



In our legal alert dated **18th May 2021**, we discussed the law regarding transfer of shares by transmission. (Link: <https://wamaeallen.com/the-law-regarding-transfer-of-shares-by-transmission/>)

In the aforementioned article, we stated that shares can be held individually or jointly and that shares are personal property which forms part of the estate of the shareholder upon their demise. Shares of a deceased shareholder can be transferred by transmission depending on whether the shares were held jointly or individually.

To explain our point and with due consideration of the provisions outlined in **Section 326 of the Companies Act**, which stipulates the transferability of shares and any other interests held by a company member in accordance with the company's articles, we used the example of transmission of shares in a private company limited, as prescribed by regulation **8(2) of the Companies (General) Regulations, 2015**.

Furthermore, we referred to the **Article 65 and 67 of the Model Articles of a Private Company**, to explain transmission of shares- in the context of a private company limited by shares. We concluded our article with a list of documents required for transmission of shares.

In today's article, we are going to elaborate on the law regarding transmission of shares in a public company.

**Regulation 8 of the Companies (General) Regulations, 2015** provides for the model articles applicable to **Public Company, Private Company and a Company Limited by Guarantee** as follows:

#### **8. Model articles for companies**

- i. *The articles prescribed by the Third Schedule are model articles that are applicable to a public company.*
- ii. *The articles prescribed by the Fourth Schedule are model articles that are applicable to a private company.*
- iii. *The articles prescribed by the Fifth Schedule are model articles that are applicable to a company limited by guarantee.*

The process of transmission of shares in a public company is provided for in the **Third Schedule**.

**Article 83-86 of the Model Articles for Public Company** provide for transmission of shares in public companies limited by shares.

We note that the relevant provisions in the model articles of public COMPANIES limited by shares (**Articles 83 to 86**) and private companies (**Articles 65 to 68**) with respect to transmission of shares have a striking resemblance. The process is quite similar as elaborated in our legal alert dated **18th May 2021** as hereabove stated.

It is important to note that the only distinction is **Article 83 (2) of the Public Companies Model Articles** which states as hereunder:

#### **83. Transmission of shares**

*(2) Nothing in these articles releases the estate of a deceased member from any liability in respect of a share that had been jointly held by the deceased member with other persons.*

The upshot of above statement is that that, even though a person has passed away, their estate remains responsible for any legal obligations or debts associated with a shared ownership (jointly held share). In other words, the estate of the deceased individual cannot escape or be released from the legal responsibilities related to jointly held shares.

#### **Conclusion**

From the foregoing, as part of due diligence, it is always prudent as a prospective purchaser of shares in a private/public company, to take note of the articles of association of the subject company and its provisions as regards the process of transmission of shares upon demise of the shareholder.

Our exploration of the law concerning the transmission of shares in both private and public companies underscores the significance of understanding the provisions within the respective model articles. As elucidated in our legal alert of 18th May, 2021, the transmission process shares commonalities across public and private companies, particularly in **Articles 65 to 68** for private companies and **Articles 83 to 86** for public companies. However, a noteworthy distinction emerges in **Articles 83(2) of the Public Companies Model Articles**, emphasizing that the estate of a deceased member remains liable for any legal obligations tied to jointly held shares, even posthumously.

This legal caveat, absent in private company regulations, underscores the enduring responsibilities of the deceased shareholder's estate, ensuring that jointly held shares do not grant an escape from the associated legal duties.

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