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MEMBERS OF A COMPANY

5.1 Members : Meaning

Member v/s Shareholder

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INTRODUCTION :

An institution or organization is formed for purposes like education, entertainment, sports, health, business etc. It is a structured unit with well-defined objectives and relationships. The organization is formed and managed by persons even though by itself it is a non-living set-up. The persons associated with an organization are termed as 'Members'. It can be rightly said that organization is by Members, of Members and for Members.

Let's understand the concept of Members / Membership of Joint Stock Company:-

5.1 MEANING OF MEMBER :

Member means a person whose name is entered in the Register of Members of Company and also includes holder of equity shares whose name is entered as beneficial owner in the records of Depository.

Two pre-requisites for a person to become a member of the company are:

- 1) The agreement in writing to take shares of company.
- 2) The Registration of the person so agreeing in Register of Members of the Company.

1) Register of Members:

The Register which enlists all its members with their details in a prescribed form.

2) Depository:

Is an institution where securities are held in electronic / de-materialised form. viz. National Securities Depository Ltd. (NSDL), Central Depository Services Ltd. (CDSL).

3) Beneficial owner:

Is the investor who owns securities in electronic form and has interest in the securities.

Member v/s Shareholder:

Generally, buying shares is the most common and easiest way or medium whereby a person becomes Member of the Company. So terms Member and Shareholder can be used interchangeably and mean the same person for all practical purposes.

But in some cases, a Member might not be a shareholder and vice versa; as explained below:

I) Member without being a shareholder:

1) Signatories to the Memorandum of Association:

They become Members of the company but are not Shareholders till shares are allotted to them.

2) Company Limited by Guarantee Amount:

This company does not have any share capital. Therefore it has only Members and no Shareholders.

3) Membership by Acquiescence / Estoppel:

If any person misrepresents himself as a member; shall be stopped from refuting his position subsequently and is held liable as a member even though he is not a shareholder. A person who knowingly permits entering his name in register of members.

Acquiescence means to permit, agree to allow, accept or give approval for.

4) Transfer of Shares:

The Transferor (Seller) of shares continues to be member of company till his name is removed from Register of members and replaced with name of Transferee (Buyer).

5) On Death of a Member / By succession / Transmission of shares:

Shares of a deceased member are held by his legal heir/representative. The deceased person ceases to be the shareholder but continues to be a Member till transmission is effected. Transmission is the process wherein the shares of deceased are registered in the name of his legal representative.

6) On Insolvency of a Member:

Shares of an insolvent member are held by the court appointed Official Receiver or Assignee so the insolvent person continues to be member but he is not a shareholder.

II) Shareholder without being a Member:

The Transferee (Buyer of the shares), Official Receiver (in case of insolvency), Legal heir (in case of death) as explained above, are Shareholders but not Members of the Company.

5.2 ELIGIBILITY OF MEMBERSHIP:

Let us now know who can or cannot be a member of the company.

- **Criteria:** Buying shares amounts to making a contract; so any entity viz. person/ organization competent to make contracts can be a member of the company. This topic therefore has a context to the Provisions of the Contract Act too. Subject to the provisions of Companies Act, Memorandum and Articles of company; any person 'sui-juris' can become a member of the company as follows:

'sui-juris : *Latin Phrase means legally competent to manage one's own affairs.*

I) Individuals:

- a) **Minor:** A minor cannot be a member of the company himself. A guardian can enter into share purchase transaction on behalf of a minor.
- b) **Insolvent:** Since the beneficial rights of shareholding are held by Official Receiver/ Assignee, so the insolvent person stops being the member.
- c) **Insane/Lunatic:** Inability to enter into a contract renders the person ineligible for membership of a company.
- d) **Foreigner:** Since a foreigner can enter into contract; Foreigner can buy shares to be Member of an Indian company, subject to provisions of FEMA 1999.

