

Prepared by:

CS Ankur Garg

<https://www.facebook.com/#!/ankur.gargcs>

Procedure for Transfer of Shares under Companies Act, 2013

Dear Professional Colleagues,

Through this write up we shall discuss another topic which is quite frequent for secretarial department of a Company. Statutory provisions related to transfer of share one should refer the following sources:

1. Section 56 of Companies Act, 2013
2. Rule 11 of Companies (Share Capital & Debentures) Rules 2014
3. Provisions given in model articles of association given in Table 'F' of Schedule-I

"Relevant" Text of Section 56 and Rule 11 are reproduced below for ready reference:

Transfer and transmission of securities

Section 56 (1) *A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, 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, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been 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:*

Provided *that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.*

(2) *Nothing in sub-section (1) shall prejudice the 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.*

(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 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.*

(4) *Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—*

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- (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 under sub-section (2), 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:*

Provided that 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.

(5) 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.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Rule 11 of Companies (Share Capital & Debentures) Rules 2014: Instrument of transfer.-

- 1. 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 (60) days from the date of such execution.*
- 2. In the case of a company not having share capital, provisions of sub-rule (1) shall apply as if the references therein to securities were references instead to the interest of the member in the company.*
- 3. 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 two weeks from the date of receipt of notice.*

Main Provisions related to Transfer of Share

- 1. Instrument for Transfer of Share is compulsory:** Section 56 provides that a company shall not register a transfer of shares of, the company, unless a proper transfer deed in **Form No. SH.4** as given in Rule 11 of Companies (Share Capital & Debentures) Rules 2014 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

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been delivered to the company, along with the certificate relating to the shares, or if no such certificate is in existence, along with the letter of allotment of the shares. You may download soft copy of **Form No. SH.4** from the link given below:

[Download Instrument for Transfer - Form No. SH.4](#)

- 2. Time Period for deposit of Instrument for Transfer:** An instrument of transfer of shares i.e. Form **No. SH.4** with the date of its execution specified thereon shall be delivered to the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee.
- 3. 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.
- 4. Time limit for issue of certificate on transfer (Section-56(4)):** Every company, unless prohibited by any provision of law or of any order of any Court, Tribunal or other authority, shall, within One month deliver, the certificates of all shares transferred after the application for the registration of the transfer of any such shares, debentures or debenture stock received.
- 5. 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 2(58)(i) of the Companies Act, 2013 provides that the Articles of private company shall restrict the right to transfer the company's shares.
- 6. Restriction on transfer in Private Company 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.

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

- 7. Time Limit for Refusal of registration of Transfer:** Provisions related to Refusal of registration and appeal against refusal is given in Section 58 of the Companies Act, 2013. Power of refusal to register transfer of shares is to be exercised by the company within thirty (30) days from the date on which the instrument of transfer or the intimation of transfer, as the case may be is delivered to the company.

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- 8. Time Limit for appeal against refusal to register Transfer by Private Company:** As per section 58(3), a transferee of shares may appeal to the Tribunal against the refusal within a period of thirty (30) days from the date of receipt of the notice from the Company or in case no notice has been sent by the company, within a period of sixty (60) 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.
- 9. Time Limit for appeal against refusal to register Transfer by Public Company:** As per section 58(4), a transferee of shares may, within a period of sixty (60) days of such refusal or where no intimation has been received from the company, within ninety (90) days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.
- 10. Penalty for Non-compliance:** Where any default is made in complying with the provisions related to transfer of shares, the company shall be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 1,00,000/-.

Basic Procedure for Transfer of Share in a 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.
- (v) 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.
- (vi) Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee.
- (vii) 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. Do not forget to cancel the stamps affixed at the time or before signing of the transfer deed.
- (viii) 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.
- (ix) Attach the relevant share certificate or allotment letter with the share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the

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company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee.

(x) After receipt of share transfer deed, board shall consider the same. If the documentation for transfer of share is in order, board shall register the transfer by passing a resolution.

Basic Procedure for Transfer of Share in a Public Company

Section 58(2) provides that the shares or debentures and any interest therein of a public company **shall be freely transferable**. Usually following steps shall be followed by a private company to give effect to the transfer of shares:—

- (i) Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee.
- (ii) 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. Do not forget to cancel the stamps affixed at the time or before signing of the transfer deed.
- (iii) 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.
- (iv) Attach the relevant share certificate or allotment letter with the share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee.
- (v) After receipt of share transfer deed, board shall consider the same. If the documentation for transfer of share is in order, board shall register the transfer by passing a resolution.

SECRETARIAL PRACTICE / DRAFTING

Sample Board Resolution for approval for transfer of share

The Chairperson informed the Board that Company has received 1 share transfer request, accompanied with share transfer deed duly filled in, signed and stamped along with other related documents, for approval of the transfer of shares of the Company. The matter was discussed and following resolution was passed unanimously:

“RESOLVED THAT the consent of the Board of Directors of the Company be and is hereby accorded for the transfer of equity shares as per the details given below:

S. No.	Date of Registration of Transfer	No. of Equity Shares	Name of the Transferor	Ledger Folio No. Transferor	Name of the Transferee	Ledger Folio No. Transferee
1.	01.09.2014	44,000	Mr. Prakash	33	Mr. Mohit	167

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“RESOLVED FURTHER THAT Mr. Rohit Bakshi, Company Secretary of the company be and is hereby authorized to make necessary endorsement on the reverse of the Share Certificate and to make entries in the register of share transfer and to do all other necessary act in this regard.to give effect to the above resolution.”

Other Corporate Secretarial work under Companies Act, 2013

For my other Corporate Law Articles on Companies Act, 2013, kindly refer the links mentioned below:

1. [Useful Interpretations about Companies Act, 2013 - Part-1](#)
2. [List of Resolutions to be filed with ROC in Form MGT.14](#)
3. [Procedure for Appointment of Additional Director in CA 2013](#)
4. [Procedure for Increase in Authorise Share Capital under Companies Act, 2013.](#)
5. [Intimation to ROC for Auditor appointment in form ADT.1](#)
6. [Procedure for Resignation of Director under Companies Act, 2013](#)
7. [Useful Corporate Board Resolutions under Companies Act, 2013](#)
8. [Checklist for Action Points under Companies Act 2013](#)
9. [Useful Interpretations about Companies Act, 2013- Part-2](#)
10. [Procedure for Incorporation of a Company under Companies Act, 2013](#)
11. [Procedure for change in Object clause of the Company](#)
12. [Important Company Law Procedures at one place - Part 1](#)
13. [Shifting of Registered Office from One ROC to another ROC within same State-Part 3](#)
14. [Law and Interpretations related to Corporate Social Responsibility](#)
15. [Corporate Board Resolutions under Companies Act, 2013 – Part 2](#)

Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavors under Companies Act, 2013. Kindly share your opinion.

Thanks

CS Ankur Garg

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