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INTRODUCTION

In general terms, the word transfer means a conveyance of property, especially stocks and shares, from one person to another. And one of the major features of a Company is 'Free Transferability of shares' subject to few restrictions on Private Companies prescribed under the Articles of Association of the Company.

Now, Transfer of Shares may be by way of Sale, Mortgage, Pledge, Gift, Death, Succession, Inheritance, Bankruptcy, etc. However, due to vastness of the provisions, I have limited the scope of this paper to Transfer of Shares by way of Gift.

Therefore, this research paper is prepared to investigate the scope of the transfer of shares by way of gift and its related provision.

KEY PROVISIONS RELATING TO TRANSFER OF SHARES BY WAY OF GIFT

Before initiating the concept of transfer of shares by way of gift in accordance with Indian Laws, we would like to highlight certain key provisions which are directly related to this topic:-

What is a GIFT?

As per the provision of Section 122 of the Transfer of Property Act, 1882 defined "Gift" as —"Gift" is the transfer of certain existing moveable or immoveable property made *voluntarily and without consideration*, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

How the transfer of movable property to effected by way of gift?

The provision of Section 123 of the Transfer of Property Act, 1882 prescribe that "For the purpose of making a gift of moveable property, the transfer may be effected *either by a registered instrument signed as aforesaid or by delivery.*"

What are Shares?

As per the provision of Section 2 (84) of the Companies Act, 2013, "share" means a share in the **share capital* of a company and includes stock.

***What is Share Capital?**

The word share capital is defined under the provision of Section 43 (1) of the Companies Act, 2013 as *'The share capital of a company limited by shares shall be of two kinds, namely:—*

(a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital'

Whether shares are movable property or immovable property?

To determine that shares are movable or immovable, we require to consider the following provisions:-

As per Section 2 (26) of the General Clause Act, 1897 “**immovable property**” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

As per Section 2 (36) of the General Clause Act, 1897 “**movable property**” shall mean property of every description, except immovable property.

Further, the provision of Section 2(7) of the Sales of Goods Act, 1930 defines the term ‘goods’ as follow:

“**goods**” means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

In light of the above-stated provisions, we can conclude as the shares or share capital of the Company are movable property.

PROCEDURE AND PROVISIONS

a) Transfer related provision under the Companies Act, 2013

Section 56 of the Companies Act, 2013

As per the provisions of Sub Section (1) of Section 56 of the Companies Act 2013, A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, 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, or if no such certificate is in existence, along with the letter of allotment of 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.

As per the provisions of Sub Section (4) of Section 56 of the Companies Act 2013, 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 transferred —

- 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;

