

Ch. 12 Membership

Introduction

The terms “members” and “shareholders” are usually used interchangeably. In general, every shareholder is a member and every member is a shareholder. However, there may be exceptions to this statement, e.g., a person may be a holder of share(s) by transfer but will not become its member until the transfer is registered in the books of the company in his favor and his name is entered in the register of members. Similarly, a member who has transferred his shares, though he does not hold any shares yet he continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company.

Herdilia Unimers Ltd. v. Renu Jain

It was held that the moment the shares were allotted and share certificate signed and the name entered in the register of members, the allottee became the member and shareholder, irrespective of whether the allottee received the shares or not.

Members

In the case of a company limited by shares, the shareholders, in general, are the members.

In a company limited by guarantee, the persons who are liable under the guarantee clause in its Memorandum of Association are members of the company.

In an unlimited company, those persons who are liable to contribute the sums necessary to discharge in full, the debts and liabilities of the company, in the event of its being wound-up, are members.

Definition of Member

According to Section 2(55) of the Companies Act, 2013:

- (1) The subscribers to the memorandum of a company who 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;
- (2) 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 of the company;
- (3) Every person holding shares of a company and whose name is entered as a beneficial owner in the records of a depository shall be deemed to be a member of the concerned company.

The two important elements, which must be present before a person can become member of a company, are as, (i) agreement to become a member; and (ii) entry of the name of the person so agreeing, in the register of members of the company. [**Balkrishan Gupta v. Swadeshi Polytex Ltd.**]

MODES OF ACQUIRING MEMBERSHIP

According to Section 2(55) of the Companies Act, 2013, a person may acquire the membership of a company:

- (a) by subscribing to the Memorandum of Association (deemed agreement); or
- (b) by agreeing in writing to become a member:
 - (i) by making an application to the company for allotment of shares; or
 - (ii) by executing an instrument of transfer of shares as transferee; or
 - (iii) by consenting to the transfer of share of a deceased member in his name; or
 - (iv) by acquiescence or estoppel.
- (c) by holding shares of a company and whose name is entered as beneficial owner in the records of a depository (Under the Depositories Act, 1996).

(a) Subscribers to the Memorandum

In the case of a subscriber, no application or allotment is necessary to become a member. By virtue of his subscribing to the memorandum, he is deemed to have agreed to become a member and he becomes ipso facto (as a result, therefore, hence, thus, in consequence, consequently) member on the incorporation of the company and is liable for the shares he has subscribed.

A subscriber to the memorandum cannot rescind the contract for the purchase of shares even on the ground of fraud by the promoters. [**Re. Metal Constituents Co.,**]

According to Section 10(2) of the Companies Act, 2013, all monies payable by any member to the company under the memorandum or articles shall be debt due from him to the company.

A subscriber to the memorandum must pay for his shares in cash even if the promoters have promised him the shares for services rendered in connection with the promotion of the company.

Again, he must take the shares directly from the company, and not through transfer from other member(s).

(b) Agreement in Writing

(i) By an application and allotment	A person who applies for shares becomes a member when shares are allotted to him, a notice of allotment is issued to him and his name is entered on the register of members.
(ii) By transfer of shares	A person can become a member by acquiring shares from an existing member and by having the transfer of shares registered in the books of the company, i.e. by getting his name entered in the register of members of the company.
(iii) By transmission of shares	A person may become a member of a company by operation of law i.e. if he succeeds to the estate of a deceased member. Membership by this method is a legal consequence. On the death of a member, the person who is entitled under the law to succeed to his estate, gets the right to have the shares transmitted and registered in his name in the company's register of members. No instrument of transfer is necessary in this case.

(iv) By acquiescence or estoppels	A person is deemed to be a member of a company if he allows his name, without sufficient cause, to be on the register of members of the company or otherwise holds himself out or allows himself to be held out as a member. In such a case, he is estopped from denying his membership.
(c) Holding Shares as Beneficial Owner in the Records of Depository.	
Every person holding shares of the company and whose name is entered as a beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.	

