

PART VII

MEMBERSHIP OF A COMPANY

Chapter 1

Members

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Important Provisions at a Glance

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1. 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 2(27) of the Companies Act, 1956, provides, that a "member", in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114.

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.

1.1 Shareholder v member

Shareholder means a person who hold the shares by having his name on the register of members. [Wala Wynand Mining Co. 52 LJ CH 88: 21 CH D 849; Howrah Trading Co. v CIT AIR 1959 SC 775] but in Kedar Nath Agarwal v Jay Engineering Works Ltd. (1963) 33 Comp Cas 102, a single judge of Calcutta High Court decided that 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 it was also observed by the learned judge that 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.

Shareholder includes a person who has purchased the shares of a company and has lodged the transfer documents for registering as a shareholder. [*Federal Bank Ltd. v Sarala Devi Rathi* (1997) 88 Comp Cas 323, 325 (Raj)].

2. How to become a member

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

2.1 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. [*U.P. Oil Mills Co. Ltd., In re* (1931) 1 Comp Cas 262 (All)].

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)].

Provisions of section 12(1) of the Companies Act, 1956 are relevant in this situation, which provides that in order to form a public company limited by shares at least seven persons and in case of a private company limited by shares at least two persons have to subscribe their names to Memorandum of Association. Following conditions in that matter shall be ensured by the subscribers:—

- (i) No subscriber of the Memorandum of a company having a share capital shall take less than one share, [Section 13(4)(b)] and
- (ii) Each subscriber of the Memorandum shall write opposite to his name, the number of shares he takes. [Section 13(4)(c)]

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. [*East Bengal Sugar Mills Ltd., In re* (1941) 11 Comp Cas 169 (Cal)].

2.2 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. Further that, an agreement to become a member can no longer be inferred or implied from conduct. The agreement should be with the company after its incorporation and any agreement with promoters of the company before its incorporation will not be sufficient.

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.

The underlying purpose of section 41(2) is that a person must give his consent in unequivocal terms by applying in writing for allotment of shares. But it does not mean that the company cannot allot the shares even when a person has not complied with the requirement of section 41(2) of the Act.

Incorporation of names of petitioners in register of members of company, without there being any agreement on their part 'in writing' is contrary to statutory requirements of section 41(2). [*Ram Kishan v Kanwar Papers (P) Ltd.* (1990) 69 Comp Cas 209 (HP)].

Persons who had monetary claims against a company by way of loans or otherwise could not come u/s 155 and claim that they be made shareholders by converting credit into shares and rectify the share register. [*Kumaran Potty v Venad Pharmaceuticals & Chemicals Ltd.* (1996) 2 Comp LJ 288 (Ker)].

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.

The Supreme Court has laid down following conditions for becoming a member in the leading case of *Balkrishna Gupta v Swadeshi Polytex Ltd.* (1985) 58 Comp Cas 563: AIR 1985 SC 520.

- (i) Existence of an agreement to become a member, and
- (ii) His name being entered in the Register of members.

Unless name of allottee of shares is entered in the register of members in the manner laid down in the Act he cannot be treated as a member. [*Karachi Oil Products Ltd. v Kumar Shree Narendrasinghji* (1948) 18 Comp Cas 215 (Bom)].

2.3 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.

2.4 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. However, the requirements of clause (b) of section 2(38) must also be fulfilled in cases of conversion pursuant to the conversion clause in the debenture, when the company implements its obligation to allot shares under the prospectus and the application for allotment of debenture authorising company also contains no recitals, it may serve as an agreement in writing between the holder to become a shareholder on allotment of shares.

2.5 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.

3. Who can become a member?

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

3.1 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.

3.2 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.

3.3 A Non-Resident Indian [NRI]

Without 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), cannot 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.

3.4 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, the guardian alone will be regarded as the shareholder by virtue of section 153 of the Companies Act, 1956 and he has to be represented by a registered guardian in his stead. It was held in the case of *Fazalbhoy Jaffar v Central Bank of India* that where the company transferred shares to a minor without being aware of this fact, the company could repudiate the transfer and the transferor would be liable by being restored to the register of members.

There is no bar in the shares of a company being registered in the name of a minor indicating therein the name of the guardian representing the minor. In India, parents of minor, with a view to provide for their major or minor children, do invest funds in several forms; all such investments are for the benefits of minors. Section 11 of the Contract Act is a beneficial provision enacted to protect the interests of minors. Such beneficial provision should not be used to the detriment of minors. [*Gautam R. Pardiral (Minor) v Karnataka Theatres Ltd.* (2000) 36 CLA 245 (CLB)].

