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Payal Agarwal, Senior Manager | corplaw@vinodkothari.com Share warrants are one of the widely used means to raise funds, particularly, in case of start-ups. MCA has recently notified the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 ("Amendment Rules") vide which Rule 9 has been amended to require mandatory conversion of the existing share warrants issued by public companies and to issue share warrants altogether? We attempt to decode the implications of the present amendment in this write up. The newly inserted sub-rule (2) and (3) to Rule 9 of the PAS Rules requires every unlisted company to - File the details of existing share warrants with the ROC in form PAS-7 within 3 months from the commencement of the Amendment Rules, i.e., by 27th January 2024, Require bearers of the share warrants to surrender the same and issue dematerialised shares in the name of such bearer within 6 months from the commencement of the Amendment Rules, i.e., by 27th April, 2024, and Convert the unsurrendered share warrants into demate share warrants into dematerialised shares and transfer the same to IEPF The company shall be required to issue notice for the bearers of share warrants in form PAS-8 on its website as well as two newspapers - in vernacular language, having wide circulation in the state in which the registered office of the company is situated. In the context of the newly inserted sub-rule (2) of Rule 9, the term share warrants is to be interpreted in a much restricted sense. The provision refers to "share warrants prior to commencement of the Erstwhile Act only. In this regard, one may refer to section 114 of the Erstwhile Act that allowed public companies to issue "bearer warrants" entitling the bearer of such warrants to the shares specified therein. The same was referred to as "share warrants" under the said Act, and the shares contained therein can be transferred through mere delivery of the warrants. The present amendment requires mandatory surrender of such "share warrants" in the form of "bearer warrants" against issuance of shares in dematerialised form. As mentioned above, the "share warrants" referred to under the Amendment Rules are limited to the bearer warrants issued in accordance with the Erstwhile Act, and do not extend to all share warrants which companies issue under the various provisions of law. In general context, share warrants are actually written options to subscribe to the shares of a company on pre-agreed terms at a future date. Such warrants are fairly common in the corporate world on account of the benefits associated with the same, and the present amendment cannot be said to rule out the possibility of issuance of such share warrants. Share warrants are directly or indirectly recognised under various provisions of law, for instance: The definition of "securities". Share warrants are, in fact, a right to acquire securities at a future date, and therefore, well covered under the definition of securities The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 contains specific provisions with respect to issuance of share warrants. The Foreign Exchange Management (Non Debt Instruments) Rules, 2019 also refers to the term "share warrants" within the overall definition of "equity instruments" and contains specific provisions with respect to the same. The Act refers to the conversion of "warrants" as a permissible mode for issuance of shares during the restricted period post buyback u/s 68(8) of the Act. It also contains references to employee "stock options", which, by nature are equivalent to share warrants. While the Act does not mention at several places under it about share warrants, however, at few places, like the provisions under section 68 dealing with buy back of securities as well as reference to employee "stock options", which, by nature are equivalent to share warrants by unlisted companies, and the same, being a "security" can very well be issued by a company, whether listed or unlisted, in compliance with the applicable provisions of law to meet the required funding as well as investment objectives. The Amendment Rules aim at the wiping out of the bearer share warrants, since the legal and beneficial ownership of the shares are non-traceable in such a case. However, that does not eliminate the concept of share warrants as a whole, that are issued to an identified set of persons, and follows a due procedure laid down in the law for transfer of such warrants. Although not expressly defined under the Act, the concept of share warrants is legally recognised under various laws and are being widely issued by Indian companies, whether listed or unlisted, including private companies. The current set of amendments will have no impact on the permissibility of issuing share warrants issued under the Act and other laws as mentioned hereinabove. Alternative versions:06/04/2008- Amendment26/05/2015-subscribed in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7) entitles the bearer to the shares may be transferred by delivery of the warrant may, if so authorised by its articles, provide (by coupons or otherwise) for the payment of the future dividends on intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon issued in pursuance of this Act, or (b)by means of any such forged or altered share warrant, coupon or document— (i)demands or endeavours to obtain or receive any share or interest in a company under this Act, or (ii)demands or endeavours to receive any dividend or money payment in respect of any such share or interest, knowing the warrant, coupon or document to be forged or altered, he commits an offence. (2)If in Scotland a person without lawful authority or excuse (of which proof lies on him)— (a)engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be— (i)a share warrant or coupon purporting to be— (i)a share warrant or coupon, or (b)uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or of any such blank share warrant or coupon, or (c)knowingly has in his custody or possession any such blank share warrant or coupon, or of any such blank share warrant or coupon, or (c)knowingly has in his custody or possession any such blank share warrant or coupon or of any such blank share warrant or coupon or of any such blank share warrant or coupon or of any such blank share warrant or