

Report and recommendations of the Group on “Transmission of Shares”

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ACKNOWLEDGEMENT

The intent of this report is to formulate and to lay down a comprehensive policy framework which shall address the issue of transmission of shares by simplifying the stringent and complex procedure in relation to transmission of shares and also to standardise the divergent practices followed by the listed companies. The objective is to alleviate the hardships caused to the investors.

The Group acknowledges the inputs from various representatives of Investors' Associations, RAIN, R & STAs like Intime Spectrum Services Ltd., Sharepro Services (I) Pvt. Ltd., Karvy Computershare Pvt. Ltd. The Group also recognizes the valuable inputs from CDSL and NSDL. The Group also extends thanks to representatives of HDFC and members of the ICSI Technical Committee on codification of Secretarial Standard on Transmission (SS-6) for their valuable inputs.

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Abbreviations

A0 A	Articles of Associations
B0	Beneficial Owner
CDSL	Central Depository Services (India) Limited
DP	Depository Participant
HLL	Hindustan Lever Limited
HDFCLtd.	Housing Development and Finance Company Limited
IA	Investors' Association
ICSI	Institute of Company Secretaries of India
KYC	Know Your Client
NSDL	National Securities Depository Limited
NOC	No Objection Certificate
OIAE	Office of Investor Assistance and Education
PAN	Permanent Account Number
POA	Power of Attorney
RAIN	Registrars' Association of India
R & STA	Registrar and Share Transfer Agent
SEBI	Securities and Exchange Board of India
TRF	Transmission Request Form

EXECUTIVE SUMMARY

1. Transmission means devolution of title to shares* otherwise than by transfer, for example, devolution by death, succession, inheritance, bankruptcy, marriage, etc. Transmission is different vis-à-vis Transfer as in Transmission a person acquires an interest in the property by operation of law, such as by right of inheritance or succession, whereas, Transfer is effected by act (free volition) of the parties. In transmission case, where title to shares are passed by operation of law, the beneficiary need not carry out further formalities such as duly executed stamped instrument of transfer as stipulated in Section 108 of the Companies Act, 1956. The Company concerned also can not insist on such formalities.
2. In spite of the legislative intent to simplify the procedure of Transmission of Shares, companies have over a period of time evolved varying and diverse documentary compliances on the part of the legal representative of the deceased security holder.
3. To address this issue and to evolve a uniform procedure and to alleviate and redress complaints received by SEBI in relation to 'Transmission of Shares', Chairman, SEBI constituted a Group headed by Shri R K Nair, ED, SEBI, with three objectives
 - (a) Examining the procedures followed by companies in relation to Transmission,
 - (b) Exploring the implementation of the concept of 'Either or Survivor' in case of shares held in dematerialized mode and
 - (c) Suggesting uniform norms and procedures to alleviate the sufferings of investors
4. To get a balanced and complete picture of the nuances and intricacies of the existing procedure and to recommend ways to simplify the same, the Group invited representatives from the following organizations: (a) Registrars' Association of India (RAIN), (b) Registrar & Share Transfer Agents (R & STAs), (c) Public Sector and Private Sector Bank, (d) NSDL, (e) CDSL, (f) Investors' Association (IA) recognized by SEBI and (g) ICSI member of Technical Committee on Transmission (SS-6)
5. On analysis of the information available in terms of the present procedure, it was observed that hardships of legal representatives of deceased are mainly:
 - ? Ambiguity about procedures

* Shares shall have the same meaning as per the definition of 'Securities' under section 2 (h) of Securities Contracts (Regulation) Act, 1956.

