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VADODARA CHAPTER OF WIRC OF ICSI- 26.03.2022

Critical Analysis on Transfer and Transmission of Shares, FC-TRS

CS (Dr.) Yashree Dixit
Practicing Company Secretary,
Ahmedabad

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DISCUSSION POINTS

Transfer of Shares

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graph TD; A[Transfer of Shares] --> B[FC-TRS]; B --> C[Transmission of Shares];
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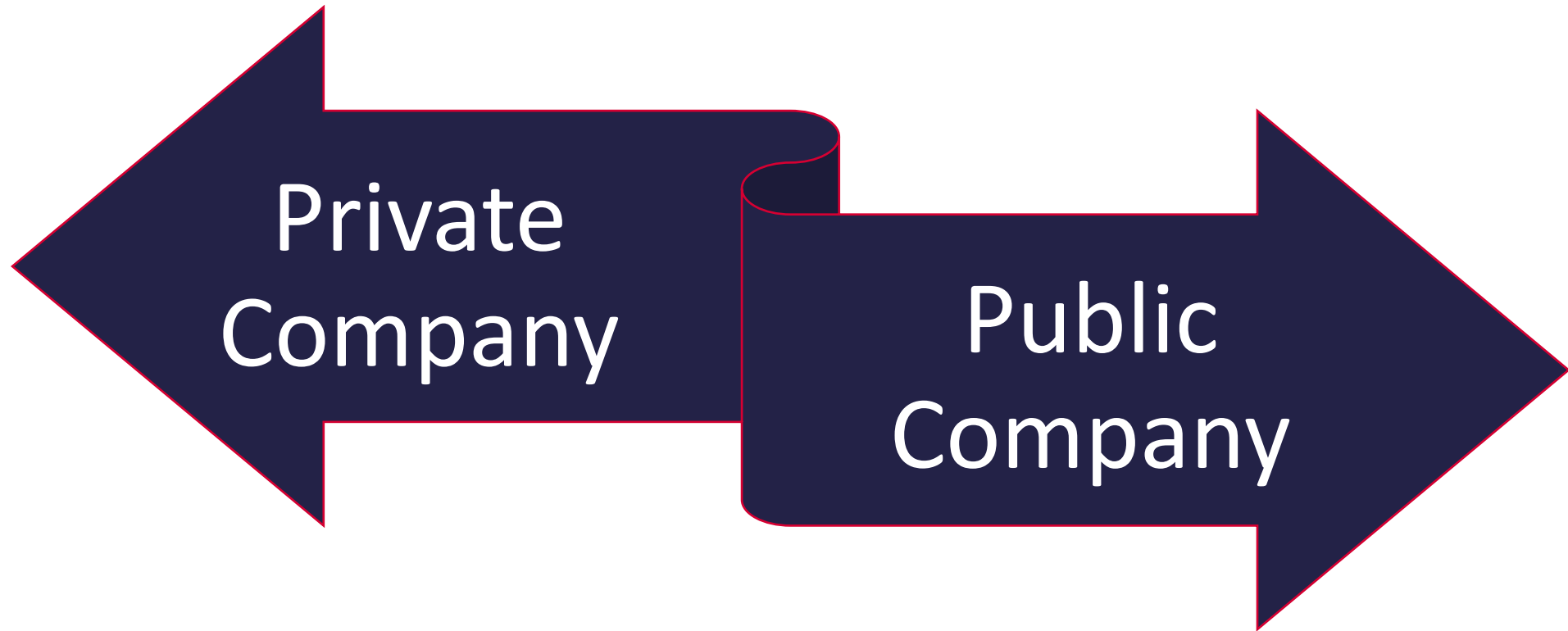
FC-TRS

Transmission of Shares



Transfer of Shares

Transfer of Shares



SHARE TRANSFER OF PRIVATE COMPANY UNDER THE COMPANIES ACT, 2013

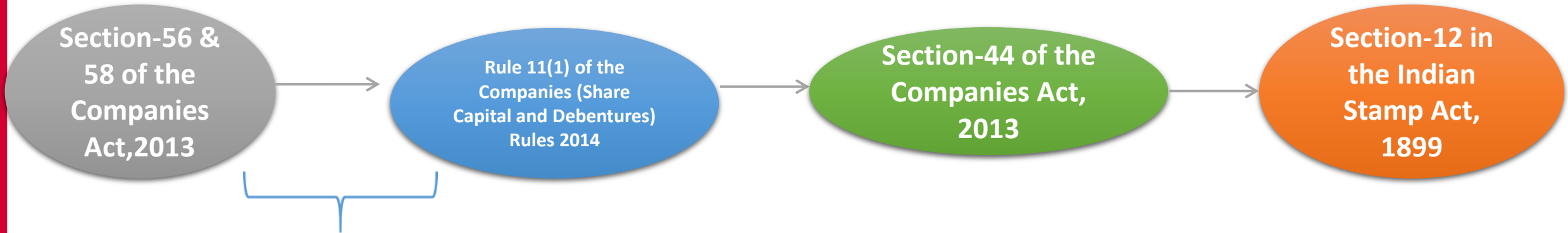
Meaning of share transfer

Share: Share means a share in the share capital of a company and includes stock. A share is an indivisible unit of capital, expressing the ownership relationship between the company and the shareholders.

Share Transfer: A share transfer is the process of transferring existing shares, its related rights and liabilities from one person to another.

A transfer of share can only be transferred for only existing shares and from existing shareholders. Though the transferee can be existing shareholder or not of company.

