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Analysing developments impacting business

SUN SETS ON THE BEARER SHARE WARRANTS OF PUBLIC COMPANIES

9 November 2023 [Introduction](#)

The notification dated 27 October 2023 by the Ministry of Corporate Affairs (MCA) (Amendment), amends Rule 9 of the Companies (Prospectus and Allotment of Securities) Rules, 2023 (PAS Rules) to introduce sun-set provisions in respect of the bearer share warrants issued under the erstwhile Indian Companies Act, 1913 or Companies Act, 1956.

[Impact of the Amendment](#)

Under Indian Law, "share" is defined to mean a share in the share capital of the company and includes stock. The shares or debentures or other interest of any member in a company constitutes movable property transferable in the manner provided by the articles of the company.

A share is also one of the unique types of moveable property inasmuch as the company is mandated to issue a certificate of title to the registered holder of the shares in a time bound manner. The property represented by a share certificate could be transferred only under a duly stamped instrument of transfer along with original share certificate.

Indian Companies Act, 1913 (as well as the English Companies Act, 1948) permitted a public company to cancel the share certificates (certificates of title) and issue share warrants. The bearer for the time being or the holders in due course of the share warrants were entitled to exercise all membership rights in a public company. Like many other forms of moveable property mere possession and delivery of a share warrant was adequate in negotiating and transferring the investment by one person to another.

Modern corporate law abhors anonymity of stakeholders and insists on transparency about the identity and status of a stakeholder. While permitting to retain these provisions under the Companies Act, 1956, the Company Law Committee had observed that while they were conscious that this instrument may provide cover for those who carry on anti-social activities, they did not recommend abolish of this relic from the past perhaps because not much use of this instrument was made in India. It was observed that the objects of public policy can be adequately achieved by stipulating that no warrants should be issued without an inherent enabling power being prescribed under the Articles of Association and prior approval of central government was obtained.

Under the Amendment, the public companies which had issued the bearer share warrants under the previous companies legislations are required to convert all the existing bearer share warrants to shares in dematerialised form.

In the past, the MCA and the Securities and Exchange Board of India have introduced legal frameworks to ensure the dematerialisation of the securities issued by listed and unlisted public companies. However, such legal framework did not extend to bearer share

warrants. With this Amendment, the MCA has laid down the procedure to dematerialise the bearer share warrants issued by public companies under the erstwhile companies legislations.

Procedure to comply with the Amendment:

Every public company that has issued share warrants under the CA 1956 and not converted them into shares is required to take the following steps:

- (a) Provide details of the outstanding share warrants to the Registrar of Companies in Form PAS-7 (*Details of pending share warrants*) within 3 months of commencement of the Amendment (i.e., by 27 January 2024).
- (b) Notify the bearers of the outstanding share warrants in Form PAS-8 (*Notice for bearers of pending share warrants*) on the website of the company, *if any*. The company is also required to publish the notice in 2 newspapers: (i) in vernacular language, having wide circulation in the district; and (ii) in English language having wide circulation in the state of the company's registered office.
- (c) The bearers of the outstanding share warrants are required to surrender the share warrants to the company and get the shares credited to their beneficiary accounts maintained by a depository participant within 6 months of commencement of the Amendment (i.e., on or before 26 April 2024).
- (d) In case any bearer of outstanding share warrants does not surrender the share warrants within the aforementioned timelines, the company is required to convert such outstanding share warrants into dematerialised shares and transfer the same to the Investor Education and Protection Fund (IEPF).

Comment

The Amendment aims to remove the issue of tracing legal ownership of bearer share warrants. Keeping in line with the active effort to promote dematerialisation of securities to ensure regulatory transparency and good governance, the MCA introduced the framework to govern dematerialisation of share warrants through the Amendment.

The Amendment is a welcome change as it not only aids in identifying ownership of shares, but also facilitates with the ease in conversion of warrants into shares and eliminates the risks associated with physical instruments such as theft, loss, forgery, mutilation, etc.

While the Amendment is desirable, one wonders about the legislative competence of the MCA as regards the scope of a delegated legislation requiring mandatory transfer of unclaimed share warrants to IEPF. The Amendment also is conspicuously silent about the manner in which the share warrant holders could re-claim their shares from the IEPF.

- *Sharad Abhyankar (Partner) Sameer Sah (Partner), Saranya Mishra (Senior Associate) and Priyal Sanghvi (Associate)*

For any queries please contact: editors@khaitanco.com

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