

Dematerialisation of securities – unlisted public companies

September 14, 2018

In brief

The Ministry of Corporate Affairs in its drive to enhance transparency, investor protection and corporate governance, has notified Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 on 10 September 2018 effective from 02 October, 2018. In accordance with the said rules, unlisted public companies need to dematerialise its existing securities and ensure that further issue of securities and transfers are only in dematerialised form. The major benefits that will be available to unlisted companies on dematerialisation are as follows:

- Elimination of risk of duplication, theft, fraud and loss with respect to physical share certificates.
- Enhancement of transparency in ownership, preventing mal-practices, such as benami shareholding, back dated issuance of shares/ transfers.
- Exemption from payment of stamp duty on transfer.
- Ease in transfer and pledge of securities.

In detail

Applicability

Every unlisted public company with effect from 02 October 2018 shall –

- a) issue its securities only in dematerialised form; and
- b) ensure dematerialisation of all its existing securities.

Dematerialisation of existing securities

Unlisted public companies can facilitate the dematerialisation of their existing securities by:

- a) Making application to a depository as per the provisions of the Depositories Act, 1996;
- b) Securing International Security Identification Number (ISIN) for each type of security; and

- c) Informing all its existing security holders about such facility.

Impact on further issue of securities by the company

Every unlisted public company needs to ensure that all its securities are dematerialised in accordance with the Depositories Act, 1996 prior to making any of the following offers:

- Issue of securities;
- Buy-back of securities;
- Issue of bonus shares; and
- Rights issue.

Impact on security holder intending to transfer/subscribe to securities

A security holder of an unlisted public company, who intends to transfer its securities on or

after 02 October, 2018 needs to dematerialise such securities before transfer.

Also, security holders who intend to subscribe to the securities of an unlisted public company on or after such date shall ensure that all his existing securities in the respective company are dematerialised before such subscription (by way of private placement, bonus shares, rights offer).

Compliance requirements

Every unlisted public company who have dematerialised their securities must comply with the following compliance requirements:

- a) Make timely payment of fees (admission as well as annual) and maintain a security deposit of at least

two years' fees, as per agreement executed with the following:

- Depository;
 - Registrar to an issue; and
 - Share transfer agent.
- b) Comply with the regulations, guidelines or circulars, if any issued by the Securities and Exchange Board or Depository from time to time.
- c) Audit Report provided under regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996 to be submitted on a half-yearly basis to the

registrar, under whose jurisdiction the registered office of the company is situated.

- d) Unlisted public companies that have defaulted in compliance requirements shall not offer any securities or buyback, or issue any bonus or right shares until the payment to depositories or registrar to an issue or share transfer agent are made.

Grievance redressal

Grievances under this rule are to be filed before the Investor

Education and Protection Fund Authority (IEPF).

The IEPF will initiate action against the following only after consultation with the SEBI:

- Depository;
- Depository participant;
- Registrar to an issue; and
- Share transfer agent.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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