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Consent Requirements on Transfer of Shares in Private Companies in India

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The National Securities Depository Limited ("**NSDL**"), one of the two securities depositories in India, has introduced an important compliance requirement for the transfer of shares of private companies held in dematerialized form. In its circular No. NSDL/POLICY/2025/0071 dated June 03, 2025, NSDL had proposed that shareholders intending to transfer shares in a private limited company must obtain a prior consent from the company and submit the same to their Depository Participants ("**DPs**") along with the delivery instruction slip ("**DIS**"). Recently, NSDL vide its second circular No. NSDL/POLICY/2025/0107 dated August 11, 2025 has amended its (a) bye laws and (b) business rules to implement the aforesaid circular dated June 03, 2025. Consequently, any sale or purchase of shares now requires explicit consent from the target company, submitted in a format prescribed with the circular dated June 03, 2025 that include details such as the names of the transferor and transferee, number and class of shares, reason for transfer, etc. This amendment formalizes gatekeeper role for private companies, aiming to curb unauthorized share transfers and safeguarding interest of investors.

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1. REASONS FOR THE CHANGE

The Companies Act, 2013 ("**Act**"), under Section 2(68) read with Section 58(1) and Section 58(2), permits Indian private companies to impose restrictions on the transfer of shares. Usually, such restrictions are provided in their articles of association ("**AoA**"), shareholders' agreement ("**SHA**"), or other similar arrangements. Typically, restrictions are in the form of right of first refusal, right of first offer, and tag-along or drag-along rights.

Historically, these restrictions were enforced during the transfer of physical share certificates, where the company had direct control over the transfer of shares. However, with the mandatory dematerialization of shares, private companies lost direct control over the transfer process to DPs. Further, there was no mechanism for a DP to verify if a share transfer initiated via a DIS complied with the restrictions under company's AoA or SHA. This created a regulatory gap where restricted shares could be transferred without the knowledge of company, as company receive transfer information post facto i.e. only after the completion through beneficiary position statement ("**BENPOS**"). The aforesaid circulars address this gap by requiring the shareholder (transferor) to obtain a formal consent letter from the company (target) before the transfer is executed through demat account.

2. WHAT HAS CHANGED

Roles	Before the Circulars	After the Circulars
Target company	The target company had limited role in transfer of shares through DP; it was notified of share transfers after completion.	The target company now has a preventive role. It must approve a proposed transfer by issuing a formal consent letter.
Transferor	Required to submit a DIS to their DP, with details of shares being transferred.	In addition to the DIS, the transferor must also procure a prior consent from the target company and submit to their DP.
Investor/Transferee	Required to provide their demat account details to the transferor/DP to receive the shares.	Additionally, the investor should ensure that the transferor has obtained the necessary consent from target company before the transfer of shares.

3. OUR ANALYSIS

The aforementioned NSDL circulars reaffirms the legal principle that private limited companies have control over their shareholding structure and can reject transfers that are not in line with restrictions imposed by way of AoA or SHA or arrangements of similar nature.

From an investor's perspective, it is a welcome development, as it prevents unauthorized share transfers by shareholders. However, for an investor seeking an exit from Indian private company, it puts additional compliance requirements. Furthermore, the absence of any prescribed timelines for companies to provide consent could create delays in closing transactions.

Here it is worth noting that the aforesaid circulars have been issued by NSDL and are only applicable to the securities managed by it. In other words, similar share transfers through Central Depository Services (India) Limited ("**CDSL**"), the second securities depository of India, yet, do not require consent from companies. It remains to be seen whether CDSL will adopt similar requirements in the future.

For foreign investors considering investments in Indian private companies, this change necessitates greater scrutiny during the due diligence. Also, it is advisable that future investment agreements should include legally binding clauses that obligate the transferor/ the target company to provide the necessary consent within a specified time frame. Investment agreements should also provide remedies, such as indemnification for losses, if such consent is unreasonably withheld or delayed.

In our view, the proposed changes are a positive step towards better corporate governance and shareholder stability. While it adds a procedural layer, it will help ensure that the transfer of shares align with existing conditions under the AoA, SHA, etc. The new rules will help private companies to maintain control over their shareholding composition and ultimately preserve the value of existing investments.

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