

SS – 6

SECRETARIAL STANDARD ON TRANSMISSION OF SHARES AND DEBENTURES



The Institute of

Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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PREFACE TO THE SECRETARIAL STANDARDS

Secretarial Standards Board and its Objectives

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

Scope and Functions of the Secretarial Standards Board

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.

The main functions of SSB are :

- (i) Formulating Secretarial Standards;
- (ii) Clarifying issues arising out of the Secretarial Standards;
- (iii) Issuing Guidance Notes; and
- (iv) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

Need for Secretarial Standards

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.

Scope of Secretarial Standards

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

ICSI will endeavour to persuade the Government and appropriate authorities to enforce these Standards, to facilitate the adoption thereof by industry and corporate entities in order to achieve the desired objective of standardisation of secretarial practices.

Procedure for issuing Secretarial Standards

The following procedure shall be adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, shall determine the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof.
2. In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.
3. The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately, if so required.
4. The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/ Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Ministry of Corporate Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies/organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received.

A meeting of SSB with the representatives of such bodies / organisations may then be held, if considered necessary, to examine and deliberate on their suggestions.

5. On the basis of the preliminary draft and the discussion with the bodies / organisations referred to in 4 above, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of ICSI, and also put on the Website of ICSI to elicit comments from members and the public at large.
6. The draft of the proposed Secretarial Standard will generally include the following basic points:
 - (a) Concepts and fundamental principles relating to the subject of the Standard;
 - (b) Definitions and explanations of terms used in the Standard;
 - (c) Objectives of issuing the Standard;
 - (d) Disclosure requirements; and
 - (e) Date from which the Standard will be effective.

7. After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalised by SSB and submitted to the Council of ICSI.
8. The Council will consider the final draft of the proposed Secretarial Standard and finalise the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

Compliance with Secretarial Standards

In the initial years, the Secretarial Standards will be recommendatory. The Institute will request the Government and other appropriate authorities to enforce these Standards and will endeavour to educate the users about the utility and need for compliance with these Standards. The Standards would be made mandatory thereafter.

SECRETARIAL STANDARD ON TRANSMISSION OF SHARES AND DEBENTURES

The following is the text of the Secretarial Standard-6 (SS-6) on "Transmission of Shares and Debentures" issued by The Institute of Company Secretaries of India.

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

In this Secretarial Standard, the Standard portions have been set in bold type. These should be read in the context of the background material which has been set in normal type and in the context of the 'Preface to the Secretarial Standards'.

INTRODUCTION

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

On transmission of Shares, the person to whom the Shares are transmitted becomes the registered shareholder of the company and is entitled to all rights and subject to all liabilities attached to the Shares.

In case the deceased held Shares in more than one company, the legal heir(s)/Nominee has to correspond with each of the companies by submitting relevant documents, alongwith the share certificates to effect transmission of Shares.

In case of dematerialised holdings, the formalities for transmission of all securities can be completed by submitting the documents required by the Depository Participant.

SCOPE

This Standard applies to Transmission of Shares held by individual shareholders in physical mode.

DEFINITIONS

The following terms are used in this Standard with the meaning specified:

"Act" means the Companies Act, 1956 or any statutory modification or re-enactment thereof.

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no Executor.

"Articles" means the Articles of Association of a company.

"Board" means the Board of Directors of a company and includes a committee constituted by the Board.

"Depository Participant" means a person registered as such under the Securities and Exchange Board of India Act, 1992.

"Executor" means a person to whom the execution of the last will of a deceased person is, by the appointment of the deceased, confided.

"Heir" means any person who is entitled to succeed the property of a deceased under applicable laws.

"Intestate" means the deceased had not made a testamentary disposition of property.

"Legal Representative" means a person who in law represents the estate or interests of another person.

"Member" means any person who agrees, either by subscribing to the Memorandum of Association of the company or by applying in writing, to become a Member of the company and whose name is entered either in the Register of Members of the company or in the records of the depository as a beneficial owner in respect of the Shares of the company held by him.

"Minor" means any person subject to the Indian Majority Act, 1875 who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years.

"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.

"Probate" means the copy of the Will certified under the seal of a Court of competent jurisdiction with grant of administration to the estate of the deceased.

"Shares" include debentures.

"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.

