

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i)]

Government of India
Ministry of Corporate Affairs
Notification

New Delhi, dated the 10th September, 2018

G.S.R. ___ (E).- In exercise of the powers conferred by clause (b) of sub-section (1) of section 29 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-

1. Short title and commencement.- (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018.

(2) They shall come into force on the 2nd day of October, 2018.

2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, after rule 9, the following rule shall be inserted, namely:-

“9A. Issue of securities in dematerialised form by unlisted public companies.- (1) Every unlisted public company shall -

- (a) issue the securities only in dematerialised form; and
- (b) facilitate dematerialisation of all its existing securities

in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(3) Every holder of securities of an unlisted public company,-

(a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or

(b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

(4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

(5) Every unlisted public company shall ensure that -

(a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

- (b) it maintains security deposit, at all times, of not less than two years' fees with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and
- (c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.
- (6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.
- (7) Except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply *mutatis mutandis* to dematerialisation of securities of unlisted public companies.
- (8) The audit report provided under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.