

# Referencer on e-Form PAS-6



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# PREFACE

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***“Things work out best for those who make the best of how things work out.”***

The profession of Company Secretaries, the profile entailing might have expanded over the past years; especially after the enactment of the Companies Act, 2013, yet, certifications, indeed holds a significant position in the same profile. Even further, with each new Amendment in the law, both in the Rules as well as the Act itself, the roles and responsibilities of the professionals of this brigade are augmented steadily. The same, however, beckons an equally effective effort on our part to uphold not just the law in its true letter and spirit but the expectations of the Regulatory Authorities as well.

The Amendment brought out by the Ministry of Corporate Affairs in the Companies (Prospectus and Allotment of Securities) Rules, 2014 in 2018 and 2019 made way for issue of securities in dematerialized form by unlisted public companies and even further, requirement of Reconciliation of Share Capital Audit Report on half-yearly basis in e-Form PAS-6.

Apart from the significance of the form in strengthening governance in the unlisted public companies, the imperativeness of this Report is further enriched for the Company Secretaries for the fact that e-Form PAS-6 shall be duly certified by a Company Secretary in practice or Chartered Accountant in practice before being submitted to the Registrar of Companies.

It is with the intent of providing ease of certification by providing a detailed insight into the aspects beginning from the very concept of pre-certification to the analysis of the provisions of the law and the methodology of carrying out the pre-certification, that the Institute of Company Secretaries of India (ICSI) has brought out this publication under the aegis of Referencer on Pre Certification of e-form PAS-6.

I would like to place on record my sincere appreciation to CS Deepak Kumar Khaitan, Chairman, PCS Committee, CS B. Narasimhan, CS Devendra V. Deshpande, CS Manish Gupta, Central Council members and CS Nagendra D. Rao, Vice President for their guidance and offering valuable suggestions in review and finalization of the publication.

I am thankful to CS Kalidas Ramaswamy and members of the Sub-group on Referencer on MCA E-forms for providing various suggestions and inputs in preparation of this publication. I also appreciate contribution of CS Makarand Joshi for providing inputs in the revised publication.

I commend the efforts put in by Mr. Manoj Kumar, Deputy Director and CS Sahil Suneja in incorporating various suggestions and inputs in the publication under the guidance of CS Samir Raheja, Director, Directorate of Professional Development, Perspective and Futuristic Planning and under the stewardship of CS Asish Mohan, Secretary, ICSI.

I am confident that the publication will prove to be immensely beneficial in the process of pre-certification of the e-form PAS-6. I would appreciate the users/ readers for offering their constructive suggestions/comments for the improvement of this publication.

Place: New Delhi

**CS Ashish Garg**

Date: October 13, 2020

*President*

The Institute of Company Secretaries of India

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# Concept of Pre-Certification

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Pre-certification of e-forms was introduced to avoid delays in registration as also to ensure correctness of the documents filed by professionals.

Pre-certification means certification of the correctness of any document by a professional including a Company Secretary in Practice before the same is filed with the Registrar of Companies (hereinafter referred to as 'the RoC') in accordance with the requirements of the Companies Act, 2013 (hereinafter referred to as 'the Act'). The professional checks the correctness of the particulars mentioned in the form after due consideration of the provisions of the Act and the relevant Rules made thereunder and ensures that the particulars stated in the form are in agreement with the books and records of the company. If any defects/ discrepancies are found or it is found that the information provided in the form is incomplete/defective, then the professional is expected to appropriately advise/provide guidance for completion of document/rectification of the defects and allow pre-certification only after ensuring that the defects have been rectified and the form is complete in all respects as complete/rectification of the defects observed.

The RoC can rely on the certification of the Company Secretary in Practice (hereinafter referred to as 'the PCS') and take the document on record without further scrutiny. At present there are several forms in straight through process mode (hereinafter referred to as 'the STP mode') which are taken on record on the basis of pre-certification and filing without any further scrutiny by the RoC. However, the RoC may carry out scrutiny of forms in future and may mark the same as defective and take necessary action. Thus, pre-certification by a PCS ensures that every such form or return is filed without any defect and should be complete in all respects as per the instructions in the form.

Disclosure of information to shareholders and other stakeholders is important to protect their interests and to ensure better governance. Accordingly, the Act has stipulated stringent measures and requirements for disclosures including in financial statements, Board's report, annual return and so on. The Act has also imposed onerous duties and responsibilities on company directors as well as the professionals. The punishment for violation of provisions of the Act are also very stringent. Therefore, it is imperative to ensure the correctness of information filed with the RoC.

If a professional gives a false certificate or omits to provide any material information knowingly, he is liable to punishment under the provisions of the Act as well as liable for professional misconduct.

### **Regulatory Developments**

Pre-certification was introduced after detailed deliberations and this has been refined over time. Though it initially aimed at avoiding delays in registration of documents and charges, its scope was expanded to authenticate correctness and integrity of documents being filed with the Ministry of Corporate Affairs (hereinafter referred to as 'the MCA') in view of the benefits from such pre-certification. With a view to avoid delay in the registration of documents, MCA (the then Department of Company Affairs) on the initiative taken by the Institute of Company Secretaries of India issued two circulars i.e. Circular No. 14/90 dated 5th September, 1990 and Circular No.5/91 dated 26th February, 1991 advising all the RoC to take on record documents that are filed by companies or the creditors concerned, duly certified as correct by a company secretary/ chartered accountant/ cost accountant in practice.

The Department Related Parliamentary Standing Committee, which examined the Companies (Second Amendment) Bill, 1999, while endorsing the pre-certification in its 64th Report in 2000, had observed that verification of compliances with the provisions of the Companies Act, 1956 by a PCS was necessary.

The High Level Committee on Corporate Audit and Governance (Naresh Chandra Committee) in its report in 2002, while observing wide gap between prescription and practice, recommended a system of pre-certification by PCS to remove defects in documents so that these could be taken on record immediately and to reduce workload on the MCA. It was also recommended that the system should provide for monetary and other penalties on PCS who certify incorrectly, even through error or oversight.

Accordingly, the Companies (Amendment) Bill, 2003 introduced in the Rajya Sabha sought to add a new section 383C to provide that all documents, returns, forms required to be filed with the Registrar or any statutory authority shall be pre-certified by a PCS. In the meantime, the Government came out with the Concept Paper for revamping of Company Law on August 8, 2004 containing a model codified company law which incorporated the provisions of section 383C of the Companies (Amendment) Bill, 2003. After enactment of the Companies Act, 2013, the process has been now sanctified in the Companies (Registration Offices and Fees) Amendment Rules, 2014 [Sub-rule (12) of Rule 8, introduced by Notification No. G.S.R. 297(E) dated 28th April, 2014]. The requirement of authentication of documents prescribed under Rule 8 of the Companies (Registration Offices and Fees) Rules, 2014 elaborates on the responsibility of professionals certifying the forms. The professional certifying the form must verify whether all the requirements as per the provisions of the Act and the rules made thereunder have been complied with and all the attachments to the forms have been duly scanned and attached completely and legibly.

# Professional Liability

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Any failure or lapse on the part of a PCS in issuing a certificate may attract disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980. Therefore, it becomes imperative for the PCS that he exercises great care and caution while issuing the certificate and also adheres to the highest standards of professional ethics and excellence in providing his services.

## **PENAL PROVISIONS FOR WRONG PRE-CERTIFICATION**

### **Under the Company Secretaries Act, 1980**

The Second Schedule to the Company Secretaries Act, 1980 in clause 2 provides that where a PCS has certified or submitted in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements, unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another PCS, he shall be deemed to be guilty of professional misconduct.

Further, clauses 5, 6, 7 and 8 of the Second Schedule to the Company Secretaries Act, 1980 provide that where a PCS while pre-certifying any e-Form or document has failed to disclose a material fact known to him in his report or statement, the disclosure of which is necessary in making such report or statement or has failed to report on a material mis-statement which is known to him or he has not exercised due diligence, or is grossly negligent in the conduct of his professional duties or fails to obtain sufficient information which is necessary for expressing an opinion or its exceptions are sufficiently material to negate the expression of an opinion, he would be deemed to be guilty of professional or other misconduct under the provisions of the Company Secretaries Act, 1980. In case there are any false statements in any of the material particulars or there is omission of

any material fact in the form certified as correct by a Practicing Company Secretary, he would be liable for disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980.

In view of the provisions of section 21B (3) of the Company Secretaries Act, 1980, in case he is found guilty of professional or other misconduct as mentioned in the second schedule to the Company Secretaries Act, 1980, he will be liable for the following actions-

- (a) Reprimand,
- (b) Removal of name from the register of members permanently or for such period as may be thought fit by the disciplinary committee,
- (c) Fine, which may extend to five lakh rupees.

### **Under the Companies Act, 2013**

As per Section 398 of the Act read with rule 8(9) of the Companies (Registration Officers and Fees) Rules, 2014, where any instance of filing document, application or return, etc. containing a false or misleading information or omission of material fact has been observed which requires action under section 448 or section 449, the person shall be liable under section 448 and 449 of the Act.

Further, Rule 8(10) of the Companies (Registration Officers and Fees) Rules, 2014 also stipulates that without prejudice to any other liability, in case of certification of any form, document, application or return under the Act which contains wrong or false or misleading information or omission of material facts or attachments by the person, the Digital Signature Certificate of the concerned person shall be de-activated by the Central Government till a final decision is taken in this regard.

### **Penal provisions under sections 447, 448 and 449 of Companies Act, 2013 & MCA circular (Circular No. 10/2014 dated 07.05.2014)**

Section 447 of the Act (punishment for fraud) provides for severe punishment. The Section contemplates that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the

amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

The proviso thereunder stipulates that where the fraud in question concerns public interest, the term for imprisonment shall not be less than three years.

The second proviso to the Section clarifies that where the fraud involves an amount which is not less than ten lakh rupees or one percent of the turnover of the company, whichever is lower and does not involve public interest, the person guilty of fraud shall be liable for imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

The term 'fraud' for the purpose of this Section has been defined in the Explanation contained in the Section.

As per section 448 of the Act (punishment for false statement), save as otherwise provided in the Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement, –

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

As per section 449 of the Act (punishment for false evidence) save as otherwise provided in the Act, if any person intentionally gives false evidence -

- (a) upon any examination on oath or solemn affirmation, authorised under this Act; or
- (b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

## Background of E-Form PAS-6

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The introduction of e-form PAS-6 by the MCA is in pursuance to sub-rule (8) of Rule 9A which was amended vide the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 with effect from 30th September, 2019.

E-form PAS-6 is concerned with the filing of the reconciliation of the share capital audit report on a half-year basis of unlisted public companies. The objective of this audit report is to identify any difference observed in the issued capital and the capital held in dematerialised form of a public company. Rule 9A(8A) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that the concerned companies shall bring immediately to the notice of the Depositories any difference observed in its issued capital and the capital held in dematerialised form.

MCA vide notification dated 10th September 2018, introduced Rule 9A to the Companies (Prospectus and Allotment of Securities) Rules, 2014 through the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 for issue of securities in dematerialized form by unlisted public companies effective from 2nd October 2018. The above rule corresponds to Section 29 of the Companies Act, 2013.

MCA vide General Circular G.S.R. 376(E). dated 22nd May, 2019 came up with the requirement of Reconciliation of Share Capital Audit Report on half-yearly basis pursuant to sub-rule (8) of Rule 9A of the Companies Prospectus and Allotment of Securities) Rules, 2014 and has issued Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 with effect from 30th September, 2019 in substitution of sub-rule (8) which provided that the audit report provided under Regulation 55A of the SEBI (Depositories and Participants) Regulations 1996 shall be submitted by the unlisted

company on a half-yearly basis to the RoC under whose jurisdiction the registered office of the company is situated.

According to Rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, every unlisted public company shall submit Form PAS-6 duly certified by a Company Secretary in practice or Chartered Accountant in practice to the RoC within 60 days from the conclusion of each half year.

On 28th November 2019, MCA clarified that the time limit to file PAS-6 without additional fees for the half year ended on 30th September, 2019 would be 60 days from the date of deployment of the PAS-6 on the website of the MCA.

On 15th July 2020, MCA has deployed the form for filing within 60 days. Accordingly, the last date for filing the Form PAS-6 for the half-year ended on 30th September, 2019 shall be 13th September, 2020.

