



Company Law Corner

PROCEDURE FOR TRANSFER / TRANSMISSION OF SECURITIES

INTRODUCTION

The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded to a company. A member may sell his shares in the open market and realise the money invested by him. This provides liquidity to a member (as he can freely sell his shares) and ensures stability to the company (as the member is not withdrawing his money from the company). The Stock Exchanges provide adequate facilities for the sale and purchase of shares.

Section 44 of the Companies Act, 2013 states that the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

Further, section 58(2) provides that the shares or debentures and any interest therein of a public company shall be freely transferable. However, shares of a private company are not marketable securities due to restriction on right to transfer. Such shares by their very nature are not freely transferable in the market. The objective behind the right of restriction on the transfer of shares is to preserve the composition of the share holding. Section 2(68) of the Companies Act, 2013 restricts the right to transfer shares but does not prohibit the right to transfer shares. In case of transfer of shares of a private company, the provisions or restrictions contained in the Articles of Association should be duly complied with by the transferor and transferee.

THE CONCEPT OF TRANSFER AND TRANSMISSION

The Companies Act, 2013 distinguishes transmission of shares from transfer of shares. While transfer of shares relates to a voluntary act of the shareholder, transmission is brought about by operation of law. The word 'transmission' means devolution of title to shares otherwise than by transfer, for example, devolution by death, succession, inheritance, bankruptcy, marriage, etc. While transfer of shares is brought about by delivery of a proper instrument of transfer (viz, transfer deed) duly stamped and executed, transmission of shares is done by forwarding the necessary documents (such as a notarised copy of death certificate) to the company. On registration of the transmission of shares, the person entitled to transmission of shares becomes the shareholder of the company and is entitled to all rights and subject to all liabilities as such shareholder.

In case the deceased shareholder had holdings in different companies, then in order to effect transmission of shares for these shares, the relevant documents must be sent to each of the companies, alongwith the share certificates.

REGULATORY FRAMEWORK

I. COMPANIES ACT, 2013

Transfer and Transmission of Securities

According to Section 56(1) of the Act, a company shall not register a transfer of securities of the company unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or transferee within a period of 60 days (irrespective of

the nature of the company, whether listed or unlisted) from the date of execution along with the certificate relating to the securities, or if no such certificate is in existence, then along with the related certificate or letter of allotment of securities.

In case of loss of the instrument, the company may register the transfer on terms as to indemnity as the Board may think fit.

Such instrument of transfer of securities held in physical form shall be in Form No. SH.4. Where a company not having share capital, the instrument of transfer should also be in Form No. SH.4 and other conditions be complied.

However, nothing in section 56(1) shall prejudice any power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted [Section 56(2)].

Registration of partly paid up shares - Notice to the transferee

According to section 56(3), where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice in Form No. SH.5 to the transferee and the transferee gives 'no objection' to the transfer within 2 weeks from the receipt of the notice.

Time Limit for Delivery of certificates

According to section 56(4), every company, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities transferred or transmitted within a period of one month from the date of receipt by the company of the instrument of transfer or the intimation of transmission.

Transfer of securities by legal representative

Section 56(5) of the Act provides that in case of death of holder of any security, the transfer of such security by the legal representative of the deceased shall be valid-

- Even though the legal representative is not the holder of such security;
- As if the legal representatives were the holder of such security.

Penalties

According to 56(6), where any default is made in complying with the provisions of sub-sections (1) to (5) of Section 56, the company and every officer of the company who is in default shall be liable to a penalty of Rs. 50, 000.

Transfer of shares by depository with an intent to defraud, is liable under Section 447 for fraud

As per section 56(7), without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447 for fraud.

II. SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

Transfer or transmission or transposition of securities. [Regulation 40]

- The listed entity shall also comply with the requirements as specified in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 alongwith the Companies Act, 2013, for effecting transfer of securities.
- The requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository. Further, provided that transmission or transposition of securities held in physical or dematerialised form shall be effected only in dematerialised form.
- The board of directors of a listed entity may delegate the power of transfer of securities to a committee or to compliance officer or to the registrar to an issue and/or share transfer agent. Provided that the board of directors and/or the delegated authority shall attend to the formalities pertaining to transfer of securities at least once in a fortnight. Further, the delegated authority shall report on transfer of securities to the board of directors in each meeting.
- On receipt of proper documentation, the listed entity shall register transfers of its securities in the name of the transferee and issue certificates or receipts or advices or issue any valid objection or intimation to the transferee or transferor within a period of 15 days from the date of such receipt of request for transfer. However, the listed entity shall ensure that transmission requests are processed for securities held in dematerialized mode and physical mode within seven days and twenty one days respectively, after receipt of the specified documents. Proper verifiable dated records of all correspondence with the investor shall be maintained by the listed entity.
- The listed entity shall not register the transfer-
 - When any statutory prohibition or any attachment or prohibitory order of a competent authority restrains it from transferring the securities from the name of the transferor.
 - When the transferor objects to the transfer provided that the transferor serves on the listed entity, within sixty working days of raising the objection, a prohibitory order of a Court of competent jurisdiction.
- The listed entity shall not decline to, register or acknowledge any transfer of shares, on the ground of the transferor being either alone or jointly with any other person or persons indebted to the listed entity on any account whatsoever.
- The listed entity shall comply with all procedural requirements as specified in Schedule VII with respect to transfer of securities.
- The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within 30 days from the end of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, subdivision, consolidation, renewal, exchange or endorsement of

calls/allotment monies. The listed entity shall ensure that certificate shall be filed with the stock exchange simultaneously.

