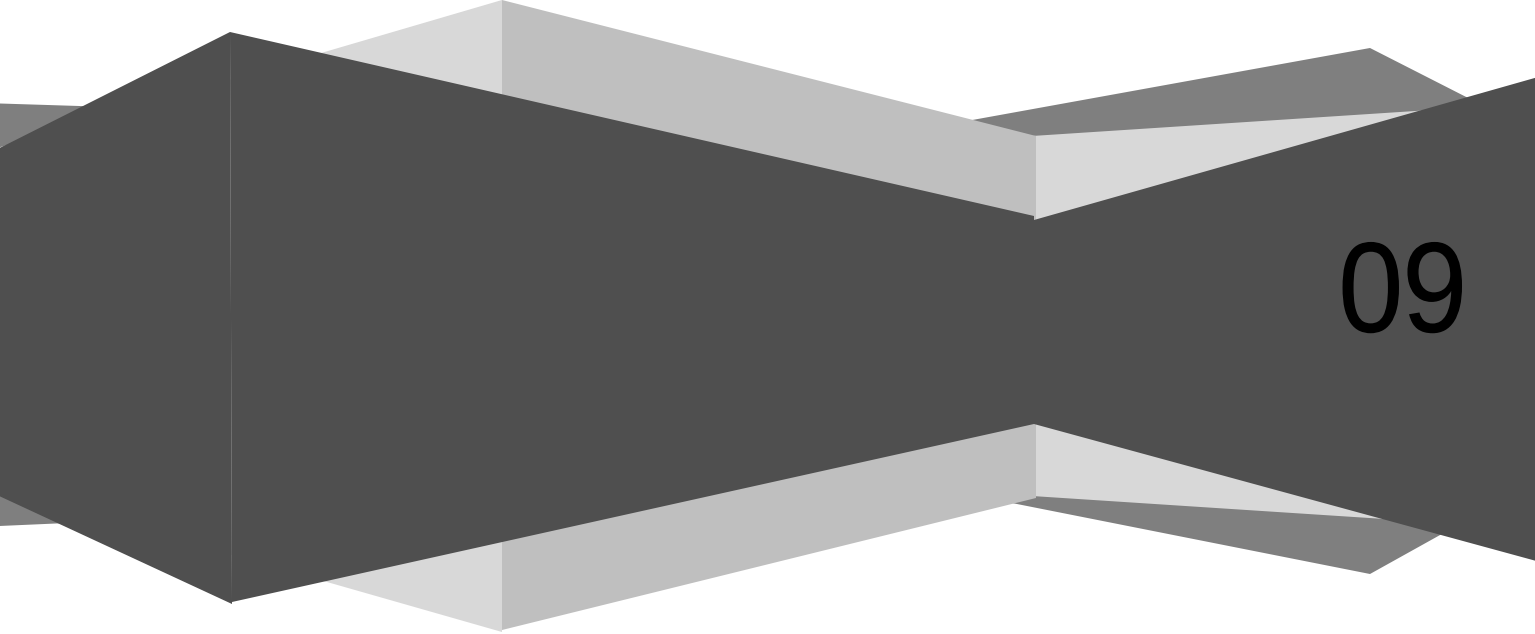


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# Transfer and Transmission of shares

## For CA and CS Students

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# **Transfer and Transmission of Shares**

## **Meaning of transfer and transmission**

The word 'transfer' is an act of the parties by which title to property is transferred from one person to another. The word 'transmission' is referable to devaluation of title by operation of law. It may be by succession or by testamentary transfer.

## **Transfer Deed is compulsory**

Section 108 provides that a company shall not register a transfer of shares of, the company, unless a proper transfer deed in Form 7B as given in the Companies (Central Government's) General Rules and Forms, 1956 duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company, alongwith the certificate relating to the shares, or if no such certificate is in existence, alongwith the letter of allotment of the shares:

## **Validity of unstamped/non-cancelled stamped on transfer deed**

Section 108 requires that where share transfer form is delivered to the Board it should be duly stamped. It means stamp of adequate value should be affixed and cancelled on transfer deed.

## **Determination of valuation of shares for affixing stamps on the transfer deed**

It was held in *Union of India v Kulu Valley Transport Ltd.* (1958) that in case shares are not quoted, the value of the shares for the purpose of stamp means **the price that the shares would fetch at the time of transfer or consideration agreed, whichever is higher.**

However, no transfer duty is applicable for transfer of shares in case of shares are in D-mat form.

