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Date : 5th September, 2024

To,
Ms. Deepti Gaur Mukerjee
Secretary,
Ministry of Corporate Affairs,
Government of India,
Dr. Rajendra Prasad Road,
Shastri Bhavan,
New Delhi 110001

Respected Madam,

Sub: Representation on the Mandatory Dematerialization of Shares for Private Companies under Rule 9B of the Companies (Prospectus and Allotment of Securities) Rules, 2014

The Chamber of Tax Consultants, established in 1926, is one of the oldest non-profit organizations of tax practitioners, having Advocates, Chartered Accountants and Tax Practitioners as its members spread across Pan India. The Chamber is on the cusp of its Centenary year which will be commencing from July 2025. Many senior tax professionals who regularly appear before ITAT, High Courts and the Supreme Court are its Past Presidents. The Chamber has been making regular representations before various government agencies.

The Chamber regularly takes up initiatives to act as a bridge between stakeholders and concerned regulatory bodies in order to convey and help in resolving genuine grievances or effectively implement the laws.

In the Companies (Prospectus and Allotment of Securities) Rules, 2014, Rule 9B has been inserted vide notification dated 27 October 2023, which mandates the requirement to facilitate and issue securities in dematerialised mode only for all private companies (other than small companies).

Background

Section 29(1)(b) read with Rule 9B provide the following requirements with respect to demat of securities of a private company.

- i. Private company shall facilitate dematerialisation of all its securities, in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder, i.e., register with Depositories (NSDL / CDSL) and procure ISIN (unique identification number) and appoint Registrar & Transfer Agent (RTA);

- ii. Issue of securities by a private company must be made only in dematerialised form;
- iii. Before making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, a private company shall ensure that the entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act, 1996 and regulations made thereunder;
- iv. Every holder of securities of a private company who intends to transfer such securities, shall get such securities dematerialised before the transfer; and
- v. Every holder of securities of a private company who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription

Sub-rule (2) of rule 9B of the Rules specifies the period within which the requirements of rule 9B must be complied with by a private company. According to sub-rule (2), a private company, which as on last day of a financial year, ending on or after 31st March, 2023, is not a small company as per audited financial statements for such financial year, shall, within eighteen months of closure of such financial year, comply with the provisions of this rule.

In view of the above rule a private company has time up to 30 September 2024 to comply with the requirements specified under rule 9B. However, after 30 September 2024, all the requirements under rule 9B must be mandatorily complied, failing which would amount to violation of the provisions of the Act. This means **all private companies to whom this aforesaid Rule 9B applies must have appointed RTA and procured ISIN on or before 30 September 2024.**

Although the intention behind this mandate is to enhance transparency and streamline the process of share transaction, few critical points that warrant reconsideration are as follows:

Sr. No.	Suggestion	Rationale
1.	Grant Exemption to Section 8 Companies	<ul style="list-style-type: none"> • Section 8 Company is not a small Company and hence if it is limited by shares, the provisions of Rule 9B are applicable irrespective of turnover and share capital • Primary objective is of promoting social welfare, education, research, and other charitable activities, rather than generating profits • Section 8 companies are often the preferred entity structure for Corporate Social Responsibility (CSR activities) undertaken by other corporations. This is because Section 8 companies are specifically designed to carry out charitable and social welfare activities, making them ideal vehicles for CSR initiatives • The existing regulatory framework for Section 8 companies already ensures that they operate with a high degree of transparency and accountability, which is crucial for maintaining public trust and confidence in their activities. • Applicability of mandatory dematerialisation imposes additional compliance burdens that may not be proportionate to the nature and scale operations

		<ul style="list-style-type: none"> • The costs associated with dematerializing shares, including RTA's joining fees and yearly fees, depositories Joining fees & Annual custodian fees corporate action fees payable each time when there is any change in capital and other transaction fees depending on number of folios, can be significant for Section 8 companies. • These costs divert funds away from their core social welfare activities, thereby impacting their ability to fulfill their charitable objectives.
2.	<p>Grant Exemption to Producer Company considering the unique nature and to ensure rural participation remains robust</p>	<ul style="list-style-type: none"> • By virtue of Section 378ZR of Companies Act, 2013, the said provisions of mandatory demat will be applicable in case of producer company as well. • Voluntary Membership As per Section 378G(2)(a) of the Companies Act, 2013, membership in a producer company is voluntary. Membership is open to individuals who qualify as eligible persons who will be primarily farmers or producers. Many of these members may not be well versed in financial processes, including dematerialisation. Farmers and producers may find it cumbersome to visit depositories or intermediaries for demat-related processes. Further, the paperwork involved in opening and maintaining demat accounts might discourage them. Therefore, if such person does not hold a demat account, accepting membership voluntarily become challenging and might discouraging. • Access to demat Services Considering the practical challenges like producer company who often have members who are farmers, producers which may or may not have easy access to Depository Participants providing services of opening demat accounts. Further considering the motive behind concept of producer company i.e. empowering rural livelihood. Rural regions face infrastructural challenges, including limited internet connectivity and technological literacy. Setting up and maintaining demat accounts may be impractical for members residing in remote villages.
3.	<p>Rationalization of costs by depositories/RTA</p>	<ul style="list-style-type: none"> • Private companies' shares are not freely transferable, often requiring the facility of freezing ISINs. • The costs associated with freezing ISINs and unfreezing each time whenever the board of directors approve transfer of shares and other dematerialization processes are significant and overburden private companies • For many private companies (other than small companies also), these costs can be substantial and may divert resources from core business activities. • These costs be rationalized by negotiating lower fees to private companies or offering special package tailored for their needs (or the dematerialization requirement be made voluntary for private companies to alleviate the financial strain.

In light of the above points, we respectfully request the Ministry of Corporate Affairs to reconsider the mandatory dematerialization requirement for private companies under Rule 9B.

A more balanced approach that takes into account the unique characteristics and challenges of private companies would be greatly appreciated.

Thank you for your attention to this matter. We look forward to a favourable consideration of this representation.

Yours Sincerely,

For **THE CHAMBER OF TAX CONSULTANTS**

Sd/-

Vijay Bhatt
President

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