

COMPANY MANAGEMENT -II

DR.RUPAL PATEL

ASSOCIATE PROFESSOR

BJVM

Unit -1 Membership of company

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Who is a Member ?

The Companies Act defines a ' member ' as a person who has subscribed to the Memorandum of Association of a company and every other person who has agreed in writing to become a member . Sec . 41 of the Act provides as follows :

(a) " The subscribers of the Memorandum of a company shall be deemed to have agreed to become members of the company , and on its registration shall be entered as members in its Register of Members " The subscribers are the persons who have signed the Memorandum (signatories) and have agreed to purchase the number of shares written against their names . They automatically become members of the company as soon as it is registered and their names are entered as members in the Register , whether shares have been allotted to them are not .

(b) " Every other person who agrees in writing to become a member of a company and whose name is entered in its Register of Members , shall be a member . " That means , in the case of persons other than the subscribers to the Memorandum , they can become members only when (i) they have agreed in writing to become a member and have authorised the company to place their names in the Register of Members , and (ii) their names have actually been entered in the Register .

Shareholder vs. Member

Although , for all practical purposes , the words ' shareholder ' and ' member ' are used in the same sense , legally speaking , there is a difference between the two . A ' shareholder ' is a person who holds shares in the company , whereas a ' member ' is a person whose name appears in the Register of Members A person does not become a member of a company merely by holding shares in that company . case of persons who have subscribed to the Memorandum a shareholder in order to be a member of the company Except in the of Association , must agree in writing to be a member and his name must appear in the Register of Members .

Normally , all shareholders become members of the company . The Share Application form usually contains the words : " I authorise you to place my name on the Register of Members in respect of the shares so allotted . " By signing the share application form , the share . holder automatically gives his consent to become a member and becomes one as soon as his name is entered in the Register . However , there may be instances when a person may be holding shares of a company and yet may not be considered a member , and a person may For instance , a transferee be a member and yet not be a shareholder . or the legal representative of a deceased shareholder becomes a share holder as soon as the legal process of transfer or transmission is complete , but he will not be considered a member until his name is entered in the Register of Members . Similarly , a holder of a share warrant is a ' shareholder ' , but not a member as his name is removed from the Register as soon as the share warrant is issued . On the other hand , a member who has transferred his shares (transferor) to another person may continue to be treated as a member so long as the transfer is not registered and the name of the transferee substituted in his place , although he ceases to be a shareholder after the transfer . Similarly , a deceased person remains a member so long as his name appears on the Register of Members , although he ceases to be a shareholder .

Who can be a Member ?

The Companies Act does not prescribe any qualifications or disqualifications for the membership of a company . Subject to the Memorandum and Articles of the company , all persons who are competent to enter into a contract i.e. , those who are not minors , are of sound mind and not disqualified by any law) can become members of a company . Of course . the company itself cannot become its own member . Some special points to be noted with regard to the different categories of persons who can be members are enumerated below :

(i) Company . A company can become a member of another company if it is so authorised by its Memorandum or Articles , or if it acquires the shares of another company in payment of a debt by way of compromise or arrangement . However , a company cannot buy its own shares and become its own member , even if it is expressly authorised by its Memorandum . * Also , under Sec . 42 of the Companies Act , a subsidiary company cannot buy shares and become member of its holding company , except under certain circumstances .

(ii) Hindu undivided family . A Hindu undivided family as such cannot become a member of a company . However , it can purchase shares in the company through its ' Karta ' who can be a member .

(iii) Partnership firm . A partnership firm cannot become a member of a company in its firm name , as it is not a legal ' person ' having separate entity from its partners . However , the firm may hold shares in a company as part of the partnership property , in which case partners individually become members as joint holders of the shares so held .

(iv) Foreigners . A foreign national can buy the shares of a company and become its member . However , in times of war with his country , he becomes an alien enemy and his power of voting and right to receive notice are suspended .