"Will" means the legal declaration in writing of the intention of a person with respect to his property which he desires to be carried into effect after his death.

Unless the context otherwise requires, words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

SECRETARIAL STANDARDS

Transmission of Shares should be effected by the company on receipt of intimation of death of a Member and on production of necessary documents, such as -

- (i) Death certificate;
- (ii) Request for transmission signed by the legal heir(s) / Legal Representatives /claimant(s) with their specimen signature(s);
- (iii) Succession Certificate or Letter of Administration or Probate of Will;
- (iv) Original share certificate(s);
- (v) Orders of the Court or of competent authority, if applicable;
- (vi) Permission under the Foreign Exchange Management Act, 2000, if applicable.

The company may require documentary evidence to prove the identity of the legal heir or other claimants, such as PAN Card, Passport, Ration Card, Voter's Identity Card, etc.

The documentation required for effecting Transmission of other securities including fixed deposits would remain the same.

To facilitate transmission of Shares in appropriate cases, the company may waive production of certain documents, such as Probate or Letter of Administration or Succession Certificate. However, in such cases, the company may insist on a suitable Indemnity and affidavit.

Section 109 provides for transfer of the Shares by the Legal Representative of the deceased Member.

Section 109A provides for nomination by an individual in respect of his Shares. Where a Nominee has been appointed, the Shares shall vest in the Nominee on the death of the Member.

As per Section 109B, 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).

Similar rights are available to a person becoming entitled to Shares consequent to the insolvency of a Member in cases of companies having provisions akin to Regulation 26 of Table A of Schedule I to the Act in their Articles.

Nomination assumes significance in transmission. The company should maintain particulars of the Nominee in a separate register and confirm to the shareholder of having noted the nomination. It is recommended that this

information is also recorded in the Register of Members with cross-reference to the register maintained for recording nomination.

In case the Nominee is a Minor, on death of the shareholder during the minority of the Nominee, the Shares should be transmitted to the Minor under the guardianship as mentioned in the nomination form till the Minor attains majority; however, the beneficial interest will be with the Minor.

In case the Shares were held by a lunatic or insolvent, the company may insist on an order of a Court of competent jurisdiction declaring such person to be of unsound mind or insolvent and appointing a Legal Representative or Administrator as the case may be to deal with his estate.

If the Articles of the company provide otherwise, it shall override the principles of the Standard.

1. TRANSMISSION OF SHARES HELD SINGLY

With nomination

- 1.1 Where a sole shareholder who has appointed a Nominee dies, the company should on receipt of written notice signed by the Nominee accompanied by the certificate evidencing the death of the shareholder and the original share certificates, register the Shares in the name of the Nominee within a period of 30 days.**
- 1.2 Where a sole shareholder who has appointed a Nominee dies, the company should on receipt of written notice signed by the Nominee accompanied by the certificate evidencing the death of the shareholder and the original share certificates with duly executed transfer deed, register the Shares in the name of any other person elected by him, within a period of 30 days.**

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. For this purpose, the Nominee should give notice of his intention.

All limitations, restrictions and provisions of the Act relating to transfer of Shares will apply.

Without nomination

- 1.3 Where a sole shareholder who has not appointed a Nominee dies leaving a Will, the company should on receipt of written request from the Executor or beneficiary named in the Will accompanied by the certificate evidencing the death of the shareholder and the Probated Will, register the Shares in the names of**

those persons who are entitled to the Shares as per the Will within a period of 30 days.

The Board may at its discretion waive the requirement of probating the Will on production of other satisfactory evidence about the genuineness of the Will.

- 1.4 Where a sole shareholder who has not appointed a Nominee, dies intestate, the company should on receipt of written request from the legal heir, accompanied by the certificate evidencing the death of the shareholder and the Succession Certificate or Letter of Administration, register the Shares in the name of the legal heir within a period of 30 days.**

In case the transmission is requested in favour of one or more but not all the legal heirs, the company may require a No Objection Certificate relinquishing their right on the said Shares or Deed of Relinquishment from other legal heir(s) for such transmission.

- 1.5 Where a sole shareholder who has not appointed a Nominee dies intestate, the company should on receipt of written request from the legal heir, accompanied by the certificate evidencing the death of the shareholder and the Succession Certificate or Letter of Administration together with duly executed transfer deed, register the Shares in the name of any other person elected by him, within a period of 30 days.**

The legal heir has the option to register himself as the holder of the Shares of the deceased or transfer the Shares to any other person.

