

COMPANY LAW

UNIT 3 : Share Capital

TOPIC- TRANSFER AND TRANSMISSION

Transfer of securities

A transfer of securities takes place where the registered security holder transfers by sale or otherwise his securities to another person voluntarily. Securities shall be moveable goods transferable in the manner prescribed by the Companies Act and the Articles of Association (and not by mere delivery as in case of furniture etc.)

Procedure of transfer of securities through Transfer deeds

- Provisions of AOA relating to transfer of shares must be followed. Transfer of securities can be done by registered shareholder or a legal representative of the deceased.
- Oral transfers are not recognised by the Act. An instrument of transfer, in prescribed form, should be executed. It should be duly filled, dated, stamped and signed by both the transferor and transferee.
- Along with the transfer form attach - the relative share certificate + copy of PAN cards
- The complete set of transfer form should be delivered at company's head office for registration within 60 days from the date of execution
- In case the transfer relates to partly paid up shares, the company must give notice of this fact to the transferee and can register the transfer only if transferee makes no objection .
- The transfer form is then presented to the BODs for approval . If approved. the company registers the transfer i.e. strikes off the transferor's name from Register of Members and enters the name of transferee in its place
- An endorsement is made on the back of the shares, recognising the transferee as the new holder of it and the same is issued to transferee within one month of the date of lodgement of transfer.

Transmission of shares

It means transfer of property\ title in securities by **operation of law i.e. in case of death\ insolvency\ lunacy of a security holder** , the securities get assigned respectively to the legal representative\ official receiver\ guardian appointed by court . The person becoming entitled to shares on transmission shall have the same rights as to dividend and other privileges as were there with original member.

There are two alternatives open to the legal representative. He can opt for any of them. If he does not opt any of these alternatives the company will send a notice to him asking about his choice and unless he intimates his decision, the company will freeze these shares and withhold the payment of dividend, bonus etc on them.

OPTIONS

1. He may get himself registered as a security holder. For this ,he has to make a **Request Application** + attach relevant **Share Certificates**+ copy of **Death Certificate** + attach **Succession Certificate** to the company. In case company is satisfied with the genuineness of the documents, it will delete name of deceased security holder from Register and enter the name of legal representative in the Register + issue new share certificate in his name .

2. He may decide to transfer the securities. For this he will have to follow the usual procedure of transfer i.e fill **Instrument of Transfer** + attach relevant **Share Certificates**+ copy of **Death Certificate** + attach **Succession Certificate** to the company. If the company is satisfied with the documents, it will register the transfer.

Distinction between transfer and transmission

- Transfer of securities is deliberate act of parties whereas transmission takes place by operation of law on death\ insolvency\ lunacy of a security holder.
- Transfer of securities requires execution of a formal instrument of transfer whereas transmission requires an evidence of entitlement (succession certificate).
- Except when transfer is by way of gift, there must be presence of adequate consideration whereas no consideration is required in case of transmission
- In case of transfer, stamp duty on market value of securities is payable whereas no stamp duty is payable in case of transmission of shares.

RESTRICTIONS ON TRANSFER IN CASE OF PRIVATE COMPANIES- Shares of a public company are *freely* transferable and BOD cannot refuse to register transfer of their shares but in case of private companies, right to transfer shares must *necessarily be restricted by its AOA*. However, **absolute restriction , even in case of private companies ,is void and inoperative**. Actually the purpose behind restrictions on transferability of shares of private companies is to maintain personal contact among members. Therefore, AOA of private companies usually contain restriction in the form of **pre-emption clause** which states that the intending transferor must in the first instance offer shares to the existing members of the company . Under the AOA, the BOD of a private company can also refuse to register a transfer on the following grounds eg. partly paid up shares are to be transferred to a pauper/minor /unsound mind person or that transferee is a person with whom directors of company have personal animosity or where call is unpaid against shares to be transferred or where company has lien on the shares as the transferor is indebted to it or instrument of transfer contains some irregularity i.e not signed\ stamped etc.

If a company refuses to register the transfer \ transmission of securities, it must send a notice of refusal to the parties concerned and state in it the reasons for refusal. The parties may then file an appeal with the Tribunal against such refusal , within prescribed time. The Tribunal after hearing them, may either dismiss the appeal or may order the company to register the transfer \ transmission within 10 days of receipt of order. Further it may direct the company to rectify the register and also pay damages to the aggrieved party.