

TRANSFER OF SHARES IN PHYSICAL FORM: NEW REQUIREMENT OF PERMANENT ACCOUNT NUMBER

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Requirements under the law:

The Securities and Exchange Board of India has mandated the requirement of Permanent Account Number (PAN) to be furnished by all the transferees transferring physical shares of listed companies. This provision has been notified by SEBI, the watch-dog of Securities Market vide Circular no. *MRD/DoP/ Cir-05/2009* dated 20th May 2009. As a result of this clarification all the market and off-market trades or in layman terms transfer of shares in physical form would require mandatory quoting of PAN before the shares can be registered in the name of the transferee. Such PAN number is required to be furnished to the company or registrars to an issue and share transfer agents for registration.

This notification is in extension of the earlier Circular no. *MRD/DoP/Cir-05/2007* issued by Securities and Exchange Board of India dated April 27, 2007 whereby the Board had made PAN as the sole identification number relating to all transactions in the securities market irrespective of the amount of such transaction.

Legal provision empowering SEBI:

Section 55A of The Companies Act,1956 empowers the Securities and Exchange Board of India to administer, in so far as the transactions relates to issue and transfer of securities and non-payment of dividend of listed or to be listed public companies. As may be noted, this is a very general power granted to SEBI in the matter of transfer of securities. However, in pursuance of this general power, SEBI has brought about a procedural change in the matter of transfer of shares.

Further Section 11 of the Securities and Exchange Board of India Act, 1992 states that it is the duty of the Board to protect the interest of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

Section 11B (inserted by an amendment in 1995) states:

Power to issue directions – Save as otherwise provided in Section 11 if after making or causing to be made an enquiry, the Board is satisfied that it is necessary –

(i) In the interest of investors, or orderly development of securities market;
or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors of securities market; or

(iii) To secure the proper management of such intermediary or person, it may issue such directions –

(a) To any person or class of persons referred to in Section 12 or associated with the securities market;

(b) To any company in respect of matters specified in Section 11-A, as may be appropriate in the interests of investors in securities and the securities market.

SEBI Act was amended in 2002, to introduce Section 11(4). The relevant parts of that Section read as follows:

Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:-

...

(b) Restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

...

Provided further that the Board shall, either before or after passing such orders, give an opportunity of being heard to such intermediaries or persons concerned.

Applicability:

The provisions of the notification shall come into force with immediate effect from the date of this notification. Further until recently, transactions through off-market route did not have any disclosure requirement pertaining to transfer of shares. However to curb money laundering, track suspicious transactions and in the investor interest SEBI has made PAN as a mandatory requirement for transfer of securities of Listed Companies in physical form.

Companies covered:

The mandatory requirement of quoting PAN in respect of all transfer of physical shares or shares in Demat Form applies in case of shares of all listed companies. It is important to note that sec. 55A of the Companies Act confers powers to SEBI as regards transfer of securities of listed companies only.

To be ensured by:

To ensure the implementation of mandatory provision of PAN number in case of transfer of Securities by the transferee, SEBI has advised **Stock exchanges** to:

- implement the above by making necessary amendments to the bye-laws and Listing Agreement, as applicable;
- bring the provisions of this circular to the notice of the listed companies for necessary compliance and also to put the same on their website
- communicate to SEBI the status of the implementation of the provisions

Further **Registrars to an issue and Share transfer agents** are advised to:

- Take necessary steps to implement the above decision.
- Disseminate the provisions of this circular on their website.

What if the PAN is not given?

The PAN has been made the sole identification number by the regulatory authority in all financial market transactions in furtherance of Know Your Customer (KYC) norms. Failure to submit the necessary documents as proof will lead to suspension or freezing of trading accounts.