FEMA: *Foreign Exchange Management Act, 1999. It aims at facilitating external trade and Promote foreign exchange market in India.*

II) Organizations:

- a) **Company:** A company being a legal person, can be a Member of another company in its own name. It can become member only if authorised by Memorandum of Association. Company cannot invest in its own Shares.
- b) **Co-operative Society:** Being a registered entity, it can be a Member of the company.
- c) **Limited Liability Partnership:** Since it is a juristic person it can be Member of the company.
- d) **Hindu Undivided Family: (HUF)** The Act does not prohibit membership of HUF, but shares can be registered only in the name of its 'Karta'.
- e) **Partnership Firm:** The firm cannot be member of the company as it is not a registered entity. But firm can hold shares of company in the individual names of Partners.
- f) **Trust:** Registered Trust can become a shareholder in company in its own name.

Eligibility of Membership of a Company at a Glance

Individuals			Organizations	
Sr. No.	Category	Eligibility	Category	Eligibility
1	Minor himself	x	Company	✓
2	Insolvent	x	Co-operative Soc.	✓
3	Insane/Lunatic	x	LLP	✓
4	Foreigner	✓	HUF	x
5	Karta of HUF/ Partners	✓	Partnership	x
6			Trust	✓

(where '✓' means eligible and 'x' means not eligible)

5.3 ACQUISITION OF MEMBERSHIP

Let us now learn how one can become member of the company.

- 1) **By subscribing to the Memorandum:** The subscribers to the Memorandum of company are its members viz. seven (7) in case of public company, Two (2) in case of Private Company and one (1) in case of One Person Company. In fact they are the first members of the company.
- 2) **By application and allotment of Shares:** Any person who wishes to buy company's shares has to apply for the same and on acceptance of application by the company, the person is allotted the shares and becomes shareholder and thereby its Member on entering his/her name in Register of Members.
- 3) **By holding Shares in Dematerialized Form:**

Any person who has shares in his name as beneficial owner in the records of the Depository is member of company.

Dematerialized Form: *It means holding financial securities in Electronic form and not Physical or paper form.*

- 4) **By Transfer:** Any person who buys shares of a company from an existing member becomes its registered member after company accepts his transfer request.
- 5) **By Transmission of Shares:** Transfer of shares by the operation of law in the events of death, insolvency and insanity of member is called Transmission of shares. The legal representative/heir in case of death, Official receiver in case of insolvency and administrator in case of insanity replace the concerned member.
- 6) **Nominee of One Person Company (OPC):** In case of OPC, the name of nominee whose name is given in the Memorandum of OPC; becomes its sole owner in the event of the death of the member.
- 7) **By Acquiescence:** If a person is wrongly entered in the Register of Members or holds himself out as a member or knowingly allows his name to remain on the Register of Members (without informing the company about the mistake and getting it rectified), is stopped from denying his membership and is liable as a member like in the event of winding up of company. It is therefore called Membership by Principle of Estoppel.

5.4 Cessation/Termination of Membership:

A person ceases to be the member of the company when any of the following occurs:

- 1) Transfer of Shares
- 2) In the event of Death or Insolvency of a Member.
- 3) Sale of Shares by the Member in the buy-back offer by the company.
- 4) Forfeiture of shares by company.
- 5) Surrender of shares to the company by Member.
- 6) Exercising of lien over the shares of a Member by the company.

- 7) The Person who holds Redeemable Preference Shares; ceases to be the Member when company redeems these shares.
- 8) Person rescinds (refutes) the contract of membership on the grounds that he/she was cheated and frauded by misrepresentation of information given by company in the prospectus.
- 9) Winding up of the company.

- 1) *Buy-back means a corporate action where as a company buys back its shares from existing shareholders at price equal to or more than market price.*
- 2) *Forfeiture means cancellation of share by company if a members fails to pay money due on shares.*
- 3) *Surrender of shares is a voluntary return of shares by member to the company.*
- 4) *Lien on shares means company does not transfer shares of a member till he pays his debt to the company.*
- 5) *Redeemable preference shares are issued for a certain period of time and paid back at the end of it.*

5.5 RIGHTS, DUTIES AND LIABILITIES OF A MEMBER:

Being an integral part of a company Member enjoys certain rights and has to fulfill certain duties and liabilities.

Let's study what are the rights conferred on member and duties and liabilities to be fulfilled by member.

Rights of Members:

1) Right of accessing Books and Documents:

A member can get the copies of Memorandum and Articles of Association, Auditor's and Directors Reports, Balance Sheet and Profit and Loss Account;

Also, member can inspect Registers of Members, Debenture-holders, Charges, Investments, Minutes Book of all General Meetings, Proxies lodged for general meetings and all Returns filed by the company.

