

Transfer and Transmission of Shares

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Description of Module

Items	Description of Module
Subject Name	Law
Paper Name	Corporate Finance
Module Name /Title	Transfer and Transmission of Shares
Module No.	VII

Transfer and Transmission of Shares:

Objective: After reading this module, the learners will have a clear picture of :

A shareholder is free to transfer shares to a person of his own choice and that the articles cannot put a complete ban or unreasonable restriction on the transfer

Learning Outcomes:

Transfer of shares is a transaction resulting in a change of share ownership. A shareholder, whether in public or private company, has a property in his share which he has a right to dispose of, subject only to any express restriction which may be found in the articles of the company. In other part Transmission is the automatic process; when a shareholder dies, his shares immediately pass to the personal representatives or, if a member is declared bankrupt, their shares will vest in the trustee in bankruptcy.

Introduction:

Shares are like any other goods. Section 82 states that the share shall be a movable property and transferable in a manner provided by the articles of the company. It has, however, been consistently held by the courts that subject to restrictions imposed by the articles, a shareholder is free to transfer shares to a person of his own choice and that the articles cannot put a complete ban or unreasonable restriction on the transfer. While shares in a private company are not freely transferable and are subject to the restrictions imposed by the articles of the company, shares in a public company are freely transferable. There are different types of transfer such as transfer of share by gifts, in case of joint holdings and transfer in private companies.

Transfer of shares: Transfer of shares is a transaction resulting in a change of share ownership. A shareholder, whether in public or private company, has a property in his share which he has a right to dispose of, subject only to any express restriction which may be found in the articles of the company.

Transmission is the automatic process; when a shareholder dies, his shares immediately pass to the personal representatives or, if a member is declared bankrupt, their shares will vest in the trustee in bankruptcy.

Transfer Of Shares – Procedure And Scope

"When joint stock companies are established, the great object was that the shares should be capable of being easily transferred."

1.1 Need for an Instrument of Transfer

Shares are moveable goods. The ownership of moveable goods may be transferred by delivery of possession, but as per section 36 there is a contractual relationship between the members and the company. When shares are transferred the contractual relationship is assigned to the transferee which requires an instrument of transfer. Transferring a share involves a series of steps, first an agreement to sell, then execution of a deed of transfer and finally registration of the transfer. Section 108 lays down the procedure for transfer.

1.2 Procedure for Transfer of Shares

- 1) Instrument of transfer must be executed by both transferor and transferee.
- 2) It must be duly stamped
- 3) It must be delivered to the company along with certificate relating to shares transferred
- 4) Must be in the prescribed form and presented to prescribed authority.

Transfer Form' Section 108 requires the transfer to be in a proper instrument of transfer known as 'Share Transfer Form' which is required to be presented to the Registrar of Companies before it is signed and filled up by the transferor .

Any instrument of transfer which is not in agreement with these provisions shall not be accepted by the company. The transferee becomes a member of a company only when the transfer is registered by the company.

In *Prafulla Kumar Rout v. Orient Engg. Works (P.) Ltd* it was observed that all that section 108 requires is that before delivery, the stamps should be affixed. However, in *Mathrubhumi Printing & Publishing Co. Ltd. v. Vardhaman Publishers Ltd* . the Kerala High Court observed that instrument is unstamped if the it is not properly executed. Cancellation of the stamps by the staff of the company does not make the transfer instrument duly stamped . Provisions of Section 108 are inapplicable to transfer where transferee or transferor are entitled as beneficial owners in the records of depository.

1.3 Demat Shares

In the case of fresh issue (IPO), the investor would indicate his choice in the application form, if he opts to hold the security in the depository mode, commonly known as 'demat' mode. An investor, who opts for a depository mode may at any time, opt to choose out of it and claim share certificate from the company by substituting his name as the registered owner in the place of the depository. Ownership changes in the depository system will be made automatically on the basis of delivery vs. payment. The provisions of section 108 are inapplicable to transfer where transferee and transferor are entered as beneficial owners in records of depository.

1.4 Time Limit

As per section 113, a company is required, within 2 months after the application for transfer, to deliver the share certificates duly transferred. In *Re, Reliance Industries Ltd.* the company failed to deliver shares within the prescribed time of 2 months. CLB fined the company and share transfer agents. The default under section 113 is a continuing offence and, therefore, shall not be subject to limitation.

1.5 Board Of Directors- Power Of Refusal

Where the AoA of a Company give power to the Board to refuse registration of a transfer of shares, such power must be exercised by a resolution of the Board. The Board may refuse to register the transfer as long as they are acting in the interests of the Company, but if they exercise their discretion to refuse malafide, i.e. they act oppressively or corruptly, the CLB or the Court will now interfere and order registration.

