

A Guide to Demat Account opening for Foreign Companies in India

Introduction

In a significant move, the Ministry of Corporate Affairs (MCA) issued a Notification dated October 27, 2023 (**Notification**), signalling a transformative shift in the issuance and management of securities by private companies in India. According to the Notification, private companies (other than small companies) are mandated to issue securities exclusively in dematerialized form and also facilitate the dematerialisation of all its securities. Importantly, this transition is to be completed within a time-bound framework, specifically within 18 months from the conclusion of the financial year ending on or after March 31, 2023. The time-bound nature of the directive emphasizes the urgency for wholly owned subsidiaries (WOS) and foreign companies to swiftly comply with the new requirements.

One notable implication of this directive is the requirement for WOS of foreign companies operating in India to obtain an International Securities Identification Numbering system (ISIN). Additionally, foreign companies themselves are obligated to initiate the dematerialization process by opening dematerialization accounts with a Depository Participant (DP).

Importance of ISIN

ISIN is an internationally recognized code that uniquely identifies a security, making it easier for electronic trading and settlement worldwide. Many regulatory bodies, including the Securities and Exchange Board of India, mandate the use of ISIN to enhance transparency and standardize the identification of securities. The crucial first step in the dematerialization process is obtaining ISIN by WOS. By obtaining ISIN, WOS sets the stage for the subsequent steps in the dematerialization process. The steps involved in obtaining ISIN are as under:

- **Identify a Registrar and Transfer Agent (RTA):** Identifying RTA is a crucial step for WOS looking to dematerialize its securities. RTA plays an important role in assisting WOS, in obtaining ISIN from depositories such as Central Depository Services Limited (CDSL) or National Securities Depository Limited (NSDL). WOS, in collaboration with RTA, prepares the necessary documentation required for obtaining ISIN.



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- **Submission of Information/Documentation with RTA and Verification:** WOS is required to submit the following information/documents to RTA for the issuance of ISIN:
 - (a) Certificate of incorporation of WOS.
 - (b) Memorandum of association of WOS.
 - (c) Articles of association of WOS.
 - (d) GST registration certificate of WOS.
 - (e) Net worth certificate of WOS duly certified any practising chartered accountant on their letterhead in the prescribed format.
 - (f) Undertaking-cum-Indemnity in relation to WOS in the prescribed format.
 - (g) Board resolution of WOS in the prescribed format.
 - (h) Details of securities of WOS in the prescribed format.
 - (i) Letter of freezing/unfreezing of securities in relation to WOS in the prescribed format.
 - (j) Undertaking in relation to WOS in the prescribed format.
 - (k) Details of the authorised representative [full name, designation, mobile number, e-mail ID, permanent account number (**PAN**)] of WOS in the prescribed format.
 - (l) No PAN undertaking in case any of the directors of WOS are non-residents and do not possess PAN.
 - (m) Non-individual promoter declaration in cases where all the shareholders of WOS are non-individuals.
 - (n) Details of the shareholders [full name, nationality, number of securities held, percentage of securities] of WOS in the prescribed format.
 - (o) Any other document as may be required by RTA.

After submission of the aforementioned documents, RTA will undertake a thorough verification process to ensure their compliance and appropriateness. Upon confirmation by RTA that the documents meet the required standards, WOS needs to pay the requisite one-time joining fees to CDSL or NSDL (as the case may be). Following the successful payment of the aforementioned fees, CDSL or NSDL will proceed to generate the Master Creation Form and Tripartite Agreement. Subsequently, WOS is tasked with obtaining stamp papers of the designated value and diligently executing the aforementioned documents. The duly executed documents are then to be submitted to RTA for further processing with CDSL or NSDL. It is imperative to note that CDSL or NSDL and RTA impose annual charges on WOS for the services they provide.

- **Issuance of ISIN** - Upon the successful submission of the required documents and subsequent verification, regulatory authorities grant approval for the issuance of ISIN. Following approval, a distinct ISIN is allocated to each category of security that WOS plans to dematerialize. This unique identifier plays a crucial role in accurately tracking and managing the specified securities within the regulatory framework.