WHO MAY BECOME A MEMBER	
Subject to the Memorandum and Articles, any sui juris (a person who is competent to contract) except the company itself, can become a member of a company. The relevant points in this context are as:	
Company as a member of another company	A company is a legal person and so is competent to contract. Therefore, it can become a member of any other company. However, it must be authorized by its Memorandum of Association to invest in the shares of that company or any other company. Also a company cannot become a member of itself.
Limited Liability Partnership	LLP, being an incorporated body under the statute, can become a member of a company.
Section 8 company	A non-profit making company licensed under Section 8 of the Companies Act, 2013 can become a member of another company if it is authorized by its Memorandum of Association to invest into shares of the other company.
Foreigners	A foreigner may take shares in an Indian company and become a member subject to the provisions of the Foreign Exchange Management Act, 1999.
Minor as member	A member who is not sui juris e.g., a minor, is wholly incompetent to enter into a contract and as such cannot become a member of a company. An agreement in writing for a minor to become a member of the co. may be signed on behalf of the minor by his lawful guardian and the registration of transfer of shares in the name of the minor, especially where the shares are fully paid cannot be refused on the ground of the transferee being a minor [Miss Nandita Jain v. Benett Coleman and Co. Ltd.] If shares are transferred to a minor, the transferor will remain liable for all future calls on such shares so long as they are held by the minor even if the transferor was ignorant of his minority.
Insolvent as member	An insolvent may be a member of a company as long as he is on the register of members. He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee or Receiver. [Morgan v. Gray]

Persons taking shares in fictitious names	A person who takes shares in the name of a fictitious person, becomes liable as a member besides incurring criminal liability under Section 38 of the Act, wherein punishment is provided for commission of fraud.
Trade Union as member	A trade union registered under the Trade Union Act, can be registered as a member and can hold shares in a company in its own corporate name. [All India Bank Officers Confederation v. Dhanlakshmi Bank Ltd.]
Holder of Global Depository Receipts (GDRs)	A person is a member of the company, (i) who is a subscriber to the Memorandum or (ii) whose name has been entered in the register of members. Since, holder of Global Depository Receipts is neither the subscriber to the Memorandum nor a holder of the shares, his name cannot be entered in the Register of Members. Therefore, a holder of Global Depository Receipts cannot be called a member of the company. NOTE: When the holder of GDR redeems the same into underlying shares, he/she becomes the member.
Registration of Shares in the name of Public Office	The Companies Act, 2013 contains no provisions with regard to the registration of shares in the name of a public office. Shares cannot, therefore, be registered in the names of public offices like the Collector of Central Excise or the Commissioner of Income-tax etc.
Partnership firm as a member	A partnership firm is not a legal person and as such it cannot, in its own name, become a member of a company except in company registered u/s 8 of Companies Act, 2013.
Pawnee	A pawnee cannot be treated as the holder of the shares pledged in his favor, and the pawner continues to be a member and can exercise the rights of a member. [Balakrishna Gupta v. Swadeshi Polytex Ltd.]

CESSATION OF MEMBERSHIP

A person ceases to be a member of a company when his name is removed from its register of members, which may occur in any of the following situations.

- (a) He transfers his shares to another person, the transfer is registered by the company and his name is removed from the register of members;
- (b) His shares are forfeited;
- (c) His shares are sold by the company;
- (d) He dies; (his estate, however, remains liable for calls);
- (e) He is adjudged insolvent;
- (f) His redeemable preference shares are redeemed;
- (g) He rescinds the contract of membership on the ground of fraud or misrepresentation or a genuine mistake;
- (h) His shares are purchased either by another member or by the company itself under an order of the Tribunal under Section 242 of the Companies Act, 2013.

Though one ceases to be a member, he remains liable as a contributory and is also entitled to share in the surplus, if any.

Expulsion of a Member

Can a public limited company insert an article in its Articles of Association relating to expulsion of a member by the Board of Directors of the company where the directors were of the view that the activities or conduct of such a member was detrimental to the interests of the company?

The Department of Company Affairs (now MCA) has clarified that any assumption of the powers by the Board of Directors to expel a member by alteration of Articles of Association shall be illegal and void.

The Supreme Court in the case of **Bajaj Auto Ltd. v. N.K. Firodia** has laid down that any provision pertaining to the expulsion of a member by the management of a company which is against the law, will be illegal and ultra vires. Therefore, an assumption by the Board of directors of a company of any power to expel a member by amending its AoA is illegal and void.