Legal Framework of Private Company

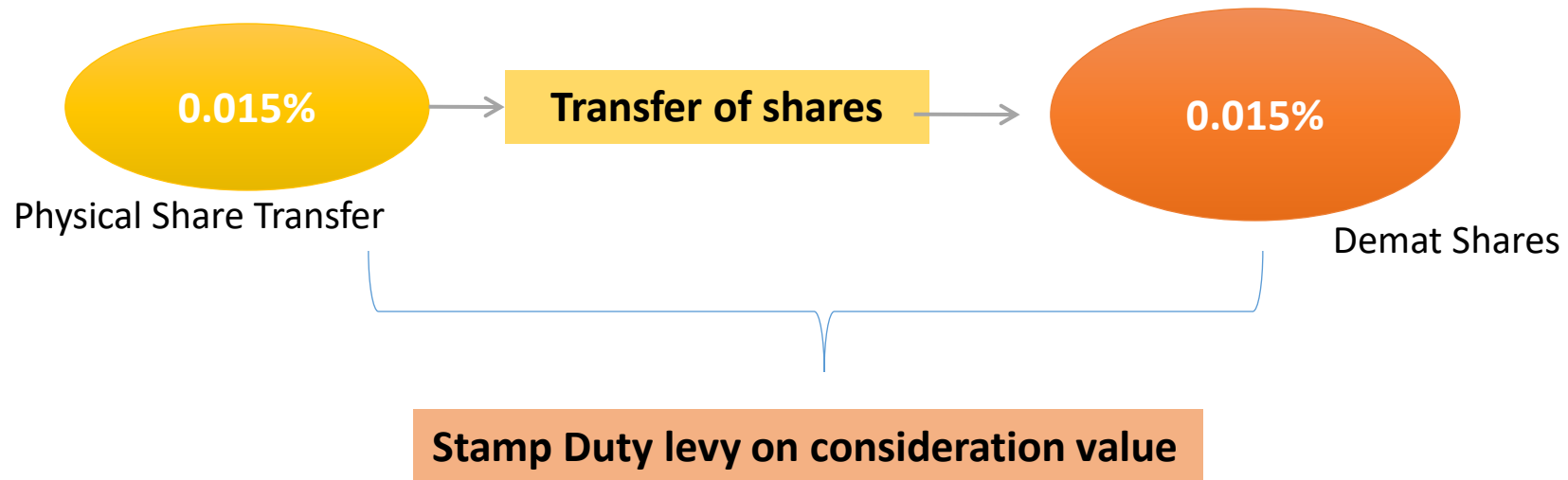


Procedure for share transfer of Private Company



Stamp duty on transfer of shares

The Central Government notified the Indian Stamp (Collection of Stamp Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 with effect from 1st July 2020.



Place of levy of stamp duty: In case of transfer of share, the place where documents are executed.

Notice to ROC

No such Notice or intimation is required to be given to ROC.

The Share Transfer details shall be given to ROC in Annual Return of the company in Form MGT-7 or MGT-7A.

Date of Previous AGM	<input type="text"/>		
Date of Registration of Transfer	<input type="text"/>		
Type of Transfer	<input type="text"/>	1 - Equity, 2- Preference Shares, 3 - Debentures, 4 - Stock	
Number of Shares/ Debentures/ Units Transferred	<input type="text"/>	Amount per Share/ debenture/unit (in Rs.)	<input type="text"/>
Ledger Folio of Transferor	<input type="text"/>		
Transferor's Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Surname	Middle name	First name
Ledger Folio of Transferee	<input type="text"/>		

Penalty for Non-Compliance of Section:-56 of the Companies Act,2013

Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which

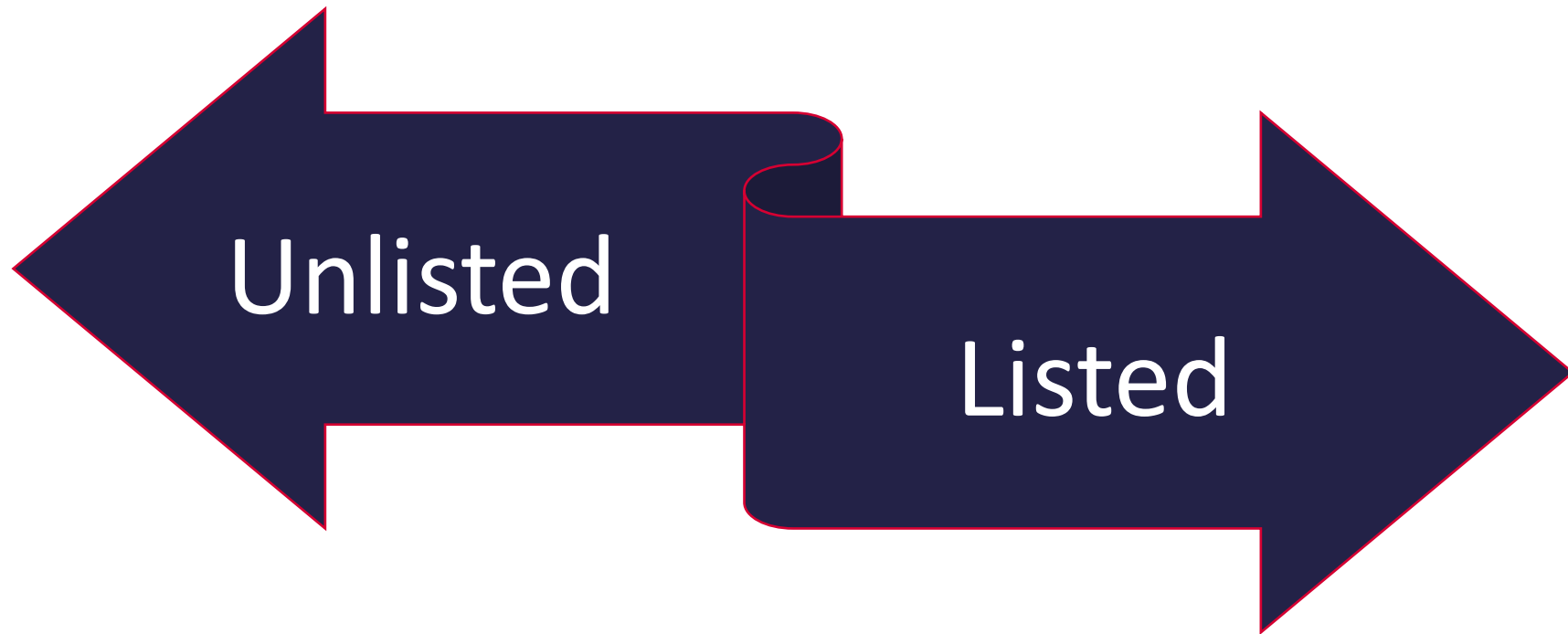
Sr. No	In case of	Minimum Penalty	Maximum Penalty
1	COMPANY	25,000	5,00,000
2	OFFICER	10,000	1,00,000