Where a minor was allotted shares and he received dividend after attaining majority and raised no objection to inclusion of his name in register of members, he could not contend that he was not a shareholder. [*Fazulbhoy Jaffar v Credit Bank of India Ltd.* AIR 1914 Bom 128].

3.5 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.

3.6 Registered Trade Union

It was held in the case of *All India Bank Officers Confederation v Dhanalakshmi 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.

3.7 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. However, according to Department's Letter No. F1/24/SE/80, dated 5-9-1980, where the change in the order of names is required in respect of a part of the holding, execution of fresh transfer deed will be required. 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) A proxy will be appointed by all of them acting jointly unless regulation 57 of Table 'A' has its effect. It says that the vote of senior or first joint shareholder, whether in person or by proxy, shall be accepted to the exclusion of the votes of other joint shareholders. So it becomes clear that senior or first joint holder can appoint a proxy all by himself.
- (iv) 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) In case of transmission of shares by operation of law, section 45 of the Indian Contract Act provides that right shall devolve on the representatives of the deceased person jointly with the survivor or survivors.
- (vi) All the joint shareholders shall be jointly and severally liable to pay unpaid calls to the company.

3.8 Shareholder whose name is not in the Register of members cannot exercise right of a member

Section 41, when read along with section 2(27), which provides that member in relation to a company, does not include a bearer of a share warrant of the company issued in pursuance of section 114. It becomes evident that entry in the register of members is a condition precedent to membership even if there is a resolution allotting the shares and the letter of allotment is issued. An applicant who has failed to get himself on the register of members, cannot claim any right on the basis of the share certificates held by him. [*Sant Chemicals (P) Ltd. v Aviat Chemicals (P) Ltd.* (2000) 25 SCL 473 (Bom)].

If the Register of members of the company does not incorporate the names of all its shareholders as members of the company, a person shall be regarded as a member, the particulars entered in the register, may not be conclusive. The shareholders in whose favour share certificates are issued can exercise rights as members of the company notwithstanding the omission of their names from the register.

Persons to whom share certificates have been issued can exercise their rights as members even if their names are not included in register of members. [*N. Satyaprasad Rao v V.L.N. Sastry* (1988) 64 Comp Cas 492 (AP)].

4. Who cannot become a member?

4.1 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.

However, section 25(4) of the Act, provides that when the company is licenced under section 25, a firm may become a member of any association or such company licensed under section 25. In such case the membership of the association or company shall cease upon the dissolution of the firm. However, partners of the dissolved firm may continue to be members of the association or company in their individual capacities.

4.2 Public office such as 'Collector'

Section 41 provides how a 'person' (other than a subscriber of the memorandum) becomes a member. The Collector of Central Excise or the Secretary to the Government of India, as such, is not a legal entity. Therefore, shares cannot be held in the name of such office. Hence, shares in a company cannot be registered in the name of a public office, which is not a corporation sole as understood in law.

The Department of Company Affairs has given a clarification in that matter as under:

"The question raised is whether the Collector of a District is entitled to hold shares of a company incorporated under the Companies Act. A 'member' has been defined in section 41 of the Companies Act. According to that section, the subscribers to the Memorandum of Association of a company and other persons who agree in writing to become a member shall be deemed to be members of the company. The answer to the question raised will, therefore, depend on whether the Collector of a District is "a person" within the meaning of the Companies Act. The term "person" has been held to include among others a "corporation sole". The Collector of a District can only be entitled to be a shareholder as a corporation sole in case it is held that his office constitutes a corporation sole. A 'corporation sole' is a corporation constituted in a single person who in the right of some office or function has corporate status. The object of a corporation sole is to make it possible to distinguish the holder of an office or function in his official and in his private capacity. By this fiction of law, it is possible to attach rights and duties to the holder, for the time being, of the officer or functions to convey real or personal property to him in his official capacity, and to sue him and for him to bring an action in his official name and style. In short, a 'corporation sole' has the same characteristics of perpetual succession and separation of rights and duties of the corporate body from those of the corporation as all corporations possess.

