



JSA Prism
Corporate

October 2023

Mandatory dematerialization of shares for non-small private companies

The Ministry of Corporate Affairs (“MCA”) *vide* notification dated October 27, 2023, issued the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (“**Amendment Rules**”) mandating all private companies but excluding small companies, to dematerialise their shares before October 1, 2024. The MCA had previously mandated that public companies must maintain and transact their shares in demat form starting from October 2, 2018. However, this requirement was not extended to private companies. The Amendment Rules do not apply in the case of a government company.

This amendment will ensure better transparency and mitigate fraud, risk of loss and theft. Further, the share transfer process will become more efficient and reduce the company’s expense of printing and distribution of physical certificates. For regulators, this will aid them in mitigating benami transactions, money laundering, and other such activities.

Issue of securities in dematerialised form by private companies:

1. Every private company, which is not a small company¹, must within a period of 18 (eighteen) months of closure of such financial year (i.e., before October 1, 2024): (a) issue the securities only in dematerialised form; and (b) facilitate dematerialisation of all its securities.
2. Every such private company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, must ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized.
3. Every holder of securities of private company who intends to transfer such securities or who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer, must ensure that all his securities are held in dematerialised form before such transfer or subscription.

Share warrants issued by public companies

1. Every public company which issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares must: (a) within a period of 3 (three) months of the commencement of the Amendment

¹ “**small company**” means a company, other than a public company, and has a — (a) paid-up share capital of which does not exceed INR 4,00,00,000 (Indian Rupees four crore) or such higher amount as may be prescribed and (b) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed INR 40,00,00,000 (Indian Rupees forty crore) or such higher amount as may be prescribed.

Rules inform the registrar of companies about the details of such share warrants in Form PAS-7; and (b) within a period of 6 (six) months of the commencement of the Amendment Rules, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialized in their account. The company must place a notice for the bearers of share warrants in Form PAS-8 on the website of the company and publication of the said notice in local and English newspapers.

2. Failure to surrender the share warrants within the 6 (six) months period results in conversion of such share warrants into dematerialised form and its transfer to the Investor Education and Protection Fund as established under section 125 of the of the Companies Act, 2013.

Corporate Practice









JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affairs. We have an expert team of attorneys who advise on legal issues concerning inbound and outbound investments, strategic alliances, collaborations and corporate restructurings. We advise clients through all stages of complex and marquee assignments including restructuring, mergers and acquisitions (including those in the public space) to private equity and joint ventures. Our vast clientele includes multinational corporations and large Indian businesses in private, public and joint sector. We work closely with in-house counsel teams, investment banks, consulting and accounting firms along with multilateral agencies and policy making institutions on development of policy and legal frameworks. We provide assistance and counsel to start-ups and venture backed companies by drawing upon our in-depth understanding of how companies are incorporated, financed and grown. With an in-depth understanding of the industry combined with years of expertise, our attorneys provide innovative and constructive solutions to clients in complex transactional engagements. We emphasize teamwork across our wide network of offices across India. This allows us to benefit from the various specialisations available for the ultimate benefit of our clients. We also provide assistance in dealing with diverse corporate governance and compliance issues including FCPA /Anti-Bribery/Anti-Corruption matters and investigations.

This Prism has been prepared by:



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