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Ministry of Corporate Affairs (MCA) vide circular dated October 27, 2023, introduces certain amendments to the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Ministry of Corporate Affairs (MCA) vide circular dated October 27, 2023, has introduced certain amendments to the Companies (Prospectus and Allotment of Securities) Rules, 2014. These changes are effective from the date of publication in the official gazette i.e. October 27, 2023. The original notification can be accessed from here.

Two major changes have been proposed by the MCA:

Firstly, every public company that has issued share warrants before the Companies Act of 2013 came into existence but has not converted such warrants into shares is required to undertake the following actions:

- a) inform their registrar of companies about the details of such warrants within a period of three months from the date of this amendment in the form and manner as specified i.e. on or before **January 26, 2024**. Said details are required to be shared in Form PAS-7 which has been introduced by the MCA;
- b) within six months from the date of this amendment i.e. on or before **April 26, 2024**, the holders of such share warrants should surrender their warrants and should have the shares dematerialized in their accounts. Further, the public companies are required to upload a notice on their website, as well as print it in a vernacular newspaper that is distributed in that district and an English newspaper that is distributed in the state where the registered office is located. Such notice is required to be in the Form PAS-8 which has been introduced by the MCA;
- c) if the holders of the share warrants do not surrender their warrants within the timelines mentioned in (b) above, the public company is required to proceed to convert such warrants into dematerialized form and transfer the shares to the Investor Education and Protection Fund.

Secondly, except for small companies and government companies, all currently operating private companies are required to:

- a) issue securities only in dematerialized form;
- b) ensure that all of their existing securities are dematerialized before the expiry of eighteen months from the last financial year i.e. on or before **September 30, 2024**; and
- c) ensure that all of the promoters', directors', and key managerial personnel's securities have been dematerialized before making any offers to issue securities, buy back securities, issue bonus shares, or offer rights after **September 30, 2024**.



The amendment further states that any shareholder who intends to transfer its securities on or after September 30, 2024, shall get such securities dematerialized before undertaking such transfer. Similarly, any investor who wishes to subscribe to securities of any private company after September 30, 2024, is required to subscribe to only dematerialized securities and not any physical securities.

Lastly, private companies are also required to comply with Rule 9A sub-section (4) to (10) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 which talks about the process and compliances about dematerialisation of the securities.

SAGA LEGAL Thoughts:

The amendments proposed by the MCA are significant amendments as it is clear that the MCA wants to do away with physical securities altogether. Even though many companies and investors have started preferring dematerialized securities over physical securities, most private companies in India still issue physical securities only.

Dematerialized securities are known to be safer than physical securities as they are not susceptible to damages or theft. Similarly, concerns around payment of stamp duties can also be avoided as generally, the depositories ensure that securities are properly and adequately stamped. There is no doubt that this is a step in the right direction by the MCA, there are a few challenges that the MCA, the companies, and the depository participants might face:

- a) A lot of industry experts are worried about the timelines that have been prescribed by the MCA. Out of the 18 months prescribed, 7 months have already elapsed and therefore, the companies are left to comply with the requirements within 11 months. This will cause a sudden influx of paperwork and will put a substantial burden on the depository participants who will be responsible for ensuring the conversion of securities.
- b) A lot of investors in India are not resident investors and therefore, they do not hold PAN cards in India. Such investors do not want to maintain an active demat account in India since it will also result in them being responsible for compliance with certain KYC norms. Proposed amendments may cause certain uneasiness with such non-residential investors.
- c) Even a foreign company holding a majority stake in an Indian private company or having a wholly owned subsidiary in India will have to comply with this amendment and adhere to stringent KYC Norms which could pose a great challenge to them.

To conclude, while this is a step in the right direction, there is a probability that the MCA might need to extend the deadline or provide additional support if there is sufficient representation by the industry. To make it possible, the companies and the depository participants need to stay updated with the latest guidelines and communicate with the regulatory authorities if they face challenges in meeting the deadline.