## **Value of share transfer stamps to be affixed on the transfer deed**

**Stamp duty for transfer of shares is 25 paise for every Rs. 100 or part thereof of the value of shares as per Notification No. SO 130(E), dated 28-01-2004 issued by the Ministry of Finance, Department of Revenue, New Delhi.**

## **Transfer procedure not applicable under the depositories system**

Section 108(3) provides that the provisions of section 108 shall not apply to transfer of securities under the depositories system.

## **Validity of transfer deed**

In the case of listed company, at any time before the date on which the register of members is closed, in accordance with law, for the first time after the date of the presentation of the prescribed form to the prescribed authority under clause (a) of section 108(1A) or within twelve months from the date of such presentation, whichever is later.

In any other case, within two months from the date of such presentation.

### **Submission of instrument for transfer to the Company**

Transfer Deed duly executed for the registration of a transfer of the shares or other interest of a member in a company may be submitted either by the transferor or by the transferee together with the relevant share certificates.

### **PROCEDURE FOR TRANSFER OF PARTLY PAID UP SHARES**

Where the application is made by the transferor and relates to partly paid shares, the transfer shall not be registered, unless the company gives notice of the application to the transferee and the transferee makes no objection to the transfer within two weeks from the receipt of the notice. The notice to the transferee shall be deemed to have been duly given if it is despatched by prepaid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.

### **Time limit for issue of certificate on transfer (Section-113)**

#### ***Within a period of two months in case of unlisted companies***

Every company, unless prohibited by any provision of law or of any order of any Court, CLB or other authority, shall, within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in section 53, the certificates of all shares transferred.

#### ***Within a period of one month in case of a listed companies***

In the case of a listed company, the listing agreement requires that the registration of transfers will be made within 30 days of receipt of the transfer deeds.

#### ***Penalty***

If default is made in complying with the company, and every officer of the company who is in default, shall be punishable with fine, which may extend to five thousand rupees for every day during which the default continues.

### **PROCEDURE FOR EXTENSION OF VALIDITY OF TRANSFER DEED**

Where the validity period of an instrument of transfer has expired, the holder may make an application in Form 7C to the Registrar of Companies requesting for extension in the

validity. The fee for such application is Rs.50 where the nominal value of the shares is upto Rs. 5,000 and the fee is Rs. 100 where the value exceeds Rs. 5000.

The application shall be made to the Registrar of Companies, where the registered office of the Company is situated or under whose jurisdiction the transferor or transferee resides. The Registrar on satisfaction of the cause shown in the application shall extend the validity for a period of 30 days from the date of approval by the Registrar. It should be noted that further extension will not be provided by the Registrar. Therefore, the transfer deed should be lodged with the company within the extended period only.

## **TRANSFERABILITY OF SHARES IN A PRIVATE COMPANY**

### **Private company shall restrict right to transfer its shares**

Entire shareholding of a private company may be owned by a family or other private group. Section 3(1)(iii)(a) of the Companies Act, 1956 provides that the Articles of a private company **shall restrict the right to transfer the company's shares.**

### ***Restriction on transfer not applicable in certain cases***

Restriction upon transfer of shares in private company are not applicable in the following cases:—

- (i) on the right of a member to transfer his/her shares cannot be applicable in a case where the shares are to be transferred to his/her representative(s).
- (ii) in the event of death of a shareholder, legal representatives may require the registration of share in the names of heirs, on whom the shares have been devolved.
- (iii) in respect of shares which are proposed to be issued on a rights basis, existing members would have a right to renounce shares likely to be allotted to them. If the existing shareholders renounce their shares then these shares will be allotted to the renouncees for the first time and therefore no transfer of shares will take place.

However, a private company may, by articles, restrict the 'right of a member to renounce his shares' otherwise, it is not possible to restrict the number of its members.

**Note: Restriction should not be in the form of prohibition and Restriction can only be by the Articles of Association**

### **Procedure for transfer of shares of private company**

Generally articles contain the detailed provisions as regards the procedure for transfer of shares. Usually following steps shall be followed by a private company to give effect to the transfer of shares:—

- (i) Transferor should give a notice in writing for his intention to transfer his share to the company.
- (ii) The company in turn should notify to other members as regards the availability of shares and the price at which such share would be available to them.
- (iii) Such price is generally determined by the directors or the auditors of the company.