coupon, or (c)knowingly has in his custody or possession any such blank share warrant or coupon, or of any such blank share warrant or coupon, or of any such blank share warrant or coupon or of any such blank share warrant s offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine (or both). (4) A person guilty of an offence under subsection (2) is liable— (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both); (b)on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both). We use some essential cookies to understand how you use GOV.UK, remember your settings and improve government services. We also use cookies set by other sites to help us deliver content from their services. You have accepted additional cookies. You can change your cookie settings at any time. In last post, we discussed meaning of warrant in with particular reference to share warrant. There are two questions pertinent to issue of share warrants be issued under the Companies Act, 2013 as fresh securities without pre - existence? In this post, we will discuss these questions. In earlier discussion, following characteristics of shares underlying Shares, Issue of warrant, Warrant may have mentioned number of shares and distinctive numbers of shares underlying it - as underlying shares or their distinctive numbers are not cancelled, Deletion of name of members in relation to these shares or securities and entering of the fact of issue of share warrant, Coupon to claim dividend, Right of bearer of warrant shall on request or after its period shall be re - converted into shares, and Share warrant, being a negotiable security, may be transferred without transfer instrument or deed. Whether Share warrants securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. According to Section 2(h) of the Securities include - Share, scripts, stock, bond, debentures, deben issued by any collective investment scheme to investors in such scheme; Security receipt as defined in clause (zg) of section 2 of the Security Interest Act, 2002 {SARFAESI 2002}; Units or any other such instrument issued to the
investor under any mutual fund scheme {certain exception there}; Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be; Government securities; Such other instrument as may be declared by the Central Government to be securities Contract (Regulation) Act, 1956] Clause (ix) of Section 2(h) of the Securities Contract (Regulation) Act, 1956 lists right or interest in securities. Warrants are essentially a right or interest in securities. To create a right or interest in securities should be in existence. Warrant bearer instrument Copyright: Aishwarya Mohan Gahrana Whether Shares or other Securities under the Companies Act, 2013 In general terms a share warrants are not shares but a right or interest in shares. This simple definition makes share warrant other securities. However, Explanation (ii) to sub - rule (1) of Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 has indirect mention of share warrant. It reads, "For the purposes of this rule (Rule 13), the expression, "shares or other securities" means equity shares, fully convertible debentures, partly convertible into or exchanged with equity shares at a later date". As shares warrant is a right or interest in underlying shares and it would be convertible into or exchanges with equity shares, it will be technically a "share" under the Rule 13 of these Rules. Issue of Share warrants be issued under the Companies Act, 2013 as fresh securities without pre - existence of underlying shares? or May share warrants be issued under the Companies Act, 2013 as fresh securities without pre - existence of underlying shares? Act, 2013 as conversion of underlying shares already existence? Issue of Share Warrants without pre - existence of underlying shares: The (Indian) Companies Act, 2013 does not "directly" prescribe any law related to Share Warrants. Explanation (ii) to sub - rule (1) of Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 has indirect mention of share warrant. It reads, "For the purposes of this rule (Rule 13), the expression, "shares or other securities, which would be convertible into or exchanged with equity shares, fully convertible, debentures, partly convertible, debentures, partly convertible into a securities, which would be converted by the securities a securi warrant, if possible to be issued as an issue for preferential basis as applicable to shares. In case of fresh issue of shares may take place. Then the instrument shall become a fully convertible 0% interest security convertible to shares. This is something akin to 0% fully convertible debenture not share warrants. Conversion of Existing securities to warrants: Unlike the Companies Act, 2013 or rules made there under do not have any law or procedure for conversion of existing to warrants. It means a full stop? Present Act, do not expressly prohibit share warrants. To arrive at conclusion, we will look into all provisions related to securities and interpret them in context of characteristics of warrants. If company in its Memorandum of Associations. The Companies Act, 2013 does not prohibit issue of share warrant and therefore such provisions shall not be in contradiction of the Act. Road Block: Section 88(1) that Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:— (a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India; (b) register of debenture-holders; and (c) register of any other security holders. According to Rule 4 of the Companies (Management and Administration) Rules, 2014, "every company which issues or allots debentures or any other security holders." as the case may be, for each type of debentures or other securities in Form MGT - 2." Form MGT - 2." Form MGT - 2 essentially ask name of securities holder. Section 88 creates a road block as share warrant is a negotiable instrument freely transferable without executing any instrument or share transfer form. Treatment of Existing Share Warrant Share warrant issue under the Companies Act, 1956 are valid up to the end of their remaining period and shall be convertible to shares as per terms and conditions of their issue. As these share warrant, reconversion of these share warrant, reconversion of their issue. their comments, suggestions, hardship, queries and everything in comment section. This blog post is not a professional advice but