

***Procedure for Transfer  
&  
Transmission of Securities***



**The KCP Limited**

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# PROCEDURE FOR TRANSFER AND TRANSMISSION OF SECURITIES

## The Companies Act, 2013 and Rules

### PROCEDURE FOR TRANSFER OF SHARES:

**Section 56 (1)** The company shall not register a transfer of securities of the company 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:

**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—

(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:

(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.

### **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 **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. The 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 Shares**

**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 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 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:

**2. Time Period for deposit of Instrument for Transfer:** An instrument of transfer of shares i.e. Form **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. 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.

**6. 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.

### **7. 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

- Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee.
- 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.
- 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.
- 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.
- 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.

## **PROCEDURE FOR TRANSMISSION OF SHARES**

### **Transmission of shares**

A transmission of interest in shares of a company, of a deceased member of the company, made by the legal representative of a deceased member shall be considered as transmission of shares by operation of law. This transmission will be registered by a company in the Register of Members.

(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.

### **Main Provisions relating to Transmission of Shares**

**1. Person eligible to apply for transmission:** 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. In other words 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.

**2. Share transfer deed not required for Transmission:** Execution of transfer deed not required in case of transmission of shares. Intimation/application of Transmission accompanied with relevant documents would be enough for valid transmission request.

**3. Documents required for Transmission of Shares:**In case of transmission of shares by operation of law, it is not necessary to execute and submit transfer deed. A simple application to the company by a legal representative along with the following necessary evidences is sufficient:—

- a. Certified copy of death certificate;
- b. Succession certificate;
- c. Probate;
- d. Specimen signature of the successor.

**4. Liability on shares shall continue:** 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.

**5. Payment of consideration or stamp duty not required:** Since the transmission is by operation of law, payment of consideration or payment of stamp duty would not be required on instruments for transmission.

**6. Time limit for issue of share certificate on transmission (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 transmitted after the application for the registration of the transmission of any such shares received.

**7. Time Limit for Refusal of registration of Transmission:**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 transmission of shares is to be exercised by the company within thirty (30) days from the date on which the intimation of transmission is delivered to the company.

**8. Time Limit for appeal against refusal to register Transmission by Public Company:** As per section 58(4), the person who gave intimation of the transmission by operation of law 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 intimation of transmission, appeal to the Tribunal against such refusal.

#### **Extremely useful Information and knowledge about Transmission documents:**

**i. Meaning of Probate:** 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'. Succession certificate is not required when probate or letter of administration is issued.

ii. 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. Once succession certificate is granted, it provides full indemnity to the company regarding transmission of shares by operation of law.

iii. 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.

#### **Basic Procedure for Transmission of Share**

Generally articles contain the detailed provisions as regards the procedure for transmission of shares. Usually following steps shall be followed in order to give effect to the transmission of shares:—

1. The survivor in case of joint holding or legal heir, as the case may be, who want transmission by operation of law in his/her favour, shall file a simple application with the Company with relevant documents such as death certificate, succession certificate, probate, etc., depending upon various circumstances may be considered necessary for transmission by the Company.

2. 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.
3. The company review and verify the documents submitted with transmission request. In case all the documents are in order, company shall approve the transmission request and register the shares in the name of the survivor or legal heir as the case may be.
4. However in case documents submitted with transmission request are not in order and it is the case of refusal, company shall within thirty (30) days, from the date on which the intimation of transmission is delivered to the company, communicate refusal to the concerned person.
5. 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.