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- ? Cumbersome documentation and
 - ? Lack of uniformity in the procedures

6 The Group discussed and deliberated on the issues and after 5 meetings narrowed down on the core procedural impediments that contribute to delay in the process of Transmission of Shares. The following core issues emerged:

- a) Conservative approach adopted by the Companies / Directors in exercising the discretion vested by the Articles of Association (AOA),
- b) Insistence by companies to obtain probate of will by beneficiary and lack of clear understanding of the legal provisions relating to Transmission of shares with respect to laws governing the will,
- c) Lack of awareness of nomination facility and the need to popularize nomination facility through proper investors' education, and
- d) The need to involve R & STAs, Depositories, DPs and Companies in creating awareness about nomination facility by launching a special drive.

BACKGROUND

Section 11 (1) of SEBI Act, 1992 states, 'Subject to the provisions of this Act, it shall be the duty of the Board to protect the interest of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.'

To meet the objectives of Investor Protection and Market Development as enshrined in the preamble of SEBI Act, 1992, SEBI and recognized IAs have been working together. Office of Investor Assistance and Education (OIAE) is a single point interface to redress investor grievances.

Quarterly meeting of recognized IAs are organized to deliberate on problems faced by investors, particularly retail and small. Investors' Associations are encouraged to ventilate Investors' issues to alleviate the problems/hardships.

In the meeting of IAs held on 11.06.2007 instances of hardships faced by investors in relation to 'Transmission of Shares' were discussed. Three key issues emerged:

- ? Ambiguity about procedures
- ? Cumbersome documentation
- ? Lack of uniformity in the procedures

Chairman, SEBI decided to constitute a Group to suggest suitable measures to address issues relating to difficulties faced by the investors while dealing with Transmission of shares, both in physical and dematerialized mode. Shri R.K. Nair, Executive Director, SEBI was nominated Chairman of the Group and Shri A.P. Bakliwal, President, Bombay Shareholders Association, Shri S.V.M.D. Rao, Chief General Manager, SEBI and Shri Ananta Barua, Legal Adviser, SEBI as other members with Shri Jeevan Sonparote, Deputy General Manager, SEBI as the Member Secretary.

The terms of reference were:

1. To examine various procedures followed by the companies and registrar and share transfer agents for transmission of physical shares.
2. To explore the implementation of the concept of 'Either or Survivor' in depository system.

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3. To suggest uniform norms and procedures relating to the transmission of physical shares, specifically with reference to documentation required for transmission.

The Group, for the above purpose, was empowered to call information from the issuer companies and R & STAs and submit its report within a period of two months.

MEETINGS AND DELIBERATIONS OF THE GROUP

In the first meeting of the Group, a discussion paper was deliberated upon and *inter alia* specific issues were discussed about the problems faced by investors, legal provisions / issues involved and measures to simplify the procedure related to the Transmission of shares.

In view of the nature of the issues involved, following persons were invited to the subsequent rounds of the deliberations-

- a) Representatives of RAIN
- b) At least two R & STAs, two companies, one public and one private sector bank.
- c) The Members of the ICSI Technical committee that codified the draft code for transmission of shares,
- d) Representatives of NSDL and CDSL
- e) Office bearers of IAs recognized by SEBI

To understand the problems faced by investors at large, the Group also called information from a sample of 8 R & STAs. R & STAs were asked to provide information in relation to 10 sample companies for which they act as R & STA detailing the divergent practices followed by the respective companies. The Group went through the various complaints received by SEBI over the period. Information was sought from NSDL and CDSL in relation to the issues faced by investors with respect to Transmission of shares held in dematerialized mode.

INTRODUCTION

To transmit is defined as “¹to cause to convey to another person or place”. Also “²to pass on a right or obligation to heirs or descendants”. and transmission is defined as the “¹action of transmitting or the fact of being transmitted: conveyance from one person to another”.

The word 'transmission' means devolution of title to shares otherwise than by transfer, for example, devolution by death, succession, inheritance, bankruptcy, marriage, etc. While transfer of shares is brought about by delivery of a proper instrument of transfer (viz, transfer deed) duly stamped and executed, transmission of shares is done by forwarding the necessary documents (such as a notarized copy of death certificate) to the company. On the death or lunacy of the original holder (single holder), his shares vest in his legal representative. On registration of transmission of shares, the person whose name is entered in the register of shareholders becomes the shareholder of the company and is entitled to all the rights and is subject to all the liabilities as were of the original shareholder.