(iv) The company should also intimate to the members, the time limit within which they should communicate their option to purchase shares on transfer.

If none of the members comes forward to purchase shares then the shares can be transferred to an outsider and the company will have no option, other than to accept the transfer.

### **Valuation for consideration for transfer of shares of a private company**

Usually, Articles of a private company provides that the shares are to be sold under pre-emption clause at a fair price determined by directors or the company's auditors. It may also be provided that the fair price would be certified by the company's auditors.

If the pre-emption clause requires that the shares are required to be offered to other members at a price certified by the directors or auditors, the Courts are not in a position to enquire into the correctness of valuation, unless there is evidence that valuation was not correctly made. If the person who made the valuation has acted negligently and failed to take into account all the necessary factors for arriving at the value of shares, in such case the transferor may sue for damages to the person who made the valuation for difference between the value of the share, as computed by the valuer, and the real value of shares.

The Company Law Board/Tribunal ordinarily do not interfere with the valuation made by experts. Therefore, if valuation is challenged then there must be sufficient evidence in support to show that valuation is improper.

### **Transfer of shares in a public company**

Section 111A(2) provides that the shares or debentures and any interest therein of a public company shall be freely transferable. Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Company Law Board/Tribunal and it shall direct such company to register the transfer of shares.

### **Procedural steps to be followed for transfer of shares**

- (i) Obtain the transfer deed Form 7B, endorsed by the prescribed authority.
- (ii) For transferring debentures, the instrument of transfer need not be in the prescribed Form 7B but this Form can be used, being convenient to do so.
- (iii) Get the transfer deed duly executed both by the transferor and the transferee or on their behalf in accordance with sections 108 and 109 of the Act and the Articles of Association, in case of shares, and also in accordance with trust deed in the case of debentures.
- (iv) The transfer deed should bear stamps according to the Indian Stamp Act and Stamp Duty Notification in force in the State concerned. The present rate of transfer of

shares is 25 Paise for every one hundred rupees of the value of shares or part thereof.

- (v) See that the stamps affixed on the transfer deed are cancelled at the time or before signing of the transfer deed.
- (vi) The signatures of the transferor and the transferee in the share/debenture transfer deed must be witnessed by a person giving his signature, name and address.
- (vii) Attach the relevant share or debenture certificate or allotment letter with the transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within the time limits.
- (viii) Where the application is made by the transferor and relates to partly paid-up shares, the company has to give due notice of the amount due on shares/debentures to the transferee and the transferee shall raise objection, if any within two weeks from the date of receipt of the said notice.
- (ix) 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.
- (x) If the shares of the company are listed on a recognized Stock Exchange, then the company cannot charge any fee for registration of transfers of shares and debentures.

### **Transfer of share certificate when original share certificates lost**

If the transferee lost the share certificates, according to section 111A still the transferee can be register as a shareholder of company but he has to approach the CLB praying the issuance of duplicate share certificate and the register the same in his name. However, by executing indemnity bond, company can issue duplicate share certificate.

### **Difference in the signature of transferor**

It is common cause for refusal of transfer of shares due to the change or difference in the signature(s) of the transferor in the transfer deeds with the specimen signatures available in the records of the company. Generally, the signature(s) of the members changes after a period of time, and it creates a lot of time and burden on the company as well as the transferee. To avoid these situation, it is advisable to provide an option to the members for furnishing fresh specimen signatures for the records of the company.

### **Refusal for transfer of shares should be exercised within two months**

Power of refusal to register transfer of shares is to be exercised by the company within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be is delivered to the company.

### **Remedy for refusal of transfer of Shares**

#### ***Appeal against refusal to register transfer of shares***

In the case of refusal, the transferee, or the person who gave intimation of the transfer or transmission of shares by operation of law, as the case may be, may appeal to the Company Law Board/Tribunal against any refusal of the company to register the transfer or transmission or against any failure on its part within the period of two months as stated under section 111(1) of the Act, either to register the transfer or transmission or to send notice of its refusal to register the same. [Section 111(2)].

### **Time limit for appeal**

Such appeal to the Company Law Board/Tribunal under section 111(2) of the Act shall be made **within two months of the receipt of the notice of such refusal** or, **where no such notice has been sent by the company, within four months from the date on which** the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company. [Section 111(3)].

