



SHARE TRANSFER PROCESS IN TANZANIA MAINLAND

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The ownership of a private limited company is determined by the shareholding of the Company. To induct new investors or transfer ownership of the Company, the share of the private limited company would have to be transferred.

A private limited company is considered to be a “closed corporation” of members, similar to a Partnership Firm. Therefore, the share transfer in a Private Limited Company can be restricted by the Articles of Association (AOA). Hence, the Articles of Association of the Company must be reviewed prior to beginning the share transfer procedure.

Shares can be transferred from a shareholder to another person (either a new or existing shareholder). Shares are transferred by way of gift or sale. Typically, shares are transferred to introduce a new shareholder.

So long as a company has enough shares, it's possible to transfer shares in a limited company any time after incorporation.

The process of Share Transfer

- **Notice to directors of the company.**

The seller/shareholder must give notice to the directors on his intention to sell his shares to the members and the director must notify the members of the same.

- **Resolution to transfer the shares.**

the company must resolve and agree on the said transfer of the share. This can be done through the extra-ordinary meeting of the company, where the members will be notified of the intention of the shareholder to sell his share, and if they agree they must resolve as such.

- **Sale Contract and Share Transfer instrument**

Once the company has resolved that the shares can be transferred, then the shareholder and the purchaser must execute the sale contract, to save as evidence that the shares have been transferred.

In addition to the sale contract the seller and the purchaser must also execute the Share



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Transfer Instrument, which signifies that the transferor/seller has transferred his shares to the transferee, the transferee has accepted such transfer and the company has consented to the said transfer of a share, by executing their signature on the said document, by the transferor, transferee and two directors or director and secretary on behalf of the company.

The share transfer instrument is so important that the share transfer will be regarded as incomplete if the instrument is not executed by either party.

- **Payment of Capital Gain Tax.**

Generally, the transfer of property is charged CGT by the government, the tax is charged to the person who has earned monetary value from the transfer of property, in this case, the Seller/Transferor, however, the parties are not prohibited to make personal arrangement on who will cover the said tax.

In Tanzania, the CGT is charged at 10% of the value of the contract or the estimated value made by the taxing officer depending on the value of the share at the current market, whichever is greater.

The tax is paid to the Tanzania Revenue Authority, through the control number issued by the authority for payment of the same. After paying the CGT, the authority issues the tax clearance certificate to acknowledge full payment of the required amount of tax, by the transferor/seller.

- **Notification to the registrar of companies about Share Transfer.**

Once the transfer has been completed, the next stage is to notify the registrar of companies of the same, so as he can update the company information in the registry.

The company will have to file with the registrar, the resolution which authorized the sale, the copy of the sale contract, together with the tax clearance certificate from TRA. In addition to the above notification, the said changes also have to be shown in the annual return of the company to be filed with the registrar.

- **Surrender & Issuance of Share Certificate.**

A share certificate is issued to the shareholder who has fully paid for his shares and it serves as evidence that he is the owner of the fully paid-up shares indicated under the certificate. The share certificate is issued to the shareholders only if the article of association has provided for the same.



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If the company issues share certificates to its shareholders, then once the transfer has been completed, the holder of the share certificate at the time of transfer i.e. the seller, has to surrender the certificate to the company as he will cease to be a member once the transfer is done.

Furthermore, upon surrender of share certificate and completion of the share transfer the company has to issue a share certificate to acknowledge the transfer of share and recognize the purchaser as one of its members/shareholders.

Restrictions on right of the shareholders to transfer shares are usually in two forms:

Rights of pre-emption:

If a shareholder wishes to sell some or all of his shares, such shares must first be offered to other existing members of the private limited company at a price determined by the Directors or the Auditor of the Company. The value of the shares can be determined based on the formula / method prescribed in the Articles of Association. In no existing shareholder is interested, then shares of the Company can be freely transferred to an outsider.

Powers of Directors to refuse:

The Director may have the powers to refuse registration of transfer of shares under certain circumstances - prescribed in the Articles of Association.

Only restriction contained the Articles of Association are considered legally binding. Any private agreement between the shareholders are not binding either on the company or on the shareholders. Further, share transfer can only be restricted by the Articles of Association. The right to transfer shares of a private limited company cannot be an total prohibition or ban on share transferability.