



**dvmgopal & associates**  
Company Secretaries

# **NEWSLETTER**

**November - 2023**



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## Designating A Designated Person – SBO – Sec 90

Rule 9 of the Companies (Management and Administration) Rules, 2014 has been amended vide the *Companies (Management and Administration) (Second Amendment) Rules, 2023*, requiring a company to designate a person for furnishing and extending corporation with respect to beneficial interest under Section 90 of the Companies Act 2013. This amendment is applicable from 27<sup>th</sup> October, 2023



*“Every Company” to designate a person to 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.”.*

### *Who can be a designated person?*

Sub-rule (5) of said Rule 9 deals with the person qualified to be a designated person. It requires one of the following to act as a “designated person”:

CS of the company, or

Any KMP of the company, other than CS or

Every director of the company, in case the company does not have a CS or other KMPs.

Therefore, a company may designate the CS, or any of the KMPs or director(s) of the company to act as a designated person preferably through a duly passed board resolution in this regard,

## **"Deemed" designated person**

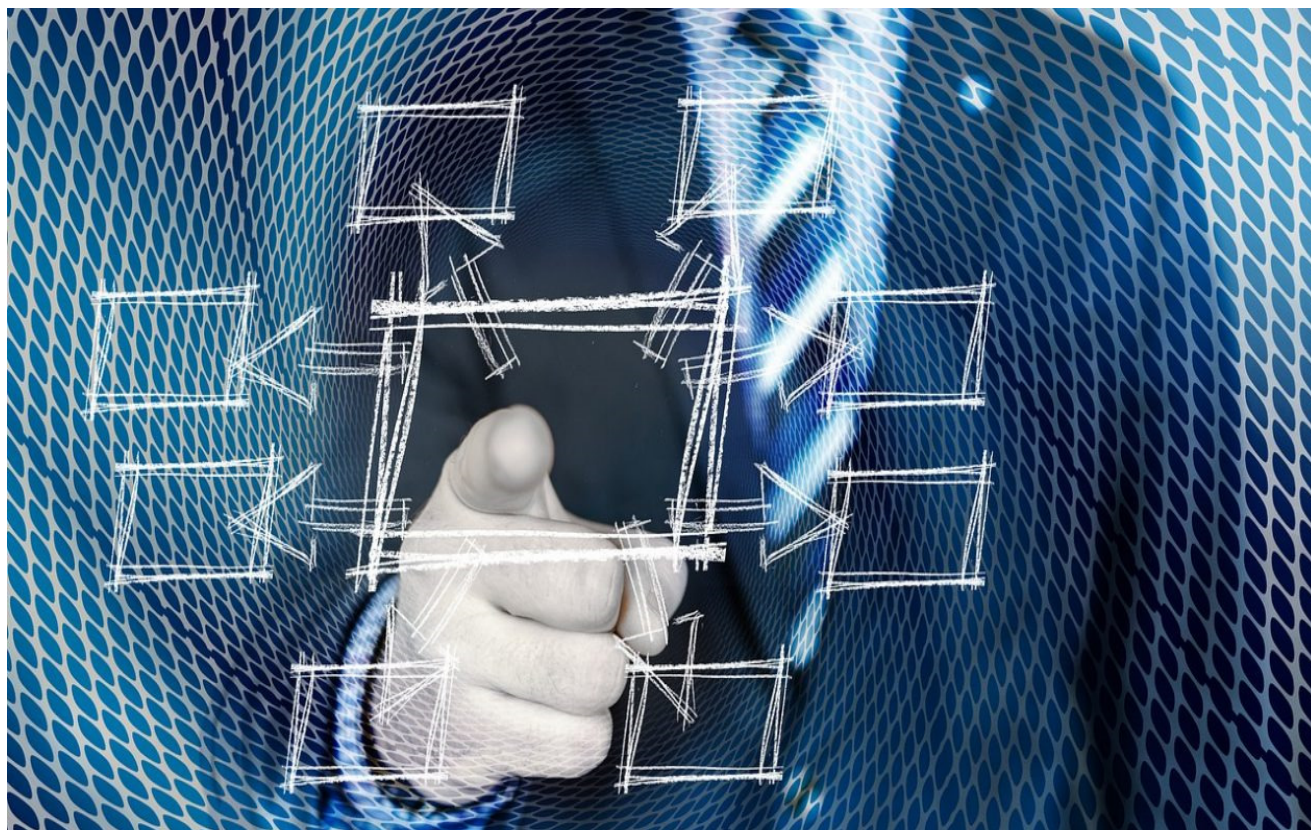
The provisions are applicable immediately, and therefore, till the time a company designates a person for compliance with the aforesaid, these persons shall be deemed to be designated person:

- CS of the company, or
- Every Managing Director or Manager of the company,
- In the absence of both of the above, every director of the company.

