

Corpedia



Recent amendment in Companies and LLP Act in India

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Background:

Recently, the Ministry of Corporate Affairs came out with certain amendments concerning dematerialisation of shares of private limited companies, the issue of warrants by companies, certain administrative matters, and additional compliances applicable to Limited Liability Partnerships (LLP).

Advith Consulting briefs below a quick overview of the recent amendments:

Designating a person responsible for providing information on the Beneficial owner of the shares:

- The Company law in India requires that companies inform the Registrar of Companies (ROC) about the Beneficial owner of the shares in case, the member who holds those shares are not the beneficial owners.
 - There are compliances surrounding the manner and periodicity of reporting the beneficial owners.
 - The current amendment¹ fixes the responsibility for, who should be responsible for furnishing information about beneficial owners to ROC.
 - The new requirement is that “Every company must designate a person responsible for providing information to the ROC or any authorized officer regarding beneficial interests in the company’s shares.”
 - For the above purposes the company may designate:
 - a company secretary, if there is a requirement for the appointment of such a company secretary under the Act and the rules made thereunder; or
 - key managerial personnel, other than the company secretary; or
 - every director if there is no company secretary or key managerial personnel.
- Until a person is officially designated as above, certain individuals are deemed to have been designated, this includes following:
- a company secretary, if there is a requirement for the appointment of such a company secretary under the Act and the rules made thereunder; or
 - key managerial personnel, other than the company secretary, or
 - every director if there is no company secretary or key managerial personnel.
- Every company must include the details of the designated person in its Annual Return, ensuring transparency and compliance.
- If the company changes the designated person at any time, it shall inform the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules, 2014.

Mandatory conversion of Share Warrants to Shares

An amendment to Rule 9 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, has been brought out, which makes it mandatory for every public company that issued share warrants prior to the commencement of the Companies Act, 2013 and not converted into shares to:

- inform the Registrar about the details of such share warrants in Form PAS-7 within a period of **3**

¹ Amendment made to Rule 9 of Companies (Management and Administration) Rules, 2014.

months from 27th October 2023; and

- require the bearer of such warrants, within a period of **6 months** from 27th October 2023 to surrender such warrants to the company and get the shares dematerialised in their account. For this purpose, the company shall place a notice for the bearers of share warrants on the website of the company, if any, and shall also publish the same in a newspaper in the vernacular language that is in circulation in the district and in English language in an English newspaper, widely circulated in the state in which the registered office of the company is situated.
- In case any bearer of a share warrant does not surrender the share warrants within the period of **6 months**, the company shall convert such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund.

Issue of securities in dematerialised form by private companies:

- Every private company, other than a small company², shall, within **18 months** of closure of financial year starting 31.03.2023 (referred to as the ‘compliance deadline’), comply with the following as regards its shares –
 - a) issue the securities only in dematerialised form; and
 - b) facilitate dematerialisation of all its securities,
- Further, it is also mandatory for every private company making any offer for the issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the compliance deadline to ensure that before making such an offer, entire holding of

securities of its promoters, directors, and key managerial personnel has been dematerialised.

- Every holder of securities of the private company referred to above:
 - a) who intends to transfer such securities on or after the compliance deadline is required to comply with this rule shall get such securities dematerialised before the transfer; or
 - b) 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 compliance deadline, shall ensure that all his securities are held in dematerialised form before such subscription.
- Rules around compliances with various formalities for dematerialisation have also been brought out.

Limited Liability Partnership – Register of Partners and Beneficial ownership compliance:

- Every limited liability partnership shall, from the date of its incorporation, maintain a register of its partners in **Form 4A**, which shall be kept at the registered office of the limited liability partnership.
- In the case of a limited liability partnership existing on the date of commencement of the Limited Liability Partnership (Third Amendment) Rules, 2023, it shall maintain the register of partners in Form 4A within thirty days from 27th October 2023.
- The entries in the register maintained shall be made within seven days pursuant to any change made in the contribution amount, or in the name and details of the partners in the

² Company having paid-up capital less than Rs.4crore and turnover less than Rs.40 crores, except holding &

subsidiary company or a non-profit company or company incorporated by a Special Act.

Limited Liability Partnership agreement, or in cases of cessation of partnership interest.

- Furthermore, in case, any partner whose name is mentioned in the register of Partners but does not hold beneficial interest, such partners are required to file a declaration with the LLP within a period of thirty days from the date on which his name is entered in the register of partners, specifying the name and other particulars of the person who actually holds any

beneficial interest in such contributions.

- Any change occurs in the beneficial interest in such contribution, the registered partner shall, within a period of **30 days** from the date of such change, make a declaration of such change to the LLP.
- Further rules on change in beneficial owners, its reporting to the ROC, person responsible for the reporting, etc, have also been brought out.

Advith Comments: The declaration of person responsible to report beneficial ownership, maintenance of Partners Register in LLP and concept of beneficial ownership in LLP, seems to have been brought in with a specific purpose. A general understanding that these must be complied were already there but mandating it under the rules now has reaffirmed that these compliances are mandatory.

Someone using the LLP structure to evade the beneficial ownership disclosures that were mandatory for companies cannot do so anymore.

Further, the amendment relating to the mandatory conversion of share warrants issued during the regime of the earlier Companies Act, might be to eliminate any pseudo-holding structures using share warrants.

The requirement to dematerialise shares for private limited companies seems to be slightly onerous. It is good that small companies have been kept out of this mandate. The number of demat providers in India is very small and the operational efficiency is still a little doubtful. Given this and the fact that this entire process will cost money, it may seem to be burdensome for some private limited companies.

The important point to note is that, despite falling within the thresholds of a small company, subsidiaries of foreign companies are not considered small companies and hence would have to comply with the dematerialisation requirements.

However, to bring transparency and effective disclosure, dematerialisation of shares is a good step.

All the amendments clearly show that regulators are taking various measures to eradicate shell entities and questionable corporate structures.

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