MEMBERSHIP OF A COMPANY

Definition of member — section 41

All the subscribers of the Memorandum of Association shall be deemed to have agreed to become members of the company and on registration of a company shall be entered as members in the Register of members.

Section 41 deals with definition of member which provide as under:—

(*i*) 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.

(*ii*) 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.

(*iii*) Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.

Shareholder Vs *member*

Shareholder means a person who hold the shares by having his name on the register of members. but where shares are transferred by a member, the transferee, though not yet registered in the books of the company would be a 'member' and the 'holder' and a 'member' shall be a 'holder' of shares, but a 'holder' may not be a 'member'. However, in 1974, a Division Bench of the Calcutta High Court in *CWT, West Bengal III* v *Smt. Sumitra Devi Jalan* 96 ITR 35, held that Art.19 of the Table A, says that the transferor shall be deemed to remains a holder of the shares until the name of the transferee is entered in the register of members in respect thereof. So, a person to be a member has to hold shares and the name of such person has to be entered on the register of members, kept by the company pursuant to section 150 of the Companies Act, 1956 and such company obviously must be a company limited by shares, or by guarantee but having a share capital or an unlimited company where capital is held by indefinite shares.

How to become a member

A person may become a member of a company in any of the following manner:

1. Membership by subscription to the Memorandum

A person subscribing to the Memorandum shall become a member of the company on its incorporation and remains so till the company accepts his surrender of shares or he transfers shares.

In that case, an entry in the Register of members is not necessary and mere allotment on the basis of subscription to Memorandum will suffice to constitute him as a member.

Therefore, a subscriber is deemed to be a first member of the company and his membership is beyond revocation after the issue of certificate of registration.

A subscriber to memorandum of association is deemed to have agreed to become a shareholder, even if he submits no application and no allotment of shares is made to him. [*Collector of Moradabad* v *Equity Insurance Co. Ltd*. (1948) 18 Comp Cas 309 (Oudh)].

Subscribers can be either literate or illiterate, man or woman, either resident or non-resident, either Indian national or foreign national, etc. A company being an artificial legal person can also be a subscriber.

Even though the signature of a subscriber to memorandum of association of a company is not properly attested, once the memorandum has been registered, such subscriber cannot divest himself of his liability.

A subscriber to memorandum cannot, after issue of certificate of registration, repudiate his subscription on ground that he was induced to sign by misrepresentation of an agent of company. [*Metal Constituents Ltd*., *In re* (1902) 1 Ch. 707]. If subscribers to memorandum have any objection to memorandum and articles of association, the time to object is before putting their signatures to it.

2. Membership by agreement in writing

No person can become a member unless he has agreed in writing. Agreement in writing is must to become a member of a company.

To become a shareholder there must be an agreement in writing under section 41(2) of the Companies Act between the shareholder and the company. The words 'in writing' indicate by necessary implication that an application for allotment of shares should be made in writing.

However, as long as a person's name is not entered in the Register of members, he will not be considered as a member despite he has already purchased the shares of the company.

3. Deemed member

If a person whose name has been entered in the Register of members and who has, in fact, accepted the position and acted as a member, it will be presumed to be an agreement in writing unless the presumption is rebutted by proof to the contrary.

4. Membership by conversion of debentures into shares

The company is under an obligation to issue equity shares for the convertible portion of debentures, whether fully or partly as per the terms of the debentures issued by the company.

5. Membership by operation of law or transmission of shares

A legal heir or other legal representative cannot be registered as member by mere operation of law in case of transmission of shares, until an intimation in writing has been given by the legal heirs of the deceased member. The intimation in such case will constitute an agreement in writing to become a member.

WHO CAN BECOME A MEMBER

In addition to an individual person, the following may also become a member of a company:

1. A company

A company can become a member of another company. The company must have powers under its Memorandum & Articles to make investment in other bodies corporate.

2. A registered co-operative society

A registered co-operative society may become a member of a company, provided it is recognised as a separate legal entity and a society can be treated as a 'person' having separate legal entity apart from the members constituting it and thereby capable of becoming a member of a company under section 41(2) of the Act.

3. A Non-Resident Indian [*NRI*]

With the general or special permission of the Reserve Bank of India, a person, who is not resident in India (even if he be an Indian citizen), can become a member of a company registered in India, as no shares can be issued or transferred to him without general or special approval of the RBI.