2) Right to make Fundamental Corporate Decision:

Members hold exclusive powers to decide at meetings of members on matters like a) Change of Registered office of company b) Increase in Authorized Capital c) Change of objects of the company d) Amend Articles of Association e) Acquisitions, Mergers and takeovers by the company f) Appointing sole-selling agents g) Winding up of the company.

3) Right to Participate in General Meetings:

Members have a right to receive the notice and agenda of all general meetings, attend them in person or appoint proxy, speak and vote at meetings, demand and vote at a poll; demand to call Extra-ordinary General Meeting etc.

4) Right to appoint and Remove a Director:

Members have a right to appoint and remove the Directors.

5) Right with respect to company's accounts and its audit:

Members approve the annual accounts at the Annual General Meeting; appoint auditors, decide their remuneration and also have right to remove the auditors.

6) Right to participate in Profits of the company:

Member invests money in company with a hope of getting returns on the investments. Therefore, Member has the right to approve Dividend; and get the same within 30 days of its declaration at the Annual General Meeting.

7) Shareholding Rights:

These rights include right to receive share certificate, transfer of shares, to get Rights Issue and Bonus Issue/shares.

8) Right to receive surplus assets:

In the event of winding up of the company, Member is entitled to get shares of surplus assets of company, if any, after the payment to all the other stakeholders.

9) Right to Class Action Suit:

The Act confers right of class action suit to members against company or its directors; in the event of any fraudulent, unlawful or wrongful act or omission or misleading statements in the Audit Report. Any 100 members or those holding 10% of voting rights can apply to the Tribunal for redress. Members can demand investigation in the affairs of the company. Also, they can file a petition to wind up the company.

- 1) *Dividend means a share of Profit of a company distributed to its Shareholders.*
- 2) *Right issue means additional shares offered to existing equity shareholders of company.*
- 3) *Bonus shares mean shares given by the company free of cost to equity shareholder from accumulated earnings.*
- 4) *Class Action Suit mean where a group of people with similar harm/wrong caused to them sue the opposite Party for redressal of a harm / wrong.*

Duties and Liabilities of a member:

A member is required to fulfill certain liabilities and obligations; like:

1. A member is bound to the company by all the covenants of the Articles of Association.
2. Since most of the companies have liability limited upto face value of shares; the member is liable to pay full value of shares.
3. In case of unlimited liability company, a member is personally liable for all the debts of the company.

Covenants of the Article means contents & clause of Articles of Association of the company.



Activity: Find the composition of shareholding of a listed public company.

SUMMARY

- Member of a company is an integral part of company.
- Member and Shareholder generally means the same; except due to some technicalities.
- Any person or organization competent to enter into contracts legally, is eligible to become the member of the company.
- There are several ways whereby a membership of company can be acquired.
- The common most way of all is to buy the shares of the company.
- There are several ways whereby memberships of company comes to an end which is termed as cessation or termination of membership.
- The member of a company is conferred with several rights.
- The Member of a company needs to fulfill certain duties and liabilities.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) is a person whose name is entered in the Register of Members.
a) Member b) Creditors c) Registrar
- 2) A person can be called as a Member when the name is entered in
a) Register of charges b) Register of Members c) List of Members
- 3) A cannot be a member of a company.
a) Foreigner b) Woman c) Minor
- 4) When a person buys shares of a company by filling up an application form, person becomes a member by
a) Application and allotment of shares
b) Subscribing to Memorandum
c) Transmission of Shares
- 5) means a person ceases being a member of the company.
a) Termination of Membership
b) Acquisition of membership
c) Subscription to Membership
- 6) A member has right to participate in General Meetings means, he has a right to
a) receive dividends
b) receive notice and agenda of a meeting
c) to transfer his shares

B. Match the pairs:

	Group 'A'		Group 'B'
a)	Insane person	1)	Transfer of shares by operation of law
b)	Foreigner	2)	Cannot be a member
c)	Transmission of shares	3)	Cessation of membership
d)	Surrender of shares	4)	To get copies of Auditor's, Directors' Report, etc.
e)	Right of Members	5)	Can be a Member
		6)	To attend board meeting
		7)	Duties of member
		8)	Surrendering all assets to the company
		9)	Demand or claim money from company
		10)	Transfer of shares by order of Secretary

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) End of membership of a person.
- 2) A person whose name is entered in Register of Members.
- 3) Book in which names of all members are entered.
- 4) Becoming a member of a company.
- 5) The subscribers of this document are considered as Members of the company.

