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New compliance requirement for transfer of dematerialised shares of private companies

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Introduction

The National Securities Depository Limited (NSDL), through its circular no. NSDL/POLICY/2025/0071 dated 3 June 2025 (Circular), has introduced an additional compliance requirement for transfers of shares held in private companies. Going forward, in order to execute a transfer of dematerialised shares of a private limited company, demat account holders must submit a consent/confirmation letter from the company to their Depository Participant (DP) in the format prescribed in the Circular. This effectively requires prior company approval before any share transfer can be completed through NSDL. While this requirement has currently been notified only by NSDL, it is reasonable to expect that Central Depository Services (India) Limited (CDSL) may introduce a similar requirement in due course.

NSDL circular and impact

Currently, the process of executing a transfer of dematerialised shares involves the seller issuing irrevocable instructions to its DP by submitting a duly filled and signed Delivery Instruction Slip (DIS), instructing the DP to credit the relevant shares to the demat account of the purchaser. Pursuant to the Circular, this process will now require the DIS to be accompanied by a consent letter from the private limited company. This consent letter must confirm that the proposed transfer is in compliance with the provisions of the Companies Act 2013 (CA2013) and that all necessary internal approvals (such as board approvals or compliance with the articles of association) have been obtained by the company. The consent letter must also include: (i) details of the demat accounts of both the transferor and the transferee; (ii) their respective PAN details; (iii) the number of shares proposed to be transferred; and (iv) the reason for the transfer.

DPs will no longer be permitted to process transfers of shares in a private company unless the company has issued the prescribed confirmation letter. This makes corporate authorisation a mandatory prerequisite for executing such transfers. While even prior to this change, the CA2013 required that all share transfers be taken on record by the board of directors, the recent dematerialisation of shares of private companies had led to a growing number of instances where shareholders were bypassing the board altogether—executing share transfers solely by submitting instructions to their DPs. This Circular seeks to address that regulatory gap by ensuring that a private company's internal approval processes are integrated into the demat share transfer mechanism. The Circular aims to align the transfer process for demat shares with the characteristics of 'private companies' as defined under CA2013.

Conclusion

While the intent of the Circular appears to be to enhance transparency and corporate compliance in share transfers involving private companies, it also poses practical challenges for private equity and venture capital investors, who typically expect free transferability of their shares and the ability to exit or liquidate their investments without undue restrictions. While a long term solution could involve re-evaluating the requirements of the Circular through a more practical lens, including prescribing reasonable timelines for processing such consents in line with the CA2013, in the short term, a balanced approach would be to incorporate appropriate contractual safeguards in the shareholders' agreement (or the share purchase agreement, as applicable) and the articles of association, to align with both the compliance requirements of the Circular and the commercial expectations of investors. These contractual safeguards should be designed to ensure that adherence to the Circular does not become a tool for obstructing or delaying legitimate share transfers that are not otherwise prohibited under the shareholders' agreement.

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