4. A Minor

Since the minor is incapable of entering into a contract because contract by a minor is void *ab initio* and thereby not eligible to agree in writing to be a member, he cannot be entered in the register of members.

It has been clarified by the Department of Company Affairs that when a guardian of a minor applies to be a member of a company, the company can allot shares in the name of guardian.

5. HUF

Hindu undivided family is represented by its Karta. The Companies Act does not prohibit membership of Hindu Undivided Family. In case of HUF, the shares can be registered in the name of '*A*' as Karta of HUF.

6. Registered Trade Union

It was held in the case of *All India Bank Officers Confederation* v *Dhanlakshmi Bank Ltd*. (1997) 90 Comp Cas 225 that 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.

7. Shareholding in joint names

If more than one person jointly apply for and are allotted shares in a company, each one will be regarded as a member. In the case of joint-applicants, they can insist on having their names registered in such order as they may require.

The following points should be considered in the case of joint shareholders:

(*i*) Joint shareholders shall be counted as one member in case of counting for quorum for a voting and for requisitioning meeting under section 169.

(*ii*) All the documents, notices and dividend warrant, etc., will be served on the first named joint holder and it will be deemed as sufficient compliance unless the instructions in writing to other effect have been given to the company.

(*iii*) In case of transfer of shares by joint holders, the transfer will be effective and valid only if it is made by all the joint shareholders.

(*v*) All the joint shareholders shall be jointly and severally liable to pay unpaid calls to the company.

WHO CANNOT BECOME A MEMBER?

1. Partnership firm

Section 41(2) provides that only a person can be a member of a company who has agreed in writing to become a member and whose name is entered in the Register of members.

As per Department's Circular No. 4/72, dated 9-2-1972, it has been clarified that "a firm" not being a person, cannot be registered as a member of a company.

2. Membership by a subsidiary company in its holding company

A company cannot be a member of its holding company and any allotment or transfer of shares in a company to its subsidiary shall be void.

3. Pawnee

The Pawnee of shares cannot exercise rights of a member.

4. Receiver

A receiver appointed under section 182A of the Land Revenue Act, cannot exercise privileges of a member.

5. Legal representative

Legal representative of a deceased member cannot be compelled to have his name entered on register.

RIGHTS OF MEMBERS

Only a person whose name is on register can exercise privileges of a member. Some of the rights of a shareholder are:

(*i*) to elect directors and thus to participate in the management through them;

(*ii*) to vote on resolution at meetings of the company;

(*iii*) to enjoy the profits of the company in the shape of dividends;

(*iv*) to apply to the Court/Tribunal for relief in the case of oppression;

(*v*) to apply to the Court/Tribunal for relief in the case of mismanagement;

(*vi*) to apply to the Court/Tribunal for winding up of the company;

(*vii*) to share in the surplus on winding up;

(*viii*) the right to vote at all meetings;

(*ix*) the right to requisition an extraordinary general meeting of the company or to be a joint requisitionist;

(*x*) the right to receive notice of a general meeting [section 172];

(*xi*) the right to appoint proxy and inspect proxy registers [section 176];

(*xii*) in the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf [section 187];

Cessation of membership

A person may cease to be a member of a company on the following grounds:

1. On a valid surrender of shares

If a member surrender his shares in accordance with the provisions contained in company's Articles, he ceases to be a member.

2. On transfer of shares

If a member transfers all his shares held in the company he ceases to be a member as soon as the transfer is registered in the name of the transferee.

3. By rescission of contract of membership on ground of misrepresentation or mistake

If a person who has applied for allotment of shares on the basis of the prospectus issued by the company having misrepresentation or mistake, he may opt for cancellation of contract and may claim compensation.

4. On Bankruptcy of a member

A bankrupt is held to be a member of the company so long as his name is on the register of members. If the receiver is appointed by the court then receivers name shall be entered in the Register of members.

5. On forfeiture of shares

A company has powers in its articles to forfeit the shares in the case of any call remains unpaid. In that case on the date of valid forfeiture of all the shares, a person may cease to be a member on his shares being forfeited.

6. On death of the member

A person may cease to be the member on his death, but in such a case the deceased member's state remains liable until the registration of some person entitled under a transfer from his executors or administrators.

7. On buy-back of shares

If a shareholder/member offers all his shares for buyback by a company and the same are bought back as per the relevant provisions, then he ceases to be a member.