2. TRANSMISSION OF SHARES HELD JOINTLY

With nomination

- 2.1 Where Shares are held in joint names and where such holders have together appointed a Nominee, the company should on receipt of written notice signed by the Nominee accompanied by the certificates evidencing death of all the joint shareholders, register the Shares in the name of the Nominee within a period of 30 days.**
- 2.2 Where Shares are held in joint names and where such holders have together appointed a Nominee, the company should on receipt of written notice signed by the Nominee accompanied by the certificate evidencing the death of all**

the joint shareholders, register the Shares in the name of any other person elected by him, within a period of 30 days.

Where joint holders have jointly appointed a Nominee, Shares shall vest in the Nominee, only in the event of death of all the joint holders.

Where Shares are held in joint names, on death of any of the holders, the company should on receipt of written request from the survivor(s) accompanied by the certificate evidencing the death of the shareholder, register the Shares in the name of the survivor(s). In such a case the remaining holders are entitled to vary the nomination.

Without nomination

- 2.3 Where Shares are held in joint names and no Nominee has been appointed, on death of the last shareholder who has left a Will, the company should on receipt of written request from the Executor or beneficiary named in the Will, accompanied by the certificate evidencing the death of the shareholder and the Probated Will, register the Shares in the names of those persons who are entitled to the Shares as per the Will within a period of 30 days .**

The Board may at its discretion waive the requirement of probating the Will on production of other satisfactory evidence about the genuineness of the Will.

The legal heir has the option to register himself as the holder of the Shares of the deceased or transfer the Shares to any other person.

- 2.4 Where Shares were held in joint names and the last of the surviving shareholders died intestate without appointing a Nominee, the company should on receipt of written request from his legal heir accompanied by the certificate evidencing the death of the shareholder and the Succession Certificate or Letter of Administration, register the Shares in the name of the legal heir within a period of 30 days.**

- 2.5 Where Shares were held in joint names and the last of the surviving shareholders died intestate without appointing a Nominee, the company should on receipt of written request from his legal heir accompanied by the certificate evidencing the death of the shareholder and the**

Succession Certificate or Letter of Administration, together with duly executed transfer deed, register the Shares in the name of any other person elected by him, within a period of 30 days.

2.6 Where Shares are held in joint names and all the shareholders die simultaneously and no Nominee has been appointed, but the first holder has left a Will, the company should on receipt of written request from the Executor or beneficiary named in the Will, accompanied by the certificate evidencing the death of the shareholders and the Probated Will, register the Shares in the names of those persons who are entitled to the Shares as per the Will within a period of 30 days.

2.7 Where Shares are held in joint names and all the shareholders die simultaneously intestate and without appointing a Nominee, the company should on receipt of written request from any of the legal heirs of the first named shareholder accompanied by the certificate evidencing the death of all the shareholders and the Succession Certificate or Letter of Administration, register the Shares in the name of the legal heirs of the first named shareholder within a period of 30 days.

In the case of Shares held jointly, the Articles of the company recognize the first named person as the shareholder for the purpose of receiving notice and other benefits, in the absence of any document to the contrary.

The legal heir has the option to register himself as the holder of the Shares of the deceased or transfer the Shares to any other person.

3. OTHER REQUIREMENTS

3.1 On transmission, share certificates shall be endorsed in the name(s) of the person(s) to whom the Shares are transmitted.

Where the claimant for transmission of Shares of the deceased shareholder, is unable to produce the original share certificates, the company should issue duplicate share certificates after complying with the procedure.

3.2 Every company should maintain a register containing particulars of all transmissions.

The Register maintained for recording Transmission should be placed before the Board to authorize registration of transmission. In token of approval, the Chairman of the Board should date and initial at the end of the last entry in the Register for each set of approvals.

The Company Secretary or any other authorised person should make necessary changes in the Register of Members.

3.3 The register and records pertaining to transmission should be preserved permanently and kept in the custody of the secretary of the company or any other person authorized by the Board for the purpose.

Detailed reference pertaining to this Register has been made in the Secretarial Standard on Registers and Records (SS-4).

EFFECTIVE DATE

This Standard is effective from 20th September 2007.