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## RECENT UPDATES UNDER THE COMPANIES ACT, 2013

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# Dematerialisation of Securities by Private Companies

# Dematerialisation of Securities by Private Limited Companies

**MCA Notification dated 27.10.2023 GSR 802 (E)**

## **Applicability**

**Private companies** which are not **small companies** as at the financial year ending on or after 31<sup>st</sup> March 2023.

**Offer for issue of Securities/Transfer/Issue Securities including private placement, bonus issue and rights offer** by Private Companies.

## Cos not covered

- ✓ *Small Companies*
- ✓ *Government Companies*
- ✓ *Private Companies which are wholly owned subsidiaries of Public Companies*

## **Due Date for Compliance**

- ✓ Notification applicable from 27.10.2023
- ✓ To be complied within 18 months from the end of financial year.

## Demat of existing securities when there is no Fresh issue

<b>Nature of Company</b>	<b>Financial Year Ending on</b>	<b>Demat of securities</b>
Not a Small Company	31.03.2023	30.09.2024
Not a Small Company	31.12.2023	30.06.2025

## **In case the proposed fresh issue occurs within 18 months**

**Any fresh issue after 27.10.2023** : then such issue should be made **in demat mode** only even if it is done before expiry of time limit of 18 months.

If company is planning to make fresh issue of any **securities before the end of 18 months**, then it does not have time up to 18 months for complying with demat related provisions. Instead, it will have to do the same before making offer for fresh issue of securities.

## **In case of no fresh issue within 18 months**

**If company is not going to make any fresh issue of securities within 18 months from end of financial year 2023, then it has time of 18 months for facilitating demat of securities.**

But if it is going to make any issue of securities, then it must facilitate demat before making such issue without waiting up to 18 months.

## Shareholding of Promoters

Post the date of this notification and even before the completion of the said 18 months, it is better to ensure that the shareholding of promoters, directors and KMP is held in dematerialised mode before making offer for such issue.

## FAQ

### **1.Can a member refrain from DEMAT of Shares ?**

*Yes, The company is required only to facilitate demat of shares by obtaining ISIN.*

### **2.Can a member maintain the shares in physical form Shares ?**

*Yes, If members wish to keep securities in physical form, then they will not be eligible to subscribe further shares or transfer their shares in future.*

## Procedure for Demat or ISIN

- ✓ ISIN to be obtained to make the securities held by the promoter and non promoter dematerialised.
- ✓ Articles of Association to be amended to incorporate the same.
- ✓ Pass Board resolution to authorize the dematerialization of its securities.

# Procedure for Demat or ISIN

- ✓ **Selection** of Depository Participant and open Demat Account.
- ✓ **Appoint** Registrar and Share Transfer Agent.
- ✓ **Execute** Tripartite Agreement.

## **Designated Person for SBO**

**G.S.R. 801(E) the Companies (Management and Administration) Rules dated 27th October, 2023**

- Every company to designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company

## **Persons who can be normally designated**

- Company Secretary(CS), if a company is required to appoint him.
- Every Managing Director/Manager if CS has not been appointed.
- Every director, if there is no company secretary or a Managing Director or Manager.

## **Reporting Requirements**

Every company shall inform the details of the designated person in Annual return.

If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules, 2014.

# Recent Judgements on Company Law

## **A. Nomination by Shareholder**

**[2023] 157 taxmann.com 364 (SC) Shakti Yezdani v. Jayanand Jayant Salgaonkar**

Object of introduction of nomination facility vide the Companies (Amendment) Act, 1999 was only to provide an impetus to the investment climate and ease the cumbersome process of obtaining various letters of succession, from different authorities upon the shareholder's death. **(Para 45)**

Upon the holder's death, the nominee would not get an absolute title to the subject matter of nomination, and those would apply to the Companies Act, 1956 (pari materia provisions in Companies Act, 2013) and the Depositories Act, 1996 as well.

**(Para 43)**

Nomination process therefore does not override the succession laws. **(Para 46)**

## **B. Investigation on a company under liquidation**

**[2023] 157 taxmann.com 677 (Allahabad)[22-12-2023]**

In case of a company in liquidation, investigation under Chapter XIV of the Companies Act, 2013 may not be initiated

## **C. Investigation on Dissolved Company**

**[2023] 155 taxmann.com 174 (Calcutta), HIGH COURT OF CALCUTTA,  
Cressanda Solutions Ltd v. Union of India**

There is nothing in provisions of Companies Act 2013, which empowers ROC to enquire into antecedents and activities of a dissolved company; SEBI and MCA are appropriate authorities to enquire fraudulent share transactions and transactions of shares by struck off companies.