Illustrations of corporation sole in existence in the modern law are the sovereign, an archbishop, a minister or officer of the Crown who is given the status usually by statutes (See Palmer's Company Law — 21st Edition).

The Collector of a District is a civil servant of the Union/State. Under Article 299 of the Constitution of India, all contracts are required to be in the name of the President or the Governor as the case may be and under Article 300, all suits by or against the Union/State Governments are required to be filed in the name of the President or the Governor as the case may be. A Collector has no power under the Constitution either to enter into contracts or to sue or to be sued in his capacity as a Collector. Therefore, the Collector cannot be said to be a corporation sole.

In the circumstances, he is not competent to hold shares in a limited company incorporated under the Companies Act, as the Collector."

4.3 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.

However, section 42(1) shall not prevent a subsidiary company from continuing to be a member of its holding company if it was a member thereof either at the commencement of the Act, or before becoming subsidiary of its holding. But in such cases a subsidiary shall have no voting right at the meeting of holding company or of any class of members thereof.

4.4 Pawnee

The Pawnee of shares cannot exercise rights of a member. [*Balkrishan Gupta v Swadeshi Polytex Ltd.* (1985) 58 Comp Cas 563 (SC)].

4.5 Receiver

A receiver appointed under section 182A of the Land Revenue Act, cannot exercise privileges of a member. [*Balkrishan Gupta v Swadeshi Polytex Ltd.* (1985) 58 Comp Cas 563 (SC)].

4.6 Legal representative

Legal representative of a deceased member cannot be compelled to have his name entered on register. [*State of Kerala v West Coast Planters Agencies Ltd.* (1958) 28 Comp Cas 13 (Ker)] Question of a legal representative of a shareholder becoming entitled to the shares arises only in the case of a sole shareholder and not when shares are held jointly. [*Ram Govind Misra v Allahabad Theaters (P) Ltd.* (1989) 66 Comp Cas 358 (All)].

5. Rights of members

Subject to the provisions of the Companies Act, 1956, the Articles of Association of a company establish rights and duties between the members inter se and the members and the company. Only a person whose name is on register can exercise privileges of a member.

Some of the rights of a shareholder laid down in *Life Insurance Corp. of India v Escorts Ltd.* (1986) 59 Comp Cas 548 (SC); *Balkrishan Gupta v Swadeshi Polytex Ltd.* (1985) 58 Comp Cas 563 (SC) 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];
- (xiii) the right to require the company to circulate his resolution [section 188]

The copies of documents which are open to inspection to members only, cannot be supplied to non-members. [*Murarka Paint & Varnish Works Ltd., In re* (1948) 18 Comp Cas 177 (Cal)] Where a Court grants permission to a shareholder to file a suit on behalf of and for benefit of other shareholders, no prior notice to other shareholders before grant of permission is necessary. [*Southern Steelmet & Alloys Ltd. v Lakshmi Nivas Mittal* (1986) 60 Comp Cas 132 (Kar)] Person whose name is not on the register of members of a company cannot make any claim against the company. [*BSN (UK) Ltd. v Janardan Mohandas Rajan Pillai* (1996) 86 Comp Cas 371 (Bom)].

An order of attachment of shares does not affect the right of shareholder until attached shares are sold off. [*Balkrishan Gupta v Swadeshi Polytex Ltd.* (1985) 58 Comp Cas 563 (SC)].

The following are the provisions in regard to the rights of members in a company:

Sl. No.	Sections	Particulars of right available to a member
1.	39 & 192	A member can ask the company concerned to send him the following at free of cost: (a) Memorandum of Association. (b) Articles of Association, if registered. (c) Copy of any special resolution. (d) Copy of resolution passed by the Board of directors relating to the appointment or renewal of appointment or variation of the terms of appointment of a Managing Director or copy of agreement entered into with him. (e) Copy of resolution passed by all the members of a company giving consent to call a general meeting with shorter notice as per section 171(2) of the Act. (f) Copy of resolutions passed at a general meeting empowering the Board of directors to exercise powers under clauses (a), (d) and (e) of sub-section (1) of section 293 of the Act. (g) Copy of resolution passed at a general meeting to wind up the company voluntarily under section 484. (h) Copy of resolution passed at a general meeting approving the appointment of sole selling agent under section 294 or 294AA.
2.	49(8)	Register of investment of a company in securities held in the name of a bank or other person shall be open to the inspection of any member or debentureholder of a company free of charge. <i>Note.</i>—The company shall allow inspection for not less than two hours during business hours as specified in the articles or by general meeting.
3.	71(1)	An allotment of shares by a public company in contravention of section 69 or 70, shall be voidable at the instance of the applicant. <i>Note.</i>—The applicant should approach the company within two months as specified in the section.
4.	107	Where the rights of any class of preference shares are varied as per section 106, dissentient shareholders holding at least 10% of the issued shares of that class may apply to the court to cancel the variation.