Legal provisions related to 'Transfer by legal representative' is contained in section 109 of the Companies Act 1956. Section 109 reads as,

“A transfer of the share or other interest in a company of a deceased member thereof made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.”

Section 109A deals with 'Nomination of shares' which provides for nomination by holder (s) of shares in respect of shares held by them. Cases where in a nominee has been appointed, the shares should vest in the nominee on the death of the member (s).

Section 109B deals specifically with transmission of shares. As per section 109B, on the death of the shareholder, the nominee has the option either to register himself as the holder of the shares of the deceased or to transfer the shares to any other person. The transferee (s) may not necessarily be the legal heirs of the deceased shareholder (s). Section 109B (1) states, “Any person who becomes a nominee by virtue of the provisions of section 109A, **upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either-**... ..”

¹ The Law Lexicon

² www.dictionary.com

From the above, it becomes evident that the provisions of the Companies Act do not specify the procedure to be followed by the companies for transmission and that the companies have the discretion to decide on the procedure as per their AOA and other relevant laws. The companies generally follow procedures as laid down in their AOA and such other requirements that safeguard the companies from the consequences of future litigation and these procedures differ from company to company.

EXISTING PRACTICE AND THE HARDSHIPS FACED BY INVESTORS

Due to the fact that the Companies Act has not specifically mandated any set of documents which must be provided in relation to transmission, an attempt has been made to summarize the problems/difficulties faced by investors

Problems faced by investors

1. Small investors who have made will are not able to produce the probate of the will. Obtaining a probate requires the investor to approach a court and it also involves payment of fees/stamp duty.
2. While documents such as indemnity and affidavit can be produced without much difficulty, procuring other documents such as surety/bank guarantee, no-objection certificate (NOC) from all legal heirs (particularly when a registered will is available), and issuance of press advertisement may cause inconvenience to investors
3. In case a shareholder who dies intestate (without executing a will), the applicant has to follow the cumbersome process as given below:
 - a) The Application for issuance of succession certificate is to be made in the court, where the properties of the deceased are situated or where he /she normally resided, and depending on the value of the estate of the deceased, the matter goes to the competent court on the basis of 'pecuniary jurisdiction'.
 - b) Application is to be made to the court with the names of all other heirs of the late relative as the respondents in the matter. Normally a newspaper notice is also issued apart from mandatory notice to the respondents
 - c) Upon the expiry of the time period (normally 1 and a half months) from the date of publication of the notice after the respondents have given their no objection, the court passes the orders for issuance of the Succession Certificate, for which the applicant has to submit Judicial Stamp papers of sufficient amount (as per the prescribed court fees structure) in the court.
 - d) It roughly takes about 3-6 months from date of filing to receive the certificate.

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4. The procedures brought out above, come at a cost to the investor. In some cases the cost of legal requirements and newspaper advertisement could exceed the value of the shares to be transmitted.
 5. Variation is also observed in the procedure followed by different companies, particularly related to obtaining NOC from legal heirs, Surety/Bank Guarantee and issue of press/newspaper advertisement.
 6. The protracted procedures also cause opportunity loss to the investors.
 7. Some of the procedures though not mandated by law are in place basically as safeguard to the companies so that they do not face any claims/counterclaims at a later stage. Further, in respect of procedures adopted by some of the sample companies, it has been observed that some have prescribed, "*the Company at its discretion / under special circumstances waive requirements.. ...*" without specifying as to what are those special cases/circumstances?

PROCEDURE FOLLOWED IN PHYSICAL SHARES

Various companies listed with the Stock Exchanges have been following divergent practices in relation to the transmission of shares to the legal heir / nominee of the shareholder in case of the death of the original shareholder.