CHECK POINTS FOR PRIVATE COMPANY-SHARE TRANSFER

- ✓ The company shall duly hold a board meeting as per **Section 173 & SS-1** for approving of the share transfer and pass appropriate resolution.
- ✓ The Company within a period of **one month** from the date of receipt of the share transfer agreement or the share transfer certificate can issue share transfer certificate.
- ✓ If only the Transferor has applied for the transfer of the shares which are partly paid then, the company will send notice to the transferee in **Form SH-5**, if transferee gives no objection within two weeks from the date of receipt of notice then Board shall proceed further.
- ✓ Company shall make necessary entries in the Register of Members i.e. **Form MGT-1**, within 7 days of the Board Meeting in which transfer was approved.

SHARE TRANSFER OF PUBLIC COMPANY UNDER THE COMPANIES ACT, 2013

SHARE TRANSFER OF PUBLIC COMPANY



COMPULSORY REQUIREMENT FOR DEMATERIALISATION OF SECURITIES

New Rule 9A has been inserted, which requires that; Every unlisted public company

(By Notification No. .GSR 853(E) dated 10th Sept., 2018)

issue the securities only in dematerialized form

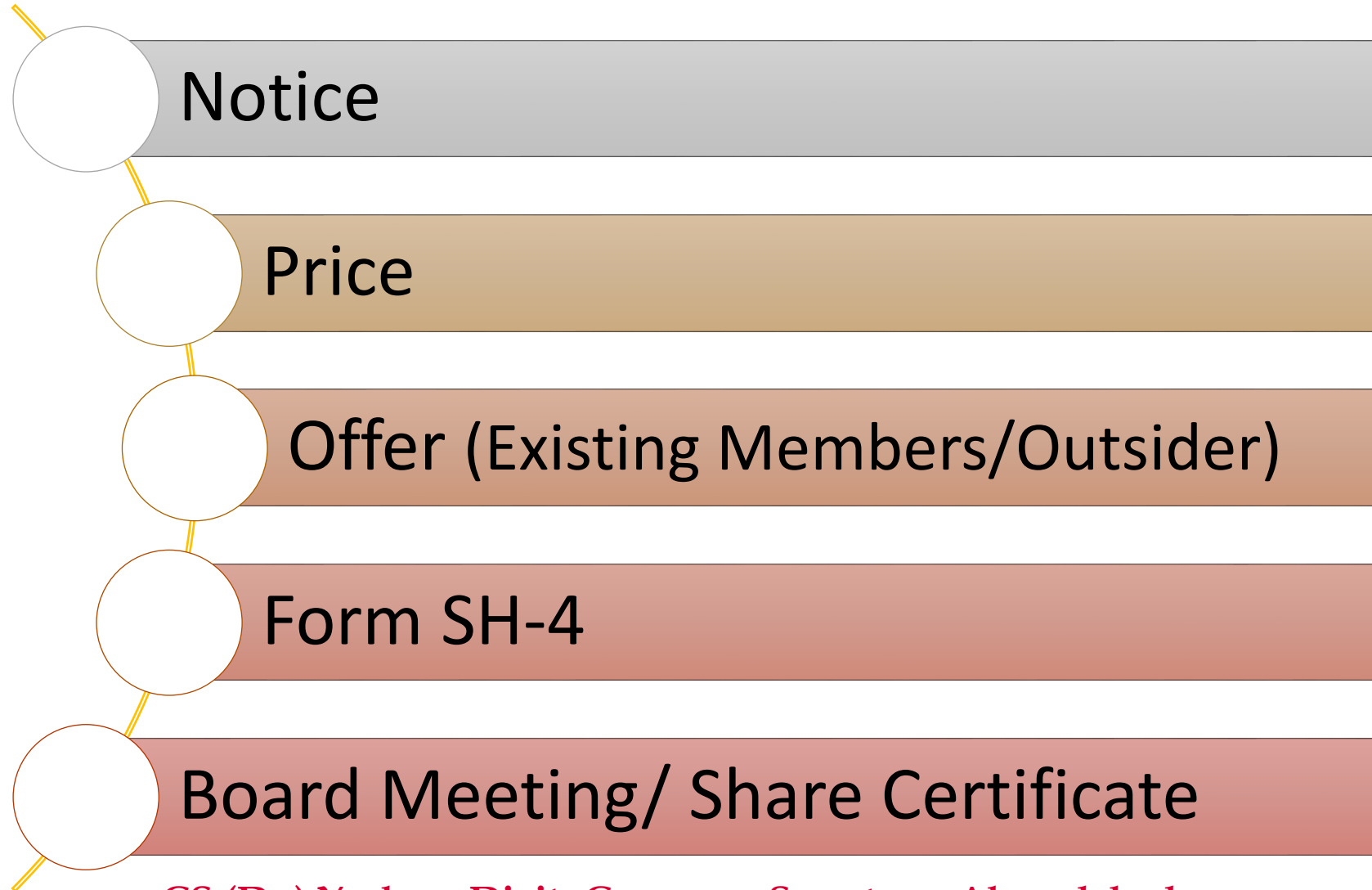
facilitate Dematerialization of all its existing securities

Dematerialization is a pre-requisite condition to making any offer for issue of any securities; or buyback; or issue of bonus or rights offer, transfer or subscription of securities after 2nd Oct., 2018.