Rule 11 of the Companies (Share Capital and Debentures) Rules, 2014

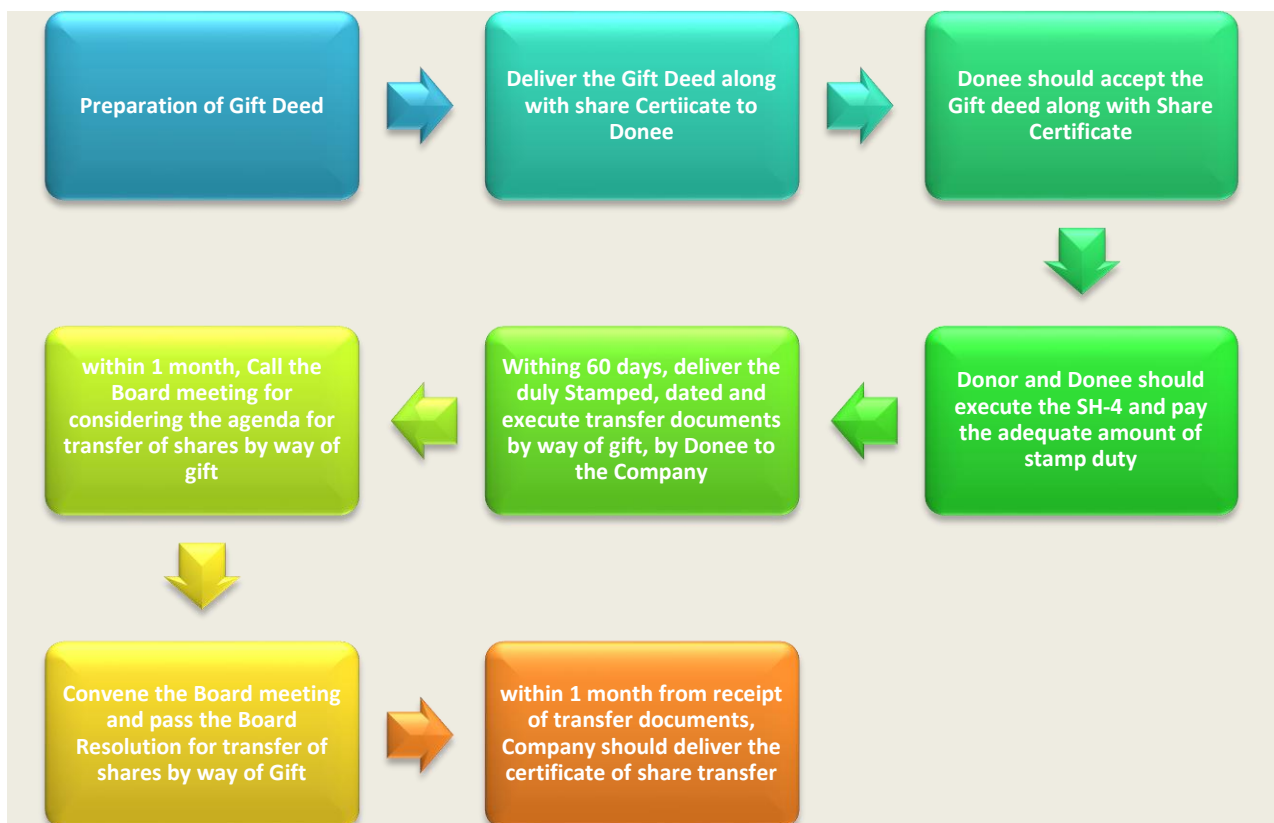
- (1) An instrument of transfer of securities held in physical form shall be in Form **No.SH.4** and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.

b) Procedure for transfer of shares by way of Gift

1. Preparation of Gift Deed for transfer of Equity share or Preference Shares;
2. Delivery of Gift Deed along with share certificate by Donor in favour of Donee;
3. Gift Deed along with share certificate should be accept by or on behalf of Donee;
4. Execution of SH-4 and payment of an adequate amount of stamp duty;

5. Delivery of duly Stamped, dated and execute transfer documents by gift, by Donor or Donee to the Company within 60 days from the date of its execution;
6. Company should call the Board meeting, which is required to be convened within a period of 1 month from the receipt of transfer documents by way of Gift;
7. Convene the meeting and pass the Board Resolution for transfer of shares by way of Gift;
8. The company should deliver the certificate of share transfer within one month from the receipt of the Company of the transfer documents by gift.

Can be easily understood by the below chat



DOCUMENTS REQUIRED TO BE PREPARED

- Gift deed;
- Hand over the position of Share Certificate of the Company;
- Execution of SH-4;
- Board Resolution.

OTHER KEY PROVISIONS RELATING TO THE TRANSFER OF SHARES BY GIFT

- **STAMP DUTY**

What is the applicable stamp duty on transfer of shares?

Companies Act, 2013 requires that where share transfer form is delivered to the Board it should be duly stamped, with adequate value, and dated and cancelled as per section 12 of the Indian Stamp Act. Generally, the transferee is responsible for the payment of the stamp duty.

Being the transfer of Shares are subject to the central Stamp duty, accordingly, as per the provision of Article 62 (a), Schedule I of Indian Stamp Act, 1899, the transferee is required to pay stamp duty at the rate of Rs 0.25 for every Rs 100 of the value of the share. Special adhesive stamps bearing the word “share transfer” shall be used for stamping for share transfers.

How to determine the valuation of shares to affix stamps on the transfer deed happens?

In the case of listed companies, it is very easy to find out the price of the shares from the stock exchanges. However, in case of private companies, the value of the shares are difficult to obtain, in such cases, the value of the shares to determine the stamp duty, will be taken based on the average market value of the shares at the time of transfer or the agreed price between the seller and the buyer, whichever is higher. However, generally, the Articles of a private company might contain provisions which provide that the shares must be sold at a fair price determined by the directors or the company’s auditors.