Personation and Penalty

According to Section 57, if any person fraudulently personates as an owner of any security, and thereby obtains or attempts to obtain any such security or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

REGISTER OF MEMBERS

According to **Sec 88**,

- (1) Every company shall keep and maintain the following registers as may be prescribed, namely:
- (a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;
 - (b) register of debenture-holders; and
 - (c) register of any other security holders.
- (2) Every register maintained under sub-section (1) shall include an index of the names included therein.
- (3) The register and index of beneficial owners maintained by a depository.

If a company does not maintain a register of members as stated above, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, during which the failure continues.

Rule 3 of Companies (Management and Administration) Rules, 2014

Every company limited by shares shall from the date of its registration maintain a register of its members in **Form No. MGT-1**.

In the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.

Rule 5 of Companies (Management and Administration) Rules, 2014

(1) The entries in the registers maintained under section 88 shall be made within seven days after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures, etc.

(2) The registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorizing the keeping of the register at any other place where the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside.

(3) Consequent upon any forfeiture, buy-back, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission or by issue of duplicate or new share certificates entry shall be made within seven days after approval by the Board or committee, in the register of members.

(4) If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name, entries thereof explaining the change shall be made in the respective register.

Rule 8 of Companies (Management and Administration) Rules, 2014

The entries in the registers maintained under section 88 and index included therein shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

Rule 6 of Companies (Management and Administration) Rules, 2014

Every register maintained under section 88 shall include an index of the names entered in the respective registers and the index, so that records of member could easily be found.

Provided that the maintenance of index is not necessary in case the number of members is less than fifty.

Registers (including Register of members) and copies of Annual Return to be kept at the Registered office

A copy of the proposed special resolution in advance to be filed with the registrar, shall be filed with the Registrar, at least one day before the date of general meeting of the company in **Form No. MGT.14**.

Inspection of Registers- Rule 14 of Companies (Management and Administration) Rules, 2014

(1) The registers and their indices, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder during business hours without payment of any fees and by any other person on payment of such fees as may be specified in the articles of association of the company but not exceeding Rs. 50 for each inspection.

<p>(2) Any such member, debenture holder, security holder or any other person may require a copy of any such register or return on payment of such fee as may be specified in the articles of association of the company but not exceeding ten rupees for each page. Such copy or return shall be supplied within seven days of deposit of such fee.</p>	
<p>Consequences if inspection is refused</p>	<p>According to Section 94(4), if any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.</p>
<p>Register prima facie evidence</p>	<p>A register of members is prima facie evidence of the truth of its contents. Accordingly, if a person's name, to his knowledge, is there in the register of members of a company, he shall be deemed to be a member and onus lies on him to prove that he is not a member.</p>
<p>Re. M.F.R.D. Cruz, the plaintiff applied for 4,000 shares in a company but no allotment was made to him. Subsequently 4,000 shares were transferred to him without his request and his name was entered in the register of members. The plaintiff knew it but took no steps for rectification of the register of members. The company went into liquidation and he was held liable as a contributory. The Court held "when a person knows that his name is included in the register of shareholders and he stands by and allows his name to remain, he is holding out to the public that he is a shareholder and thereby he loses his right to have his name removed".</p>	
<p>Rectification of a Register of Members</p>	<p>Though the time limit for filing an application for rectification of register of members has not been specified in the Act, the provisions of Article 137 of the Limitation Act would apply and in consequence, the application for rectification must be made within three years from the date on which the right occurs [Anil Gupta v. Delhi Cloth & General Mills Co. Ltd.]</p>
<p>Foreign Register</p>	
<p>Section 88(4) of the Companies Act, 2013 empowers companies to keep foreign registers of members or debenture-holders, other security holders residing outside India.</p> <p>A company may, if so authorized by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register, called "foreign register" containing the names and particulars of the members, debenture-holders, other security holders' resident in that country (residing outside India).</p> <p>If a company does not maintain foreign register of members or debenture-holders or other security holders, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, during which the failure continues. [Section 88(5)]</p>	
<p>Rule 7 of Companies (Management and Administration) Rules, 2014</p>	
<p>(1) A company which has share capital or which has issued debentures or any other security may, if so authorized by its articles, keep in any country outside India, a part of the register of</p>	

members or of debenture holders or of any other security holders, resident in that country. (hereafter referred to as the "foreign register").