Practices followed by a sample of companies for the "Transmission of Shares" were obtained from websites of companies. The following companies were part of the sample – HLL, RIL, REL, Jet Airways, SBI, ITC, Tata companies, HDFC, ICI Ltd.

General observations

It was observed that there is no problem in case the heirs of the deceased present a probate of a will. The problem lies in the divergent practices followed by companies in cases where there is no will left by the deceased or even if the will is there but there is no probate of the will. It is observed from the sample study that two different approaches are in use among the companies/R & SATs, which are as follows:

1. In the absence of a probate of will, some companies ask for a 'succession certificate' or a 'letter of administration' along with a request letter and transmission form to process the transmission. Some of the companies in the

select sample do not explain the procedure to be followed where there is a will which is not probated or where there is no will and no succession certificate.

2. Certain other companies from the sample list have provided for an alternate procedure in case of absence of a probate of will / letter of administration / succession certificate. The alternate procedure is required even if there is a registered will.

Some companies have evolved the alternate mechanism that apply only upto a threshold. In cases where the value / number of shares involved is lower than a certain threshold limit, companies seek alternate documents instead of insisting on probate of will / succession certificate which may be cumbersome and cost ineffective to obtain. As there is no standardization of the procedures, the documents sought differ from company to company. The documents sought by the sample companies are listed below: -

- (a) Request letter (all companies)
- (b) Copy of death certificate (all companies)
- (c) Affidavit affirming the name of legal heirs / Affidavit sworn in by the claimants (all companies)
- (d) Indemnity agreeing to indemnify the company against future claims that may be made on the company (all companies)
- (e) NOC from other heirs in favour of person claiming the title to shares (most companies – whereas one company in the sample study does not ask for this).
- (f) Bank Guarantee in favour of the Company for the market value of the Shares for specified period. (only one company in the sample has this requirement)
- (g) Surety Form seeking surety from one or two persons covering the value of shares involved. The surety form often requires financial details to be filled in by the surety (only two group companies from the sample study have this requirement whereas others do not require surety). The surety form mostly requires financial details to be provided such as movable / immovable property and PAN no. etc.
- (h) Press Advertisement informing the public about the transmission request made to the Company (This requirement is there only for one company).

PROCEDURE FOLLOWED IN DEPOSITORY / DEMAT SYSTEM

The procedures followed for transmission of shares in the depository systems is also cumbersome and is amplified in the case of joint holding. The procedures involved are outlined below:-

Single Holder

A. NSDL:

NSDL requires that the legal heir(s) or the legal representative(s) of the deceased person submit an instruction called the Transmission Request Form (TRF) to the Depository Participant (DP) along with the following documents

- a. A copy of the death certificate duly notarized
- b. A copy of the Succession certificate duly notarized 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 notarized.

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 shares held in each account of the deceased as on the date of application for transmission does not exceed Rs 1 lakh, then the DP will process the transmission request on the basis of the following documents

- a. Transmission form ;
- b. Copy of the death certificate duly notarized ;
- c. Letter of Indemnity duly supported by a guarantee of an independent Surety acceptable to the Depositories, made on appropriate non judicial stamp paper;
- d. An Affidavit made on appropriate non judicial stamp paper; and
- e. NOC(s) from all the legal heir(s) who do not object to such transmission.

The procedure followed by NSDL is similar to that followed by companies for physical shares, and the alternate procedure is made available for shares of value less than Rs 1

lakh. The surety form sought by NSDL also seeks financial details of movable / immovable property held by the surety, as well as details such as PAN no. etc.

B. CDSL:

CDSL requires that the claimant should submit TRF along with the following documents to the concerned DP:

1. In case of the death of the sole holder wherein the holder has appointed a nominee
 - a. Notarized copy of the death certificate;
2. In case of the death of the sole holder wherein the holder has not appointed a nominee
 - a. Notarized copy of the death certificate;
 - b. Any of the below mentioned documents
 - i. Succession certificate
 - ii. Copy of will and probate
 - iii. Letter of administration

The DP after ensuring that the application is genuine will transfer the shares to the account of the claimant. In case the market value of the shares do not exceed Rs 1 lakh, the Board of Directors of CDSL, even in the absence of the documents specified at (b) above, has the discretion to transmit the shares to the heir / legal representative on such terms and conditions as it may specify.