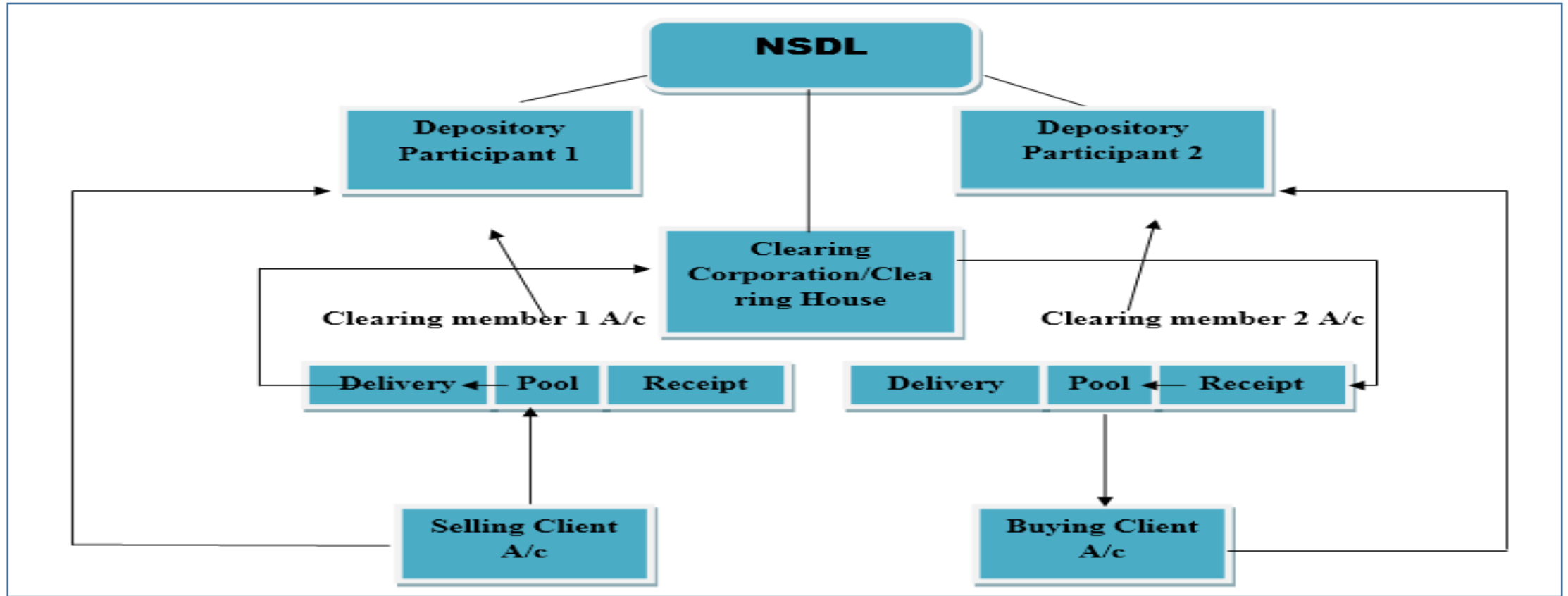
* This rules shall not apply to an unlisted public company which is:—

(a) a Nidhi; (b) a Government company or (c) a wholly owned subsidiary

PROCEDURE FOR SHARE TRANSFER OF PUBLIC (UNLISTED COMPANY)



PROCEDURE FOR SHARE TRANSFER OF LISTED COMPANY



PROCEDURE FOR SHARE TRANSFER BY WAY OF GIFT



FAQs- SHARE TRANSFER OF SHARE

1. Does Member pledge their shares in demat form to avail any funding/loan arrangement with my bankers?

Yes. But the same is not in the scope of the Company or the Registrar & Transfer Agents.

2. I would like to gift some shares to my children/relatives. How do I get them registered in their names? Does this involve stamp duty?

The procedure for registering gifted shares is the same as the procedure for a normal transfer. Stamp duty is also applicable on gifted shares and the duty is at 0.015% of the market value prevailing on the date of execution of the transfer deed.



FC-TRS- Filing Of FDI Reporting With RBI

What is FC-TRS?

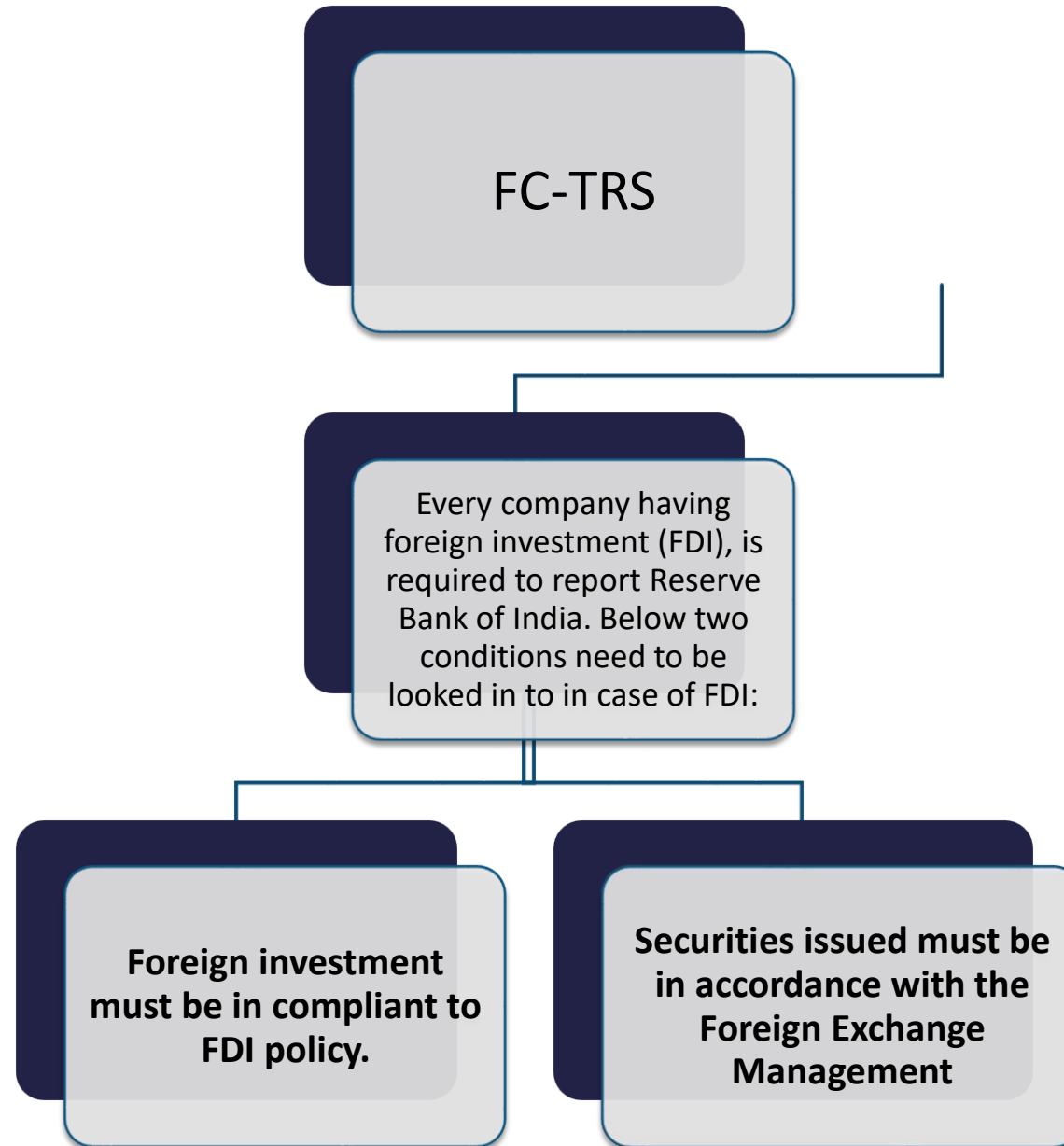
Form FC-TRS is Foreign Currency Transfer of Shares. This form is filed in case of transfer of shares of an Indian Company from a resident to a Non-Resident/Non-Resident Indian and vice versa through its authorized dealer bank (AD Category-1 Bank)