## **Disclosure of details of a designated person**

- The details of the designated person are required to be disclosed in the annual return.
- Any changes in the designated person are also required to be intimated to the ROC in e-form GNL-2.
- No timeline has been specified for filing the form but should be filed within a reasonable period.

## MANDATORY DEMATERIALIZATION - PRIVATE COMPANIES



Insertion of Sub-section (1A) to Section 29 of the Companies Act 2013 in 2019, facilitated the Central Government to prescribe such class or classes of unlisted companies for which the securities shall be held and/ or transferred in dematerialised form. The Ministry of Corporate Affairs, have in phased manner prescribed such class of companies for mandatory dematerialization, earlier for unlisted public companies, and now for certain unlisted private companies.

As for listed companies and unlisted public companies, the dematerialisation of securities is already a mandatory requirement. With the present amendment being notified, the private companies have also been covered by the mandatory dematerialisation requirements.

### APPLICABLE PROVISIONS:

Rule 9B inserted to the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**PAS Rules**") vide the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (effective from 27<sup>th</sup> October, 2023) in pursuance to the power under Section 29(1A) referred above, have made the requirement of mandatory dematerialization of securities for every private company (except small companies<sup>1</sup>), in the manner as discussed hereunder.

<sup>1</sup> a **small company** means a company, other than a public company, having paid up share capital not exceeding Rs. 4 crores and turnover not exceeding Rs. 40 crores. Further, the following cannot be a small company – (A) a



## COMPLIANCE REQUIREMENTS UNDER RULE 9B

Every private company, other than a small company, shall on and after the due date for compliance with the provisions of Rule 9B of PAS Rules, ensure following compliances:



**Provide platform for dematerialization:** shall make necessary arrangement for dematerialisation of all its securities.



**Further Issue of Securities:** any further issue of securities shall only be in dematerialised form. Further subscriber to issue to ensure that entire pre-issue holding is dematerialised.



**Dematerialised holding for promoters, directors, KMPs:** before making any offer for issue of any securities or buyback of securities, shall ensure that entire holding of securities of its promoters, directors, KMP has been dematerialised.



**Transfer of Securities in DEMAT:** Every holder of securities intending to transfer such securities shall get such securities dematerialised before the transfer.



**Filing half-yearly return:** submit half-yearly return in Form PAS-6 with the ROC duly certified by a company secretary in practice or chartered accountant in practice.

**Note:** This requirement is applicable in respect of all the securities issued by the private company. The term "securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. Which inter-alia includes equity shares, preference shares, debentures.

### DETERMINATION OF SMALL COMPANY:

For the applicability of provisions of Rule 9B of PAS Rules, whether a private company is a small company or not, is to be determined on the basis of the paid-up share capital and/or turnover of the company under review, as on the last day of a financial year, ending on or after 31st March, 2023 as per audited financial statements.

That is:

- For existing private companies - on the basis of the financial position as on the last day of the financial year ended 31<sup>st</sup> March, 2023
- where the financial year of an existing private company is January to December - on the basis of the financial position as on the last day of the financial year ending 31<sup>st</sup> December, 2023
- For private companies incorporated after 31<sup>st</sup> March, 2023 - on the basis of the financial position as on the last day of the 1<sup>st</sup> financial year.

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.



## DUE DATE FOR ENSURING COMPLIANCE:

A private company, which is not a small company, as on last day of a financial year, ending on or after 31st March 2023, as per the audited financial statements, shall ensure compliance of Rule 9B of PAS Rules, within a period of 18 months of closure of such financial year.