Joint Holder

The procedure of transmission in case of demat account operated in joint names is similar to that followed in case of transmission of shares in physical form. In case the deceased was one of the joint holders, then the surviving holders have to request the DP vide a form called TRF along with a copy of notarized death certificate to transmit the shares lying in the account of the deceased to the account of the surviving holders. For this purpose, the surviving joint holder(s) necessarily have to open a new Beneficial Owner (BO) account with their name in the same sequence in which the names appear in the joint account to be closed.

There have been suggestions from various quarters of investors that demat account should be treated like a bank account and the procedure followed by banks for such accounts should be replicated in the depository accounts. Some of the suggestions were

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- a. Operation of BO Account on 'Either or Survivor' basis on the similar lines as is done in case of Bank Accounts; and
 - b. Continuation with the same account instead of closure of the account in case one of the account holders dies

As per article 25(1) of Schedule I to the Companies Act, 1956 the surviving joint holder is entitled to the shares in case of death of a joint shareholder. The surviving joint holder(s) has a choice to get himself / themselves registered as the shareholder(s) or to transfer the shares as per Article 26. Where he / they elect to retain the shares, he / they are required to be registered as the sole shareholder / remaining joint holders. In such a case, the new holder is allotted a new folio number, i.e. it is treated as a different folio from that of the original joint holder.

The practice as prevalent in case of physical shares has been replicated in the dematerialized environment. At present, if one of the joint holders dies, the surviving joint holder necessarily has to open one more BO account and has to transfer the shares from the existing account.

AN ALYSIS AN D DISCU SSION

The Group deliberated on the aforesaid issues and felt that the existing rigorous procedures of companies and R & STAs are depriving the investors the fruits of their investment decision. The group felt that there is an imperative need to simplify the procedure involved in relation to the Transmission of shares particularly in view of the fact that investments in shares are made to provide financial assistance in times of need.

Threshold and standardisation of documents

Physical environment:

Transmission of shares held in physical form can be categorised into two broad sub categories

CASE A: Cases where in the shares are held in single name in varied companies and the Estate of the deceased is quite large.

In such cases, the heirs of the deceased obtain succession certificate, probate of the will or letter of administration as the case may be. As the succession certificate / probate of will / letter of administration is already there in respect of the property (including the shares) bequeathed, cases falling under these categories pose no major problem and the turn around time starting with lodgement of claim form till the dispatch of certificates after effecting transmission ranges from 3 to 4 weeks

CASE B: Cases where in value of the holdings of the deceased shareholder is quite small compared to the cost of the legal representation in obtaining succession certificate, probate of the will or letter of administration as the case may be. It has been observed that the majority of the cases fall under this category and should be the focus area for significant improvement / simplification of the procedure. This would reduce the hardships faced by investors

The Board of Directors of the respective companies are normally vested with significant powers and discretion by the AOA in relation to the transmission without production of legal documents. Further, some companies have prescribed threshold limits in terms of value of the shares exceeding which the company requires more stringent procedure in relation to transmission as an investors' friendly measure. This alleviates the undue hardships caused to the investors

Divergent views prevail with regard to probate of will. Under Section 57 and Section 213 of the Indian Succession Act 1925, requirement of probate arises only where the properties are situated at Mumbai, Chennai and West Bengal. Thus it would follow that requiring the heirs to obtain a probate at places other than Mumbai, Chennai and West Bengal is unjustified. This needs to be taken into account by the companies. Again the provisions of the Indian Succession Act do not apply to Mohammedans and Christians (i.e. Communities other than Hindus, Buddhists, Sikhs and Jains). Therefore, companies can adopt a pro-active policy while dealing with these two communities.