PROCEDURE FOR TRANSFER AND TRANSMISSION OF SHARES

- An instrument of transfer of securities held in physical form shall be in Form No.SH.4 and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within 60 days from the date of such execution along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.
- The transmission request form in case of transmission of securities are submitted with the death certificate of the securities holder, original share certificate and registered will, if any/letter of probate/succession certificate as evidencing the proof of legal ownership of the deceased securities holder.
- The proper value of share transfer stamps on the basis of consideration, is affixed on the transfer deed (25 paise for every 100 rupees of the value of the share or part thereof). The stamp affixed on the transfer deed is cancelled at the time or before signing of the transfer deed. No stamp duty shall be required to be paid in case of transmission of share.
- The signatures of the transferor and the transferee in the share transfer deed must be witnessed by a person giving his signature, name and address.
- The transferee as well as transferor are required to furnish a copy of their PAN card to the listed entity for registration of transfer of securities.
- Complete formalities regarding calling of board meeting in the following manner:
 - Prepare notice of the board meeting along with draft resolution to be passed in the board meeting.
 - Send notice of the board meeting to all the directors at least 7 days before the date of board meeting or in such a manner as prescribed.
- Convene board meeting and pass the following board resolution:
 - Acceptance of transfer/transmission of securities or recording the reasons for refusal of transfer/transmission of securities, if refused.
 - Authorising a director/company secretary to make necessary entries in the respective registers.
 - Issuing securities certificates after transfer/transmission in the name of transferee or take appropriate action to inform the depository about such transfer/transmission.
- As per SEBI (LODR) Regulations, 2015, the board of directors of a listed entity may delegate the power of transfer of securities to a committee or to compliance officer or to the registrar to an issue and/or share transfer agent. Provided that the board of directors and/or the delegated authority shall attend to the formalities pertaining to transfer of securities at least once in a fortnight. Further, the delegated authority shall report on transfer of securities to the board of directors in each meeting.
- Complete Formalities regarding minutes of the board meeting as per section 118 of the Companies Act, 2013.

- Endorse the name of the transferee on the reverse of the share certificate and make necessary entries on the certificate and get it signed by the authorised person and send the same to the transferee within a period of one month from the date of receipt by the company of the instrument of transfer or the intimation of transmission.
- Make necessary entries in the Register of Members and Register of transfer of shares.
- Every individual, who subsequently becomes a significant beneficial owner after the transfer, has submitted a declaration in Form No. BEN-1 to the reporting company, within 30 days of acquiring such significant beneficial ownership or any change therein.

DOCUMENTATION REQUIREMENTS FOR TRANSMISSION OF SECURITIES IN CASE OF LISTED ENTITY

In case of transmission of securities held in dematerialized mode

Where the securities are held in a single name without a nominee, for the purpose of following simplified documentation, as prescribed by the depositories vide bye-laws or operating instructions, as applicable, the threshold limit is rupees five lakhs only per beneficiary owner account.

In case of transmission of securities held in physical mode:

- where the securities are held in single name with a nominee, the following documents are required:
 - (i) duly signed transmission request form by the nominee;
 - (ii) original or copy of death certificate duly attested by a notary public or by a gazetted officer;
 - (iii) self attested copy of PAN card of the nominee.
- where the securities are held in single name without a nominee, an affidavit from all legal heirs made on appropriate non judicial stamp paper, to the effect of identification and claim of legal ownership to the securities shall be required.
- For value of securities up to Rs. 2 lakh, per listed entity, as on date of application, a succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925 may be submitted.

However, in the absence of such documents, the following documents may be submitted:

1. no objection certificate from all legal heirs who do not object to such transmission or copy of family settlement deed duly notarized and executed by all the legal heirs of the deceased holder.
 2. an indemnity bond made on appropriate non judicial stamp paper, indemnifying the Share Transfer Agent / listed entity.
- for value of securities, more than Rs. 2 lakh, per listed entity, as on date of application, a succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925 mandatorily be submitted.
 - The listed entity however, at its discretion, may enhance value of securities, threshold limit, of Rs. 2 lakh.

EXCEPTIONS TO THE PROVISIONS OF THE COMPANIES ACT, 2013

- The provisions of section 56(1), in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond.
- The provisions of section 56(1) shall not apply to a Government Company in respect of securities held by nominees of the Government.
- The instrument of transfer may not be in the prescribed form in the following cases:-
 - Shares transferred by a direct or nominee on behalf of an other body corporate under section 187 of the Companies Act, 2013;
 - Shares transferred by a director or nominee on behalf of a corporation owned or controlled by the Central or State Government;
 - Shares transferred by way of deposit as a security for repayment of any loan or advance, if they are made with any of the following:-
 - (a) State Bank of India; or
 - (b) Any scheduled bank; or
 - (c) Any other banking company; or
 - (d) Financial Institution; or
 - (e) Central Government; or
 - (f) State Government; or
 - (g) Any corporation owned or controlled by the Central or State Government; or
 - (h) Trustees who have filed the declarations.

