

This article offers an overview of the procedure for effecting a transfer of shares under the Companies Act of 1994. It is not intended to serve as a definitive guide and should be read together with the applicable legislation.

Q. How many shares in a Company be transferred?

A. Shares in a company may be transferred by a written instrument of transfer, signed by the transferor and naming the transferee and co-signed by the Registrar of Companies.

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Q. Is there a prescribed form for share transfer?

A. No, a document sufficiently identifying the shares being transferred and the consideration for the transfer, if any, will suffice.

Q. How much stamp duty is payable on transfers of shares?

A. Where real property accounts for less than 50% of a company's assets or a company holds no real estate, the rate of stamp duty is as follows: (item 22 of the Schedule to s.3 of Cap. 318)

(a) On sale - Where the amount or value of the consideration for the sale is:

less than \$25

6 cents

more than \$25 but less than \$50

15 cents

more than \$50 but less than \$100

30 cents

more than \$100 but less than \$200

50 cents

more than 200 but less \$300

75 cents

more than \$300 but less \$500

\$1.50

more than \$500 for every \$500 or fractional part thereof

\$1.50

(b) By way of security, the same rates of duty as on a mortgage (c) By way of gift - \$5.00 (d) By devise to a beneficiary under a will as specific or residuary legatee or transmission to a party entitled on intestacy - 50 cents (e) In any other case - \$2.00

(d) Where 50% or more of the assets of a company is comprised of real property, the stamp duty payable on a transfer of shares is 6% of the value of the consideration or transfer on sale, of which 3% is to be paid by the transferor and transferee respectively (item 23, Schedule to s.3 of Cap.318).

Q. What is the procedure for having stamp duty assessed?

A. A signed instrument of transfer must first be submitted to the Registrar of the High Court for assessment together with a statutory declaration is required by the Registrar of Companies under authority of s.506 of the Companies Act for the purpose of determining compliance with s.3 of the stamp Act. A specimen form of declaration is available from CIPO on request. The Registrar of the High Court will assess stamp duty having regard to the value recited in the declaration. After stamp duty had been paid, the instrument, accompanied by proof of payment, must be submitted to CIPO for signature by the Registrar of Companies pursuant to s.195 of the Companies Act. Section 195(1)(a) as amended by Act No. 7 of 2001 states that the Registrar of Companies "shall not sign any instrument of transfer ... unless stamp duty has been paid on the said instrument of transfer in accordance with s.3 of the Stamp Act". Where the Registrar is satisfied that the applicable stamp duty has been paid, a certificate of compliance will be endorsed on the instrument.

Q. What happens if either Registrar has reason to doubt the declared value of the shares?

A. Yes. Under the Stamp (Amendment) (act, No. 2 of 1999, the value of the shares for the purpose of item 23 of the Schedule to s.3 of the Stamp Act "shall be estimated to be the price which in the opinion of the Registrar of the High Court such property would realise if sold in the open market at the time when the conveyance or transfer takes place". Section 4(2) of the Commerce and Intellectual Property Office Act, No. 43 of 2003, further authorises the Registrar of the Commerce and Intellectual Property Office, in conjunction with the Registrar of the High Court, to exercise functions in the assessment and collection of stamp duty on instruments that are to be stamped under the stamp Act in relation to companies. In determining the value of shares, either Registrar may require the person seeking to have the transfer registered to

submit particulars of valuation for the purpose of determining whether the consideration stated in the instrument of transfer reflects the fair market value of the shares being transferred. These particulars must be exhibited to the above-mentioned declaration. If dissatisfied with the particulars submitted, the Registrar may cause a valuation to be made by the Commissioner of Estate Duties and assess duty on the basis of that valuation.

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