Despite the provisions of the Indian Succession Act, most companies are insisting on the probate of the will by citing the requirement under the AOA of the respective companies, which requires that such probate should be obtained.

The Group felt that a threshold limit both in terms of number of shares and in terms of the market value of the shares, should be fixed and upto the threshold limit, the company should not seek legal documents in the form of succession certificate / probate of will / letter of administration.

The group felt that the threshold limit of a holding of 200 shares or a value of Rs 1 lakh, whichever is higher shall be appropriate. Upto this threshold the companies shall transmit the title to the shares only with the following documents-

- i. Affidavit – to the effect of the claim of legal ownership to the shares
- ii. Deed of Indemnity – indemnifying the company along with Surety and
- iii. NOC from other legal heir(s), wherever applicable, along with Claim Form / TRF,

As there is no prescribed format in relation to the documents to be furnished along with TRF, there is a need to formalize the documents and their formats.

The Group observed that some of the companies had more liberal thresholds. The intent of the Group is not to interfere with such thresholds which are more than the one stated above. The Group thus recommends that if any of the companies are having a more liberal threshold they shall continue to do so, and companies desiring to set liberal threshold should be able to do so. The threshold specified herein be the basic minimum that a company shall adhere to.

Dematerialised environment

While the above threshold would apply to the holding in physical, there cannot be a mirror application of this concept in the depository environment for all holding in the various companies. Threshold limit in case of shares held in physical mode is applicable company-wise and only if the values of the shares in respective companies exceed the threshold limit, the claimant / heir may be required to submit succession certificate / probate of will / letter of administration.

However, in case of shares held in dematerialized mode, in a single BO account, the account holder can hold shares of several companies and fixing a threshold limit company-wise would not be practically feasible as the holder can hold the shares in a particular BO account which may run in crores. Further, in case of BO account, the documents which the claimant of the deceased needs to submit for transmission is account-wise and not company-wise and this saves the claimant from the undue hardship of approaching the respective companies whose shares are to be transmitted. Group felt that the threshold as specified in shares held in physical mode shall not apply in case of shares held in dematerialized mode. However, the existing threshold of Rs 1 lakh in value as provided in the byelaws of the Depositories shall continue to apply.

Joint holders in Demat Mode

In relation to BO account held in joint names, as per the existing practice, when an account holder dies, the surviving holders have to make an application to the DP, along with fresh set of documents (as required in case of opening of a new account), to open a new account in the name of the surviving member(s), appearing in the same order, as in case of original account. This is time consuming and tantamount to duplication of documents which are already in possession of DP. Though, in relation to the automatic opening of a new BO account on the basis of the existing documents, Depositories expressed their concern in the form of possibility of change of name / address, change in residential status, updating of signature, changes in appearance due to age, medical disabilities etc. and the same may need to be incorporated in the records.

The Group agreed that the concerns were genuine but felt that the opening of the new BO account can be on the basis of the existing documents already in the possession of DP(s), except in case of updation of the documents as per Know Your Client (KYC) norms, and any other additional documents for transmission. For this purpose Depositories shall make suitable changes in their bye-laws / business rules / operational instructions, etc.

As regards the scenario for operation of the account on 'Either Basis', it was informed that in cases of accounts held in joint names, the holder(s) in anyway has the option of operation of the BO account on 'Either Basis' on production of duly executed Power of Attorney (POA) executed in favour of other account holder(s). The present system is working smoothly without any hassle or complaint. In view of this the Group did not feel the need for any further change in the existing provisions.

Nomination Facility:

Nomination is defined as an act of nominating a person to act on his behalf in his absence. In case of shares, any holder of the security at any time can nominate a person to whom the nominator's interest in those shares shall vest in the event of the death of the nominator. The nomination once made can be changed as many times as desired by the nominator.

