

Transfer of Shares Procedural Analysis

Dear Members,

Please find below a useful file article covering some relevant information regarding transfer of share in public and private company. Hope this file would be off some help in your professional working:

For a detailed file on transfer of share along with the procedure for transmission of share kindly follow the link mentioned below:

<http://www.caclubindia.com/forum/pcc-chapter-wise-law-notes-part-ii-49735.asp>

Meaning of transfer of share

The word 'transfer of share' is an act of the parties (transferor and transferee) by which title to share is transferred from one person to another. Transfer of share may also take place succession.

Transfer Deed is compulsory for share transfer

In Companies Act, 1956 transfer of share is governed by Section 108. As per section 108 registration of transfer of shares is possible only if a proper transfer deed in Form 7B 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, along with the share certificate.

Kindly note where share certificate is not in existence, attach letter of allotment with of the share transfer deed.

Rate of Stamp duty

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.

SHARES TRANSFER IN A PRIVATE COMPANY

Restriction in Private company on the right to transfer its shares [Section 3(1)(iii)]

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. Normally 100% shareholding of a private company may be owned by a family or other private group.

Cases where Restriction on transfer not applicable

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

- (i) on the right of a member to transfer his/her shares to his/her representative(s).
- (ii) in the event of death of a shareholder, legal representatives may require the registration of share in his/her name.

Procedure for transfer of shares of private company

Transfer of shares in a private company is governed by AOA. Some steps followed by a private company to give effect to the transfer of shares are as follows:—

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

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 of share for the purpose of transfer of shares of a private company

Normally Articles of a private company contain provisions in this regard and provides that the shares are to be sold at a fair price determined by directors or the company's auditors.

Transfer of shares in a public company

Section 111A(2) provides that the shares or debentures 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.

Checklist to be followed for transfer of shares

- (i) Arrange share transfer deed (Form 7B). It should be endorsed by the prescribed authority. This deed can also be used for the transfer of debenture.
- (ii) Get the transfer deed duly executed both by the transferor and the transferee as desired by sections 108 and 109 of the Act and the Articles of Association.
- (iii) 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.
- (iv) Do not forget to cancel the stamps affixed on the transfer deed at the time or before signing of the transfer deed.
- (v) 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.
- (vi) Attach the relevant share or debenture certificate or allotment letter with the transfer deed and deliver the same to the company within the time limits.
- (vii) 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.
- (viii) 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.

EXTENSION OF VALIDITY OF TRANSFER DEED_PROCEDURE

In case the validity period of a share transfer deed has expired, the same can be extended by making an application in Form 7C to the ROC. 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.

Difference in the signature of transferor

One of the reason for refusal of transfer of shares is the difference in the signature(s) of the transferor in the share transfer deeds with the specimen signatures available in the records of the company. To avoid this situation, it is advisable to provide an option to the members for furnishing fresh specimen signatures for the records of the company.

Remedy for refusal of transfer of Shares

Appeal against refusal to register transfer of shares

In the case of refusal, the transferee may appeal to the CLB/Tribunal against any refusal by the company to register the transfer or transmission. This appeal can also be preferred where there is delay on the part of the company to send notice of its refusal to register the transfer within the period of two months. [Section 111(2)].

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)].

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 dispatched 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.

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