just a knowledge sharing initiative for mutual discussion. A share warrant is a document in which it is stated that the bearer of the warrant is entitled to the shares specified therein. A definition may, thus, be given as follows: A share warrant is a bearer "document of title" to the shares, issued by the company under its common seal, duly stamped and signed by one or more directors of the company, as per Articles'. Image Source: psdgraphics.com/file/attachment-icon.jpg A share warrant is just like a negotiable instrument. The shares specified therein may be transferred by delivery of the warrant only, [Sec. 114(3)] and any bona fide holder for value will obtain a perfect title to the shares (Webb, Hale & Co, vs. Alexandria Water Co.). In other words, a share warrant represents a bearer share is just like a bearer share is just like a bearer share is just like a bearer share warrant represents a bearer share warrant represents a bearer share warrant set of loss is great. Once it is lost there are very remote chances of recovering the ownership of shares. Conditions of Issue : Section 114 lays down the following provisions for the issue of share warrants. (2) Share warrants. (2) Share warrants cannot be issued originally. Only share certificates for fully paid shares can be converted into share warrants. (3) The articles of association must authorize the issue of share warrants. (4) Approval of Central Government must be obtained for issuing share warrants. Preparation of the Warrant : Whenever any holder of fully paid shares wants to convert the share warrants. request on printed application form to the company along with the relevant share certificate. He has also to deposit the stamp duty and other prescribed fees and charges. On receipt of the duly completed application form, the secretary's office sends a Lodgement Ticket to the shareholder concerned acknowledging the receipt of the documents and slating therein that this 'Ticket' is to be exchanged for the share warrant later. The secretary now looks to it that all the relevant provisions of the Companies Act relating to the issue of share warrant forms are usually printed in three parts, one being separated from the other by perforation: (i) the Counterfoil, (ii) the Share Warrant proper, and (iii) the Dividend coupons. A 'talon' for demanding a fresh set of dividend coupons, when those attached to the warrant have been exhausted, is also provided therein. These forms are completed by the secretary's office, and a meeting of the Board of Directors is convened to pass a resolution for sealing and signing of the warrant(s). Accordingly, the share warrants are then sealed and signed and the applicants are advised by a circular letter to take delivery of the warrants from the registered office of the company in exchange for the 'Lodgement Tickets'. Effects of the Issue of Share Warrants : The various effects of the issue of share warrants may be enumerated as follows: (1) The company shall strike out of its Register of Members the name of the member then entered therein as holding the shares specified in the warrant, just as if he had ceased to be a member, and shall enter in that register the following particulars: (a) the fact of the issue of the warrant; (b) a statement of the share specified in the warrant, distinguishing each share by its number; and (c) the date of the issue of the warrant [Sec. 115(1)]. (2) By virtue of Section 115(5) the bearer of share-warrant may or may not be granted all the rights of membership. As such, if the Articles so provide, he may be deemed to be a member to the extent and for the purposes defined in the Articles. His rights of membership are usually curtailed e.g., he cannot present a petition for the winding up of the company. He may not be granted the right to attend general meetings, the right to vote etc. (3) The share warrant will not constitute the qualification shares for the directors, where one is imposed by the Articles [Sec. 270(4)]. (4) The Annual Return must give particulars of share warrants. Terms and Conditions for use of www.adityabirlacapital.com About Aditya Birla Capital ('the Brand') is the single brand for financial services business of Aditya Birla Group. 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These Terms and Conditions are governed by and to be interpreted in accordance with laws of India, without regard to the choice or conflicts of law provisions of any jurisdiction. You agree, in the event of any dispute arising in relation to these Terms and Conditions or any dispute arising in relation to the Website whether in contract or tort or otherwise, to submit to the jurisdiction of the courts located at Mumbai, India for the resolution of all such disputes. Introduction A Share Warrant is a document issued by the company under its common seal, stating that its bearer is entitled to the shares or stock specified therein. Share warrants are negotiable instruments. They are transfers the ownership of the shares. Coupons are attached to each warrant, bearing the dates on which the dividend will be paid by the company as they cannot know who the shareholder or who is entitled to the dividends. The person who produces the appropriate coupon can receive payment of the dividend. Warrants are essentially a right or interest in security under clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956). According to Section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities" means the securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of section 2 (81) of Companies Act, 2013 says "securities" means the securities as defined in clause (h) of securities as defined in c Contract (Regulation) Act, 1956 for the same: According to Section 2(h) of the Securities Contracts (Regulation) Act, 1956, 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; (i.c) security receipt as defined in clause (g) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; (i.d) units or any other such instrument issued to the investors under any mutual fund scheme; (ii) Government to be securities; and (iii) rights or interest in securities Now the question that should come in one's mind does Share Warrants issued & subscribed forms a part of the subscriber of such warrants are essentially a right or interest in securities, it shall be treated as a security under clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956). Further, vide RBI Notification No. FEMA 308/2014-RB2 dated June 30, 2014 RBI clarified that warrants shall be treated as security within the meaning of Section 2 (za) of FEMA. Furthermore, for accounting purposes, the amount received against share warrants shall be shown under the head Shareholder' funds on the liability side. As per the prescribed format under Schedule III read with Section 129 of the Companies Act, 2013, the Money received against share warrants has been mentioned as item (c) as a part of the Shareholder's Fund under Equity and Liabilities. The relevant extract of the said schedule is provided below. PART I — BALANCE SHEET Name of the .. (Rupees in......) Particulars Note No. Figures as at the end of the current reporting period 1 2 3 4 I. EOUITY AND LIABILITIES (1) Shareholders' funds