Form FC-TRS is filed in case of *transfer of shares or convertible debentures* of an Indian Company from a resident to a Non-Resident/Non-Resident Indian and vice versa by way of sale.

Form used by shareholder resident outside India and resident Indian or vice versa when they transfer their shares.

The Indian company is required to report the transactions to the AD Category – I bank in the form FC-TRS.

Introduction



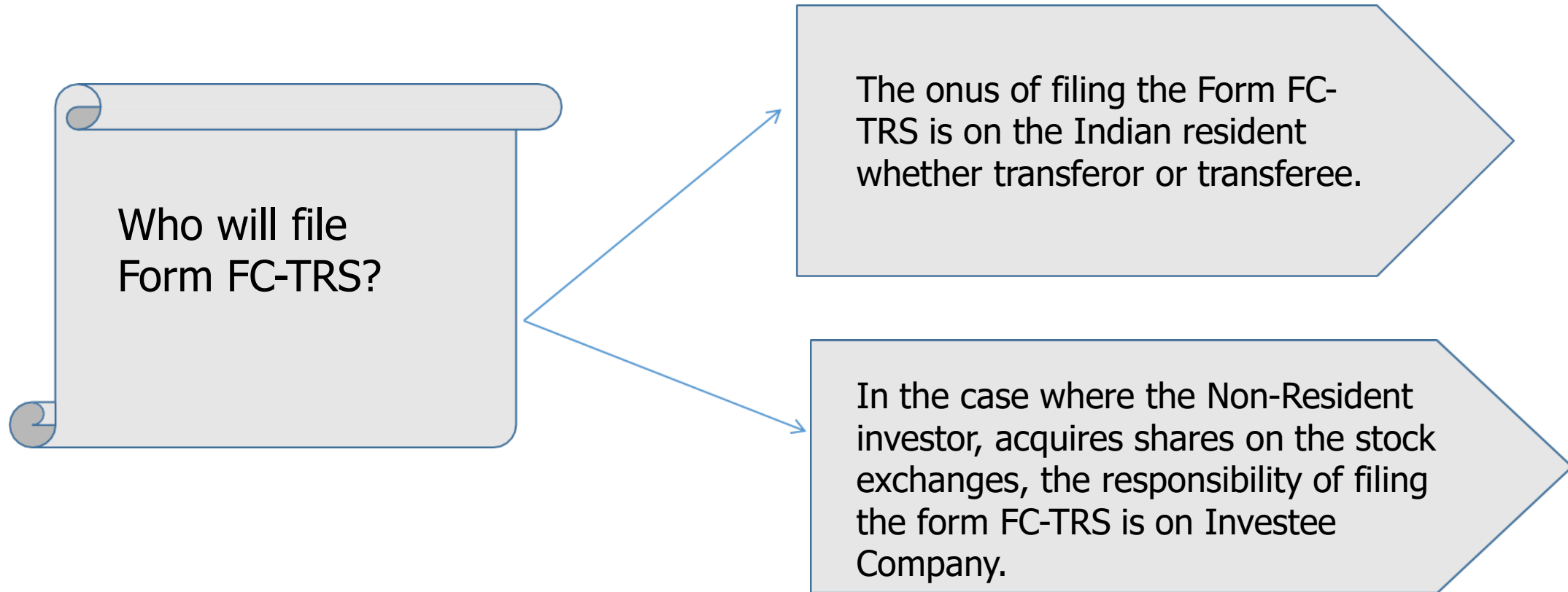


As announced in the First Bi-monthly Monetary Policy Review dated April 5, 2018 that, with the objective of integrating the extant reporting structures of various types of foreign investment in India, it will introduce a **Single Master Form (SMF)** subsuming all the existing reports. The filing of SMF would be online.

Under the head Single Master form FC-GPR, FC-TRS, and LLP-I, LLP-II, CN, ESOP, DI, DRR, InVi are to be filed and submitted.

The Reserve Bank of India (the “RBI”), on September 1, 2018, released a user manual (the “SMF Manual”) to clearly set out the procedure for filing a single master form (the “SMF”), which it introduced on June 7, 2018, to integrate the existing reporting norms for foreign investment in India.

Who is responsible for filing the Form-FC-TRS?

