

Companies Act Fundamentals

Transfer / Transmission of shares



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Applicable Law

- Chapter IV- Share Capital and Debentures - Section 43-72 of the Companies Act 2013

- The Companies (Share Capital and Debentures) Rules, 2014.

- Act means – Companies Act 2013
- Rules means - The Companies (Share Capital and Debentures) Rules, 2014.

Transfer / Transmission of shares

Transfer of Shares

- Section 56 of the Act provides that a company shall not register a transfer of securities, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer.
- Such transfer form shall be duly stamped, dated and executed by or on behalf of the transferor and the transferee, and specify the name, address and occupation, if any, of the transferee.
- Rule 11 (1) of the Rules provide that 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 sixty days from the date of such execution.
- Rule 11 (2) provides that in the case of a company having no share capital, the provisions aforesaid rule shall apply to the interest of the member in the company.

Transfer of Shares

- The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

Time period for delivery of Transfer form

- Form SH-4 needs to be delivered to the company by the transferor or the transferee within a period of sixty days from the date of 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.
- In the event where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period i.e. within sixty days from date of execution, the company may register the transfer on such terms as to indemnity as the Board may think fit.

Transfer of Partly paid up Shares

- The section provides that 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 of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.
- According to Rule 11(3)a company may 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 two weeks from the date of receipt of notice.

Transmission of shares

- 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 the company shall exercise its power to register the same.
- Section 56 also provides that the transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

Delivery of securities:

- The Company needs to 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, of the intimation of transmission.
- Further the section provides where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

Delivery of securities:

- Every company, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, needs to deliver the certificates of all securities allotted, transferred or transmitted—
 - (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
 - (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;
 - (c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission, in the case of a transfer or transmission of securities;
 - (d) within a period of six months from the date of allotment in the case of any allotment of debenture
- Where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities

Penal Provisions

- In the event here any default is made in complying with the provisions of Section 56 sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Refusal of Registration- Private Company

- Section 58 of the Act provides that in case a private company limited by shares refuses, to register the transfer of, or the transmission, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

Appeal against refusal to register transfer / transmission

- The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

Refusal of Registration- Public Company

- The securities or other interest of any member in a public company shall be freely transferable subject to the provision that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.
- Where a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

Power of Tribunal

- The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order
 - (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
 - (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

Penal Provision

- If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees

Rectification of Register of Members

- As per Section 88 of the Act every company is required to maintain a register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India.
- Section 88 also provides that for all the purposes of this Act the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index.
- Section 59 of the Act provides in the event where the name of any person is entered in the register of members of a company, or is omitted therefrom, without sufficient cause, or a default is made, or unnecessary delay takes place in entering in the register. The person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

Rectification of Register of Members

- The Tribunal may, after hearing the parties to the appeal by order either:
 - (i) dismiss the appeal or;
 - (ii) direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or; direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

- These provisions shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

Rectification of Register of Members

- Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

Penal Provision:

- If any default is made in complying with the order of the Tribunal the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Thank you



**Mind, Heart, Aspiration =
Passion, Integrity, Excellence**

Thank You

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