For instance:

Category of a private company	Financial Year ending date*	Due date
Private Company which is not a small company	31 <sup>st</sup> March, 2023	30 <sup>th</sup> September, 2024
Private Company which is not a small company	31 <sup>st</sup> December, 2023	30 <sup>th</sup> June, 2025
Private company, which is not a small company, incorporated on or after 1 <sup>st</sup> January, 2023	31 <sup>st</sup> March, 2024	30 <sup>th</sup> September, 2025

## EXEMPTED PRIVATE COMPANIES:

The compliances enunciated under Rule 9B of PAS Rules are not applicable in respect of following types of private companies:

- A Small Company.
- A Government Company.

**Note:** *Unlike in Rule 9A of the PAS Rules – prescribing dematerialization for unlisted public companies, Rule 9B does not exempt a wholly owned subsidiary, which is a private company.*

## STEPS THAT MAY BE TAKEN:

### 1) Arrangement for dematerialization and ISIN:

- Approval of the Board for availing DEMAT platform for all the securities issued by a company
- Appoint Registrar and Transfer Agent (RTA);
- Apply to depository for DEMAT platform/ connectively and payment of fees
- Dematerialization of securities as may be required by the holders thereof

### 2) Appraising the holders of securities about:

- The compliance requirement and provisions
- The availability of DEMAT Facility
- Requirement of opening a demat account and/or trading account

## CONSEQUENCES IN CASE OF FAILURE:

**For Company:** No specific penal provisions governing the non-compliance with the provisions of Section 29 of the Act is provided, therefore Section 450 of the Act shall apply.

**For Security Holders:** If fails to comply above – security-holder will not be able to transfer or subscribe the securities of such company.



## Compliance Calendar – November 2023

November/2023			
Companies Act, 2013			
Compliance details	Form	Applicability	Due Date
Reconciliation of Share Capital Audit Report	Form PAS-6 (Half Yearly)	Every unlisted public companies	29/11/2023
Filing of Annual Return with Registrar	Form MGT-7/7A	Every Company	60 days from the date of AGM
FEMA			
Compliance details	Form	Applicability	Due Date
External Commercial Borrowings (ECB) - FEMA	Form ECB-2	All Companies having ECB	07/11/2023
SEBI LODR Regulations			
Compliance details	Form	Applicability	Due Date
Regulation 23(9)	Disclosure of Related Party Transactions	All Listed Entities	On the date of publication of the Financial Results
Regulation 32 (1)	Statement of deviation(s) or variation(s). Within 45 days from the end of the quarter/Within 60 days from the end of the last quarter	All listed companies, till time the issue proceeds have been fully utilised or the purpose has been achieved	14/11/2023
Regulation 33	Financial Results along with Limited review report/Auditor's report	All Listed Entities	14/11/2023
Labour Laws			
Compliance details	Form	Applicability	Due Date
PF Payment	Monthly ECR	Entities registered with PF Authorities	15/11/2023
ESI Payment	Monthly ECR	Entities registered with ESIC Authorities	15/11/2023
INCOME TAX			
Compliance details	Form	Applicability	Due Date
Deposit of Tax Deducted	Challan 281	Non-government deductors	07/11/2023
Deposit of Tax Collected	Challan 281	Non-government deductors	07/11/2023
Income tax return	Respective ITR's	Assessed if having international or specified domestic transactions	30/11/2023

GST			
Compliance details	Form	Applicability	Due Date
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who have not opted for QRMP scheme	11/11/2023
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who opted for QRMP scheme -Optional	13/11/2023
Summary Return of Outward and Inward Supplies along with payment of Tax	GSTR 3B	GST Taxpayers who have not opted for QRMP scheme	20/11/2023
GST Challan Payment if no sufficient ITC		GST Taxpayers who opted for QRMP scheme and not having sufficient ITC	25/11/2023
Summary Return of Outward taxable supplies and tax payable	GSTR 5	Non-Resident GST Taxpayers	20-11-2023 or within 7 days after expiry of registration, whichever is earlier
Return for persons providing OIDAR services	GSTR 5A	OIDAR services from a place outside India to a person in India other than a registered person	20/11/2023
Return for details of ITC received and distribution	GSTR 6	Input Service Distributors	13/11/2023
Return for TDS under GST	GSTR 7	Government Authorities	10/11/2023
Return for Details of Supplies and the amount of tax collector	GSTR 8	E-commerce Operator	10/11/2023
Return for details of goods and services purchased in India	GSTR-11	Taxpayer claiming Refund & having UIN	28/11/2023