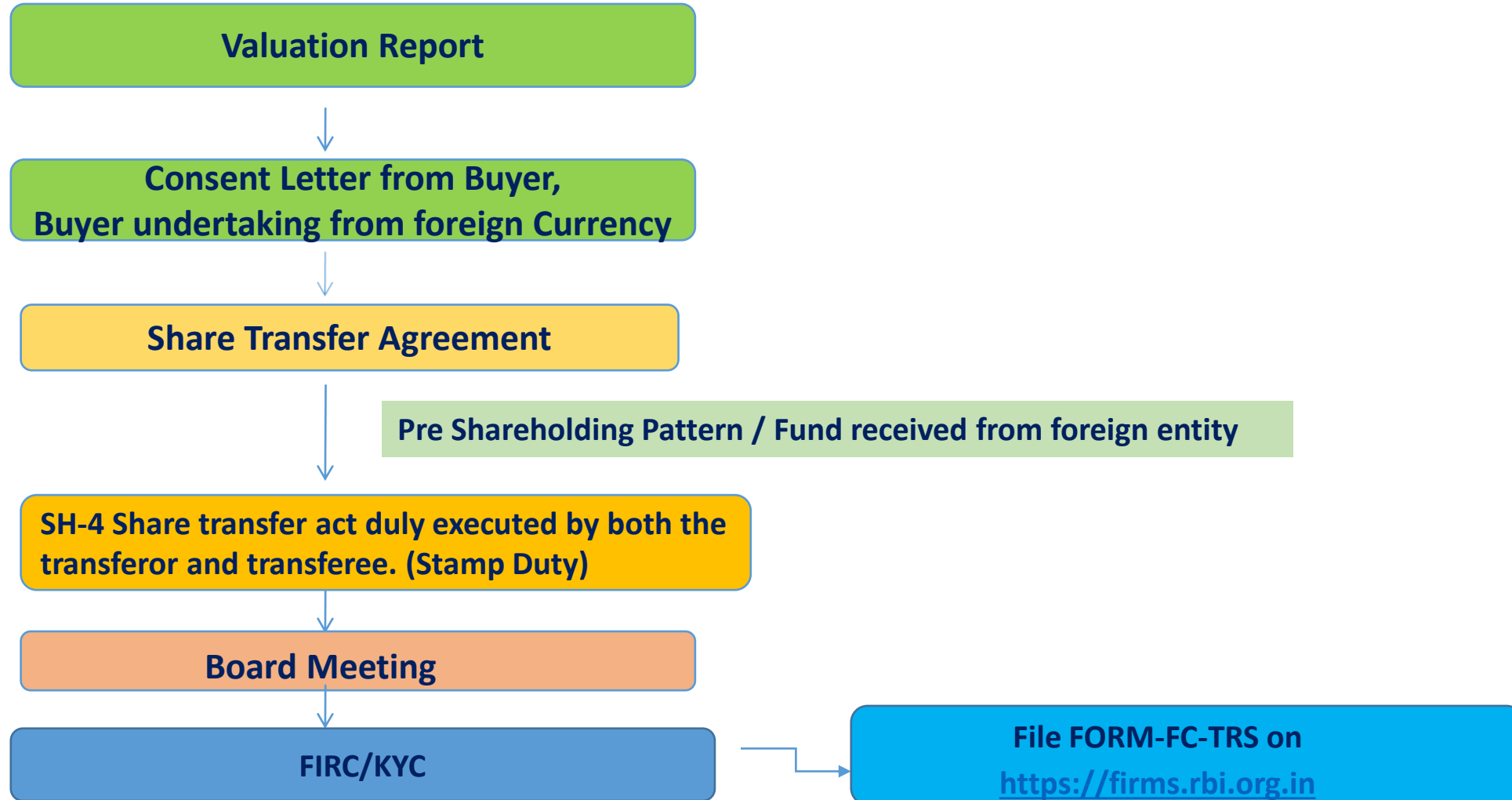


FORM-FC-TRS (FOREIGN CURRENCY TRANSFER)

FCTRS Filing under FEMA or the Foreign Exchange Management Act was passed in the parliament of India in the year 1999. Under this act, all financial activities are monitored related to foreign trade and payments.

Under the provision of FEMA the government has provided many categories that can be filed as per the nature of the business **FOREIGN CURRENCY- TRANSFER OF SHARES or the FC- TRS** is one of the types.

Procedure for share transfer in FC-TRS



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Steps to file for Form FC-TRS



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Approved Forms

FCGPR Form	1	FCTRS Form	0
LLP1 Form	0	LLP2 Form	0
Cn Form	0	ESOP Form	0
DRR Form	0	DI Form	0
INVI Form	0		

Rejected Forms

FCGPR Form	0	FCTRS Form	0
LLP1 Form	0	LLP2 Form	0
Cn Form	0	ESOP Form	0
DRR Form	0	DI Form	0
INVI Form	0		

Pending Approval Forms

FCGPR Form	12	FCTRS Form	3
LLP1 Form	0	LLP2 Form	0
Cn Form	0	ESOP Form	0

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FAQs-FC-TRS

1. In case of transfer of capital instruments between a person resident in India and a person resident outside India on deferred payment basis, at which stage the form FC-TRS is required to be filed?

Form FC-TRS has to be filed with the AD bank on receipt of every tranche of payment. The onus of reporting shall be on the resident transferor/ transferee.

2. What is meant by Late Submission Fee (LSF)?

For the transactions undertaken on or after November 7, 2017, in case of reporting delays, the person/ entity responsible for filing the reports as provided in Part IV of the Master Direction on Reporting shall be liable for payment of Late Submission Fee (LSF).



