



Understanding Share Transfers In Nigeria: Frequently Asked Questions (FAQs)

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WHAT IS A SHARE?

Shares are a unit of ownership that represents an equal proportion of a company's capital, which entitles its holder to *pro rata* claim on the company's profits and an equal obligation for the company's debts and losses. Each share forms a unit of ownership of a company and is offered for sale to raise capital for the company. **Section 567, Companies and Allied Matters Act, Cap C20 LFN, 2004 (CAMA)** defines shares as “the interests in a company’s share capital of a member who is entitled to share in the capital or income of such company and except where a distinction between stock and shares is expressed or implied, includes stock.” For a company having a share capital, each member shall be a shareholder of the company and shall hold at least one share.¹ A company has the power to issue shares up to the total number authorised in its memorandum, this is subject to any limitation and pre-emptive rights prescribed in the Articles of Association (“Articles”) of the company with respect to the number of shares which may be issued.



I WANT TO ACQUIRE SHARES IN A COMPANY, HOW DO I GO ABOUT IT?

Section 115 CAMA provides that shares or other interests of a member in a company are property transferable in the manner provided in Articles of the company. There are four main ways of acquiring shares in a company:

1. **By subscription to the Memorandum & Articles (incorporation documents) of a company²**

A subscriber to the incorporation documents of a company limited by shares automatically becomes a shareholder (member) of such company. Twenty five percent (25%) of the authorised share capital must be subscribed at incorporation, and the company must have minimum of two shareholders, whilst a shareholder must hold at least one share. Foreigners can freely invest and be shareholders in Nigerian companies.

2. **By allotment³**

A person desirous of acquiring shares in a company may express his desire by applying to the company for shares which may be allotted to him or he may have the shares transferred to him in pursuance of a contract of sale or such other transaction. Authority to allot shares in a company is vested in the company which may be delegated to the directors based on the provisions of its Articles. Where an application for shares is contemplated this may be made in a formal or informal manner. A formal application could be in writing and signed by the applicant even though an application by word of mouth would likewise be effective.⁴

3. **By transfer⁵**

Transfer of a company’s shares is by instrument of transfer and except as expressly provided in a company’s

¹Section 79(3) CAMA

²Section 79 CAMA

³Section 125 CAMA

⁴*Berliet (Nig.) Ltd v. Francis* [1987] 2 NWLR (Pt. 58), 678.

⁵Section 151 CAMA



Articles, transfer of shares is expected to be without restrictions.⁶ However, notwithstanding anything in the Articles of a company, a company is not allowed to register a transfer of shares in the company, unless a proper instrument of transfer has been delivered to the company. Transfer of shares are to be in writing, executed by or on behalf of the transferor and transferee through the instrument of transfer.⁷ The transferor is deemed to remain a holder of the share, until the name of the transferee is entered in the Register of Members in respect of the share. Precedent as to the form of an instrument of transfer of shares is a good guide but the mere fact that a transfer was not on precedent printed form or contained all that precedent contains does not necessarily make incomplete a transfer of shares once such form contains all the essential legal ingredients of transfer.⁸

The Securities and Exchange Commission (SEC) need not be informed of transfer of shares in a private company, however a public company's securities, investments or collective investment scheme cannot be issued, transferred, sold or offered for subscription or sale to the public without the prior registration of the securities or investment with SEC.⁹ Any person who does any of the above without the prior registration of the securities or investments with SEC commits an offence and is liable on conviction to a fine of N1 million or to three (3) years imprisonment or to both.¹⁰

4. By transmission¹¹

When a member of a company dies, the survivor(s) where the deceased was a joint holder, or the legal personal representative where the deceased was a sole holder, will be

the only persons recognised by the company as having any title to the interest in the shares, but the estate of a deceased joint holder is not released from any liability in respect of any share which had been jointly held by him with other persons.

Any person becoming entitled to the shares of a deceased or bankrupt shareholder may, upon evidence¹² being produced, as required by the directors, can elect either to be registered as holder of the share, or to have some person nominated by him registered as the transferee of the share. Nevertheless, the company has the right to decline or suspend registration as they would have had in the case of a transfer of share by that member before his death or bankruptcy.

If the person entitled to the deceased's shares elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and if he elects to have another person registered, he shall testify his election by executing to that person, a transfer of the share. All the limitations, restrictions and provisions of CAMA and the company's Articles relating to the rights to transfer and the registration of transfers of share is also applicable to any such notice or transfer.

A person becoming entitled to a share by reason of the death or bankruptcy of the holder, shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, unless the Articles of the company otherwise provides, before being registered as a member in respect of the share exercise any right conferred by membership in relation to meetings of the company. The directors may at any time give notice requiring any person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety (90) days the directors may thereafter

⁶Section 151(1) CAMA provides that "subject to the restrictions of a company's articles of association as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve."