REGISTER OF MEMBERS

Every company shall keep, in one or more books, a register of its members. The Register of members shall be kept at the registered office of the company or some other place within the local area limit of the Registered Office as may be decided by the company.

Contents of the Register of members

The Register of members shall provide the following details as required under section 150(1) of the Companies Act, 1956:—

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

(*b*) In the case of a company having a share capital, the shares held by each member distinguishing each share by its number except, where such shares are held with a depository and the amount paid or agreed to be considered as paid on those 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.

Where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each of the members concerned instead of the shares so converted which were previously held by him.

Penalty for non-maintenance of Register of members

If default is made in maintaining the Register of members and in including therein requisite particulars then the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues. [Section 150(2)]

Place of keeping Register of members

The Register of members commencing from the date of registration of the company shall be kept at the registered office of the company [section 163]. However, proviso to section 163(1) permits keeping of Register of members at places other than the registered office of the company.

Accordingly, the Register of members may be kept at any other place within the city, town or village where the registered office is located, if:—

(*i*) such other place has been approved for this purpose by a special resolution passed by the company in General Meeting,

(*ii*) the Registrar has been given, in advance, a copy of the proposed special resolution at the same time when notice for the meeting is sent to members, and

(*iii*) after the meeting, copy of the special resolution and explanatory statement shall be filed with the Registrar in e-Form 23 with the prescribed filing fee as per Schedule X of the Companies Act, 1956.

Inspection of Register of members and obtaining copy from the company

Section 163(2) of the Act provides that the Register of members shall, except, when the same is closed under the provisions of section 154 of the Companies Act, 1956, be open during business hours subject to such reasonable restrictions, as the company may impose, so that not less than two hours on each day are allowed for inspection:—

(*i*) of any member or debentureholder of the company without payment of any fee, and

(*ii*) of any other person, on payment of a fee of rupees ten.

The right of inspection is a statutory right. The company cannot ask the members, etc., seeking inspection, to state the purposes for which he wishes to inspect and inspection cannot be denied on the ground of *mala fide* intention on the part of the person seeking inspection.

Requirement to keep Index of members

Where the company has more than fifty members, the register of members shall have an index for the purpose of locating entries in the register. If default is made in complying with the requirements of section 151, the company and every officer of the company who is in default, shall be punishable with fine, which may extend to Rs. 500.

Register and Index of debentureholders

Section 152 states that every company which has issued debentures shall keep in one or more books a register of the holders of its debentures and enter therein the following particulars:—

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

(*b*) the debentures held by each holder distinguishing each debenture by its number other than the debentures held in a depository and the amount paid or agreed to be paid;

(*c*) the date on which each person was entered as a debentureholder; and

(*d*) the date on which any person ceased to be a debentureholder.

All the provisions for keeping Index of debentureholders are same as in the case of the Index of the register of members.

Shares and other securities held by a depository

Section 152A of the Act provides that the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be a register and an index of members and register and index of debentureholders as the case may be for the purpose of the Companies Act, 1956.

CLOSURE OF REGISTER OF MEMBERS AND DEBENTUREHOLDERS

Section 154 provides power to the companies to close their register of members or debentureholders. It applies to all companies registered under the Act without any exception.

Purpose of closure of Register of members or debentureholders

Section 154 deals with book closures but the section does not elaborate the object and purpose of book closure. Clause 16 of the listing agreement however indicates the purpose of book closure. It is for declaration of dividend, issue of bonus/right shares, etc. The purpose of book closure is to keep a cut off date, for deciding the members who would be entitled for the benefits of dividend/right and bonus shares and not for determining the voting rights.

The purposes behind closure of Register of members may be declaration of a dividend, issue of bonus shares, issue of right shares, holding of Annual General Meeting, etc. The purposes behind closure of Register of debentureholders may be payment of interest, conversion of debentures into shares, redemption of debentures, etc.

It is not compulsory for a company to close its register of members and even if it does, it may keep it open for the inspection during such period and register the transfers of shares though it may also refuse to register transfers or transmissions during the period.

Period for closure of Register of members or debentureholders

Section 154 of the Act provides that the Register of members can be closed for an aggregate period of 45 days in a year but not exceeding 30 days at a time.

NOMINATION FOR SHARES AND SECURITIES

Sections 109A and 109B contain provisions regarding nomination facility to shareholders and debentureholders.