Transmission of Shares

REGULATORY FRAMEWORK

Under the Companies Act,2013

- Section 56 (2) of the Companies Act,2013
- Section 56 (4) (c) of the Companies Act,2013

Under SEBI (LODR) Regulation, 2015

Regulation 40 of SEBI (LODR) Regulation, 2015

Circular:- SEBI/
HO/MIRSD3/CIR/P/2016/85 dated
September 15,2016

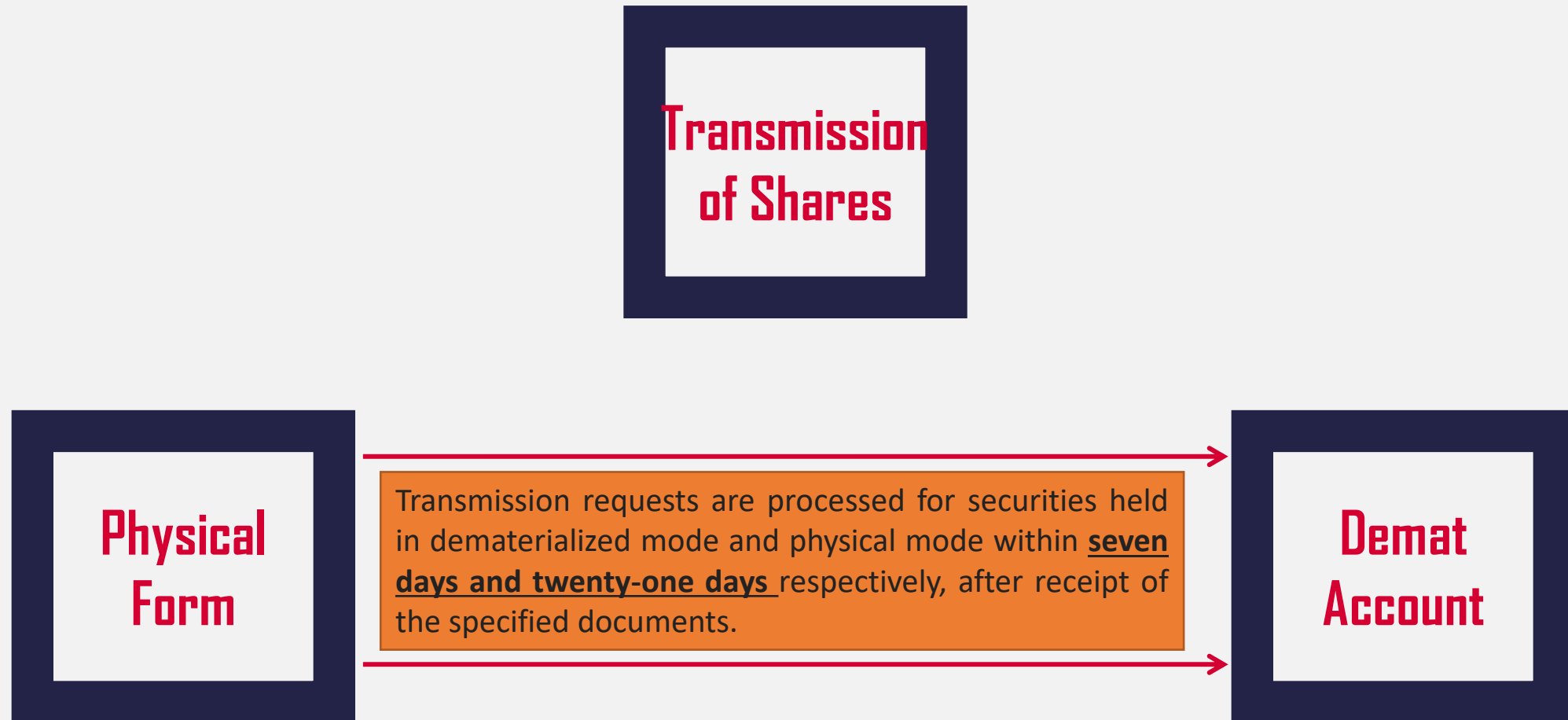
What is Transmission of Shares?

Transmission of shares/securities means transfer of shares/securities from the account of deceased shareholder to the surviving legal heir, nominee or joint holder.