## **PROVISIONS OF THE COMPANIES ACT, 2013 AND RULES MADE THEREUNDER**

### **The Companies Act, 2013**

Section 29 of the Companies Act, 2013 read with Rule 9A of the of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that in case of every unlisted public company, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.

Every holder of securities of an unlisted public company, who subscribes to any securities of such company on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialised form before such subscription.

Section 29 of the Companies Act, 2013 is reproduced as follows : -

### **Public Offer of Securities to be in Dematerialised Form**

29. (1) Notwithstanding anything contained in any other provisions of this Act,—

- (a) every company making public offer; and
- (b) such other class or classes of companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

### **The Companies (Prospectus and Allotment of Securities) Rules, 2014**

The Companies (Prospectus and Allotment of Securities) Rules, 2014 has been enacted by the Central Government in exercise of powers conferred under Sections 26, 27, 28, 29, 31, 39, 40 and 42 read with Section 469 of the Companies Act, 2013. They came into force on the 1st day of April, 2014.

Rule 9 of the said rules provides for the dematerialisation of securities, while Rule 9A provides for issue of securities in dematerialised form by unlisted public companies was inserted vide the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 dated 10th September, 2018. Sub-rule (8) to Rule 9A was substituted vide the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 dated 22 May, 2019 to be effective from 30th September 2019 to provide for submission of e-form PAS-6 by unlisted public companies.

### **Rule 9 of The Companies (Prospectus and Allotment of Securities) Rules, 2014 is reproduced as follows:**

#### 9. Dematerialisation of securities

The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised form:

Provided that the entire holding of convertible securities of the

company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

**Rule 9A of The Companies (Prospectus and Allotment of Securities) Rules, 2014 is reproduced as follows:**

9A. Issue of securities in dematerialised form by unlisted public companies –

(1) Every unlisted public company shall -

- (a) Issue the securities only in dematerialised form; and
- (b) Facilitate dematerialisation of all its existing securities

in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.

(3) Every holder of securities of an unlisted public company,-

- (a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or
- (b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

(4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International Security

Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

(5) Every unlisted public company shall ensure that –

- (a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
- (b) it maintains security deposit at all times, of not less than two years', fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and
- (c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board of India or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.

(6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buy-back its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

(7) Except as provided in sub-rule (8), the provisions of the Depositories Act 1996 the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply *mutatis mutandis* to dematerialisation of securities of unlisted public companies.

(8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

(8A) The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.

(9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and Protection Fund Authority.

(10) The Investor Education and Protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the Securities and Exchange Board of India.

(11) This rule shall not apply to an unlisted public company which is:

- (a) a Nidhi;
- (b) a Government company or
- (c) a wholly owned subsidiary.

# Brief Analysis of the Relevant Provisions of the Applicable Law

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## **The Companies Act, 2013**

Section 29 of the Act corresponds to Section 68B of the Companies Act, 1956. Section 29 of the Act was notified with effect from 12th September, 2013.

The Notes on clauses to the Companies Bill, 2011 provided that the clause was intended to provide that a public company making public offer and such other class or classes of companies as may be prescribed shall issue the securities only through dematerialised form. Other companies may issue securities in physical form or in dematerialised form.

Section 29(1A) was introduced through the Companies (Amendment) Act, 2019 effective from 15th August, 2019 to provide, *inter alia*, that in the case of such class of unlisted companies as may be prescribed, securities shall be held or transferred only in dematerialised form in the manner laid down under the Depositories Act, 1996 and the regulations made thereunder.

Section 29 which begins with a non-obstante clause and overrides anything contained in any other provision of the Act read with Rule 9 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that every company making a public offer and such other classes of companies as prescribed in the above rules shall issue the securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and the regulations contained therein.

## **Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014**

Rule 9A was introduced to the Companies (Prospectus and Allotment of Securities) Rules, 2014 vide the Companies (Prospectus and

Allotment of Securities) Third Amendment Rules, 2018 dated 10th September, 2018.

Rule 9A sets out the provisions relating to issue of securities by unlisted public companies in dematerialised form and for facilitating dematerialisation of all the existing securities issued by such companies. Rule 9A came into force on 2nd October, 2018.

Every holder of securities of an unlisted public company, who subscribes to any securities of such company on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialised form before such subscription.

The relevant provisions under discussion apply to a public company. Section 2(71) of the Act provides that 'public company' means a company which is not a private company. The provisions relating to minimum paid-up share capital have been omitted in the Act. Proviso to Section 2(71) of the Act provides that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles. Accordingly, the provisions of Section 29 of the Act and Rule 9A will apply *mutatis mutandis* to such deemed to be public company.

Rule 9A(1)(a) provides that every unlisted public company shall issue the securities only in dematerialized form. Accordingly, w.e.f 2nd October, 2018 no unlisted public company can issue securities in physical form as earlier.

Rule 9A(1)(b) provides that every unlisted public company shall also facilitate dematerialization of all its existing securities. Accordingly, w.e.f 2nd October, 2018 every unlisted public company has to also facilitate dematerialisation of all its existing securities. It is pertinent to note that both the activities i.e. the issue as well the facilitation of dematerialisation is focused not on equity shares or preference shares but on securities which is a wide term. Further, where an unlisted public company has various types of securities then such company would be required to facilitate dematerialisation of all its existing securities and not just the particular class of security for which the issue is proposed.

The manner of compliance of the responsibility laid down in Rule 9A(1)(b) has been provided in Rule 9A(4) by stating that every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility. Hence, facilitating the dematerialisation of all its existing securities would require the company to obtain ISIN for each type of security separately.

A Depository is a facilitator for holding of securities in the dematerialised form and an enabler for securities transactions. It is observed that two duties have been cast upon the Company for this purpose. Firstly the duty to apply for ISIN and secondly the duty to inform all its existing security holders about the dematerialisation facility. It is also important to observe that twice the words 'shall' have been used in Rule 9A(4) and also that the word 'shall' has also been used in Rule 9A(1) and hence the compliance requirement for an unlisted public company to make an application to secure ISIN for each type of its securities is a mandatory requirement.

ISIN may be obtained by the company from National Securities Depository Limited (hereinafter referred to as the 'NSDL') or Central Depository Services (India) Limited (hereinafter referred to as the 'CDSL') or both. ISIN is a unique 12 digit identification number.

Rule 9A(2) provides that every unlisted public company shall ensure that the entire holding of securities of three classes of persons i.e. promoters, directors and key managerial personnel have been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder before making any offer for –

- (a) issue of any securities, or
- (b) buy-back of securities, or

- (c) issue of bonus shares
- (d) rights offer

Accordingly, it is very much clear that three classes of security holders have to compulsorily dematerialise their holdings in an unlisted public company if such company proposes to make any offer for issue of securities or buyback of securities or issue of bonus shares or rights offer. It is also observed that the Rules impact not only issue of securities or bonus shares or rights issue but also for buyback of securities.

Further, where any promoter, director or key managerial personnel in an unlisted public company holds various types of securities then they are required to compulsorily dematerialise their entire holding of securities and not just the particular class of security for which the issue or buyback is proposed.

Rule 9A(3)(a) provides that every holder of securities of an unlisted public company who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer.

Rule 9A(3)(b) provides that every holder of securities of an unlisted public company who intends to subscribe to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

While Rule 9A(1) casts the obligation on the unlisted public company whereas Rule 9A(2) casts the obligation both on the Company as well as select class of security holders i.e. promoters, directors and key managerial personnel and whereas Rule 9A(3) casts the obligation on concerned security holder of the company who is intending to transfer his securities or subscribe to securities of such company .

Rule 9A(5) provides that every unlisted public company shall ensure that :

- (a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer

agent in accordance with the agreement executed between the parties;

- (b) it maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and
- (c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board of India or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.

Rule 9A(6) provides that no unlisted public company which has defaulted in compliance of Rule 9A(5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

Rule 9A(7) provides that except as provided in Rule 9A(8), the provisions of the Depositories Act 1996 the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.

Rule 9A(8) provides that every unlisted public company governed by Rule 9A shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

The existing Rule 9A(8) and Rule 9A(8A) was introduced by substituting the earlier Rule 9A(8) vide the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 dated 22nd May 2019. This has come into force w.e.f. 30th September, 2019. The format of Form PAS-6 was introduced by the aforesaid amendment rules, however the e-form was not deployed. Accordingly, the MCA vide

General Circular No. 16/2019 dated 28th November, 2019 provided that the time limit for filing Form PAS-6 without additional fees for the half-year ended on 30th September, 2019 will be sixty days from the date of deployment of this form on the website of the MCA. Subsequently Form PAS-6 was deployed on the website of the MCA on 15th July, 2020.

The first period for which the Form PAS-6 needs to be filed is half-year ended on 30th September, 2019 and the relevant due date for such Form PAS-6 is sixty days from the date of deployment of the Form PAS-6, i.e., 13th September, 2020 which is sixty days from 15th July, 2020.

It is noted that no such extension has been granted specifically for the second period i.e. half-year ended on 31st March, 2020 for which the due date was 30th May, 2020. However, since the e form PAS-6 has been deployed on 15th July, 2020 hence it is suggested that relevant due date for such Form PAS-6 is also sixty days from the date of deployment of the Form PAS-6, i.e., 13th September, 2020 which is sixty days from 15th July, 2020.

Subsequently the Form has to be filed within sixty days from the conclusion of each half year. It is clarified that Form PAS-6 has to be filed for each type of security, viz., equity and preference.

Rule 9A(8A) provides that the company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form. It is clarified that since Form PAS-6 has to be filed for each type of security, hence the difference in issued capital and capital held in dematerialised form has to be checked with respect to each security.

### **The Depositories Act, 1996**

It is also important to note the following pertinent provisions of Depositories Act, 1996:

As per Section 20 of the Depositories Act, 1996 whoever contravenes or attempts to contravene or abets the contravention of the provisions of the Act or any regulations or bye-laws made thereunder shall be punishable with imprisonment for a term which may extend to ten years, or with fine which may extend to twenty five crore rupees, or with both.

Sub-section (1) of Section 21 of the Depositories Act, 1996 provides that where an offence under the Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

The proviso to Sub-section (1) of Section 21 of the Depositories Act, 1996 states that nothing contained therein shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Further Sub-section (2) of Section 21 of the Depositories Act, 1996 provides that notwithstanding anything contained in sub-section (1) of the Depositories Act, 1996 where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

# Methodology for Carrying Out Verification

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It would be advisable that the PCS requests the company for access to various documents and books including the Memorandum and Articles of Association of the company, Annual Reports for the last two to three years, Register of Members/ debenture holders, various statutory and other registers, the Minutes Books, copies of forms and returns filed with the RoC which he considers essential for the purpose of verification. The reasons, if any, for delays in demat, difference in capital, etc., may be stated by the PCS at the relevant places. If the scope of work required to be performed is restricted on account of limitations imposed by the client or on account of circumstantial limitations (such as certain books or papers being in custody of another person or Government Authority) such constraints or limitations should be appropriately mentioned in the e-form.

## **SCOPE OF CERTIFICATE**

The scope of the certificate would comprise the following:

- a. Tallying of
  - Total issued capital
  - Total paid-up capital
  - Total admitted capital with both the Depositories (NSDL/ CDSL)
- b. Updation of Register of Members (ROM).
- c. Confirmation of dematerialisation requests within 21 days.
- d. Shares pending confirmation for more than 21 days from the date of requests and reasons for delay, if any.

- e. Furnishing details of changes in share capital (due to rights, bonus, private placement, buyback, capital reduction, amalgamation, de merger, etc.)

The e- form relates only to share capital (equity and preference) and not with respect to debts (debentures, bonds etc.).

If the company has equity shares with multiple ISIN's, reconciliation has to be done for each ISIN.

The PCS should also check:

- (i) Whether Registrar's Certificate with SEBI is renewed or not.
- (ii) Whether there is any delay/defect with registrar in completing demat work.
- (iii) Whether any intimation is due to be given to depositories.
- (iv) Whether certificates received for demat have been destroyed after confirming demat requests.
- (v) Whether any wrong confirmation of demat requests is given; if so financial impact of such errors.