(v) Minor . A minor cannot be a member of a company as , under Indian Law , a minor is wholly incompetent to enter into a contract , and so cannot enter into an agreement to purchase the shares of a company . A guardian can purchase shares in a company on behalf of a minor , but in that case the company will have to register his name as member without

indicating that he is acting on behalf of the minor . The guardian cannot become a member as a trustee as , under Sec . 153 , no notice of any trust , implied or constructive , can be entered in the Register of Members .

Note . However , an the Appellate case the Company Law Board has now decided that an agreement in writing , for a minor to become member of a company , may be signed on his / her behalf by the legal guardian . Where the shares are fully paid , the registration of transfer of shares in the name of the minor , acting through his / her legal guardian , cannot be refused on the ground of the transferee being a minor . It has also been held in another case that , there is no bar to a minor acquiring or holding shares in a company where these are fully paid up and subject to no obligation .

If the directors of a company , being ignorant of the fact that an applicant for shares is a minor , allots shares to him and enters his name in the Register of Members , the company can repudiate the allotment and remove the minor's name from the Register of Members where that fact comes to its knowledge . The minor may also repudiate the allotment of shares to him any time during his minority . In either case , the company must refund all moneys received from the minor in the respect of the allotted shares . If neither party repudiates allotment , the minor's name continues to be on the Register of Members but the minor does not incur any liability on the shares during the minority .

A company may also refuse to register transfer of shares in favour a minor if it knows about the minority of the transferee . company may register transfer or transmission of shares in favour of a minor if the shares are fully paid and if the Articles do not specifically provide that shares cannot be registered in the name of a minor . If a company had registered transfer of shares in favour of a minor in ignorance of the fact of minority , the company may repudiate the transfer and retain the name of the transferor on the register when it learns of the minority . If shares are transferred to a minor , the transferor remains liable for all future calls so long as these are held by the minor , even if the transferer had been ignorant of the minority at the time of the transfer .

(vi) Insolvent . Unless otherwise provided in the Articles , an insolvent does not cease to be a member as soon as he becomes insolvent . An insolvent may remain member of a company as long as his name is on the Register , and he is entitled to vote and exercise his other rights although the beneficial interests in the shares will vest in the Official Assignee or Receiver on his becoming insolvent .

(vii) Married woman . A married woman can be a member in so far as she is competent to enter into a contract in respect of her own property . This is valid irrespective of the religion to which she may belong .

(viii) Trustee . A trustee cannot become member of a company . Under Sec . 153 of the Companies Act , no notice of any trust , express or implied , or constructive , can be entered on the Register of Members .

(ix) Registered society . A registered society (i.e. , a society registered under the Registration of Societies Act , 1960) can hold shares in a company and become a member in its own name , if it is so authorised in its Memorandum or Articles .

How is Membership Acquired ?

The membership of a company may be acquired by a person in any of the following ways :

(i) By subscribing to the Memorandum . A signatory to the Memorandum , i.e .. a person who has subscribed to the Memorandum of a company , becomes a member by virtue of his signing the Memorandum . Sec . 41 of the Act provides that such a person shall be deemed to have agreed to become a member of the company and , on its registration , shall be entered as a member in the Register of Members . In the case of signatories to the Memorandum , allotment of shares is not necessary for becoming a member .

(ii) By allotment of shares . Persons other than the signatories to the Memorandum can become members of a company by applying for shares and securing allotment thereof .

(iii) As a nominee on renunciation of allotment . Rights shares , i.e .. shares issued by a company after two years from the date of incorporation or one year from the date of first allotment of shares , are first offered to the existing equity shareholders . The equity shareholders have the option to buy the shares or to renounce them in favour of some other person . The nominees , who secure allotment . shares on renunciation by the equity shareholders , also become member as soon as their names are entered in the Register of Members .

(iv) By transfer of shares . A person can also become a member as transferee of shares on the execution of a transfer deed by the existing shareholder and getting his name entered in the Register of Members .

(v) By transmission . A person may also become a member by virtue of transmission of shares in his favour on the death , insolvency or lunacy of an existing shareholder . It is the process by which shares are automatically transferred , by operation of law , to the legal successor of the deceased , insolvent or lunatic .