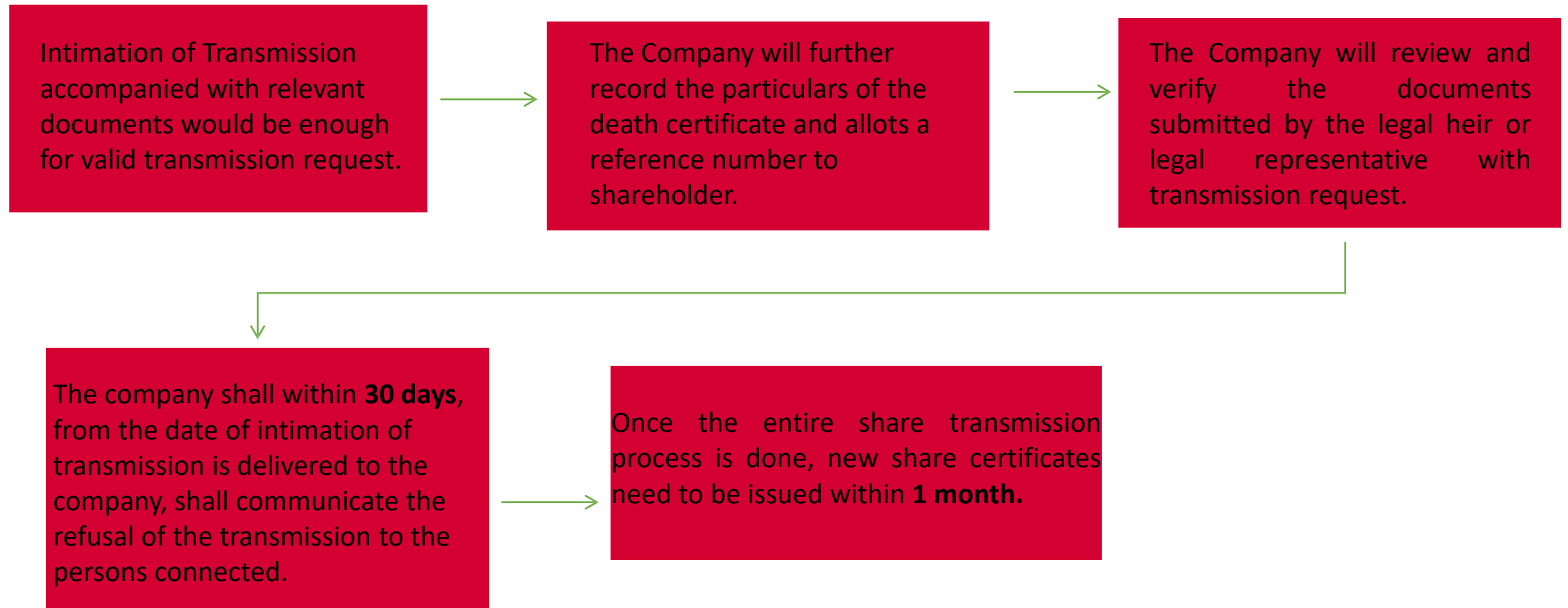
Key Aspects:-

1. Transmission of shares is brought by **operation of Law**.
2. The word 'transmission' means devolution of title to shares otherwise than by transfer, for example, **devolution by death, succession, inheritance, bankruptcy**, etc.
3. On registration of the transmission of shares, the person entitled becomes the shareholder of the company and enjoy all the rights and subject to all the liabilities.

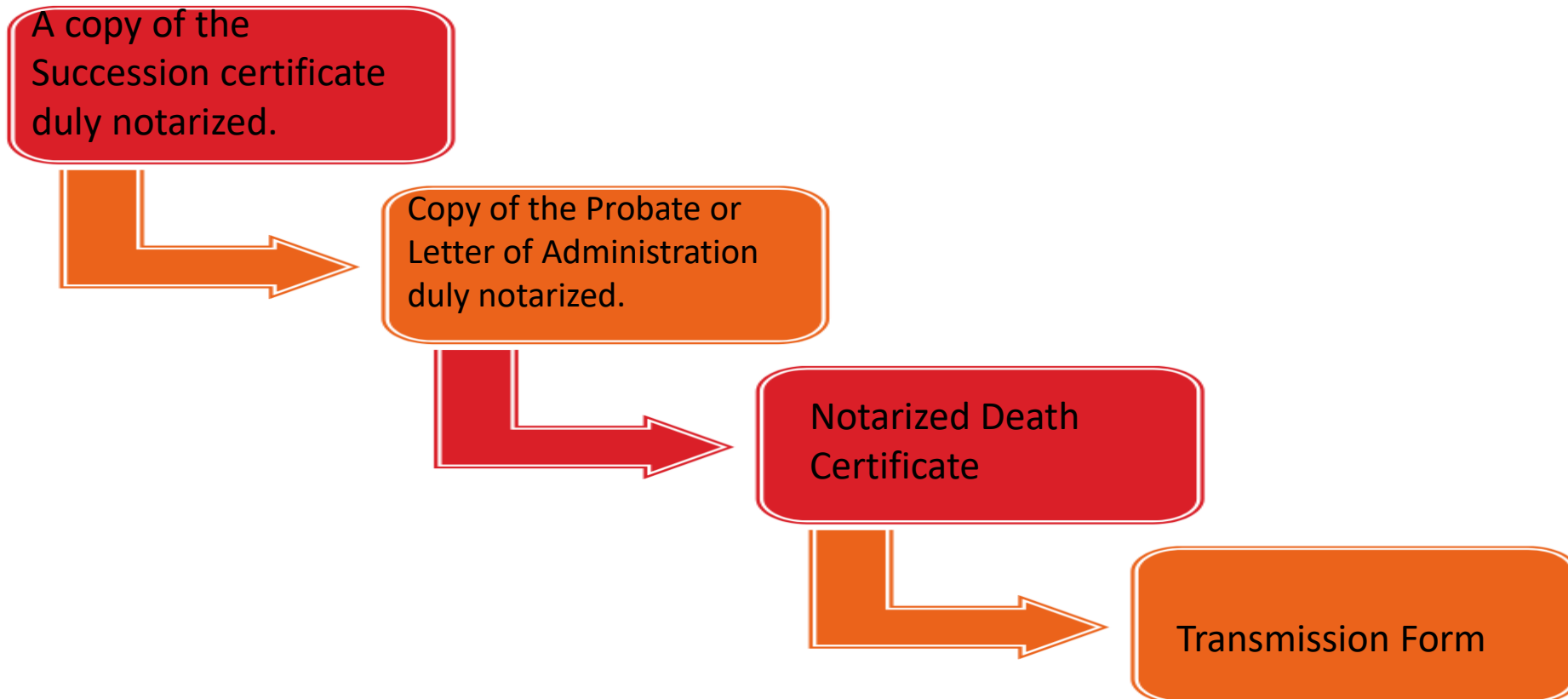
Transmission of Shares



Procedure for Share Transmission of share



Documents



FAQs- SHARE TRANSFER OF SHARE

1. If a shareholder who held shares in his sole name dies without leaving a will, how can his legal heir/s (either husband/wife/son/daughter, etc.) get the shares transmitted in their names?

The legal heirs are required to obtain a Succession Certificate or Letter of Administration/ probate of a will with respect to the shares. A true copy of the same, duly attested by the Court Officer or Notary, should be sent to the Company or Registrar and share transfer agents along with a request letter, pan card of all the claimants and all original share certificates for transmission in their favour.

2. In case of joint holdings, in the event of death of one shareholder, how do the surviving shareholders get the shares in their names?

The surviving shareholder/s are required to submit a request letter supported by a self-attested copy of PAN card of all surviving holders, an attested copy of the Death Certificate of the deceased shareholder and the relevant share certificates together with the request for transmission.



CS (Dr.) Yashree Dixit- Company Secretary- Ahmedabad

*Thank
you*



CS (Dr.) Yashree Dixit- Company Secretary- Ahmedabad

CS (Dr.) YASHREE DIXIT
PCS, M.Com, Ph.D (Corporate
Governance)

YASHREE DIXIT & ASSOCIATES
COMPANY SECRETARIES

801/802, Abhijeet-1, Near
Mithakhali Six Roads, Navrangpura,
Ahmedabad-380009

Email: csyashreedixit@gmail.com

Mobile: +91 -8690830431

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