In the course of the verification, if the PCS comes across any Forms, resolutions etc., not filed with Registrar of Companies then the same should be brought to the notice of the management of the Company for compliance. For example, if the company has altered its authorized or paid-up share capital and has not filed necessary Forms with Registrar of Companies, then the same need not be reflected in the certificate, but should be brought to the notice of the management of the company.

PCS certifying the e-form has to conduct a diligent verification / examination of the relevant registers, books and records maintained by the company and Registrars and Share Transfer Agents. Similarly, the Issuer Company and concerned Registrars and Share Transfer Agents shall facilitate and make it convenient for a PCS to have access to all necessary registers, records and books maintained in this connection.

**Steps to be taken by professional while conducting the audit for reconciliation of share capital of unlisted public company**

S. No.	Particulars	Compliance
1.	Reconciliation to be done for the Issued Capital at the start of the audit period (i.e. half year) and Issued Capital at the end of the audit period (i.e. end of half year) after accounting for the changes which have happened during the half year	Details of changes in the share capital in the form of Rights, Bonus, Private placement, ESOPs, Amalgamation, Conversion, Buyback, Capital Reduction, Forfeiture and others
2.	Issued Capital which is dematerialised and those held in physical form	Treat this as the Opening Balance
3.	Was there any new request for dematerialisation received during the audit period for dematerialisation of shares.	To reduce this from the shares held in physical form
4.	Was there any demat requests, confirmed after 21 days and the total no. of demat requests pending beyond 21 days.	If yes, kindly mention the reason
5.	Details of shares held by promoters, directors and KMPs both in physical mode and demat mode	
6.	Whether the Company has made default regarding the payment of fees / deposit to depositories or RTA	If yes, then the Company shall not make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

*Note: Please see table below as to how to carry out reconciliation.*

**PROCEDURE FOR DOING THE RECONCILIATION  
(WORKING SHEET)**

Total admitted capital as on ..... (here give as on 1st day of the half year)

S. No.	Particulars	Electronic	Physical	Total
1	Opening balance of issued and admitted capital			
2	Add fresh issue mention details of issue below the table		NIL	
3	Less capital reduced due to buy back, reduction of capital		NIL	
4	Less demated from physical			
5	Add rematerialised shares			
6	Total issued and admitted capital			
7	Closing figures as per depository			
8	Difference (6-7) should be NIL			

**DOCUMENTS TO BE VERIFIED / EXAMINED**

1. Documents

- 1.1 Appointment letter.
- 1.2 Certified copy of memorandum and articles of association.
- 1.3 Latest audited account(s).
- 1.4 Letter of intent / Master Creation Form submitted to depository.
- 1.5 Confirmation letter from depositories for admission of shares for demat (which also gives ISIN).
- 1.6 Copy of latest annual return filed with the Registrar of Companies.
- 1.7 Copy of e-Form No. PAS -3 filed with Registrar of Companies for allotment of shares.
- 1.8 Copy of e-Form No.SH-7 filed with Registrar of Companies for change in authorized share capital.

- 1.9 Return of buy-back of shares filed with Registrar of Companies.
  - 1.10 Certified copy of the resolution passed by the Board for forfeiture and re-issue of forfeited shares.
  - 1.11 Certified copy of the NCLT order and e-Form INC 28 filed with Registrar of Companies for reduction of capital.
  - 1.12 Certified copy of the order issued by NCLT for Amalgamation Scheme / Restructuring and e-Form INC 28 filed with Registrar of Companies.
2. Registers
    - 2.1 Minutes of board meeting and general meeting.
    - 2.2 Register of Members.
    - 2.3 Register of Demat / Rematerialisation.
    - 2.4 Beneficiary details furnished by Depositories.
3. DRF form and Correspondence with the client
  4. Annual Report of the company

# Terminology

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**Securities** is defined in Section 2(81) of the Act to mean the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the 'SCRA'). Section 2(h) of the SCRA provides that 'securities' include –

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
  - (ia) derivative;
  - (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
  - (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - (id) units or any other such instrument issued to the investors under any mutual fund scheme;
- (ii) Government securities;
  - (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interest in securities;

**Issuer Company** means any company making an issue of securities.

**Authorised capital** means the number and par value, of each class of shares that an enterprise may issue in accordance with its instrument of incorporation. This is also referred to as the nominal or face value of the shares, which the company is authorised to issue by its Memorandum of Association.

**Issued Capital** means the portion of the authorised share capital, which has actually been offered for subscription. This includes any bonus shares allotted by the corporate enterprise.

**Paid-up Capital:** The reference to the Paid-up Capital is similar to the reference provided in the Companies Act. As per Section 2(32) of the said Act, 'paid-up capital' or 'capital paid-up' includes capital credited as paid-up.

Paid-up Capital means that part of the subscribed share capital for which consideration in cash or otherwise has been received. This includes any bonus shares allotted by the corporate enterprise.

**Admitted Capital:** Admitted Capital refers/relates to the quantum of securities, which are admitted for getting dematerialised into the Depository.

Accordingly, a company before dematerialising the Shares will have to make an application to the respective Depositories after filling a 'Master Creation Form' (MCF) giving the various salient features of the securities, which are to be admitted into the Depository. The quantum of shares, which are admitted into the Depository for the first time based on the Master Creation Form submitted by the Company, is verified by the respective Depositories.

**ISIN** refers to the International Standard Identification Number. This is unique for each security issued by a Company. The ISIN number is allocated by NSDL and CDSL.

**Distinctive Numbers:** Shares issued in physical form have a unique number, which is called distinctive number. Generally the last distinctive number indicates the total issued/paid-up capital. Additional capital, if any, raised by the company will have the distinctive number in a continuous manner after the last distinctive number originally issued.

### **Updation of Register of Members (ROM)**

The updation of ROM means recording the details of the present registered holder for a given Certificate, which has been issued by the Company. Technically, when a transfer takes place from Mr.

A to Mr. B, the ROM is updated so that the shares which were in the Folio number of Mr. A are now reflected in the Folio number of Mr. B. Similarly, when shares are received for dematerialisation from Mr. A, the shares are debited to the Folio of Mr. A and credited to the Folio of NSDL/CDSL.

**CHECKLIST****E-form No. PAS – 6****Reconciliation of Share Capital Audit Report (Half-yearly)**

*[Pursuant to Section 29 of the Companies Act, 2013 and Rule 9A of the of Companies (Prospectus and Allotment of Securities) Rules, 2014]*

<b>Sl. No.</b>	<b>Item</b>	<b>Source of Information / Documents to be Checked</b>	<b>Remarks</b>
1(a)	<b>Corporate Identification No. (CIN)</b>	Company Master Data at the MCA website Certificate of Incorporation	CIN available at MCA website 'www.mca.gov.in'
2(a)	<b>Name of the Company</b>	Certificate of Incorporation Memorandum of Association Automatic through Pre-fill option	On clicking the pre-fill button, system shall automatically display the name.  Check the correctness of name getting pre-filled as per the records of the company.
2(b)	<b>Address of the Registered Office of the Company</b>	Automatic through Pre-fill option Check: (i) the Memorandum of Association (ii) e-Form No. 18/ INC 22 (Notice of situation or change of situation of registered office) (iii) MCA website (iv) Check the letterhead /Website used by the company.	On clicking the pre-fill button, system shall automatically display the registered office address.  Check the correctness of the address getting pre-filled as per the records of the company.

2(c)	<b>Email id of the company</b>	Automatic through Pre-fill option or option to write manually  (i) Check the letterhead /Website used by the company.	Ensure that valid e-mail ID is entered.
2(d)	<b>Phone No. of the company</b>	Option to write manually if required  (i) Check the letterhead /Website used by the company.	Ensure that valid Phone no. of the company is entered.
3.	<b>ISIN</b>	Check the classes of shares issued and numbers of ISIN's issued to the company from weekly reports given by depositories / letters / correspondence with depositories.  Verify the letter of Depository allocating International Securities Identification Number to the securities of the company.  From the concerned depository website.  Agreement with Depository.	There shall be separate ISIN for each type of security.
4.	<b>Period of Filing</b>	Half Year i.e. (a) from 1st April to 30th September and (b) from 1st October to 31st March of every year.	The first e-form shall be w.r.t the half year ended on 30th September, 2019.  The second e-form shall be w.r.t the half year ended on 31st March, 2020.  Subsequently, the e-form shall be filed for each half year ending on 30th September and 31st March of every year irrespective of the financial year of the company.

<b>5. Details of the Company</b>			
(a)	<b>Issued Capital - Number of Shares and percentage of Total Issued Capital</b>	<p>Register of Members</p> <p>Last Audited Financial Statement</p> <p>Returns of Allotment</p> <p>Minutes of Board meetings</p> <p>Minutes of general meetings</p> <p>Master Data at the MCA website</p> <p>Authorised Capital Clause of the Memorandum of Association</p>	<p>Details should be filled up as on the last date of the reporting period.</p> <p>Issued Capital should not exceed the Authorised Capital of the Company for each type of security.</p> <p>The issued capital of each type of security forms the base of audit for further verification and reporting.</p> <p>Admitted Capital: check the details of shares informed to depositories, check whether the same information is given to both the depositories or if there is any discrepancy.</p>
(b)	<b>Held in Dematerialised form in CDSL- Number of Shares and percentage of Total Issued Capital</b>	<p>Register of Members</p> <p>Beneficiary Shareholding Details</p> <p>Register of Dematerialisation</p> <p>Register of Rematerialisation</p> <p>Request the Issuer / RTA to furnish a report giving the total number of Shares which have been dematerialised as held under CDSL.</p>	<p>All the Registers must be updated.</p> <p>Representation / Certificate may be taken from the Company/ Registrar and Share Transfer Agent, wherever required.</p>

			<p>The total shares dematerialised, technically should be equivalent to the total number of Shares held in NSDL/CDSL/ Depository Folio as reflected in the ROM.</p> <p>Though the certificate relates dematerialisation, PCS also needs to verify rematerialisation for the purpose of ensuring that ROM is updated upon rematerialisation.</p>
(c)	<b>Held in Dematerialised form in NSDL - Number of Shares and percentage of Total Issued Capital</b>	<p>Register of Members</p> <p>Beneficiary Shareholding Details</p> <p>Register of Dematerialisation</p> <p>Register of Rematerialisation</p> <p>Request the Issuer / RTA to furnish a report giving the total number of Shares which have been dematerialised as held under NSDL.</p>	<p>All the Registers must be updated.</p> <p>Representation / Certificate may be taken from the Company/ Registrar and Share Transfer Agent, wherever required.</p> <p>The total shares dematerialised, technically should be equivalent to the total number of Shares held in NSDL/CDSL/ Depository Folio as reflected in the ROM.</p> <p>Though the certificate relates dematerialisation</p>

			PCS also needs to verify rematerialisation for the purpose of ensuring that ROM is updated upon rematerialisation.
(d)	<b>Held in Physical form - Number of Shares and percentage of Total Issued Capital</b>	<p>Register of Members</p> <p>Register of Dematerialisation</p> <p>Register of Rematerialisation</p> <p>Request the Issuer/RTA to furnish a report giving the total number of shares, which are held by the Investors in physical form</p>	<p>All the Registers must be updated.</p> <p>Representation / Certificate may be taken from the Company/ Registrar and Share Transfer Agent, wherever required.</p>
(e)	<b>Total No. of shares - Number of Shares and percentage of Total Issued Capital</b>	<p>Automatic through Pre-fill option on the basis of information provided in 5(b), 5(c) and 5 (d).</p> <p>Request the Issuer/RTA to furnish a report giving the integrity check for the total Capital in the Register of Members (ROM).</p>	Total of the shares shown in the Beneficiary Position of NSDL, CDSL and the Distribution Schedule (Physical Mode) must be equal to total issued and paid up share capital of the company with respect to each type of security.
6.	<b>Reasons for difference in 5(a) and 5(e)</b>	<p>Proper reason to be mentioned explaining the difference.</p> <p>(i) Verify the total Capital, the PCS may ask the Issuer to furnish a report giving reference of the first and last distinctive numbers available in the Master. The last distinctive number would indicate the total available Capital as per the ROM/ Master Creation Form.</p>	<p>The differences could arise on account of the following :</p> <p>(a) Distinctive master creation form / Register of Member has been updated but confirmation have not been given electronically or vice-versa for Demat/ Remat;</p>

		<p>(ii) Sample checks can be carried out for a few of the dematerialized requests received and confirmed by the RTA to ensure that those Certificates have been moved and updated on the ROM and stands reflected in the NSDL / CDSL/Depository Folio.</p> <p>(iii) Request the Issuer/RTA to furnish a reconciliation statement from the NSDL and CDSL Server as at the end of the last day of the Quarter giving the total number of Shares in the respective Depositories as held by the various beneficiary holders of the Company.</p> <p>(iv) The Shares moved in NSDL/CDSL/ Depository Folio should be equal to the total number of Shares held in NSDL and CDSL. In case of difference, if any, explanation has to be sought from the Issuer/ RTA. The differences could arise on account of the following :</p> <p>(a) Distinctive master creation form / ROM updated but confirmation not given electronically or vice-versa Demat/ Remat.</p>	<p>(b) Excess confirmation given in the Depository.</p> <p>This may happen where a DP has generated two Demat Requests for the same set of Certificates, which has also been confirmed by the Company/RTA</p> <p>(c) Unsubscribed portion of any issue which has not been cancelled by the Company.</p> <p>(d) Others</p>
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		<p>(b) Excess confirmation given in the Depository. This may happen where a DP has generated two Demat Requests for the same set of Certificates, which through oversight has been confirmed by the Company/RTA.</p> <p>(v) Check the Beneficiary Position received by the Company/ RTA from NSDL and CDSL as at the beginning &amp; end of the quarter.</p> <p>(vi) Check the Distribution Schedule maintained by the Company/ RTA for the shares held in the physical mode as at the beginning &amp; end of the quarter.</p> <p>(vii) Check that the total of the shares shown in the Beneficiary Position of NSDL, CDSL and the Distribution Schedule (Physical Mode) tally with the total Paid - up Share Capital of the Company.</p> <p><b>Notes :</b></p> <p>(1) For the purpose of carrying out the reconciliation, the PCS should insist and obtain the Reconciliation statement generated from NSDL/CDSL server and not consider the beneficiary position downloaded by the depositories.</p>	
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		<p>(2) Check that the issued capital is equal to or less than the Authorised Capital.</p> <p>(3) Check that the paid-up capital is equal to or less than the Issued Capital.</p> <p>(4) Check that the Admitted Capital is equal to or less than the Paid-Up Capital.</p>	
<b>7.</b>	<b>Details of changes in share capital during the half-year under consideration</b>		
	<p><b>Rights</b></p> <p>- No. of Shares</p> <p>- Whether Intimated to NSDL</p> <p><b>Whether Intimated to CDSL</b></p> <p><b>Bonus</b></p> <p>- No of Shares</p> <p>- Whether Intimated to NSDL</p> <p><b>Whether Intimated to CDSL</b></p>	<p>Register of Members</p> <p>Returns of Allotment</p> <p>Details of Beneficiary Holding</p> <p>Last Audited Financial Statement</p> <p>Minutes of Board meetings</p> <p>Minutes of General meetings</p> <p>Communications with the Depository</p> <p>Communications with the RTA</p> <p>Orders passed by Court, National Company Law Tribunal, Regional Director.</p> <p>Forms filed at the MCA portal</p> <p>Master Data at the MCA website</p>	<p>Compliances relating to corporate actions to be checked from the records. Changes in share capital arises due to various corporate actions being Rights, Bonus, Private Placement, ESOPs, Amalgamation Conversion, Buy Back and Forfeiture.</p>

<p><b>Private Placement</b></p> <p>- No of Shares</p> <p>- Whether Intimated to NSDL</p> <p>Whether Intimated to CDSL</p>	<p>(i) Check minutes of Board meetings, committee meetings and general meetings to ascertain any change (increase or decrease) in the capital.</p> <p>(ii) In case of increase of capital through Rights Issue, ESOPs, Bonus Issue, Preferential Allotment of shares, check that</p>	
<p><b>ESOPs</b></p> <p>- No of Shares</p> <p>- Whether Intimated to NSDL</p> <p>Whether Intimated to CDSL</p>	<p>(1) the resolution passed in the General Meeting,</p> <p>(2) resolution for allotment of shares passed in the Board Meeting,</p> <p>(3) the effect of increase of share capital is reflected in the Register of Members, and necessary Forms etc. filed with the Registrar of Companies.</p>	
<p><b>Amalgamation Conversion</b></p> <p>- No of Shares</p> <p>- Whether Intimated to NSDL</p> <p>Whether Intimated to CDSL</p>	<p>(iii) In case of reduction of capital by way of Buy Back of shares, Forfeiture of shares, Scheme of Arrangement, Reduction of Capital u/s. 66 of the Companies Act, 2013, check that:</p>	
<p><b>Buy Back</b></p> <p>- No of Shares</p> <p>- Whether Intimated to NSDL</p> <p>Whether Intimated to CDSL</p>	<p>(1) the resolution is passed in the General Meeting,</p> <p>(2) resolution passed in the Board Meeting and order(s) passed by National Company Law Tribunal</p>	

<p><b>Capital Re-reduction</b></p> <ul style="list-style-type: none"> <li>- No of Shares</li> <li>- Whether Intimated to NSDL</li> <li>Whether Intimated to CDSL</li> </ul>	<p>(iv) In case of further issue of shares (Where a Company has obtained an ISIN and admitted Shares in dematerialised form, for any additional Capital issued):</p>	
<p><b>Forfeiture</b></p> <ul style="list-style-type: none"> <li>- No of Shares</li> <li>- Whether Intimated to NSDL</li> <li>Whether Intimated to CDSL</li> </ul>	<p>(a) Check the 'Master Creation Form' submitted by the Issuer Company to the Depositories for admission of shares for Dematerialisation to ascertain the number of shares and distinctive numbers, which would be available for dematerialisation.</p>	
<p><b>Any Other</b></p> <ul style="list-style-type: none"> <li>- No of Shares</li> <li>- Whether Intimated to NSDL</li> <li>Whether Intimated to CDSL</li> </ul>	<p>(b) Obtain the letter of confirmation received from NSDL &amp; CDSL for admission of share capital for Dematerialisation and ensure that the same number of shares and distinctive numbers are admitted as applied in 'Master Creation Form'. Until both these requirements are in place, the shares even if allotted can be retained only in physical form by the respective allottees.</p> <p>(v) Check should also be on consolidation/ subdivision of shares/ conversion of debt instrument into shares etc., consequent change in number of shares-effect on shares held in depositories.</p>	

8.	<b>Details of shares held by</b>		
	<b>Promoters - No of Shares in Demat, Physical and Total</b>	Register of Directors and KMPs Register of Members	Total column will be automatically filled upon addition of Demat and Physical column
	<b>Directors - No of Shares in Demat, Physical and Total</b>	Returns of Allotment Details of Beneficiary Holding	
	<b>KMPs - No of Shares in Demat, Physical and Total</b>	Declarations given by Directors, Promoters, Key Managerial Personnel	
9.	<p><b>(a) Whether the Register of Members is updated</b></p> <p><b>(b) If No, the date up to which it has been updated</b></p>	<p>Register of Members Register of Dematerialisation Register of Rematerialisation Details of Beneficiary Holding Status of pending requests of dematerialisation and transfers of shares</p> <p>(i) Check that the request for physical transfer of shares, request for dematerialisation of shares received during the quarter has been given effect to in the Register of Members maintained by the company or RTA. A random sampling method may be adopted in case a company has received large number of application for transfer/dematerialisation of shares.</p>	<p>All the Registers must be updated.</p> <p>Date can be selected from drop down option.</p>

		<p>(ii) Check records of the Share Transfer Committee Meeting/ Board Meeting in relation to approval for dematerialisation/ rematerialisation of shares, where company has direct connectivity with depositories and in those cases where the company has practice to do so though the work may have been assigned to RTA.</p> <p><b>Note:</b></p> <p>(i) Format of Register of Members (ROM) has been Prescribed under Rule 3 of the Companies (Management and Administration) Rules, 2014 and a company is required to maintain ROM under Section 88(1)(a) of the Companies Act, 2013.</p> <p>(ii) It may be noted that the RTA is required to maintain details of beneficiaries, and the name of the depositories appear in the Register of Members as an ostensible owner.</p> <p>(iii) Generally, ROM is maintained in electronic form. Normally in a database of ROM, certain critical fields are indexed which would facilitate verification of the specific record. For e.g. the fields, which are normally indexed are Certificate number, Distinctive number, Folio number and the name of the shareholder:</p>	
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		<p>(a) A query made on a Certificate number will disclose the details of the Certificate which has been issued.</p> <p>(b) A query made on a Distinctive number will disclose details of the Certificate number pertaining to that Distinctive number which has been issued.</p> <p>(c) A query made on a Folio number will disclose all the details of the Certificates including distinctive numbers, which are held under that Folio.</p> <p>(d) A query made on the name of a shareholder with ROM is maintained in electronic form. Normally in a database of ROM, certain critical fields are indexed which would facilitate verification of the specific record. e.g. the fields, which are normally indexed are certificate number, Distinctive number, folio number and the name of the shareholder.</p>	
10.	<b>Whether there were dematerialized shares in excess in the previous half-yearly period</b>	<p>Register of Members</p> <p>Register of Dematerialisation</p> <p>Register of Rematerialisation</p> <p>Details of Beneficiary Holding</p>	

11.	<b>Has the company resolved the matter mentioned in point no. 10 above in the Current half-year</b>	<p>Register of Members (for the next quarter)</p> <p>Register of Dematerialisation (for the next quarter)</p> <p>Register of Rematerialisation (for the next quarter)</p> <p>Details of Beneficiary Holding (for the next quarter)</p> <p>Communications between the Company and the RTA and the Depository</p> <p>(i) PCS may seek the information/ letter of representation in this regard from the management of the company and report in the certificate.</p> <p>(ii) Previous Annual returns, Annual reports and RTA Reports.</p>	
12.	<b>Mention the total no. of demat requests, if any, confirmed after 21 days and the total no. of demat requests pending beyond 21 days with the reasons for delay</b>	<p>Register of Members</p> <p>Register of Dematerialisation</p> <p>Register of Rematerialisation</p> <p>Details of Beneficiary Holding</p> <p>Specific Confirmation to be obtained from the RTA</p> <p>(i) Check that the requests for dematerialisation of shares received by the company or RTA during the quarter have been given effect to within 21 days of the request. If any discrepancy is noticed the same should be mentioned in the audit report along with the reason.</p>	<p>In case of delay beyond the prescribed time, the RTA to confirm the reasons for delay. The delay could be on account of difference in signatures, omission to attach physical certificates not matching of the details provided and other reasons.</p>

		<p>(ii) If requests received are in large numbers (where the physical verifications of the same would take time) the same can be checked by random sampling.</p> <p>(iii) Check that Depositories maintain history file, from which Company/ RTA can take printout of demat requests made during the quarter showing date of DRN (date of request) and confirmation date on their server.</p> <p>The gap between DRN date and confirmation date shall not be more than 21 days.</p> <p>(iv) Check whether there are any demat requests received during the quarter and which are pending confirmation beyond 21 days as on the date of the certificate. If there are any such cases, the same should be stated with the reasons for the delay in confirmation. The PCS while carrying out the audit should take an exception report where there has been delay for the request which has been confirmed beyond period of 21 days of the generation of the request. The fault may be on the part of the DP in verifying and releasing the request within 24 hrs and/ or delay in dispatch of documents to the issuer/RTA</p>	
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		<p>whereby the documents may have been received beyond the period of five days from the generation of the request. The exception report should mention the reasons for the delay.</p> <p>(v) Check whether any demat request pending for more than 21 days needs to be rejected on the depositories system. if not rejected, get them rejected or mention in the certificate that request requiring attention for rejection have not been rejected.</p> <p><b>Note:</b></p> <p>(i) The 21 days period for giving effect to the request for dematerialisation is reckoned from the date of the request as generated by the Depository Participants upon entering particulars of shares submitted for demat in the server of Depositories.</p> <p>(ii) The DP generating a demat request has to complete the process of verification and releasing the said request. It is normally expected that the DP will verify and release the request within 24 hrs.</p> <p>Demat Request Form (DRF) thereafter alongwith the physical Certificate is posted/ couriered to the concerned issuer/RTA.</p>	
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		Allowing further five days for receipt of the documents by the issuer/RTA, the processing and confirmation of request by the RTA should not take more than 14 days from the date of receipt of the documents.	
13.	<p><b>Details of Company Secretary of the Company, if any:</b></p> <p><b>PAN, Name, Membership no, Address, Email, Telephone No.</b></p>	<p>Form DIR 12/DIR 32 filed by the Company</p> <p>Membership Details at the website of the Institute – <a href="http://www.icsi.edu">www.icsi.edu</a></p> <p>ECSIN of the Company Secretary at the website <a href="http://ecsin.icsi.edu">ecsin.icsi.edu</a></p>	<p>This information is to be provided only when a Company Secretary has been appointed in the Company on the date of filing this Form.</p> <p>The details filed in Form DIR 12 should match with membership details at the ICSI website and ECSIN should also match as per the records of the ICSI.</p>
14.	<p><b>Details of CA/CS certifying this form:</b></p> <p><b>Name, Address, E Mail, Telephone No.</b></p>	<p>Membership and Certificate of Practice Details at the website of the concerned Institute and as provided by the Professional as per the records of the Institute</p>	<p>The details should match with membership data of ICSI</p>
15.	<p><b>Whether there is appointment of common agency for share registry work</b></p>	<p>Agreement between the Company and RTA</p> <p>Fees paid to RTA</p> <p>Communications between the Company and the RTA</p>	<p>The Company can appoint a common agency to carry out the share registry work or have an in-house Arrangement. It is not necessary to compulsorily appoint an RTA.</p>

16.	<b>Any other details that the professional signing this form may like to provide:</b>		Professional may provide the details as they want, but in consultation with the Company, such as remarks like Bonus under process, Demat under process, etc.
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# Frequently Asked Questions (FAQs) on E-form PAS-6

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## **Q 1. What is the intent behind introduction of Form PAS-6?**

**Ans:** The key purpose of Form PAS-6 is to undertake reconciliation of number of securities issued (share certificate / demat credit) matches / does not match with issued / paid-up capital. It attempts to ensure that there is no excess credit of securities as compared to the issued number of securities and that demat process is done in timely manner.

## **Q 2. What are the provisions relating to filing of Form PAS-6?**

**Ans:** As per Section 29(1) of the Companies Act, 2013 "Notwithstanding anything contained in any other provisions of this Act, (a) every company making public offer,; and (b) such other class or classes of companies as may be prescribed; shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder."

Further as per Section 29(1A) of the Companies Act, 2013, "In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder."

The class of companies are prescribed in Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014, i.e., unlisted public companies. Rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 states that every unlisted public company shall submit Form PAS-6 with the Registrar of Companies by paying such fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

The Form is required to be filed for the half year ended on 30th September 2019 and 30th March every year. Form PAS-6 has been deployed at MCA website on 15th July 2020 and is required to be filed within 60 days from the said date.

**Q 3. If a company has multiple securities, does it need to file multiple Form PAS-6?**

**Ans:** Yes, Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 is applicable for each class of security and in Form PAS-6 only one ISIN can be entered. Hence for multiple types and classes of securities, multiple forms are required to be filed. Form PAS-6 is devised ISIN wise and not Company wise. Hence, a company is required to file Form PAS-6 for each ISIN issued.

**Q 4. Can a company obtain ISIN now and file Form PAS-6 for Half years ending 30th Sept 2019 and 31st March 2020?**

**Ans:** Form PAS-6 is to be filed only after obtaining ISIN. A company can file the Form for the half year ending September 30, 2019 and March 31, 2020 after obtaining the ISIN now.

**Q 5. Which provisions of the Act and / or rules made thereunder are to be examined while certifying Form PAS-6 by a professional?**

**Ans:** Certification of the Form is not only about the data filled in Form PAS-6 but also about the entire Companies Act, 2013, Depositories Act, 1996 and all Rules in respect of dematerialisation of Securities. Hence, compliances of Section 29 of the Companies Act, 2013, Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014, Depositories Act, 1996 and Regulations made thereunder which are related to subject matter of Form PAS-6 will have to be examined and reported.

**Q 6. Which class of companies are required to file Form PAS-6?**

**Ans:** All unlisted public companies and subsidiary of public companies are required to file Form PAS-6. However Government companies, wholly owned subsidiaries and Nidhi companies although being unlisted public companies, are not required to file Form PAS-6.

It is important to note that as per Section 2(52) of the Companies

Act, 2013 a 'listed company' means a company which has any of its securities listed on any recognized stock exchange. The Companies (Amendment) Bill, 2020, which has been passed by the Lok Sabha and Rajya Sabha proposes to insert a proviso in this section which can enable the Central Government to exempt, in consultation with SEBI, certain class of companies, which have listed or intend to list certain class of securities, from being considered as listed companies.

Once the amendment in Section 2(52) becomes effective and the Central Government prescribes Rules in this regard, many companies might get classified into the category of 'unlisted public companies', which are currently not considered to be 'unlisted public companies'.

**Q 7. Is Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 applicable for (a) unlisted public company but debt is listed, or (b) private company but debt is listed or (c) unlisted public company and debt is unlisted?**

**Ans:** Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 is applicable only for unlisted public companies. As per Section 2(52) of the Companies Act, 2013, a 'listed company' means a company which has any of its securities listed. Hence, if debt security is listed, then such company (public or private) will not be covered in Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014. If debt as well as equity is unlisted, and company is public company, then Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 is applicable.

It is important to note the abovementioned proviso (as mentioned in answer to Q6 above) which is proposed to be inserted in Section 2(52) of the Companies Act, 2013 (in definition of listed company). Once this amendment in Section 2(52) becomes effective and the Central Government prescribes in this regard, this answer may change.

**Q 8. Whether debt listed companies need to submit Form PAS-6?**

**Ans:** As on date of this document, debt listed company is a listed company under the provisions of Companies Act, 2013. Therefore, there is no need to file Form PAS-6 with ROC. However, pursuant to the proposed amendment in Section 2(52) of the Companies Act, 2013 (as explained in Q6 and Q7 above), this answer may change.

**Q 9. Can debt listed public companies issue, transfer or hold equity shares in physical form?**

**Ans:** Debt listed companies are covered under Chapter IV of SEBI (LODR) Regulations, 2015. Since debt listed public companies are not covered under Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014, and they are also not covered under Regulation 40 of SEBI (LODR) Regulations, 2015, there is no restriction on debt listed companies (public or private) to issue equity shares in physical form.

However, pursuant to the proposed amendment in Section 2(52) of the Companies Act, 2013 (as explained in Q6 and Q7 above) the compliances be carried out accordingly.

**Q 10. If a company has obtained ISIN but some security holders have not converted their securities into demat form, is it a non-compliance of Section 29 of the Companies Act, 2013 or Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 and whether the same is to be qualified in Form PAS-6?**

**Ans:** If Company has made intimation about ISIN and facility available for demat to all security holders as per Rule 9A(4) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, then Company has complied on its part. No time period is prescribed for converting existing securities into demat unless until any issue of securities or buy back of securities happens at Company level or any security holder approaches the Company for transfer of shares. However such companies have to file half yearly returns and have to mention that the securities are held by the members in physical form only.

**Q 11. If preference shares / debentures are due for redemption, can they be redeemed in physical form? Is Form PAS-6 to be filed for securities fully redeemed during half year?**

**Ans:** There is no restriction on redemption of securities in demat form and hence redemption can be done in physical form. If securities are fully redeemed as on end of half year, then ISIN should be extinguished by making application to the Depository. In such case, Form PAS-6 cannot be filed. However, as on the last date of the half year i.e. September 30th or March 31st if the ISIN is still in existence

but preference shares / debentures were redeemed, then Form PAS-6 is required to be filed and the redemption of preference shares / debentures may be mentioned in the form by way of an attachment that the redemption has taken place and the ISIN is being extinguished.

**Q 12. Can a company reject transfer of securities lodged in physical form? Whether to mention anything about it in Form PAS-6?**

**Ans:** As per Rule 9A(3)(a) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, it is obligation of security holder to convert securities into demat form before lodging for transfer. If the physical securities are lodged for transfer, company should reject such transfers. If company has approved such transfer, then checking of Updation of Register of Members would reveal this and this can be considered as subject matter of Form PAS-6. It is a non-compliance and has to be mentioned in Form PAS-6.

**Q 13. If some securities (held by persons other than promoters, directors and KMP of Company) are in physical form only, can company never do buy-back / issue new shares?**

**Ans:** If entire holding of its promoters, directors, KMPs is in Demat Form, then buy back can be initiated by the company even if some securities are in physical form and buy back can be done even of those securities which are in physical form. However, in case of issue of securities, the allotment of new shares can be done only in demat mode.

**Q 14. If a company gives buy-back offer, then whether holders of physical securities cannot tender for buy-back? Whether to mention the same in Form PAS-6?**

**Ans:** As per Rule 9A(3) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, a security holder is under an obligation to convert securities into demat before lodging the same for transfer or before subscribing to new shares. There is no obligation on holders other than Promoters, Directors & KMP to convert into demat form before tendering for buy-back. In fact for listed companies also, SEBI has clarified vide Circular dated 31st July, 2020 that shareholders holding shares in physical form are allowed to tender shares in buy-

back. There is no non-compliance on part of company and hence no need to mention in Form PAS-6.

**Q 15. Whether mandatory demat is required for Compulsory Convertible Debentures also, which would surely get converted into equity shares? Whether Form PAS-6 is to be filed for CCD?**

**Ans:** CCDs fall under the definition of 'Securities' and Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 is applicable. Hence the Company is under obligation to facilitate demat by obtaining ISIN. Rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 states that every unlisted public company governed by this Rule shall file Form PAS-6. However, Rule 9A(8A) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 speaks about difference observed in issued capital and capital held in demat form. Hence, ambiguity arises as to whether Form PAS-6 is to be filed for debentures or not. But it is recommended that Form PAS-6 is required to be filed even for CCDs.

**Q 16. If a company does bonus issue, how to deal with physical security holders and Form PAS-6?**

**Ans:** Company can keep the bonus entitlements of physical security holders in escrow demat account which can be credited only when they convert their existing holding into demat form.

**Q 17. In what scenarios can there be difference in issued capital and total of shares held in physical plus demat?**

**Ans:** The difference may arise in following scenarios:

- Issue (offer) made by company – but pending for allotment
- Issued but not subscribed capital
- Allotment done but corporate action form with depositories not yet filed
- Issued but forfeited shares

**Q 18. What documents can be relied upon by PCS while certifying Form PAS-6?**

**Ans:** PCS may verify following documents while certifying Form PAS-6:

- Balance Sheet
- BENPOS of past half year and current half year – with details of shareholders
- Screenshots of NSDL & CDSL holding in company
- Find out from Register of Members how many are in physical mode (can be matched through folios) and tally it with total paid-up capital
- Register of Members [new allotment/ transfers]
- Board resolutions passed, Form PAS-3 filed with MCA, Representation made by the company
- PCS may search at MCA portal to be satisfied about all e-forms filed by the company.

**Q 19. What proofs should be taken to verify para 12 (within 21 days demat credit) of Form PAS-6?**

**Ans:** RTA provides list of demat requests received during half year – which contains as follows:

- **Lodgement date** – when demat request was submitted with Depository Participant
- **RTA inward date** – when RTA received from Depository Participant – PCS can ask for Demat Request Forms (DRF) filed by shareholder (with inward stamp of Depository Participant as well as RTA) as proof
- **Credit confirmation date** – when demat credit was actually given – PCS can ask for screenshot from software of RTA.

**PCS should also check:**

- Gap between lodgement date to RTA. Inward date should not be more than 7 days [Regulation 74(4) of SEBI (Depositories and Participants) Regulations, 2018]
- Gap between RTA inward date to credit confirmation date should not be more than 15 days [Regulation 74(5) of SEBI (Depositories and Participants) Regulations, 2018]

**Q 20. What other records are to be verified while certifying Form PAS-6?****Ans:**

- Copies of Corporate Action Forms filed
- Copy of Register of Members maintained by RTA – check with format as per MGT-1.
- Emails from NSDL, CDSL for Credit / Debit Corporate Actions executed.
- Demat account statements of shareholders (if available) or else BENPOS for previous and current half year end.

**Q 21. Whether Form PAS-6 is to be filed for preference shares and debentures also which might be issued long back?**

**Ans:** Preference shares and Debentures fall under the definition of Securities under section 2 (81) of the Companies Act, 2013. Rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that every unlisted public company shall file Form PAS-6 for all of its securities. However, Rule 9A(8A) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 speaks about difference observed in issued capital and capital held in demat form. Hence, ambiguity arises as to whether Form PAS-6 is to be filed for debentures or not. But it is recommended to file Form PAS-6 for preference shares and for debentures also.

**Q 22. If a company does rights issue, can it offer to physical security holders? Whether it is to be mentioned in Form PAS-6?**

**Ans:** As per Rule 9A(1)(a) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, company is under obligation to issue new securities in demat form only. Hence, it can make rights offer to physical security holders but with a disclaimer that their application will be accepted only if they convert existing holding into demat form and apply for new securities in demat form only.

**Q 23. If a company has not yet obtained ISIN, can it file Form PAS-6?**

**Ans:** ISIN is a mandatory field in Form PAS-6. Hence, if ISIN has not

been obtained, then Form PAS-6 cannot be filed, which will lead to non-compliance of Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

**Q 24. If Form PAS-6 is not filed by 13th September, 2020, would it be covered under Company Fresh Start Scheme 2020 (CFSS)?**

**Ans:** As per point (iii) of MCA circular dated 30th March, 2020 on Companies Fresh Start Scheme, 2020, any defaulting company is permitted to file belated documents which were due for filing on any given date in accordance with the provisions of the said Scheme. However, in the list published on MCA website for forms covered under CFSS, Form PAS-6 is not covered. But as per prevailing practice, if a ticket is raised with MCA enquiring the said issue, it has been replied that Form PAS-6 is covered under CFSS.

**Q 25. What is the first period for which the Form PAS-6 is required to be filed?**

**Ans:** Half Year ended on 30th September, 2019.

**Q 26. What was the due date of filing the Form PAS-6 for the half year ended on 30th September, 2019?**

**Ans:** 13th September, 2020.

**Q 27. What is the second period for which the Form PAS-6 has to be filed?**

**Ans:** Half Year ended on 31st March, 2020.

**Q 28. What is the due date of filing the Form PAS-6 for the half year ended on 31st March, 2020?**

**Ans:** September 13, 2020

**Q 29. Which are the class of companies to which Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 does not apply?**

**Ans:** Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 does not apply to an unlisted public company which is:

- (a) a Nidhi company
- (b) a Government company
- (c) a wholly owned subsidiary

Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 also does not apply to a private company.

**Q 30. Is it necessary to file separate Form PAS-6 for each ISIN?**

**Ans:** Yes, separate Form PAS-6 is to be filed for each ISIN. Each type of security will have a separate ISIN.

**Q 31. Who is authorized to certify Form PAS-6?**

**Ans:** A Practicing Company Secretary or a Practicing Chartered Accountant is authorized to certify Form PAS-6. This is over and above the certification given by the Director, Manager, CS, CEO & CFO.

**Q 32. Is there any limitation on PCS regarding number of certification to be issued in respect of Form PAS-6?**

**Ans:** There is no limit regarding number of certification to be issued in respect of Form PAS-6 by a PCS.

**Q 33. Is communication to previous professional required to be made by a new PCS before certifying Form PAS-6?**

**Ans:** There is no requirement to communicate to previous professional by a new PCS while certifying Form PAS-6.

**Q 34. Can an unlisted public company issue securities in physical form?**

**Ans:** No, an unlisted public company cannot issue securities in physical form.

**Q 35. Is it compulsory that entire holding of securities of its promoters, directors, key managerial personnel of an unlisted public company has to be dematerialised before such company makes any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer?**

**Ans:** Yes.

**Q 36. Is it compulsory that in case of an unlisted public company the transferor of shares or proposed subscriber of private placement or bonus or rights offer has to get all his existing securities dematerialized before such transfer or subscription?**

**Ans:** Yes.

**Q 37. Can an unlisted public company have its own in-house registry system / share registry work instead of appointing a Share Transfer Agent?**

**Ans:** Yes.

**Q 38. What will be the consequence if an unlisted public company is non-working and do not want to take ISIN and further want to convert into private company and has not filed Form PAS-6?**

**Ans:** A company shall facilitate dematerialisation of securities and communicate the same to its members. In case a company fails to facilitate dematerialisation of its securities then the penal provisions mentioned under section 450 of the Companies Act, 2013 shall be applicable which is Rs.10,000 and continuing penalty of Rs.1000 per day to the company and officer in default subject to maximum of Rs.2,00,000 on the company and Rs.50,000 per officer in default.

**Q 39. Whether Form PAS-6 is to be filed when no shareholder has done demat of his shares until now however the company has facilitated demat of shares?**

**Ans:** Yes

**Q 40. What would be the penalty on late filing if ISIN generation is under process?**

**Ans:** Penalty under section 450 of the Companies Act, 2013 will be applicable. However, till 30 September, 2020 form may be filed without additional fees and file Immunity Form under CFSS.

**Q 41. What are the situations and circumstances in which point no. 10 and 11 of Form PAS-6 will be applicable to a company?**

**Ans:** Point no. 10 and 11 will be relevant only in situations where dematerialised shares were in excess like:

- (i) Form PAS-3 filed earlier had error and therefore revised Form PAS-3 filed subsequently as a result of which demat credit has happened in excess of issued capital, or
- (ii) Fraudulently corporate actions of higher capital created without actually having that capital in books, etc.

**Q 42. Whether UDIN is required to be generated for certification of Form PAS-6?**

**Ans:** It is not mandatory.

**Q 43. Is filing of Form PAS-6 applicable to the subsidiary and step down subsidiary of a listed company?**

**Ans:** Exemption is available only to wholly owned subsidiary (WOS), otherwise it is required to be complied with.

**Q 44. What happens when the subsidiary and holding relationship comes to an end in the middle of the Financial Year?**

**Ans:** This compliance is required to be done for public company whenever it becomes public company and remains public company as on the date of closure of the financial year. In case a company becomes a private company, it has a choice to continue its securities in demat mode or otherwise.

**Q 45. What are the consequences where such subsidiary is yet to dematerialise its shares?**

**Ans:** It can still do demat and file Form PAS-6 once demat is complete. But the compliance has to be ensured on or before September 30, 2020.

**Q 46. A Company Secretary was appointed in February, 2019 and resigned in December, 2019. In the Form PAS-6 for half year ending September, 2019, while filling the details of Company Secretary, error message appears that “the Company Secretary is not associated with the Company”. In this situation, should the form be processed without mentioning Company Secretary details for September, 2019 half year in the Form PAS-6”.**

**Ans:** In case of any technical difficulty being faced, the form may

be filed without mentioning the details of Company Secretary and a clarification may be added to the Form PAS-6 by way of an attachment.

**Q 47. If in case of an unlisted public company where there are no operations since 3 years and it is going to apply for closure of the company shortly, is it necessary to convert the physical shares to demat form and comply with the requirement of filing Form PAS-6?**

**Ans:** Any company till the time it is existing, it shall ensure compliance with the provisions of the Companies Act, 2013. As per Rule 9A(1) (a) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the company should facilitate dematerialization of its securities and inform its members of the same. Since the company is going to apply for closure then no transfer or issue of securities may take place. Hence the members may or may not convert their securities in demat mode. However the Company shall file Form PAS-6 returns.

**Q 48. Which amount should be mentioned in the issued capital column if the issued capital is Rs.5,10,000 and paid-up share capital is Rs.5,00,000 and all the shares are in the demat form with CDSL, which are 98.04% of total issued capital then total did not tally in point no.5 of Form PAS-6?**

**Ans:** A company's issued, subscribed and paid up capital may be different. The entire issued capital may not have been subscribed and then entire subscribed capital might not have been paid up. Hence there may be a variance between issued and the capital subscribed which may be either in demat mode or physical mode. In case there is a difference between issued capital and the total capital, the same may be explained. The purpose of Form PAS-6 is to ensure that the total capital in demat mode and physical mode should not be in excess of the total subscribed capital of the company. There is an anomaly here. One may mention issued capital what it is.

**Q 49. Whether Annual Fees and Security Deposit Fees paid to Depository and RTA by the company is required to be checked and confirmed as per Rule 9A(5) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 while certifying Form PAS-6 by a**

**Practising Company Secretary? If yes, what supporting documents are to be checked?**

**Ans:** If there are any defaults w.r.t. Rule 9A(5) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, company cannot issue shares, etc. and certificate which Company Secretary issues needs to be looked at carefully.

**Q 50. The field for “Issued Share Capital” in each of the form would be against the specific ISIN or would be the total share capital of the company, if there are 3 ISINs against Equity Shares, Class-A Equity Shares and Preference shares?**

**Ans:** Data of respective ISIN should be mentioned in respective Form PAS-6. The intention is to allow one only one ISIN per security in the Form. And a clarification may be attached with each Form PAS-6 as to what is the consolidated issued and paid up capital of the company.

**Q 51. Is ISIN mandatory for deemed public company having paid-up capital of Rs.1 lakh with two shareholders only.**

**Ans:** A company which is subsidiary of public company shall be deemed to be public company and shall have 7 shareholders. As per Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 such unlisted public company shall facilitate dematerialisation for all existing securities.

**Q 52. What is the last date of filing of Form PAS-6 without late fees? Is it 13th September, 2020 or 30th September, 2020?**

**Ans:** Last date for filing Form PAS-6 with normal fee was 13th September, 2020. However, form may be filed upto 30th September, 2020 with normal fee under CFSS.

**Q 53. If an unlisted public company's shares are not in demat form as on 31st March, 2020, but later on in August, 2020, the process of demat of shares was completed. In this case is the company required to file Form PAS-6 for the period 1st April, 2019 to 30th September, 2019 and 1st October, 2019 to 31st March, 2020?**

**Ans:** Yes, it is required to file Form PAS-6.

**Q 54. If an unlisted company has both equity and preference shares,**

**and demat of equity shares were done but due to some reason demat of preference shares could not be completed. In this case can Form PAS-6 be filed for equity shares only?**

**Ans:** Demat of preference shares is to be done by taking separate ISIN and Form PAS-6 will have to be filed for both equity and preference shares.

**Q 55. A Company Secretary while trying to file Form PAS-6 for half years September, 2019 and March, 2020 is getting pre-scrutiny error as membership number is not associated with the company. How should file Form PAS-6 be filed in such situation?**

**Ans:** Check appointment related forms and other e-forms where number was mentioned and see if there is any error. Raise ticket and still if it is not resolved, try to file without Company Secretary details and attach a clarification letter.

**Q 56. Whether the provisions relating to Form PAS-6 are applicable to wholly owned subsidiary private company of an unlisted public company?**

**Ans:** Subsidiary of a public company is public company. However, WOS has been specifically exempted from Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 so provisions relating to Form PAS-6 are not applicable.

**Q 57. In Form PAS-6 shareholding pattern of promoters, directors and KMP is to be mentioned. What if promoters are also directors and they hold 10,000 shares? Shall 10,000 shares in promoters category and also 10,000 shares in directors category be mentioned? Will it not be miscalculation?**

**Ans:** You can mention in any one category and attach clarification.

**Q 58. What is the penalty for delay in filing of Form PAS-6?**

**Ans:** One time penalty of Rs.10,000 and for continuing default Penalty of Rs.1000 per day on company and officer in default as per section 450 of the Companies Act, 2013 will be applicable subject to maximum of Rs.2,00,000 on the Company and Rs.50,000 per officer in default.

**Q 59. Whether Form PAS-6 is mandatory for unlisted government companies exempted from demat?**

**Ans:** A Government company is exempted under Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 therefore filing of Form PAS-6 is not mandatory.

**FORM NO. PAS-6**

[Pursuant to sub-rule (8) of rule 9A  
Companies (Prospectus and Allotment  
of Securities Rules, 2014.)]


**Reconciliation of Share  
Capital Audit Report  
(Half-yearly)**

Form language  English  Hindi

Refer the instruction kit for filing the form.

1. (a) \* Corporate Identification Number (CIN)
2. (a) Name of the company
- (b) Address of Registered office of the company
- (c) \* Email id of the company
- (d) Phone Number
3. \* ISIN
4. \* Period of Filing From  To
5. \* Details of Capital of Company

		Number of shares	Percentage of Total Issued Capital
(a)	Issued Capital		
(b)	Held in dematerialised form in CDSL		
(c)	Held in dematerialised form in NSDL		
(d)	Held in Physical form		
(e)	Total No. of shares [(b) + (c) + (d)]		

6. Reasons for difference in 5(a) and 5(e)

7. Details of changes in share capital during the half-year under consideration as per Table below:

Particulars	No. of Shares	Whether intimated to NSDL	Whether intimated to CDSL
Rights			
Bonus			
Private Placement			
ESOPs			
Amalgamation Conversion			
Buy back			
Capital Reduction			
Forfeiture			
Any other (Please Specify)			

8. \* Details of Shares held by:

	Demat	Physical	Total
Promoters			
Directors			
KMPs			

9 (a) \* Whether the Register of Members is updated  Yes  No

(b) If no, the date upto which it has been updated

10. \* Whether there were dematerialised shares in excess in the previous half-yearly period

Yes  No

11. \* Has the company resolved the matter mentioned in point no. 10 above in the Current half-year

Yes  No

If no, give details and reasons thereof

12. \* Mention the total no. of demat requests, if any, confirmed after 21 days and the total no. of demat requests pending beyond 21 days with the reasons for delay:

Total no. of demat requests	No. of requests	No. of shares	Reasons for delay
Confirmed after 21 days			
Pending for more than 21 days			

13. Details of Company Secretary of the Company, if any:

PAN

Name

Membership Number

Address

E-mail

Telephone No.

14. \*Details of CA/CS certifying this form:

Name

Address

E-mail

Telephone No.

15. \*Whether there is appointment of common agency for share registry work  Yes  No

16. Any other details that the professional signing this form may like to provide:

#### Attachments

1. Optional Attachments, (if any).

**Attach**

#### List of Attachments

**Remove attachment**

**Verification**

I am authorized by the Board of Directors of the Company vide resolution no \*  dated \*  to sign this form and declare that all the requirements of Companies Act, 2013 (18 of 2013), the Depositories Act, 1996 (22 of 1996) and the rules/regulations made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed. It is hereby further certified that the professional (Name and Type i.e. CA/CS) certifying this form has been duly engaged for this purpose.

**\*To be digitally signed by**

Director or manager or secretary or CEO or CFO of the company

Designation

\*DIN of the director; PAN of the Manager or CEO or CFO or Membership number of the Company Secretary

**Certificate by practicing professional**

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 (18 of 2013), the Depositories Act, 1996 (22 of 1996) and rules/regulations made thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original records maintained by the Company

which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

- a. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013, and the Depositories Act, 1996 and were found to be in order;
- b. All the required attachments have been completely and legibly attached to this form;
- c. It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage.

**\*To be digitally signed by**

Chartered accountant (in whole-time practice) or

Company secretary (in whole-time practice)

**\*Whether associate or fellow**  Associate  Fellow

**\*Membership number**

**\*Certificate of Practice number**

**Note: Attention is also drawn to provisions of section 448 of the Act which provide for punishment for false statement and certification.**

**This eform has been taken on file maintained by the Registrar of Companies through electronic mode and on the basis of statement of correctness given by the filing company.**

Instruction Kit for eForm PAS-6: Reconciliation of Share Capital Audit Report (Half Yearly)

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Instruction Kit for eForm PAS-6: Reconciliation of Share Capital Audit Report (Half Yearly)

## About this Document

The Instruction Kit has been prepared to help you file eForms with ease. This document provides references to law(s) governing the eForms, instructions to fill the eForm at field level and common instructions to fill all eForms. The document also includes important points to be noted for successful submission.

User is advised to refer instruction kit specifically prepared for each eForm.

This document is divided into following sections:

[Part I – Laws Governing the eForm](#)

[Part II – Instructions to fill the eForm](#)

[Part III – Important Points for Successful Submission](#)

***Click on any section link to refer to the section.***

## Part I – Law(s) Governing the e-Form

### Section and Rule Number(s)

**Rule 9A:** Issue of securities in dematerialised form by unlisted public companies:-

- (1) Every unlisted public company shall -
  - (a) Issue the securities only in dematerialised form; and
  - (b) Facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under
- (2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act 1996 and regulations made there under.
- (3) Every holder of securities of an unlisted public company, \_

Instruction Kit for eForm PAS-6: Reconciliation of Share Capital Audit  
Report (Half Yearly)

- (a) who intends to transfer such securities on or after 2nd October 2018, shall get such securities dematerialised before the transfer; or
- (b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.
- (4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.
- (5) Every unlisted public company shall ensure that \_
- (a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
- (b) it maintains security deposit at all times, of not less than two years', fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and
- (c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.
- (6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.
- (7) Except as provided in sub-rule (8), the provisions of the Depositories Act 1996 the securities and Exchange Board of India (Depositories and participants) 3[Regulations, 2018] and the securities and Exchange Board of India (Registrars to an Issue and share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.
- (8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules,2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.
- (8A) The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.
- (9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and protection Fund Authority.
- (10) The Investor Education and protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India]
- (11) This rule shall not apply to an unlisted public company which is:-
- (a) a Nidhi;

Instruction Kit for eForm PAS-6: Reconciliation of Share Capital Audit Report (Half Yearly)

- (b) a Government company or  
(c) a wholly owned subsidiary.]

Purpose of the eForm

Reconciliation of Share Capital Audit Report on half yearly basis.

Part II – Instructions to fill the eForm

Specific Instructions to fill the eForm PAS-6 at Field Level

Instructions to fill the eForm are tabulated below at field level. Only important fields that require detailed instructions to be filled in eForm are explained. Self-explanatory fields are not discussed.

Sr. No.	Section Name	Field Name	Instructions
1	(a)	CIN	Enter a valid CIN . You may find CIN by entering existing registration number or name of the company in the 'Find CIN' service available under the menu MCA services available on the MCA website.
		Pre-fill button	Click the Pre-fill button. System will automatically display the name, address of the registered office and email ID.  In case there is any change in the email ID, enter the new valid email ID.
3		ISIN	Enter ISIN. All information shall be furnished for the half year ended 30th September and 31st March in every financial year for each ISIN separately.

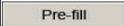
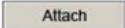
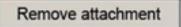
Instruction Kit for eForm PAS-6: Reconciliation of Share Capital Audit  
Report (Half Yearly)

Sr. No.	Section Name	Field Name	Instructions
5		Details of Capital of Company	Enter the details of issued capital number of shares along with percentage of total issued capital.  Enter total number of shares which are held in dematerialised form or physical form.
7		Details of changes in share capital during the half-year under consideration as per Table below	Enter details of changes in the share capital in the form of Rights, Bonus, Private placement, ESOPs, Amalgamation, Conversion, Buyback, Capital Reduction, Forfeiture and others.
8		Details of Shares held by:	Enter the details of shares held by promoters, directors and KMPs in the form of demat or physical.
12		Mention the total no. of demat requests, if any, confirmed after 21 days and the total no. of demat requests pending beyond 21 days with the reasons for delay	Specify the details of number of requests, number of shares and reasons for delay for requests confirmed after 21 days or requests pending beyond 21 days.
13		Details of Company Secretary of the Company, if any;	Enter PAN, name, membership number and address of Company Secretary of the Company.
14		Details of CA/CS certifying this form	Enter name and address of CA/CS certifying the form.
Attachments		<ul style="list-style-type: none"> <li>Optional attachments, if any.</li> </ul>	
To be digitally signed by		<p>Enter the number and date of board resolution authorizing the signatory to sign and submit the eForm.</p> <p>Ensure the eForm is digitally signed by the Director, Manager, CEO, CFO or Company Secretary.</p> <p>The person should have registered his/her DSC with MCA by using the following link (<a href="http://www.mca.gov.in">www.mca.gov.in</a>). If not already registered, then please register before signing this form.</p> <p>Disqualified director is not allowed to sign the form.</p> <ul style="list-style-type: none"> <li>In case the person digitally signing the e-Form is a Director - Enter the approved DIN.</li> </ul>	

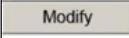
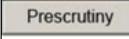
Instruction Kit for eForm PAS-6: Reconciliation of Share Capital Audit Report (Half Yearly)

Sr. No.	Section Name	Field Name	Instructions
			<ul style="list-style-type: none"> <li>In case the person digitally signing the e-Form is Manager, Chief Executive Officer (CEO) or Chief Financial Officer (CFO) - Enter valid income-tax PAN.</li> </ul> <p>In case the person digitally signing the e-Form is Company Secretary - Enter valid membership number in case of other than Section 8 company. In case of Section 8 company and if designation selected as 'company secretary', either membership number/ PAN shall be entered.</p>
	Certification		<p>Ensure the eForm is digitally signed by a Chartered Accountant or a Company Secretary in whole-time practice.</p> <p>Enter the details of the practicing professional and attach the digital signature.</p>

Common Instructions to fill eForm

Buttons	Particulars
<p>Pre-fill</p> 	<p>The Pre-fill button can appear more than once in an eForm. The button appears next to a field that can be automatically filled using the MCA database.</p> <p>Click this button to populate the field.</p> <p>Note: You are required to be connected to the Internet to use the Prefill functionality.</p>
<p>Attach</p> 	<p>Click this document to browse and select a document that needs to be attached to the eForm. All the attachments should be scanned in pdf format. you have to click the attach button corresponding to the document you are making an attachment.</p> <p>In case you wish to attach any other document, please click the optional attach button.</p>
<p>Remove Attachment</p> 	<p>You can view the attachments added to the eForm in the List of attachment field.</p> <p>To remove any attachment from the eForm, select the attachment in the List of attachment field and click the Remove attachment button.</p>
<p>Check Form</p>	<p>1. Click the Check Form button after, filling the eForm system performs form level validation like checking if all mandatory fields</p>

Instruction Kit for eForm PAS-6: Reconciliation of Share Capital Audit  
Report (Half Yearly)

Buttons	Particulars
<p>Check Form</p> 	<p>are filled. System displays the errors and provides you an opportunity to correct errors.</p> <ol style="list-style-type: none"> <li>2. Correct the highlighted errors.</li> <li>3. Click the Check Form button again and. system will perform form level validation once again. On successful validations, a message is displayed “Form level pre scrutiny is successful”.</li> </ol> <p>Note: The Check Form functionality does not require Internet connectivity.</p>
<p>Modify</p> 	<p>The Modify button is enabled, after you have checked the eForm using the Check Form button. To make changes to the filled and checked form:</p> <ol style="list-style-type: none"> <li>1. Click the Modify button. Make the changes to the filled eForm. Click the Check Form button to check the eForm again.</li> </ol>
<p>Prescrutiny</p> 	<p>After checking the eForm, click the Prescrutiny button. System performs some checks and displays errors, if any.</p> <p>Correct the errors. Click the Prescrutiny button again. If there are no errors, a message is displayed “No errors found.” The Prescrutiny functionality required Internet Connectivity.</p>

Instruction Kit for eForm PAS-6: Reconciliation of Share Capital Audit Report (Half Yearly)

Part III - Important Points for Successful Submission

Fee Rules

S. No	Purpose of the form	Normal Fee	Additional Fee (Delay Fee)	Logic for Additional Fees		Remarks
				Event Date	Time limit(days) for filing	
1.	Reconciliation of Share Capital Audit Report (Half-yearly)	<a href="#">The Companies (Registration of offices and Fees) Rules, 2014Annexure B</a>		(All information shall be furnished for the half year ended 30th September and 31st March in every financial year for each ISIN separately)	60 days from the date of conclusion of each half year	

Fees payable is subject to changes in pursuance of the Act or any rule or regulation made or notification issued thereunder.

Processing Type

The form will be processed in STP mode.

SRN Generation

On successful submission of the eForm PAS-6, SRN will be generated and shown to the user which will be used for future correspondence with MCA.

Email

When an eForm is completely processed by the authority concerned, an acknowledgement of the same, if any is sent to the user in the form of an email to the email id of the company

**Annexure I**

**Government of India**  
**Ministry of Corporate Affairs**  
**Notification**  
**New Delhi, dated 28th April, 2014**

**G.S.R 297(E).** In exercise of the powers conferred by sections 396, 398, 399, 403 and section 404, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration Offices and Fees) Amendment Rules, 2014.