(2) The company shall, within thirty days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in **Form No.MGT.3** along with the fee where such register is kept.

(3) A foreign register shall be deemed to be part of the company's register (hereafter in this rule referred to as the "principal register") of members or of debenture holders or of any other security holders.

(4) The foreign register shall be maintained in the same format as the principal register.

(5) A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof, in the same manner, as is applicable to the principal register.

(6) If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.

(7) Entries in the foreign register maintained under sub-section (4) of section 88 shall be made simultaneously after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

Closing of Register of Members

According to Section 91 (1) A company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least 7 days or such lesser period as may be specified by Securities and Exchange Board for listed companies.

If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided above, the company and every officer of the company who is in default shall be liable to a penalty of 5000 rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

RIGHTS OF MEMBERS

When once a person becomes a member he is entitled to exercise all the rights of a member until he ceases to be a member.

So long a person's name stands registered in the books as a member, even if he has sold the share and has given the share certificates and the blank transfer deed duly signed, he alone is entitled to exercise the rights of membership. [**Balakrishna Gupta & Others v. Swadeshi Polytext Ltd.**] & [**Life Insurance Corporation of India vs. Escorts Ltd.**]

Individual Rights

Members of a company enjoy certain rights in their individual capacity. These rights can be categorized as: -	
Right to receive copies of certain documents	(i) Abridged financial statement and auditor's report; (ii) (Report of the Cost Auditor (iii) Notices of the general meetings of the company
Right to inspect statutory registers/returns and get copies thereof	(i) Debenture trust deed (Section 71); (ii) Register of Charges and instrument of charges (Section 85 & 87); (iii) Copies of contract of employment with Managing or Whole-time directors); (iv) Shareholders' Minutes Book (Section 119); (v) Register of Contracts, Companies and Firms in which directors are interested (Sec-189); (vi) Register of directors and key managerial personnel and their shareholding (Section 170);
Right to attend meetings	Right to attend meetings of the shareholders and exercise voting rights at these meetings either personally or through proxy (Sections 96, 100, 105 and 107).
Other Rights	To transfer shares (Sections 44 and 56 and Articles of Association of the company). To resist and safeguard against increase in his liability without his written consent. To receive dividend when declared. To have rights shares (Section 62). To appoint directors (Section 152). To share the surplus assets on winding up (Section 320). Right of dissentient shareholders to apply to Tribunal (Section 48). Right to make application collectively to the Tribunal for relief in cases of oppression and mismanagement (Sections 241). Right to file class action suits before the Tribunal (Section 245) Right of Nomination. (Section 72) Right to file a suit or take any other action in case of any misleading statement or the inclusion or omission of any matter in the prospectus. (Section 37)
Class Rights	Member's rights are determined by the Companies Act, Memorandum of association, Articles of association of the company and the terms of issue of shares. Rights attached to a class of shares are known as "class rights".

Nomination by Security holders (including members) (Section 72)

Section 72(1) states that every holder of securities of a company may, at any time, nominate any person to whom his securities shall vest in the event of his death.

Section 72(2) states that when the securities of a company are held by more than one person jointly, the joint holders may together nominate any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

Section 72 (4) states that when the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

Rule 19 of Companies (Share Capital and Debentures) Rules, 2014 with respect to nomination

(1) Any holder of securities of a company may, at any time, nominate, in **Form No. SH.13**, any person as his nominee in whom the securities shall vest in the event of his death.

(2) On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.

(3) Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in **Form No. SH.13** any person as nominee.

(4) The request for nomination should be recorded by the Company within a period of two months from the date of receipt of the duly filled and signed nomination form.

(5) In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either-

(a) to register himself as holder of the securities; or

(b) to transfer the securities, as the deceased holder could have done.

(6) If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder(s).

(7) All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to nominee.

8) A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities

(9) A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in **Form No. SH.14**.

(10) The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.

(11) When the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in **Form No. SH.14** specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.