⁷*Inyang v. Ebony* [2002] 2 NWLR (Pt. 751), 284

⁸*Faloughi v. Faloughi* [1995] 3 NWLR (Pt. 384), 435

⁹Section 54(5) ISA 2007

¹⁰Section 54(6) ISA 2007

¹¹Section 155 CAMA

¹²A Person entitled to the shares of a deceased shareholder is expected to obtain probate or Letter of Administration from the jurisdiction where the deceased shareholder was domiciled before his death and afterwards make an application to the company of his intention to either become a member of the company or to elect some else in his place, the application will be accompanied by a copy of the Death Certificate of the deceased shareholder, a copy of the probate or Letters of Administration, and original shares certificate of the deceased shareholder.

withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

AM I FREE TO TRANSFER MY SHARES AS I CHOOSE?

A company's shareholders have the right to transfer their shares as stated in **section 151(4) CAMA** however, there are certain restrictions that have been imposed by law on the transfer of shares in a private company. For such shares to be transferred, they must first be offered to shareholders of the company before they can be offered to third parties. This is known as the pre-emptive clause which is mandatory to be included in the Articles of a private company. The restrictions on a private company are not limited to the pre-emptive clause and transfer of shares could be further restricted as the shareholders deem necessary by including same in the Articles or Shareholders' Agreement.

WHAT IF THERE IS NO ONE TO BUY MY SHARES?

Where there are no persons willing to purchase shares from a prospective seller, it puts the seller in a difficult situation. This is more so considering that **section 160(1) CAMA** (subject to **section 160(2) CAMA** and provisions of the Articles) provides that a company may not purchase or otherwise acquire shares issued by it. A company can only purchase its own shares under the following conditions: settling a debt asserted by or against a company; eliminating fractional shares; fulfilling the terms of a non-assignable agreement under which the company has an obligation to purchase shares owned by an employee of the company; satisfying the claims of a dissenting shareholder; and complying with a court order.¹³

A shareholder who no longer wishes to be a member of a company may have no other option but to surrender the shares

back to the company that issued them even with no consideration from the company. Shares are surrendered by the shareholder issuing a letter stating that he wishes to relinquish his shares and once approved by the directors, same is perfected by requisite filings at the Corporate Affairs Commission (CAC). **Section 160(3) CAMA** also recognises surrender by way of gift, subject to the caveat that the company may not reduce or extinguish liability in respect of any amount unpaid thereon save by complying with provisions on reduction of share capital. This simply means that where a shareholder has partly paid for his shares and wishes to 'gift' same to the company, he will still be liable to the company in respect of the amounts on the unpaid shares he owns.

I HAVE GOTTEN THE SHARES, THEY ARE MINE AS LONG AS I CHOOSE, RIGHT?

It is possible for a shareholder to lose his shares by forfeiture. This could happen where the shareholder fails to make payment upon a call by the company.¹⁴ A call is a demand upon a company's shareholders to pay the value of shares held by them. When shares are issued, a specified sum may be paid on allotment and the balance paid subsequently when calls are made. Alternatively, the entire amount may be outstanding but payable upon a call being made by the company. Failure to do so, subject to the Articles of a company, can lead to a forfeiture of the relevant shares. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalments. The joint holders of a share shall be jointly and severally liable to pay all calls in respect of the share. Forfeited shares can subsequently be re-issued by the company.¹⁵

In making a call, the board of directors must observe the provisions of the Articles (if it specifies the procedure,

amount or number of calls) otherwise the call will be void and the shareholders will not be bound to pay. A shareholder can resist forfeiture of his shares on the premise that the conditions precedent to forfeiture were not strictly complied with. In *Johnson v Lyttle's Iron Agency*¹⁶ the Court held that since a notice claimed interest from the date of the call, instead of from the day fixed for payment, as provided in the company's Articles, it was a bad notice. The forfeiture was deemed invalid and an injunction was granted restraining the company from proceeding further under the resolution of forfeiture.

A call may also be made by the liquidator in the course of winding up of a company. In *NBCI v. Balogun*,¹⁷ a company purportedly made a call on shares to the applicants /shareholders without giving the 21 days' notice required under its articles. The company went into liquidation and the liquidators sent letters to applicants demanding payment of the call. It was held on appeal that the call made by the company was invalid because proper notice had not been given and that the presence of the representatives of the applicants as directors at the meeting where the call was made did not constitute statutory notice to the applicants. A person, whose shares have been forfeited, ceases to be a member of the company but he shall remain liable to pay to the company all sums which at the date of forfeiture were payable by him to the company in respect of the shares.

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¹³Section 151(2) CAMA

¹⁴Section 140(1) CAMA

¹⁵Section 164 CAMA states that: "where shares in a company are redeemed, purchased, acquired or forfeited, such shares shall, unless the company by alteration of its articles of association cancels the shares, be available for re-issue by the company."

¹⁶(1877) 5 Ch D 689

¹⁷(1989) 2 GRBL No. 6 at 46