(2) They shall come into force with effect from the 28th day of April, 2014.

2. In the Companies (Registration Offices and Fees) Rules, 2014 (herein after referred to as the said rules), in rule 8, after sub-rule (11), following sub-rule shall be inserted, namely:-

“(12) (a) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre certified by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice, namely:-

INC-21, INC-22, INC-28, PAS-3, SH-7, CHG-1, CHG-4, CHG-9, MGT-14, DIR-6, DIR-12, MR-1, MR-2, MSC-1, MSC-3, MSC-4, GNI-3, ADT-1, NDH-1, NDH-2, NDH-3;

(b) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre certified in the following manner, namely:-

- (i) GNL-1 – optional pre-certification by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice;

- (ii) DPT-3 – certification by Auditors of the company;
- (iii) MGT-10 – certification by a Company Secretary in whole-time practice;
- (iv) AOC-4- certification by a Chartered Accountant in whole-time practice;

(c) E-form DIR-3 shall be filed along with attestation of photograph, identity proof and proof of residence of the applicant by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice.”

**3.** In the said rules, in rule 9, for sub-rule (1), the following sub-rule shall be substituted, namely:-

“(1) The Central Government shall set up and maintain a secure centralized electronic registry in which all the applications, financial statement, prospectus, return, register, memorandum, articles, particulars of charges, or any particulars or returns or any other documents under the Act shall be filed and stored electronically.”

[F.No.1/5/2014-CL-V]  
(Renuka Kumar)  
Joint Secretary

**Annexure II****General Circular- 10/2014**

F. No. MCA21/28/2014-E-gov

Government of India

Ministry of Corporate Affairs

'A' Wing, 5th Floor, Shastri Bhawan,  
Dr. R P Road, New Delhi-110001.

**Dated: 7-5-2014**

To

All Regional Director

All Registrar of Companies

**Sub: Certification of E Forms/non e-forms under the Companies Act, 2013 by the Practicing Professionals: regarding.**

The Ministry has allowed registered Members of the professionals bodies (the ICAI, ICSI and the ICAI) to authenticate correctness and integrity of documents being filed by them with the MCA in electronic mode. Details of documents required to be certified have been given in the notification dated 28/04/2014 available on the MCA portal.

**2.** In this regard attention is invited towards the requirement of authentication of documents prescribed under the Companies (Registration Offices and Fees) Rules, 2014 which elaborate on the responsibility. Further, Rule 10 of ibid the Registrar is to examine a-forms or non a-forms attached and filed with general forms on MCA portal viz. to verify whether all the requirements have been complied with and all the attachment to the forms have been duly scanned and attached in accordance with the requirement of above said rules.

**3.** Where any instance of filing of documents, application or return or petition etc. containing false or misleading information or omission of material fact or incomplete information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the professionals who certified the form and signatory

thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules; 15 days notice may be given for the purpose.

**4.** The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action u/s 447 and 448 of the Companies Act, 2013 wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.

**5.** The E-Gov cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action u/s 448 and 449 of the Act wherever prima facie cases have been made out. The E-Gov cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future.

**6.** The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Gov Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month as per the prescribed proforma (copy enclosed).

**7.** This issues with the approval of the Secretary.

Yours faithfully,  
(KMS. Narayanan)  
Assistant Director  
23387263

1. PPS to Secretary
2. PPS to Additional Secretary
3. PPS to JS(R) / JS(B)/ JS(M)/ DII(UCN)/DII(BNH)
4. PS to DIR(AB)

**PROFORMA FOR FORTNIGHTLY REPORT BY ROC****For the period from.....to.....**

SL NO	NAME OF THE PROFESSIONAL	MEMBER OF THE INSTITUTE	MEMBERSHIP NO / CP NO.	DETAILS OF THE CASE	REMARKS

**PROFORMA FOR MONTHLY REPORT BY RD****FOR THE MONTH OF.....**

SL NO	NAME OF THE ROC	DETAILS OF THE PROFESSIONAL	MEMBERSHIP NO / CP NO.	FACT OF THE CASE	REMARKS

**Annexure III**

**Government of India**  
**Ministry of Corporate Affairs**  
**New Delhi**  
**Notification**

**Dated 10th September, 2018**

**G.S.R. 853(E).**– In exercise of the powers conferred by clause (b) of sub-section (1) of section 29 read with sub-sections (1) and (2) of section 469 of the Companies Act 2013(18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-

**1.** Short title and commencement – (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018.

(2) They shall come into force on the 2nd day of October, 2018.

**2.** In the Companies (Prospectus and Allotment of Securities) Rules, 2014, after rule 9, the following rule shall be inserted, namely:-

“9A. Issue of securities in dematerialised form by unlisted public companies.-

(1) Every unlisted public company shall –

- (a) issue the securities only in dematerialised form; and
- (b) facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act! 1996 and regulations made there under.

- (3) Every holder of securities of an unlisted public company,—
- (a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or
  - (b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.
- (4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall in-form all its existing security holders about such facility.
- (5) Every unlisted public company shall ensure that \_
- (a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
  - (b) it maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and
  - (c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.
- (6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

(7) Except as provided in sub-rule (s), the provisions of the Depositories Act 1996' the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 and the securities and Exchange Board of India (Registrars to an Issue and share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.

(8) The audit report provided under regulation 55A of the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.

(9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and protection Fund Authority.

(10) The Investor Education and protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India.

[File No. 1/21/2013-CL-V]

(KVR Murty)

Secretary to the Government of India

Note:- The Principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide notification number G.S.R. 251(E), dated the 31st March, 2014 and were subsequently amended vide number G.S.R' 424(E), dated the 30th June, 2014 and number G.S.R. 430 (E) dated the 7th May, 2018 and number G.S.R. 752 (E) dated the 7th August, 2018.

**Annexure IV**

**Government of India**  
**Ministry of Corporate Affairs**  
**Notification**

**New Delhi, the 22 May, 2019**

**G.S.R. 376(E).**- In exercise of the powers conferred by section 26, sub-section (1) of section 27, section 28, section 29, sub-section (2) of section 31, sub-sections (3) and (4) of section 39, sub-section (6) of section 40 and section 42 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to-amend the Companies (Prospectus and Allotment of Securities Rules, 2014, namely –

**1. Short title and commencement.**- (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019.

(2) They shall come into force with effect from 30th September, 2019.

**2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014**(hereinafter referred to as the principal rules), in rule 9A,-

- (i) in sub-rule (7), for the word and figures "Regulations, 1996", the word and figures "Regulations, 2018" shall be substituted;
- (ii) for sub-rule (8), the following sub-rules shall be substituted, namely:-

"(8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

(8A) The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form."

3. In the principal rules, in the ANNEXURE, after Form PAS-5, the following Form shall be inserted, namely:-

**“Form PAS – 6**

**Reconciliation of Share Capital Audit Report (Half-yearly)**

**‘Pursuant to sub-rule (8) of rule 9A**

**Companies (Prospectus and Allotment of Securities Rules, 2014.)**

**(All information shall be furnished for the half year ended 30th  
September and 31st March in every financial year for  
each ISIN separately)**

1. Corporate identity number (CI.N) of company:

2. (a) Name of the Company :

(b) Address .of the registered office:

(c) E-mail id, if any:

(d) Phone Number:

3. ISIN:

4. Period of filing:        From:                    To:

5. Details of the capital of the company:

		<b>Number of shares</b>	<b>Percentage of Total Issued Capital</b>
(a)	Issued Capital		
(b)	Held in dematerialised form in CDSL		
(c)	Held in dematerialised form in NSDL		
(d)	Held in physical form		
(e)	Total No. of shares [(b) + (c) + (d)]		

6. Reasons for difference in 5(a) and 5(e)

7. Details of changes in share capital during the half-year under consideration as per Table below:

<b>Particulars</b>	<b>No. of Share</b>	<b>Whether intimated to NSDL</b>	<b>Whether intimated to CDSL</b>
Rights			
Bonus			
Private Placement			
ESOPs			
Amalgamation			
Conversion			
Buyback			
Capital Reduction			
Forfeiture			
Any Other (Pls. Specify)			

8. Details of shares held by:-

	<b>Demat</b>	<b>Physical</b>	<b>Total</b>
Promoters			
Directors			
KMP			

9. (a) Whether the Register of Members is updated (Yes / No ):

(b) If not, the date upto which it has been updated:

10. Whether there were dematerialised shares in excess in the previous half-yearly period (Yes/No ):

11. Has the company resolved the matter mentioned in point no. 10 above in the Current half-year? If not, reason why?

12. Mention the total no. of demat requests, if any, confirmed after 21 days and the total no. of demat requests pending beyond 21 days with the reasons for delay:

<b>Total No. of demat requests</b>	<b>No. of requests</b>	<b>No. of shares</b>	<b>Reasons for delay</b>
Confirmed after 21 Days			
Pending for more than 21 Day			

13. Name, Address, E-mail and Telephone No. of the Company Secretary of the Company, if any :

14. Name, Address, E-mail, Telephone No. and Registration. no. of the CA/CS certifying this form:

15. Whether there is appointment of common agency for share registry work:

If yes (Name & Address):

16. Any other detail that the professional signing this form may like to provide:

### **Verification**

I am authorized by the Board of Directors of the Company vide resolution no ..... dated ..... to sign this form and declare that all the requirements of Companies Act, 2013 (18 of 2013), the Depositories Act, 1996 (22 of 1996) and the rules/regulations made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein. above is true, correct and complete including the attachments to this form and nothing material has been suppressed. It is hereby further certified that the professional (Name and Type i.e. C.A/CS) certifying this form has been duly engaged for this purpose.

### **To be digitally signed by**

Designation (to be given)

DIN of the person signing the form

**Certificate by practicing professional**

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 (18 of 2013), the Depositories Act, 1996 (22 of 1996) and rules/regulations made thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original records maintained by the Company (name of the company) which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

- a. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and the Depositories Act, 1996 and were found to be in order;
- b. All the required attachments have been completely and legibly attached to this form;
- c. It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage.

Signature

Chartered Accountant/Company Secretary in practice (whether Associate or Fellow) Membership No. and also CP No.

Note: This eform has been taken on file maintained by the Registrar of Companies through electronic mode and on the basis of statement of correctness given by the filing company. Attention is also drawn to provisions of Section 448 which provide for punishment for false statement and certification."

[File No. 1/21/2013-CL-V]

(K.V R. Murty)

Joint Secretary to the Government of India

Note: – The Principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification number

G.S.R. 251(E), dated the 31st March, 2014 and were subsequently amended:-

- (1) Vide notification number G.S.R. 424(E), dated the 30th June, 2014;
- (2) Vide notification number G.S.R. 430 (E) dated the 7th May, 2018;
- (3) Vide notification number G.S.R. 752 (E) dated the 7th August, 2018;
- (4) Vide notification number G.S.R. 853 (E) dated the 10th September, 2018;
- (5) Vide notification number G.S.R. 43 (E) dated the 22nd January, 2019; and
- (6) Vide notification number G.S.R. 130 (E) dated the 19th February, 2019.

**Annexure V****General Circular No. 16/2019**

F. No. 01/21/2013 CL-V  
Government of India  
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,  
Dr. Rajendra Prasad Road, New Delhi-1.

**Dated: 28-11-2019**

To  
All Regional Directors,  
All Registrar of Companies,  
All Stakeholders.

**Subject: Extension of last date of filing of Form PAS-6– reg.**

Sir,

This Ministry has received representations regarding extension of the last date of filing of Form PAS-6 under rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

2. The matter has been examined and it is stated that the time limit for filing Form PAS-6 without additional fees for the half-year ended on 30.09.2019 will be sixty days from the date of deployment of this form on the website of the Ministry.

3. This issues with approval of the competent authority.

Yours faithfully,

(KMS Narayanan)  
Assistant Director (policy)

Copy to:–

1. E-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File.

## Motto

सत्यं वद। धर्मं चर।

इष्टार्थे तेन त्पत्ते. बोधेन तेन तेन।

## Vision

"To be a global leader in promoting good corporate governance"

## Mission

"To develop high calibre professionals facilitating good corporate governance"



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

### Headquarters

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