### **Order of Company Law Board/Tribunal**

On appeal under section 111(2) of the Act, the Company Law Board/Tribunal may, at its discretion, make—

- (a) such interim orders, including any orders as to, injunction or stay, as it may deem fit and just;
- (b) such orders as to costs as it thinks fit; and
- (c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

## **TRANSMISSION OF SHARES**

### **Transmission of shares**

A transmission of shares or other interest in a company of a deceased member thereof made by the legal representative of a deceased member of the company shall be considered as transmission of shares by operation of law and will be registered by a company in the Register of Members. **Execution of transfer deed not required in case of transmission of shares**

### **Transmission shall be subject to the liabilities, if any**

In the case of a transmission of shares, shares continue to be subject to the original liabilities, and if there was any lien on the shares for any sums due, the lien would subsist, notwithstanding the devaluation of the shares.

### **Requirement of documents/evidences for transmission of shares**

Where title to shares comes to vest in another person by operation of law, it is not necessary to execute and submit transfer deed. A simple application (Appendix 2) to the company by a legal representative alongwith the following necessary evidences is sufficient:—

- (i) Certified copy of death certificate;
- (ii) Succession certificate;
- (iii) Probate;

(iv) Specimen signature of the successor.

### **No requirement of consideration and payment of stamp duty**

Since the transmission is by operation of law, neither consideration for transfer nor stamp duty is required on instruments for transmission.

### **Procedure for transmission of shares**

(i) The survivors in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares. The company records the particulars of the death certificate and a reference number of recording entry is given to the shareholder so as to enable him to quote such number in all future correspondence with the company.

(ii) If a member of a company dies and he leaves after him a will or letter of administration then the survivors shall get a copy of 'will' certified under the seal of a Court of competent jurisdiction. The certified copy of the will is called a 'probate' and it shall be forwarded to the company.

(iii) If a member of a company dies without leaving a will, then succession certificate issued by a Court of competent jurisdiction shall be submitted to the company.

(iv) In case a member of a company becomes bankrupt, the official receiver shall produce documentary evidence of his appointment from a competent Court.

Right to dividend, rights shares and bonus shares to legal representative shall be kept in abeyance

### **Appeal against refusal to register transmission of shares**

The transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board/Tribunal against any refusal of the company to register the transfer or transmission or against any failure on its part as stated under section 111(1) of Companies Act, either to register the transfer or transmission or to send notice of its refusal to register. [Section 111(2)]

### **Time-limit for filing an appeal**

An appeal under section 111(2) of Companies Act, 1956 shall be made within two months of the receipt of the notice of such refusal or where no notice has been sent by the company within four months from the date on which intimation of transmission was delivered to the company under section 111(3) of Companies Act, 1956.

### **PROCEDURE RELATING TO TRANSMISSION OF SHARES**

(i) Transmission is devaluation of title by operation of law.

(ii) No instrument of transfer (Transfer Deed) is necessary.

(iii) If there was any lien on the shares or any original liabilities, it would subsist even after transmission.

- (iv) A simple application with certain documents such as death certificate, succession certificate, probate, etc., depending upon various circumstances may be sufficient for transmission.
- (v) In case of joint holding, the survivor or survivors shall only be entitled for registration and the legal heir of the deceased member shall have no right or claims.
- (vi) Dividend declared before the death of the shareholder will be payable to legal representative but dividend declared after the death of a member can be paid to him only after registration of his name and till that period it has to be kept in abeyance.
- (vii) Succession certificate is not required when probate or letter of administration is issued.
- (viii) Once succession certificate is granted, it provides full indemnity to the company to transmit the shares by operation of law.
- (ix) In case of amalgamation, no instrument of transfer is required to be executed.
- (x) In case of shares of a private company, if company refuses to register transmission, notice of such intention within two months giving reasons must be sent by the company to the person sending intimation.
- (xi) Remedies provided under section 111 are no longer applicable on listed/unlisted public companies.
- (xii) New section 111A abrogates the right of the public company to refuse registration of transfer/transmission of share and debenture on any grounds.
- (xiii) The companies, after registration of transfer, may approach the Company Law Board/Tribunal for an order of rectification in case the transfer is in contravention of any of the provisions of the Companies Act, 1956 or any other Act.