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ADJUDICATION OF SHARE TRANSFERS

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1. WHAT IS A SHARE TRANSFER?

Shares are Securities which represent ownership / value of ownership in a company by the shareholder.

Shares will include debentures (*Property Transfer Tax Act, s.2*).

Shares may be sold by the shareholder to another party. Shares, however, may be transferred other than by sale from one party to another.

The Financial Services Commission adjudicates the transfer of shares, other than by sale, under the *Property Transfer Tax Act, Cap 84A*:

Testamentary Disposition. **Ref** (*Property Transfer Tax Act, Cap 84A, section 6 (1B)*)

Shares held in trust. **Ref** (*Property Transfer Tax Act, Cap 84A, section 6(1B) or (1C)(a)or(b)*);

2. WHAT IS ADJUDICATION?

Adjudication is where the Financial Services Commission, on an intention to transfer shares, confirms that a transfer of shares is exempt from the payment of property transfer tax. (*Property transfer Tax Act, Cap 84A*)

Adjudication – judgement, decision, ruling, determination; based on evidence provided.

3. WHY ARE SHARE TRANSFERS ADJUDICATED?

Under the laws of Barbados, the transfer of shares may be liable to the payment of Property Transfer Tax and in the case of a company which is not listed on the Barbados Stock Exchange, shall be liable to Stamp Duty.

The adjudication of share transfers by the Commission will confirm the transfer of those shares as exempt from the payment of such taxes.

Section 5 of the Property Transfer Tax Act provides as to the rate of tax payable under that Act.

Section 6 of the Property Transfer Tax Act provides as to what is exempt from tax.

4. WHO ADJUDICATES SHARE TRANSFERS?

The Financial Services Commission is responsible for the adjudication of share transfers:
An Officer of the Commission, assigned to carry out this function.

The **Property Transfer Tax Act, Cap 84A, section 3(2)** states

“Notwithstanding subsection (1), the administration of this Act with respect to the transfer of securities of public companies shall be vested in the Securities Commission”

On April 1st, 2011, the Financial Services Commission assumed the function of the Securities Commission which was dissolved on March 31st, 2011.

5. WHAT IS A PUBLIC COMPANY?

The Securities Act, 2001 –13 of Barbados, refers to a “public company” as, “a company any of whose issued securities are or were part of a distribution, or an offer, to the public”.

6. STATUTES AND RULES GOVERNING THE TRANSFER OF SHARES.

The transfer of shares is regulated by

- (a) Laws of Barbados and
- (b) the requirements of the Barbados Stock Exchange Inc. :
the Stock Exchange being the Registrar and transfer agent.

Property Transfer Tax Act, Cap. 84A

Securities Act, 2001-13

Stamp Duty Act, Cap. 91

7. DOCUMENTS REQUIRED (See next page)

THE ESTATE WILL PROVIDE: STANDARD DOCUMENTS

- **INSTRUMENT OF SHARE TRANSFER** - This will include:

the name of the company in which the shares are held;

Names and addresses of the former shareholder (deceased) and the transferee;

If applicable, a clause which states that the shareholder at the date of death was not resident in Barbados for the purposes of the *Exchange Control Act, Chapter 71* of the laws of Barbados;

If applicable, a clause which states that the transferee is not resident in Barbados for the purposes of the *Exchange Control Act, Chapter 71* of the laws of Barbados.

If the deceased person had not been, or the transferee is not resident in Barbados, permission to transfer shares must be sought from the Exchange Control Authority of the Central Bank of Barbados.

The estate's representative may submit a letter seeking approval.

The Authority may place its stamp of approval if permission is granted.

Please note that where shares are to be transferred to multiple beneficiaries of an estate, **a separate instrument of share transfer is required for each** beneficiary

- **COVER LETTER** -

Stating that you are acting on behalf of the estate or its representatives;

Requesting that the Financial Services Commission adjudicates the matter;

outlining the circumstances under which the request for adjudication is being made and including contact name and number of estate's representative and list of documentation submitted.

- **CERTIFIED TRUE COPY OF WILL** - Shares are disposed of in accordance with the instructions of the Will.
- **LETTERS TESTAMENTARY & ORDER OF PROBATE OR LETTERS OF ADMINISTRATION**
- **DEATH CERTIFICATE**
- **A STATEMENT OF ACCOUNT** from the Barbados Central Securities Depository Inc. which is a subsidiary of the Barbados Stock Exchange Inc.
- **BARBADOS REVENUE AUTHORITY CERTIFICATE OF CLEARANCE.**

Please note: if there is no Will (intestate), Letters of Administration is submitted

OTHER DOCUMENTATION MAY BE REQUIRED DEPENDING ON THE CIRCUMSTANCES INVOLVED

Examples of other documentation which have been presented depending on the circumstances involved

- **Central Bank of Barbados', Exchange Control Authority, Letter of Approval**
- **Marriage Certificate / Affidavit, as proof of name change**
- **Affidavit as proof of one and the same person**
- **Power of Attorney**
- **Proof of Ownership of a company**

In the case of a minor, shares are issued to the executor or administrator of the estate, to be held in trust until the minor reaches the age of eighteen.

At that time, the shares are transferred to the beneficiary who was the minor.

- **His/ her National Identification card, Birth Certificate and Letters Testamentary must be submitted.**

NB: The Property Transfer Tax Act, Cap 84A, ss.14 (2) provides

“Every company shall furnish the Registrar with such particulars of any instrument of transfer of any shares in the company as the Registrar may require for the purposes of this Act.”

8. THE PROCESSING OF SHARE TRANSFER ADJUDICATIONS

- The estate / representative will refer to the Barbados Stock Exchange for initial guidance.
- The Instrument of share transfer is prepared by the estate's representative who usually is an Attorney.
- All required documentation is submitted to the Financial Services Commission.
- The Commission will review the submitted documents and determine the matter accordingly.
- If approved, the Commission shall apply its stamp in accordance with the legislation.

9. UNLISTED COMPANIES

Are entities which are not listed on the Barbados Stock Exchange but may offer securities, including shares, to the public.

Such entities are referred to as public companies (see pages 2 and 3) and should be registered with the Financial Services Commission, as Reporting Issuers of shares.

Ref (*Securities Act, 2001-13, section 58 (1), (2), (6)*)

The Financial Services Commission may adjudicate the transfer of shares of such companies, under the Property Transfer Tax Act.

Ref (*Property Transfer Tax Act, Cap 84A, Section 3(2)*)

Shares of unlisted companies are **not** exempt from the payment of Stamp Duty under ***General Exemptions of the Stamp Duty Act, Cap 91***.

For adjudication of stamp duty, please refer to the Barbados Stock Exchange Inc.

Ref (*Stamp Duty Act, Cap 91*).