(vi) By agreeing to take qualification shares Under Sec . 266 of the Companies Act , persons who have been appointed directors of a company in its Articles or named or proposed as such in the prospectus must sign and file with the Registrar a written consent to act as such and an undertaking to take and pay for the qualification shares . Such persons are considered in the Act (Sec . 266/2) as being in the same position as the signatories to the Memorandum and , thus become members of the company on its registration .

(vii) On the surrender of share warrant . When a shareholder is issued a share warrant , his name is struck off the Register of Members and he ceases to be a member of the company . He can again become a member by surrendering the share warrant for cancellation and having his name re - entered as a member in the Register of Members .

(viii) By estoppel . A person becomes a member by estoppel , if his name has been wrongly placed on the Register of Members and he knows of it and allows it to continue , or holds himself out as a member or allows others to believe that he is a member by attending meetings of the company , accepting dividends , etc. He is then deemed to be a member and is estopped from denying that he is a member .

Termination of Membership

The membership of a person in a company may come to an end in any one or more of the following ways :

(i) By the execution of a transfer deed in favour of another person (i.e. , by transfer of shares) and registration of the transfer in the books of the company .

(ii) On forfeiture of the shares by the company for non - payment of calls .

(iii) On the valid surrender of the shares liable to be forfeited by the member himself

(iv) On the exercise by the company of its right of lien on the shares , i.e. , when the shares of a member are sold by the company in discharge of his debts to the company by giving 14 days ' notice .

(v) By making a gift of the shares and thereby transferring ownership of the shares to another person .

(vi) On the redemption of the shares by the company (in the case of redeemable preference shares)

(vii) on the valid transmission of the shares to legal heir or representative on the death , insolvency or lunacy of the member and registration of the same in the books of the company .

(viii) On the repudiation of membership by the shareholder (except in the case of promoters and signatories to the Memorandum) on account of any misrepresentation in the prospectus or on the ground of irregular allotment .

(ix) On the conversion of a share certificate into share warrant .

(x) On the removal of one's name from the Register of Members .

(xi) On the liquidation of the company .

Rights and Liabilities of Members

Every member of a company enjoys certain rights under the Act in relation to the company . Some of the more important rights are enumerated below :

1. He has the right to receive notices of , attend and vote in the general meetings of the company and also the meetings of the class of shareholders . [Secs . 165 , 166 , 169 to 173 , 177]

2. He is entitled to receive copies of the annual report of directors , annual statement of accounts and auditors ' report (Sec . 219) .

3. He has the right to appoint proxies and exercise his voting right through the proxy . [Sec . 176]

4. He has a right to get copies of the Memorandum , Articles , resolutions and certain other documents . [Sec . 39]

5. He can inspect the Statutory Books and Minutes Book of general meetings of the company free of cost at the head office and take extracts from them . [Sec . 163]

6. He is entitled to receive share certificate and has a right to transfer his shares subject to the provisions of the Articles .

7. He has a right to appeal to the Company Law Board against the refusal of [Secs . 82 , 84 , 108 , 113] the company to register transfer of shares . (Sec . 111]

8. He has a right to apply to the Company Law Board for rectification of the Register of Members . [Sec . 111]

9. He has the right to have the first preference to subscribe to any additional issue of shares by the company and of renouncing them in favour of another person (Sec . 81) .

10 . He has a right to demand the convening of an extraordinary general meeting if there are reasons for the same (Sec . 169) .

11. He has a right to receive dividends , when declared by the directors , and bonus shares issued by the company .

12 . He has a right to petition to the Court for the winding up of the company under certain circumstances (Sec . 439) .

13. He has a right to inspect the statutory books , registers and minute books of general meetings of the company free of cost and take extracts therefrom . [Secs . 163 , 196 , 301 , 304 , 307]

14. He has a right to apply to the Company Law Board for calling an annual general meeting or extra - ordinary general meeting under certain' circumstances . [Secs . 167 , 186]

15. He has a right to apply to the Company Law Board for ordering an investigation into the affairs of the company . [Sec . 235] .