Section 109A of the Companies Act talks about 'Nomination of Shares'. Nomination is required to be made in the prescribed manner, i.e., in Form 2B [prescribed under rule 4CCC/5D of the Companies (Central Government's) General Rules & Forms, 1956]. Non individuals including a society, trust, body corporate, partnership, karta of HUF and holder of POA cannot make a nomination.

As per Section 109A (3) of the Companies Act, a nomination made as per the provisions of the Act ***overrides anything contained in any other law for the time being in force***, including any law of succession or will or any other testamentary law, including anything contrary contained in the AOA of the company.

The investor can easily save their legal heirs from the legal hassles and the rigours of transmission of shares by appointing a nominee in the prescribed form.

In the absence of nomination, the company needs to transmit the shares to the person(s) who as per law has the legal right to the shares. This forces the companies to require adequate documentation from the legal heirs to prove their right to ownership of the shares. This is a piquant situation for the company. If the company does not do its due diligence at this stage, the company may be dragged into legal wrangle in case of counter disputes regarding the right to ownership. This casts the onerous responsibility on the company and the directors to ensure that all rights to ownership of shares are properly scrutinized so as to avoid any future litigation on this count.

Nomination is a very effective remedy to the situation. Once a shareholder appoints a nominee, then as per the law, the company's liability towards the event stands discharged to the extent that it has transmitted the shares to the nominee appointed by

the shareholder. It is then the nominee's responsibility to dispose of the shares or otherwise to the legal heirs

The intention of legislature in inserting specific provisions related to nomination facility in the Companies Act is to see that the company is discharged in relation to the impugned shares, in case the same is transmitted to the nominee and in case of dispute, the matter could be settled *inter se* the nominee and the disputing legal heirs

Many investors are not aware of the nomination facility and its benefits; hence do not avail of this facility. Thus the issue is more of creating /generating awareness amongst the investors about the benefits of the facility provided in law. In fact this fact was fairly acknowledged way back in 1999, which is evident in Press Release dated July 23, 1999 issued by the Department of Company Affairs, the text of which is reproduced below:-

"Under the Companies (Amendment) Act, 1999, the shareholders have been allowed to nominate a person for their shares, debentures and deposits. The form in which the nomination has to be filed has been notified by the Department of company Affairs under the amended Companies Act. Earlier, holders of shares and debentures in a company did not enjoy the nomination facility for shares, debentures and deposits, which caused hardships to them. They were required to obtain a letter of succession from the competent authority. The facility of nomination is intended to make the company law in tune with the present day economic policies of liberalization and deregulation. This is also intended to promote investors confidence in capital market and to promote the climate for intercorporate investment in the country."

If properly utilised by the investors, this facility could prove to be a very useful remedy against all the problems faced by the investors while grappling with the issue related to the transmission of shares

Group felt that efforts need to be made to make filling up of the nomination form mandatory, in a phased manner. However, if a person subscribing for the shares does not wish to file his nomination, he shall necessarily have to give a declaration to the said effect.

The Group felt that this facility of nomination should also be propagated and encouraged by the Depositories. With a view to encourage such a practice, the group recommends that the Depositories embark on a special drive to create awareness about the benefits of the nomination facility.

A special drive should be targeted at all its existing BOs who have not made nomination, by way of a special letter / communiqué drawing the attention of the BOs to avail of the nomination facility or to take on record the declaration of the BO that he

does not want to nominate any body. This shall be apart from the normal communication channels that the Depositories have with its BOs for such messages

As regards new accounts opened on or after October 01, 2007, it shall be provided for at the account opening stage itself that the nomination is insisted upon. In case the person is not interested to nominate, then such a person would have to give a positive declaration to the effect that he does not want nomination for his account as under: 'No, I do not want to nominate anyone on my behalf.'

As regards nomination, to place matters beyond doubt, it is recommended that provisions similar to sec 109A & 109B of the Companies Act 1956 should be inserted in Depositories Act so that a single nomination can be made for all shares held in the BO account.