Steps for Opening Demat Account by Foreign Company

A demat account, or dematerialized account, serves as a digital repository for a wide array of financial instruments, including stocks, bonds, mutual funds, and government securities. Unlike the conventional method of holding physical certificates, a demat account allows the foreign companies to store and manage these financial assets in an electronic format, providing a more efficient and secure means of handling investments. When a foreign company seeks to open a demat account in India, the process involves a series of steps, each intricately linked to compliance with regulatory requisites. The essential steps involved in the process of opening a demat account for a foreign company in India are as follows:

- **Identify a DP:** Identifying DP is a crucial step for foreign companies looking to open a demat account. DP acts as an intermediary between the foreign company and the depository (NSDL or

CDSL). DP plays a key role in making the transition from holding physical securities to electronic format smooth.

➤ **Submission of Information/Documentation with DP and Verification:** A foreign company is required to submit the following information/documents to DP for opening of its demat account in India:

- (a) Demat and KYC account opening form provided by DP.
- (b) Details of ISIN of WOS.
- (c) Notarised and apostilled/consularised copy of the list of authorised signatories of the foreign company in the prescribed format.
- (d) Notarised and apostilled/consularised copy of the members' resolution of the foreign company confirming the list of the board of directors of the foreign company.
- (e) Notarised and apostilled/consularised copy of the board resolution of the foreign company in the prescribed format.
- (f) Notarised and apostilled/consularised copy of the shareholding pattern of the foreign company in the prescribed format.
- (g) Notarised and apostilled/consularised copy of the RBI and FEMA declaration of the foreign company in the prescribed format.
- (h) Notarised and apostilled/consularised copy of the corporate structure of the foreign company in the prescribed format.
- (i) Notarised and apostilled/consularised copy of the PAN of the foreign company.
- (j) Notarised and apostilled/consularised copy of the certificate of incorporation of the foreign company.
- (k) Notarised and apostilled/consularised copy of the articles of incorporation/organisation (with all previous amendments, if any) of the foreign company.
- (l) Notarised and apostilled/consularised copy of the recent bank statement (not older than 1 month) of the foreign company.
- (m) Notarised and apostilled/consularised copy of the taxpayer identification certificate of the foreign company.
- (n) Notarised and apostilled/consularised copy of the list of shareholders of the foreign company along with the copy of the share certificates issued to them.
- (o) Notarised and apostilled/consularised copy of the declaration regarding the officers of the foreign company.
- (p) Notarised and apostilled/consularised copy of the audited financial statements of the foreign company for the last 2 financial years. In case, the foreign company is not required to get its financial statements audited, then it should provide the notarised and apostilled/consularised copy of the audit declaration confirming that audit is not mandatory in the home country of the foreign company.
- (q) Notarised and apostilled/consularised copy of the passport of any two directors/officers from the board of the foreign company.
- (r) Notarised and apostilled/consularised copy of the recent bank statement (not older than 1 month) of any two directors/officers from the board of the foreign company.
- (s) Photograph of the aforesaid two directors/officers from the board of the foreign company, in JPEG format.

It is crucial to highlight that if any of the aforesaid documents of the foreign company are in a language other than English, then the said documents also need to be translated in English by a certified translator in the home country of the foreign company and the said English translated

copy duly notarised and apostilled/consularised (as per the aforesaid requirement) should be submitted along with the original document(s).

Following the submission of the aforementioned documents, DP takes on the responsibility of meticulously verifying them to ensure they comply with regulatory standards and are appropriate for the demat account opening process. Once DP confirms that the documents meet the necessary requirements, the foreign company is then required to make the requisite payment of one-time joining fees to DP. After the successful completion of the fee payment process, DP proceeds to officially open the demat account for the foreign company. After the demat account is opened, the foreign company can start operational activities such as dematerializing securities, holding and transferring shares electronically, and participating in corporate actions. It is important to note that DP levies annual custody fees (which varies according to the amount of the paid-up share capital) on the foreign company for the ongoing services it renders in connection with the demat account.

Conclusion

In conclusion, the intricate process of establishing a demat account for foreign companies in India necessitates a methodical approach, marked by strict adherence to regulatory frameworks and precise documentation. This article serves the purpose of shedding light on the pivotal steps essential for a seamless and compliant entry into the Indian securities market. By adhering to the outlined procedures, foreign companies can confidently initiate the opening of a demat account. Beyond enabling the electronic holding and transfer of securities, this strategic move positions these entities to actively engage and invest in India's dynamic financial ecosystem. In essence, this article strives to provide a lucid roadmap, empowering foreign companies to navigate the intricacies of the process and capitalize on opportunities within the vibrant landscape of the Indian capital market.

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