POINTS TO PONDER

- Every holder of securities of an unlisted public company who intends to transfer such securities, shall get such securities dematerialised before the transfer.
- If signed transfer deed has been lost, affix the same stamp on a written application. In such case, the Board may, if it thinks fit to do so, register the transfer on such terms of indemnity as it thinks fit.
- A company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH.5 to the transferee and the transferee has given no objection to the transfer within 2 weeks from the date of receipt of notice.
- If the shares of the company are listed in a recognized stock exchange, then the company cannot charge any fee for registration of transfers of shares and debentures.

TRANSFER OF SHARES IN PHYSICAL FORM STOPPED FROM APRIL 1, 2019

SEBI has amended the relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to disallow listed companies from accepting request for

transfer of securities which are held in physical form, with effect from April 1, 2019. The shareholders who continue to hold shares and other types of securities of listed companies in physical form even after this date, will not be able to lodge the shares with company / its RTA for further transfer. They will need to convert them to demat form compulsorily if they wish to effect any transfer. Only the requests for transmission and transposition of securities in physical form, will be accepted by the listed companies / their RTAs.

This amendment will help in curbing fraud and manipulation risk in physical transfer of securities by unscrupulous persons. Further, with shares held in demat form will improve ease, convenience and safety of transactions for investors.

CHECKLIST FOR COMPANY SECRETARY

A Company Secretary is required to put up before the Board or the Share Transfer Committee of the company for consideration and approval, only those cases of registration of share transfers, which have been checked up by him and have been found to be strictly in accordance with the provisions of section 56 and other applicable provisions of the Companies Act, 2013 and the articles of association of the company. If the Instrument received is deficient in any respect, the same should be returned to the person who had lodged the same with the company for making good the deficiency. The following checklist has been designed to help a Company Secretary in his work of processing of cases of share transfers:

- (1) Each column of transfer deed (SH-4) is properly and adequately filled in.
- (2) Date of execution is to be filled up properly.
- (3) Name of the company and its Corporate Identification Number (CIN) is correctly given.
- (4) Names of the recognized stock exchange, where dealt in, if any, have been given in the Instrument.
- (5) Description of shares, viz., equity, preference etc. is correctly given. Kind or class of securities, nominal value of each unit, amount called up and amount paid up, number of securities being transferred (both in figures and words) and consideration received (both in figures and words) are to be mentioned clearly.
- (6) Distinctive numbers of the shares mentioned in the share certificate(s) are to be mentioned in the deed.
- (7) Corresponding share certificate numbers are to be entered in the transfer deed.
- (8) Folio number of the transferor as given in the enclosed share certificate(s) is to be correctly entered in the transfer deed.
- (9) Name and address of the witness to the signature(s) of the transferor(s) are legibly written in the transfer deed and the witness has signed the transfer deed.
- (10) Signature(s) of the transferor(s) must tally with the specimen signature available with the company.
- (11) In case of joint share holdings, form shall be signed by all joint transferors.
- (12) Particulars of transferee viz. Name, Father's name, address, E-mail Id, occupation and existing folio number are to be correctly entered in the transfer deed.
- (13) The transferee(s) or the buyer(s) has/have signed the Instrument.
- (14) Relevant certificate(s) of shares or debentures or other securities is/are to be closed.

- (15) If certificate was not issued, letter of allotment is to be enclosed.
- (16) Share Transfer Stamps of appropriate value have been affixed on the Instrument and they have been properly cancelled by a rubber stamp or defaced otherwise. If the shares are listed, the valuation of the Share Transfer Stamps is to be determined based on their quoted value.
- (17) Where the transfer is proposed to be in the name of the minor(s), whether the articles of association of the company permit such registration of transfer and the shares are fully paid.
- (18) Whether the transferor(s) and/or transferee(s) is/are non-resident Indians and if so, whether the transfer is permitted under the Foreign Exchange Management Act, 1999, and if not, whether specific permission of the Reserve Bank of India has been obtained.
- (19) Where the transferor is a body corporate, whether board resolution of the transferor is passed to this effect and proper authority has been given by the Board of Directors to the person signing as the transferor on behalf of the company.
- (20) In case of listed company, comply with the formalities of the SEBI (LODR) Regulation, 2015.
- (21) Check whether the shares under registration are subject to a lien of the company and if so, whether the company has lifted the lien.
- (22) The transfer of shares must not contravene the provisions of SEBI (Substantial Acquisition of Share and Takeovers) Regulations, 2011.

References:

- <https://www.mca.gov.in/content/mca/global/en/home.html>
- <https://nsdl.co.in/nsdlnews/SEBI-Announces.php>