Attestation of documents

During the deliberations, representations were received highlighting the insistence on the notarised copy of the documents for the various processes involved in the shares transactions including transmission.

The Group felt that if the basic purpose of notarization is to authenticate the documents even attestation of the documents, under seal, by a gazetted officer should suffice.

Time Frame

To ensure that the transmission cases are dealt with in a time bound manner, a stipulation of time limit on similar lines as has been stated in Clause 12A (3) in relation to 'Transfer' by way of insertion / amendment to the said Clause of the Listing Agreement should also be made for transmission.

RECOMMENDATIONS

In view of these discussions, the Group makes the following recommendations for simplifying the procedure in relation to 'Transmission of Shares' in the physical and dematerialized environment:-

Physical Shares

Standard documents

- A. Clause 7 of the Listing Agreement be amended to incorporate a clause specifying a threshold limit upto which the companies would insist on only the following documents in relation to transmission:-
- i. Affidavit – to the effect of the claim of legal ownership to the shares
 - ii. Deed of Indemnity – indemnifying the company along with Surety and
 - iii. NOC from other legal heir(s), where ver applicable, along with Claim Form / TRF,
- B. The group recommends the standardization of these documents. These formats are enclosed as an annexure to the report.

Threshold

- C. The Group recommends that this threshold be fixed at holding of 200 shares or Rs 1 lakh in value, whichever is **higher**:
- i. The prescribed threshold limit shall be the basic minimum limit to be adhered to by all the listed companies. The companies having higher threshold shall continue to do so, and also can set liberal threshold.
 - ii. Thus in effect this threshold shall apply to companies who have not yet fixed any such threshold, and also those companies whose threshold is less than that specified above.

Nomination

- D. To encourage nomination in physical shares, the Companies, IAs and SEBI shall embark on a special drive through the Investors' Awareness Campaigns and the other education efforts to urge shareholders to utilize the nomination facility.

Dematerialized shares

Joint holders

E. In relation to BO account held in joint names, DP(s) shall automatically open new account on an application by the surviving member(s) based on existing documents except in case of updation of the documents required as per the Know Your Client norms and additional documents such as notarized / attested copy of the death certificate of the deceased account holder(s), TRF, etc. The Depositories shall amend their bye laws / business rules, operational instructions to give effect to this.

Nomination

F. The nomination facility shall be encouraged by the Depositories. Depositories shall launch a special drive with the help of DPs and take pro-active steps to ensure that all its existing BO accounts are updated with nomination. The DPs shall specifically target its BOs which have not opted for nomination by way of special letter drawing the attention of the BOs to the benefits of nomination. This shall be apart from the normal communication channels that the Depositories / DPs have with its BOs for such messages.

G. As regards new accounts opened on or after October 01, 2007, it shall be provided for at the account opening stage itself that the nomination is insisted upon. In case the person is not interested to nominate, then such a person would have to give a positive declaration to the effect that he does not want nomination for his account as under: 'No, I do not want to nominate anyone on my behalf.'

H. As regards nomination, to place matters beyond doubt, it is recommended that provisions similar to sec 109A & 109B of the Companies Act 1956 should be inserted in Depositories Act so that a single nomination can be made for all shares held in the BO account.

Time Frame

I. To ensure that the transmission cases are dealt with in a time bound manner, a stipulation of time limit on similar lines as has been stated in Clause 12A (3) in

relation to 'Transfer' by way of insertion / amendment to the said Clause of the Listing Agreement should also be made for transmission.

Attestation

J For the purposes of attestation of the documents required by the companies and Depositories, the attestation of a Gazetted Officer, under its seal shall also suffice.

Shri A.P. Bakliwal
Member

Shri S.V.M.D.Rao
Member

Shri Ananta Barua
Member

Shri Jeevan Sonparote
Member Secretary

Shri R.K. Nair
Chairman