1.6rights Of Transferees

Till the company has registered the transfer, the name of the transferor continues to appear in the register of members and thus he continues to be the lawful owner but transferee is the beneficial owner (cestui que trust). In order to protect the interest of the transferees; section 206A was added by the Amendment Act, 1988 which provides that where any instrument of transfer of shares has been delivered to the company for registration and transfer has not been registered, the right to dividend, rights shares and bonus shares will be kept on hold.

1.7Blank Transfer

Where a shareholder signs a share transfer form without filling in the name of the transferee and hands it over along with the share certificate to the transferee thereby enabling him to deal with the shares, he is said to have made a transfer 'in blank' or a 'blank transfer'. It is not a negotiable instrument because it may be transferred by mere delivery.

1.8Right To Pre-Emption

It is a common practice to provide in the articles that any member intending to transfer his shares must offer the shares first to other members of the company. Such restrictions are not invalid. The conditions imposed and the formalities prescribed by the articles are mandatory. The pre-emption clause does not, however, completely bar transfers to outsiders .

1.9 Restrictions On Transfer Of Shares

I General Grounds

Malafide instrument of transfer, inadequacy of reasons, irrelevant considerations and bad delivery of transfer documents, contravention of law, prejudicial to company or public interest and stay order by Court are the reasons when transfer of shares can be restricted.

II Special Circumstances

1) On transfer with regard to the company's borrowing

2) Under SEBI Guidelines shares allotted to certain categories of shareholders such as promoters, employees, etc are subject to condition of non-transferability for a period of 3-5 years accordingly.

Transmission Of Shares

Transmission of shares takes place, when the registered shareholder dies; or when he is adjudicated an insolvent; or where the shareholder is a company it goes into liquidation. On the death of a shareholder, his shares vest in his legal representative. The legal representative may transfer the shares devolved upon him by transmission.

Transmission of shares in favour of a member of a private company who is engaged in a competing business cannot be refused. In *S.M. Hagee Abdul Hye Sahib v. KNS Hajee Shaik Abdul Kadar Labbai Sahib Co. (P.) Ltd .*, the CLB held that a transfer of shares in a private company may be refused in case the transferee is engaged in a competing business but transmission cannot be refused on that ground. Succession certificate covering shares held by a deceased member on the date of his death would cover subsequent issue of bonus shares and no fresh succession certificate would be required .

3.1 Transmission V Transfer

Transfer is by the act of the parties. Transmission is by devolution of law, i.e. death or bankruptcy. In transmission of shares no procedures are required to be followed unlike in transfer of shares.

Sweat Equity Shares:

Sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Employee means –

- (a) a permanent employee of the company who has been working in India or outside India, for at least the last one year; or
- (b) a director of the company, whether a whole time director or not; or
- (c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company.

(a) The normal remuneration payable under the contract of employment, in the case of an employee; and/or

(b) Monetary consideration payable under any other contract, in the case of non-employee.

CONDITIONS AND PROCEDURE FOR ISSUING SWEAT EQUITY SHARES **[SECTION 54]**

Conditions:

A company can issue sweat equity shares only of a class of shares already issued subject to fulfillment of conditions prescribed below:

General meeting and Special Resolution

- A special resolution should be passed by the members of the company authorizing the issue of sweat equity shares containing details as specified below in the Checklist and Procedure.
- The special resolution should be acted upon within a period of 12 months from the date of passing else it will become invalid and a fresh resolution will have to be passed again.

Limit on quantum of issue

- The company shall not issue sweat equity shares for more than 15% of the existing paid up equity share capital in a year or shares of the issue value of Rs. 5 crores, whichever is higher.
- The issuance of sweat equity shares in the Company shall not exceed 25% of the paid up equity capital of the Company at any time.

Pricing and valuation

- The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.

Register of Sweat Equity Shares

- The company shall maintain a Register of Sweat Equity Shares in Form No. 4.3 and shall forthwith enter therein the particulars of Sweat Equity Shares issued under section 54.
- The Register of Sweat Equity Shares shall be maintained at the registered office of the company or such other place as the Board may decide.
- Entries in the register shall be authenticated by the Secretary of the company or by any other person authorized by the Board for the purpose.
- **Disclosure in Board Report** – Details regarding the sweat equity issue need to be disclosed in the Board's Report of the year in which issue is made. The details to be disclosed are stated in the procedure below.