The liabilities of members under the Companies Act may be enumerated as follows

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1. Every member is liable to abide by the provisions of the Memorandum and Articles of Association of the company .

2. He is liable to pay the calls on his shares or the amount guaranteed by him , as and when called upon to do so .

3. He is also liable , as a contributory , to contribute the outstanding amount on the shares in the event of winding up of the company .

4. The liability of every shareholder of a company limited by shares is limited to the extent of the unpaid amount on the shares held by him . His liability ends if he has paid the full value of the shares held by him . But if , at any time , the number of members is reduced below seven (in the case of a public company) and below two (in the case of a private company) and the company carries on business for more than six months after the number of members is so reduced , then every shareholder is separately liable to pay the debts of the company contracted during that period (Sec . 45) .

5. A member , who ceased to be a member of a company within one year prior to the commencement of its winding up , is still held liable to pay the amount , if any , unpaid on the shares held by him before he ceased to be a member .

6. A person's liability as member continues even after transfer of his shares , till the transfer is registered and his name is replaced in the register of members .

7. A member is also liable under civil and criminal law for any misrepresentation , fraud , etc. detected during his membership of the company and for which he may be found guilty in the matter of acquisition of shares in the company and / or registration of their transfer or transmission in his name .

Joint Membership

The shares of a company may be held jointly by two or more persons . The rights and obligations of joint shareholders are generally regulated by the Articles of Association of the company . If the Articles of the company are silent on this point , the relevant Regulations of Table ' A ' shall apply automatically .

In most cases , joint holding by more than four persons is not allowed . Unless the Articles provide otherwise , the company is not bound to issue more than one share certificate to the joint holders . Delivery of the share certificate to one of the joint holders shall be deemed to be delivery to all the joint holders . All communications are addressed and refunds made to the person whose name appears first in the Register of Members . All notices , circulars and other documents are also sent to the joint holder whose name appears first in the Register . Any dividend , interest or other moneys payable in cash in respect of the shares may be paid by cheque or warrant sent to the registered address of the joint holder whose name appears first in the: Register of Members or to such person an address as directed by the joint holders in writing . Receipts for such moneys may be given by any one of the joint holders of shares . The senior joint holder , i.e. , the joint holder whose name appears first in the Register , has the right to attend and vote at meetings to the exclusion of other joint holders . However , other joint holders may be allowed to attend meetings and vote in meetings by rotation . The joint holders of shares (joint members) are jointly and severally liable to pay calls on the shares held jointly . No transfer of jointly held shares shall be registered by the company unless the instrument of transfer is executed by all the joint holders . On the death of a joint shareholder , only the surviving joint holders are recognised by the company as having any title to the interest of the deceased joint holder . However , the estate of the deceased joint holder shall remain liable for any liability in respect of shares jointly held .

Register of Members

Contents of the Register .Section 150 of the Companies Act makes it obligatory on every company to maintain a Register of Members which shall contain the following particulars :

(a) the name and address , and the occupation , if any , of each member ;

(b) in the case of a company having a share capital , the number of shares held by each member , the distinctive numbers of the shares and the amount paid or agreed to be considered as paid on the shares ;

(c) the date at which each person was entered in the register as a member ; and

(d) the date at which any person ceased to be a member

If the shares have been converted by the company into ' stock ' and the notice of such conversion has been given to the Registrar the Register of Members must show the amount of ' stock ' held by each member in place of number of shares held by him previously .

If the company makes default in complying with the provisions of this Section , the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs . 50 for every day during which the default continues .

Trusts not to be entered on Register . Section 153 of the Companies Act lays down that ' no notice of any trust , express , implied or constructive , shall be entered on the Register of Members or debenture holders ' . Sec . 153 - A empowers the Central Government to appoint a person as public trustee " to discharge the functions of a trustee under this Act . Sec . 153 - B requires the person , holding shares or debentures of a company as a trustee , to make a declaration to that effect to the ' public trustee ' and send a copy of the declaration to the company concerned within 21 days . Failure to make such a declaration is punishable with fine . Under Sec . 187 - B , the rights and powers exercisable by a trustee , holding shares in trust , including powers of voting have been restricted and made exercisable by the public trustee . Thus a person holding shares in trust can neither be entered in the register as a member , nor can he exercise voting and other rights as a member .

