

PROCEDURE FOR TRANSFER/ TRANSMISSION OF SECURITIES

72

{Section 56 of the Act read with Rule 11 of the Companies
(Share Capital and Debentures) Rules, 2014 and also read with Rule 9A of the Companies
(Prospectus and Allotment of Securities) Rules, 2014}

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 46, 56, 57, 58, 88, 118 and 173
The Companies (Share Capital and Debentures) Rules, 2014	Rule 11
The Companies (Prospectus and Allotment of Securities) Rules, 2014	Rule 9A
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	No form is filed. Details to be provided in MGT-7.

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ If shares are partly paid shares and instrument of transfer is made by transferor alone, send a notice to the transferee for his no objection for transfer within two weeks from the date of receipt of notice

72.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	The provisions of section 56 (1) of the Act in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond

S. No.	Particulars
	and also the provisions of this section 56(1) in respect of securities held by nominees of the Government shall not apply to a Government company { <i>Exemptions notification no. GSR 463(E) dated 05.06.2015</i> }.
2.	<p>Ensure that—</p> <ul style="list-style-type: none"> • every holder of securities of an unlisted public company except a Nidhi company or Government company and a wholly owned subsidiary company, who intends to transfer his securities, shall get such securities dematerialised before the transfer {<i>Rule 9A (3)(a) of the Companies (Prospectus and Allotment of Securities) Rules, 2014</i>}. • the company shall follow the procedure for transfer and transmission prescribed in the articles of association of the company {<i>Section 58(1) of the Act</i>}. • an instrument of transfer of securities held in physical form shall be in Form No.SH.4 and every instrument of transfer duly executed by both, the transferor and the transferee, with the date of its execution specified thereon shall be delivered to the company within 60 (sixty) days from the date of such execution along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities {<i>Section 56(1) of the Act read with Rule 11 (1) of the Companies (Share Capital and Debentures) Rules, 2014</i>}. • an application for transmission of securities by legal owner can be filed at any time as no time limit is prescribed under the Act and rules made thereunder. • if 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 Form SH-5, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice. {<i>Section 56(3) of the Act read with Rule 11 (3) of the Companies (Share Capital and Debentures) Rules, 2014</i>}. • 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 {<i>Section 56(5) of the Act</i>}. • that proper value of share transfer stamps on the basis of consideration, is affixed on the transfer deed (25 paise for every ₹100 or part thereof of the value of shares while no stamp duty shall be required to be paid in case of transmission of shares. • that the form in case of transfer of securities are submitted along with the original share certificate and in case where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the indemnity as the Board may think fit {<i>Section 56(1) of the Act</i>}. • that the form in case of transmission of securities are submitted with the death certificate of the securities holder, original share certificate and registered will, if any/letter of probate/succession certificate as evidencing the proof of legal ownership of the deceased securities holder.

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	Form as mentioned in writing, on or before appointment, from the appointed director as Form 208-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of <u>Directors</u> Rules, 2014).
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)