

TRANSMISSION OF DEMAT SHARES

(31st January 2024)

A. Short Summary:

The word “transmission” means devolution of title to Shares otherwise than by transfer.

The transmission of shares is an often encountered subject when dealing with share certificates, however it is not widely recognized. The Companies Act distinguishes between the act of transmission shares and the act of transfer shares. Transmission occurs through legal procedures, as opposed to share transfers, which are based on the voluntary decision of the shareholder. "Transmission" denotes the transfer of ownership of shares through means other than physical transfer, such as in cases of marital breakdown, death, succession, inheritance, bankruptcy, or several other legal procedures.

When shares are transmitted, the new owner becomes the registered shareholder with full rights and responsibilities associated with the ownership of those shares.

This process is typically governed by company laws, regulations, and the specific terms outlined in the company's articles of association or shareholder agreements.

The process of transmission in case of holding of shares in Physical or in Demat form are different. In this editorial the process of transmission of Demat shares shall be discussed.

“Transmission” means passing of property in Shares, other than by way of transfer, by operation of law consequent to the death or insolvency of the member.

Physical Share Transmission: The process of transmission of demat shares is easier than process of transmission of physical shares. In case the deceased shareholder had holdings in different companies, then in order to effect transmission of shares for these shares, the relevant documents must be sent to each of the companies, alongwith the share certificates. This results in a heavy reliance on the postal system. Follow-up may have to be made with

each of the companies in order get the transmission effected before the book closure, if the survivor(s) wishes to avail of the benefits accrued through these shares.

Demat Shares Transmission: In the depository system, all these problems are mitigated as the shares are account balances in the electronic form. The process of transmission through the depository is not only simple but it is also quicker. This is because the successor to the title interacts only with one entity.

Provisions of Transmission of Shares:

- SEBI: Simplification of procedure and standardization of formats of documents for transmission of securities Dated May 18, 2022
- Section 56, 58, 88 of Companies Act, 2013
- Rule 11, 19 of Companies (Share Capital and Debentures) Rules, 2014
- Rule 5 of Companies (Management and Administration) Rules, 2014
- Table F of Schedule- I of the Companies Act, 2013
- Reference – Secretarial Standard 6 of ICSI (It may be use for reference purpose)

B. Important Note

- i. There is no need to prepare a transfer deed for transmission of shares.
- ii. There is no stamp duty applicable on transmission of shares.
- iii. There is no consideration involved in transmission of shares.

C. Process of Transmission of Shares:

i. Transmission of Securities held jointly :

In case the deceased was one of the joint holders, then the surviving holders have to request the DP vide a form called the transmission form along with a copy of notarised death certificate to transmit the securities lying in the account of the deceased to the account of the surviving holders. For this purpose, the surviving clients must have a depository account, which can be with the same DP or with a different DP.

II. In case of Nominee:

“Nominee” means an individual named in accordance with the Act by a shareholder(s) whose Shares should vest in such an individual on the death of the shareholder(s) and that individual need not be a legal heir.

In case the deceased shareholder has nominated any person as their nominee, the Shares shall vest in the Nominee on the death of the Member. On death of the shareholder, the Nominee has the option to elect either to register himself as the holder of the Shares of the deceased or transfer the Shares to any other person. The transferees need not be the legal heirs of the deceased shareholder(s).

The nomination facility for shares is provided by amendment in Companies Act 1956. The clients can avail of this facility by furnishing duly filled Form for Nomination available with their DPs. This form contains photograph of the nominee and the other details of the nominee, which help DPs to identify and give effect to the nomination given by the clients.

Upon the death of the sole client (in case of securities held singly) or the death of all the clients (in case of securities held jointly),

The nominee must request the DP in writing along with a certified true copy of the death certificate and transmission form to transmit the securities covered by the nomination to the account of the Nominee.

The DP will ensure the completeness of the form and validity of the signature of the client and then execute the transmission request. Thus transmission of securities where nomination has been made eliminates the need of cumbersome legal documents such as will, succession certificate etc.

The nominee shall submit the following documents with the Depository Participant (DP):

- i. A request letter from nominee
- ii. KYC Documents of Nominee
- iii. Copy of Death Certificate
- iv. Execution of Indemnity cum affidavit

III. In case of Security Held singly (No Nominee or Joint Holder):

In case of death of the sole holder, the legal heir(s) or legal representative(s) of the deceased must request the DP to transmit the balances lying in the Client account of the deceased to the account of the legal heir(s) or legal representative(s).

For this, the legal heir (s) or the legal representative(s) of such securities must submit an instruction called the transmission form to the DP alongwith the following documents

- a) A copy of the death certificate duly notarised
- b) A copy of the Succession certificate duly notarised or an order of a court of competent jurisdiction where the deceased has not left a Will; or
- c) A copy of the Probate or Letter of Administration duly notarised.

However, if the legal heir(s) or the legal representative(s) express inability to produce either of the documents mentioned under (b) and (c) above, and the market value of the securities held in each account of the deceased as on the date of application for transmission does not exceed Rs. one lakh, then the DP will process the transmission request on the basis of the following documents:

- i. Transmission form;
- ii. Copy of the death certificate duly notarised;
- iii. Letter of Indemnity duly supported by a guarantee of an independent Surety acceptable to the DP, made on appropriate non judicial stamp paper;
- iv. An Affidavit made on appropriate non judicial stamp paper; and
- v. No Objection Certificate(s) from all the legal heir(s) who do not object to such transmission.

The DP will ensure that the documents submitted by the legal heir(s) or the legal representative(s) are in order and will then effect a transfer of the balances to the Client account of the legal heir(s) or the legal representative(s).

For value of securities more than Rs 100,000/- (Rupees One Lakh only) per issuer company as on the date of application: - Succession Certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act 1925.

After effecting the transmission, the DP will close the account of the deceased.

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