Benami holdings to be noted on Register . Where the registered holder of shares . i ... the person whose name is entered in the register of members as the holder , does not hold the beneficial interest in such shares it is known as Benami holding . The benamidar (the registered holder) remains the ostensible owner of the shares , but the beneficial interest in such shares is enjoyed by the beneficial owner . In order to restrict misuse of this practice for tax evasion and other purposes , the Companies (Amendment) Act , 1974 , has introduced two new Sections 187 - C and 187 - D .

Sec . 187 - C (1) requires every benami holder to make , within such time and in such form as may be prescribed , a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in the shares held in his name . Sub section 2 requires the beneficial owner (the person who holds a beneficial interest) to make a declaration to the company , within thirty days of the commencement of the 1974 Act or of his becoming such beneficial owner , specifying the nature of his interest , particulars of the person in whose name the shares stand registered and other prescribed particulars . If there is a change in the beneficial interest , that also must be intimated to the company by a declaration within thirty days .

Under sub - section 3 , the company , on receipt of the declaration , shall make a note of such declaration in the Register of Members and shall file within thirty days a return to the Registrar in this regard .

Failure to make the declarations required under this Section will make person concerned liable to fine . Failure of the company to comply with the provisions of this Section will make the company and every officer of the company in default liable to fine which may extend to Rs . 100 for every day during which the default continues . Sec . 187 - D empowers

the Central Government to appoint one or more inspectors to investigate and report regarding the compliance of Sec . 187 - C .

Form of the Register . Although the Companies Act does not prescribe any form for the Register of Members , the Appendix annexed to the Companies (Issue of Share Certificates) Rules . 1960 , sets out a form for the Register . However , the Rules permit companies to maintain the Register in that form or in a form as near thereto as possible . Usually the Register is maintained in such a form as to serve the purpose of a Share Ledger . (A specimen form of the Register is given on page

Small companies usually maintain the Register as a bound book , the names being arranged in alphabetical order . In large companies , the Register is maintained in the form of a loose - leaf book , the leaves being arranged in alphabetical order with a locking device to prevent any unauthorised extraction or insertion of leaves . Where shares of different classes are issued , separate Registers of Members are maintained or loose leaves of different colours may be maintained in the same loose - leaf book to keep record of members of different classes

Index of Members . The Register of Members is written up from the Application and Allotment Sheets / Lists which contain all the particulars . Where the number of members exceeds fifty , an Index of Members must be maintained to facilitate quick reference , unless the Register is already in a form as to constitute an index . The Index of Members must be maintained at the same place as the Register of Members , i.e. , the registered office of the company , and must be kept up to date . Any alteration in the Register of Members must be incorporated in the Index within 14 days after the date on which the alteration is made in the Register (Sec . 151) .

Maintenance and Inspection of Register . The Register of Members from the date of the registration of the company and the Index of Members must be kept at the registered office of the company . However , these may be kept at any other place with the city , town or village in which the registered office is situated , if such other place has been approved for this purpose by special resolution passed by the company in general meeting , and an advance copy of the proposed resolution has been given to the Registrar (Sec . 163/1) .

Except when it is closed under the provisions of the Companies Act , the Register of Members and Index must be open to inspection of any member , without fee , and of any other person , on payment of a fee of Re . 1 for each inspection , for at least two hours . Any such member or person may also make extracts from the Register or Index without fee or additional fee , as the case may be . The company shall supply a copy of the Register or Index or any part thereof to any person requiring it on payment of such sum as may be prescribed for every one hundred words or part thereof . Any refusal or default in complying with these provisions will make company and every officer of the company in default liable to fine extending to Rs . 50 for every day the refusal or default continues (Sec . 163/2 to 5) .