Section 109A(1) of the Act, provides that every holder of shares in, or holder of debentures of, a company may at any time, nominate in the prescribed manner, a person to whom his shares in, or debentures of the company shall vest in the event of his death.

Who may use nomination facilities?

Only individuals can use nomination facility. Non-individual members or debentureholders like body corporate, trust, society, HUF-Karta, power of attorney holder, etc., cannot nominate.

Nomination by holder of partly paid up shares or debentures

Nomination can be made by individuals holding shares in or debentures of a company even in relation to partly paid-up shares/debentures.

Nomination for part of the holdings

Nomination should be made for full holdings of a shareholders or debentureholders under a ledger folio and not for a part thereof.

Who can be nominated?

Nomination can be made in favour of a person in whose favour the shares or debentures held by a holder should vest in on the death of the holder as per the desire of the holder. Nomination can be made even in favour of a minor. Following provisions in this regard are very important:—

(*i*) Where the nominee is a minor, it shall be lawful for the holder of shares or holder of debentures to make the nomination to appoint in the prescribed manner any person to become entitled to shares in, or debentures of the company, in the event of his death, during the minority. In case of a minor nominee, a person shall be named in Form 2B as guardian in whose favour the shares or debentures shall vest in on the death of the shareholder/debentureholder during minority of the nominee.

(*ii*) Non-resident Indian can also be appointed as a nominee on repatriable basis with or without Reserve Bank of India's approval depending upon whether the holder of shares is a resident Indian or a non-resident Indian.

(*iii*)There should be only one nominee per folio. In case, shareholders/debentureholders hold shares/debentures in more than one folio but definitely under different order of names or hold shares/debentures in joint names in more than on folio but the combination of joint names differs from one folio to another, they can appoint different nominees for their holdings under different folios.

Procedure for making nomination

For making nomination of a person, Form 2B is required to be filled in and sent to the concerned company for the purpose of making nomination in respect of shares/debentures held by him in the company.

Form 2B is to be signed jointly in case of jointholders.

In case if the nominee is a minor, the name of a person shall be given who shall be entitled to hold the shares/debentures on the death of the holder but up to the minority of the nominee.

The company shall verify the particulars stated in Form 2B and if everything is found in order the company will register the nomination. It will also intimate to the concerned holder about registration of his/her nomination. The company shall allot nomination registration number to the shareholder.

Change in nomination

A shareholder/debentureholder/deposit-holder can change the nomination made earlier. No procedure has been prescribed in the rules for effecting change in nomination already made. It is advisable to write a letter to the company revoking nomination earlier made by a shareholder/debentureholder/depositholder and to submit fresh Form 2B for making new nomination.

Options to nominee upon death of share or debentureholder

Section 109B(1) provides that any person who becomes a nominee by virtue of the provisions of section 109A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, he may elect, either:—

(*a*) to be registered himself as holder of the share or debenture, as the case may be; or

(*b*) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debentureholder, as the case may be, could have made.

All the limitations, restrictions and provisions of this Act relating to the right to transfer and the registration of transfer of shares or, debentures shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that shareholder or debentureholder, as the case may be.

Procedure for transmission of shares in favour of nominee

Where a nominee elect for transmission of shares in his favour, he is supposed to furnish following documents for establishing his identity as a nominee upon the death of a holder or death of all joint holders up to two:—

(*i*) Certified/Attested copy of death certificate.

(*ii*) The original share certificates.

(*iii*) Proof of date of birth, if nominee is a minor.

(*iv*) Affidavit/Declaration by nominee claiming his rights.

The company will verify the documents aforesaid and other documents, if required, and will advise the nominee to elect either to register himself as a holder of shares, etc., or to transfer the same.

Section 109B(2) provides that if a person being a nominee, so becoming entitled elects to be registered as holder of the share or debenture, himself, as the case may be, 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 shareholder or debentureholder, as the case may be.

If the nominee elects to register himself as a holder, there will be transmission of shares/debentures and the same will not attract stamp duty payment. However, if the nominee elects to transfer shares/ debentures in somebody else favour then it will certainly attract stamp duty payment.

Rights of nominee

A person being a nominee, becoming entitled to a share or debenture, by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he was the registered holder of the share or debenture except that he shall not, before being registered as a member in respect of his share or debenture, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company: