

7th November 2023



MCA amendments: Impact on shareholders & LLP partners



MCA AMENDMENTS IN RELATION TO COMPANIES/ LLP

Ministry of Corporate Affairs (“MCA”) introduced the following major amendments impacting companies and limited liability partnerships (LLP) incorporated within India:

1. Private Companies are now required to dematerialize entire shareholding by the end of September 2024
2. LLPs are now mandated to maintain register of partners and declare Declaration of beneficial interest of the partners in the LLP

Significant impact on foreign shareholders, VC/PE, body corporate partners of LLPs etc.

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Dematerialization

Private Companies are required to dematerialize entire shareholding by the end of September 2024

Changes

Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (“PAS Rules 2023”), now amends the Companies (Prospectus and Allotment of Securities) Rules, 2014 as follows:

1. Mandate all private companies other than small companies are required to dematerialize the entire shareholding by the end of September 2024 (“Cutoff Date”);
2. To be considered a small company, the private company should fulfil the criteria of small company as on or after 31st March 2023;
3. Any time after the Cutoff Date, if the company wishes to (i) issue any securities (through rights issue, private placement, or bonus shares issuance route); or (ii) buyback any securities; the company will need to ensure that entire holding of securities of their promoters, directors, and Key Managerial Personnel (KMP) has been dematerialized;
4. Any transfer of securities after the Cutoff Date will be done only through dematerialized form;
5. These changes do not apply to government companies

Immediate Actions

1. Apply to a Depository under the Depositories Act, 1996 for dematerialisation and securing International Security Identification Number (ISIN) for each type of securities that are issued
2. Inform all existing security holders about the ISIN of the relevant securities
3. Assist your promoter, director and KMP in demat of their shareholding, including creation of a demat account (if they don't already have one);
4. Issue all securities in demat form once demat process is done, and in any case from 1st October 2024;
5. Maintain security deposit, at all times, of not less than two years' fees with the depository and registrar to an issue and share transfer agent.

Dematerialization - Impact

1. Critical impact will be on the foreign shareholders including foreign employees holding shares in Indian companies. To provide liquidity to any of these foreign shareholders, the companies must first ensure they have a demat account in India and then demat their shareholding within the company. There are strict requirements under the law (specifically the prevention of money laundering regulations) regarding the creation of a demat account, which may be more cumbersome to foreign parties.
2. Before any fund-raise or any event of Exit to the Investors through buy-back route, after the Cutoff Date, the promoter, director, and KMP shareholding will have to be made demat and if these persons do not have a demat account, the same will need to be created too.
3. The shareholders will have to be sensitized of the practice of transfer of shares in the demat route.

LLP Declaration

The Limited Liability Partnership (Third Amendment) Rules, 2023 (“LLP Rules 2023”), made effective from 27th October 2023 (“Commencement Date”), require (i) a registered partner to disclose the holder of beneficial interest in the partnership to the LLP; and (ii) for LLP to maintain a register of partners.

Changes

1. LLP to maintain a register of its partners in Form 4A from the date of incorporation or in case of an already existing LLP within 30 days from the Commencement Date, which shall be kept at the registered office of the LLP.
2. The registered partner (whose name is on the partnership deed) should disclose the name and details of the person holding beneficial interest, vide Form 4B, within 30 days from (i) when the registered partner’s name is entered in the register of partners; or (ii) when any change in beneficial interest is made.
3. The beneficial partner (i.e., the person whose name is not entered in the register of partners) should disclose the nature of interest and details of registered partner, vide Form 4C, within 30 days from (i) acquiring of such beneficial interest; or (ii) when any change in beneficial interest is made.
4. LLP to record beneficial interest declaration in register of partner and file return with registrar in Form 4D within 30 days of receiving such declaration.

LLP Declaration

Immediate Actions

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2. Inform all existing security holders about the ISIN of the relevant securities
3. Assist your promoter, director and KMP in demat of their shareholding, including creation of a demat account (if they don't already have one);
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IMPACT

- The beneficial interest disclosure was only applicable to the companies, which is now introduced for LLPs through this amendment. This amendment tightens the regulatory compliances on the LLP.
- If the partners of the LLP are body corporate the LLP will need to take measures to ensure that the ultimate beneficial holder of such body corporates will need to be disclosed.

How can we help?

We can assist the LLPs and Companies with the following:

- Discussing and clarifying the requirements with the relevant stakeholders including shareholders, directors, partners and KMP
- Assisting in responding queries of offshore stakeholders with respect to the process of applying for demat account
- Reviewing if the the documentation of the LLPs/Companies such as Articles of Association, Partnership Deed, Transaction Documents etc. are aligned with the requirements and suggest appropriate changes
- Assist in amendments made to the document - drafting, finalisation and execution

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