Closure of the Register . A company may close the Register of Members after giving previous notice of not less than seven days by advertisement in some newspaper circulating in the district in which the registered office of the company is situated . The register may be closed for any period or periods not exceeding an aggregate of 45 days in a year , but not exceeding 30 days at any one time . If default is made in complying with these provisions , the company

and every officer of the company who is in default shall be punishable with fine which may extend to Rs . 500 for every day during which the default continues (Sec . 154) .

The Register of Members has to be closed before general meetings of shareholders or when interim dividend is to be declared or a call is to be made . During the period of closure of the register , no transfer of shares or change of membership can take place , which enables the company to determine its membership for the purpose of sending notices of the meeting or dividend warrants or call letters .

Rectification of Register . Previously , the provisions regarding rectification of Register of Members were laid down in Sections 155 and 156 of the Companies Act . Under the Companies (Amendment) Act of 1988 , both these Sections have been omitted and the provisions regarding rectification of the register of members have been included in the entirely re - written Sec . 111 of the Act . Under this Section , the power to rectify the register has been vested in the Company Law Board instead of the Court (as previously) . According to Sec . 111 of the Act , application for rectification of the Register of Members may be made to the Company Law Board by any aggrieved person or any member of the company , if the name of any person

(a) is entered in the register without sufficient cause ;

(b) after having been entered in the register , is omitted therefrom without sufficient cause ; or

(c) default is made , or unnecessary delay takes place in entering on the register of the fact of any person having become , or ceased to be , a member , including refusal to register transfer of shares . On receipt of the application , the Company Law Board may , after hearing the parties , either dismiss the appeal or reject the application , or by an order direct the rectification of the register and also direct the company to pay damages to the aggrieved party . The Company Law Board has also discretionary powers to make interim orders or to order an injunction and also to make orders as to cost . It can also decide on any question relating to title of the shares or other relevant questions .

Certain provisions of Sec . 111 are also applicable in relation to the rectification of the register of debenture holders . Any default by a company in complying with the orders of the Company Law Board will make the company , and every officer of the company in default , liable to fine .

Foreign Register .

If so authorised by its Articles , a company which has a share capital may keep in any State or country outside India a branch register of members resident in that State or country . This is called a ' Foreign Register ' . Within 30 days from the date of opening such a Register , the company must file with the Registrar a notice of the situation of the office where such register is kept . If there is any change in the situation of such office or in the event of its discontinuance , a notice of such change or discontinuance must be filed with the Registrar within 30 days . Failure of a company to comply with these provisions will make the company and every officer of the company , who is in default , liable to fine which may extend to Rs . 50 for every day during which the default continues (Sec . 157) .

A foreign register ' shall be deemed to be a part of the company's principal register of members . It must be kept , remain for inspection and closed in the same manner as the principal register . except that the advertisement before closing the register shall be given in a newspaper circulating in the district where the foreign register is kept . The provisions and restrictions regarding taking of extracts from foreign register and supplying copies thereof are also the same as in the case of principal register . A copy of every entry in the foreign register must be communicated to the registered office of the company as soon as it is made , and which shall be entered in a duplicate copy of the foreigner register maintained at the registered office . The duplicate foreign register shall be deemed to be a part of the principal register . If the keeping of any foreign register is discontinued , all entries made in that register must be transferred to some other foreign register kept in the same part of the world or to the principal register . Subject to the provisions in this Section regarding duplicate registers , shares registered in a foreign register must be distinguished from those registered in the principal register or any other foreign register , and transactions relating to any of those shares must not be registered in any other register during the continuance of that registration (Sec . 158) .

If the Central Government so directs , the decision of any competent Court in the State or country where the foreign register is kept , with regard to rectification of that register , shall have the same force and effect as if it were the decision of a competent Court in India . The Central Government may also direct that this provision will cease to apply . [Sec . 158]

Subject to the provisions of the Companies Act , a company may also include regulations in regard to foreign register in its Articles of Association . If default is made in sending to the registered office a copy of every entry made in the foreign register , and also in maintaining a duplicate foreign register at the registered office , the company and every officer thereof will become liable to fine . [Sec . 158]