## **C. Power of NFRA**

[2023] 157 taxmann.com 82 (NCLAT- New Delhi)

*HarishKumar T.K v. National Financial Reporting Authority*

NCLAT upholds NFRA's orders against branch auditors of DHLF as regards their lapses committed prior to coming into force of section 132(4).

Section 132(4) of Companies Act regarding NFRA's powers to proceed against auditors of companies falling under NFRA's jurisdiction, can be applied retrospectively as regards professional misconducts committed prior to coming into force of section 132(4) i.e. prior to 01.04.2018.

# **Date of Constitution of NFRA**

**MCA Notification S.O. 5099(E) dated 01.10.2018**

In exercise of the powers conferred by sub-section (1) of section 132 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 1st October, 2018 as the date of constitution of National Financial Reporting Authority

# Powers of NFRA

**MCA Notification S.O. 5099(E) dated 01.10.2018**

The Authority shall have power to

- monitor and enforce compliance with accounting standards and auditing standards,
- oversee the quality of service under sub-section (2) of section 132 or
- undertake investigation under sub-section (4) of such section of the auditors on the class of companies and bodies corporate

# Powers of NFRA

**MCA Notification S.O. 5099(E) dated 01.10.2018**

*Entities falling under NFRA (Rule 3 of NFRA Rules,2018)*

- (a) Companies whose securities are **listed** on any stock exchange in India or outside India;
- (b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;

# **Powers of NFRA**

## **MCA Notification S.O. 5099(E) dated 01.10.2018**

*(c)* insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;

*(d)* any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and

# **Powers of NFRA**

**MCA Notification S.O. 5099(E) dated 01.10.2018**

*(e)* body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds twenty per cent. of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

# **Procedure to be followed by NFRA in Disciplinary Proceedings**

## **Issue of Show Cause Notice**

The show-cause notice shall be in writing, and shall state-

- (a) the provisions of the Act or rules under which it has been issued;
- (b) the details of the alleged facts;
- (c) the details of the evidence in support of the alleged facts;
- (d) the provisions of the Act, rules or the accounting standards or auditing standards thereunder allegedly violated, or the manner in which the public interest is allegedly affected;

# **Procedure to be followed by NFRA in Disciplinary Proceedings**

- (e) the actions that the Authority proposes to take or the directions it proposes to issue if the allegations are established;
- (f) the time limit and the manner in which the auditor is required to respond to the show-cause notice;
- (g) the consequences of failure to respond to the show-cause notice; and
- (h) the procedure to be followed for disposal of the show-cause notice.

# Structure of Order

*A. Executive Summary*

*B. Introduction & Background*

*C. Lapses in Audit*

*D. Articles of Charge of Professional Misconduct by the Auditor*

*E. Articles of Charge of Professional Misconduct by the Auditor*

*F. Other Misconduct*

*G. Penalty & Sanctions*

## [2023] 155 taxmann.com 10 (NFRA)

Where investigation by NFRA revealed that branch auditor of xx i.e chartered accountant 'A' **had violated provisions of Companies Act, 2013** and Chartered Accountants Act by accepting appointment that lacked a valid approval and had also violated accounting standards while carrying out branch audit, in view of fact that 'A' **had admitted his mistake**, monetary penalty of Rs. **1 lakh** was to be imposed on 'A' and he was to be debarred for six months from being appointed as an auditor/internal auditor/undertaking any audit in respect of financial statements or internal audit of functions and activities of any company or body corporate



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# Small Company

Sec 2(85) “small company” means a company, other than a [public company](#),—

(i) [paid-up share capital](#) of which does not exceed fifty lakh rupees or such higher amount [as may be prescribed](#) which shall not be more than <sup>32</sup>[ten crore rupees]; <sup>3</sup>[and]

(ii) [turnover](#) of which ~~\*\*\*\*\*~~<sup>17</sup>[as per profit and loss account for the immediately preceding financial year] does not exceed two crore rupees or such higher amount [as may be prescribed](#) which shall not be more than <sup>18</sup>[one hundred crore rupees:]

**Provided** that nothing in this clause shall apply to—

- (A) a [holding company](#) or a [subsidiary company](#);
- (B) a [company](#) registered under [section 8](#); or
- (C) a [company](#) or [body corporate](#) governed by any special Act;

# Small Company

**MCA notifies Companies (Specification of definition details) Amendment Rules, 2022** amending the definition of small company w.e.f. 15.09.2022 the limit of paid up capital and turnover for the small company has been increased to Rs. Four crore (Earlier 2 Crs.) and Rs. Forty crore (Earlier 20 Crs.) respectively. New small company limit: Paid up Capital – Rs. 4 Crs. Turnover – Rs. 40 Crs.