(a) Share capital (b) Reserves and surplus (c) Money received against share Company Balance Sheet as at warrants In view of the above, we can opine that money received against share warrants are disclosed separately in the balance sheet under 'Shareholder funds' and does not form part of paid-up share warrants by an unlisted public limited company under Companies Act, 2013? The Companies Act, 2013 does not "directly" prescribe any law related to Share warrant. This explanation makes it clear that a share warrant if to be issued, shall be issued as an issue for a preferential basis as applicable to share warrant. share warrants by the ways enumerated herein below: Section 23: Public Offer & Private Placement A Company may issue securities— (a) to the public through prospectus (herein referred to as "public offer") (b) through private placement by complying with the provisions of this Act. Payal Agarwal, Senior Manager | corplaw@vinodkothari.com Share warrants are one of the widely used means to raise funds, particularly, in case of start-ups. MCA has recently notified the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 ("Amendment Rules") vide which Rule 9 has been amended to require mandatory conversion of the existing share warrants issued by public companies under the erstwhile Companies Act, 1956 ("Erstwhile Act") into dematerialised form of securities. Following this amendment, a significant question comes up to be addressed is whether public companies will not be allowed to issue share warrants altogether? We attempt to decode the implications of the present amendment in this write up. The newly inserted subrule (2) and (3) to Rule 9 of the PAS Rules requires every unlisted company to - File the details of existing share warrants with the ROC in form PAS-7 within 3 months from the commencement of the Amendment Rules, i.e., by 27th January 2024, Require bearers of the share warrants to surrender the same and issue dematerialised shares in the name of such bearer within 6 months from the commencement of the Amendment Rules, i.e., by 27th April, 2024, and Convert the unsurrendered share warrants in form PAS-8 on its website as well as two newspapers - in vernacular language, having wide circulation in the district and in English language having wide circulation in the state in which the registered office of the company is situated. In the context of the newly inserted sub-rule (2) of Rule 9, the term share warrants is to be interpreted in a much restricted sense. The provision refers to "share warrants" prior to commencement of the Companies Act, 2013 and not converted into shares", which implies share warrants issued under the Erstwhile Act that allowed public companies to issue "bearer warrants" entitling the bearer of such warrants to the shares specified therein. The same was referred to as "share warrants" under the said Act, and the shares contained therein can be transferred through mere delivery of the warrants" in the form of "bearer warrants" against issuance of shares in dematerialised form. As mentioned above, the "share warrants" against issuance of shares in dematerialised form. warrants" referred to under the Amendment Rules are limited to the bearer warrants issued in accordance with the Erstwhile Act, and do not extend to all share warrants which companies issue under the various provisions of law. In general context, share warrants which companies issue under the various provisions of law.

terms at a future date. Such warrants are fairly common in the corporate world on account of the benefits associated with the same, and the present amendment cannot be said to rule out the possibility of issuance of such share warrants. Share warrants are directly or indirectly recognised under various provisions of law, for instance: The definition of "securities" as provided for in section 2(h) of the Securities "contracts (Regulation) Act also includes "rights or interest in securities". Share warrants are, in fact, a right to acquire securities in securities the term "share warrants. The Foreign Exchange Management (Non Debt Instruments) Rules, 2018 and contains specific provisions with respect to issuance of share warrants. While the Act does not mention at several paces under it about share warrants. Nowever, at few places, however, at few places, there are equivalent to share warrants are given the Act. Therefore, there are no explicit provisions that prohibit the issuance of share warrants by unlisted companies, and the same, being a "security" can very well be issued by a company, whether listed or unlisted, in compliance with the applicable provisions of law to meet the required funding as well as investment objectives. The Act of share warrants, since the legal and beneficial ownership of the shares are non-traceable in such a case. However, that does not eliminate the concept of share warrants is legally recognised under various laws and are being widely issued by Indian companies, whether listed or unlisted, in cluder the Act, the concept of share warrants is legally recognised under various laws and are being widely issued by Indian companies, whether listed or unlisted, in cluder the Act, the concept of share warrants is legally recognised under various laws and are being widely issued by Indian companies, whether listed or unlisted, including of period post buyback or the expressibility of issuing share warrants is legally recognised under various laws and are being widely issued by Indian compa