TRANSFER OF SHARE IN A PRIVATE LIMITED COMPANY – TANZANIA

Transfer of share shall in no way be taken synonymously as transmission of share, the two terminology are quite different from each other and refers to two different process of transferring the ownership of shares in the company.

Transfer of share is the process of transferring ownership of share by mutual agreement between the parties, where it involves the sale agreement, transfer instrument and payment of Capital gain tax, and it should be permissible under the articles of association of the company. While Transmission of share is the process of transferring the ownership of share by operation of the law, in case if the member passes away or becomes insolvent/lunatic.

SHARE TRANSFER PROCEDURE

The shares or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of association of the company. The article of association must allow the transfer of share from one person to another and it shall provide for procedure to follow during the transfer process.

i. Notice to directors of the company.

Generally, most private company’s articles of association do forbid the transfer of share to a non-member of the company. As such the shares has to be issued to the existing members and if none of them is interested on buying them, then they can be offered to the outsider.

Hence 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. If any of the existing member is interested to buy, then will go on to negotiate and reach an agreement with the seller. If none of the members are interested on buying the shares, then the same will be offered to the outsiders with the consent of the directors.

ii. Resolution to transfer the shares.

Whether the shares have been offered to the existing members or to the outsiders, the members of the company must resolve and agree on the said transfer of share. This can be done through 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.
iii. **Sale Contract and 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 the evidence that the shares have been transferred.

In addition to the sale contract the seller and the purchaser must also execute the 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 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 transfer instrument is so important that the share transfer will be regarded as incomplete if the instrument is not executed by either party.

iv. **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 issue 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.

v. **Notification to the registrar of companies about the transfer.**

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

The company has the duty under the law to give notice to the registrar on every changes made to the company and share transfer is one of them. So the company will have to file with the registrar, the resolution which authorized the sale, the copy of 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.
vi. **Surrender & Issuance of Share Certificate.**

Share certificate is issued to the shareholder who has fully paid for his shares and it saves 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.

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.

**FURTHER INFORMATION:**

At [Eden Law Chambers](http://edenlawchambers.co.tz), we assist Clients to smoothly transfer their share by making sure that all the required procedures are adhered, preparing required documents and submitting the same to the relevant authorities. This article is intended to give you a general overview of the Transfer of Share in Private Limited in United Republic of Tanzania. If you would like further information and clarification on any issue raised in this article, please contact;

Managing Partner

Email; info@edenlawchambers.co.tz

Mobile; +255717141907