D. State whether the following statements are True or False.

- 1) Buying shares is the most common way to become Member of the company.
- 2) Both; Individuals and body corporates can be members of the company.
- 3) Legal competency to enter into contracts is one of the criteria to become member of the company.
- 4) Limited Liability Partnership cannot be a member of the company.
- 5) Karta of HUF can be a member of company.
- 6) Member of the company is conferred with several rights.
- 7) Member is entitled to profits of the company when dividend is declared.
- 8) Member of company can attend general and Board meetings of the company.
- 9) Right to appoint Director is given to Members.
- 10) Minor can be the member of the company.

E) Find the odd one.

- 1) Subscribing to Memorandum, Forfeiture of shares, Application and allotment of shares.
- 2) Death or insolvency of member, Application and allotment of shares, Surrender of shares.

F) Complete the sentences.

- 1) A person whose name is entered in the Register of Member of a company is called
- 2) In case of death or insolvency of a member, he will cease to be a
- 3) Members have a right to appoint and remove the

G) Select the correct option from the bracket.

Group 'A'	Group 'B'
1) Minor	-----
2) Co - operative society	-----
3) -----	Can hold shares in the name of partners

(Partnership firm, Cannot become a member of a company, Can become member of a company)

H) Answer in one sentence.

- 1) Which individuals cannot become a member of a company?
- 2) What is the common way of becoming the member of a company?

I) Correct the underlined word and rewrite the following sentences.

- 1) A Minor can be a member of a company.
- 2) Partnership Firm can be a member of company.

Q.2 Explain the following Terms/Concepts.

- 1) Member 2) Transmission of shares 3) Cessation of Membership
- 4) Acquisition of Membership 5) Eligibility of Membership

Q.3 Study the following case/situation and express your opinion.

- 1) Mrs. & Mr. A work in a Bank. They have a daughter named Ms. Z who is 11 years old.
 - a) Can Mrs. & Mr. A invest in shares of the company?
 - b) Can they buy shares in the name of their daughter Ms. Z?
 - c) Justify your answer in (a) & (b) in one sentence only.
- 2) M/s. ABC is a Partnership firm owned by Dr. A, Dr. B, Dr. C. The doctors want to invest the profits of ABC in the shares of a company.
 - a) Can M/s ABC buy the shares of company?
 - b) Can profits of M/s. ABC be invested in shares held in the names of Dr. A or Dr. B or Dr. C?
 - c) Are the doctors eligible to invest in shares of the company?
- 3) ZEN Limited has some investible profits. Please guide Zen limited with respect to the following?
 - a) Can ZEN Limited invest in the shares of itself?

- b) Can ZEN Limited invest in the shares of TEN Limited?
- c) Justify your answers in (a) & (b) in one sentence only.

Q. 4 Answer in brief.

- 1) State any four ways of acquiring membership of a company.
- 2) State any four ways of cessation of membership of a company.
- 3) State the rights of members with regard to participation in general meeting.

Q.5 Justify the following statements.

- 1) Member and Shareholder are interchangeable terms.
- 2) A Foreigner can invest in shares of an Indian company.
- 3) Insolvent person ceases to be the Member of the company.
- 4) Co-operative Society is eligible to be the member of the company.
- 5) Subscribers to Memorandum of Association are the first members of the company.
- 6) Nominee of the member of OPC becomes its member on death of the member.
- 7) Members of company are entitled to several rights.
- 8) Members of company have some fundamental corporate decision-making rights.
- 9) Transfer of shares results in termination of membership.

Q.6 Answer the following questions:

- 1) Explain the circumstances when Member is not a shareholder and vice-versa.
- 2) Explain the eligibility of membership of a company.
- 3) Explain different ways to acquire membership of company briefly.
- 4) Explain how a membership of company terminates.
- 5) Explain Rights of a Member of company.