<i>Sl. No.</i>	<i>Sections</i>	<i>Particulars of right available to a member</i>
5.	109A	A member may at any time appoint a nominee in respect of his/her shares. <i>Note.</i>—Form 2B may be obtained from the company for giving the nomination.
6.	111(2)	Where a private limited company refuses to register a transfer or transmission, the aggrieved person may appeal to the Tribunal against such refusal. <i>Note.</i>—The application shall be made within two months of the receipt of communication from the company or where no notice is received, after 2 months from the date of making the request as per the provisions of the National Company Law Tribunal Regulations as may be notified by the Central Government.
7.	111A(2)	Where a public company refuses to register a transfer within two months, the transferee (whether a shareholder or not) may appeal to the Tribunal/Company Law Board. <i>Note.</i>—No time is specified for moving to the Company Law Board/Tribunal but the application shall be made within a reasonable time as per the provision of the Company Law Board.
8.	118	Any member can ask the company to send to him copy of the trust deed by remitting to the company Rs. 10 for a printed copy or at the rate of Re. 1 for every hundred words or part thereof for a typed one. <i>Note.</i>—The company shall send the document within 7 days.
9.	130	A member or any person can inspect the Register of Charges kept by the Registrar by paying Rs. 50 for each inspection.
10.	143 & 144	A creditor or a member can inspect free of charge, the copies of instruments creating charge and register of charges kept by the company. However, they cannot take copies of instruments from the company.
11.	163	The register of members, index, the register and index of debentureholders and copies of annual return kept by the company at its registered office or at any other place, if any, can be inspected by any member or debentureholder without fee.
12.	167	Where an annual general meeting for any year is not held and default occurs, a member can move to the Company Law Board/Tribunal for direction.
13.	169	Members holding one-tenth of the paid-up capital of the company having right to vote on the item can together give a requisition right, to a company to call an EGM.
14.	172	Members in a public company are entitled to receive notice of all general meetings of members at least 21 days before the meeting excluding the day of serving notice and day of the meeting. In a private company the Articles may provide for the notice period.
15.	176	A member entitled to attend and vote at a general meeting is also entitled to appoint a proxy to attend and vote instead of himself on a poll. Every member can also inspect the proxies as per the procedure specified. <i>Note.</i>—Unless the Articles otherwise provides, a proxy cannot speak at a general meeting nor vote on a show of hands.
16.	179	A person who is a member or holding proxy can demand a poll at a general meeting. <i>Note.</i>—The member present in person or by proxy should singly or with other member hold voting shares on which at least Rs. 50,000 has been paid.

<i>Sl. No.</i>	<i>Sections</i>	<i>Particulars of right available to a member</i>
17.	186	If for any reason it is impracticable to call a general meeting other than AGM, a member can move to the Company Law Board/Tribunal for direction to call a general meeting.
18.	188	Members holding not less than one-twentieth of the total voting power of all members or at least 100 members holding shares of a paid-up value of Rs. One lakh in all can give to the company notice of a resolution to be circulated to members. The applicants shall also deposit to the company a sum reasonable enough to meet the expenses to forward it to the members.
19.	190	Special notice can be given even by a single member to a company pursuant to sections 224(5), 225(1), 225(4) and 284 at least 14 days before a meeting excluding the day of giving the notice to the company and the day of the meeting.
20.	196	The minutes of general meetings of members of a company can be inspected by a member at the registered office. A member can also ask a company to supply him a copy of the minutes referred to above by paying the charge @ Re. 1 for every 100 words or part thereof. <i>Note</i> —There is no provision to take extracts, the company shall furnish a copy within 7 days.
21.	205A	A member who has not encashed his dividend warrant can ask the company to renew his dividend warrant up to a period of seven years after declaration of dividend.
22.	207	A member is entitled to receive the dividend/or the dividend warrant on the expiry of 30 days from the date of declaration of dividend.
23.	219	Every member of a company shall receive a copy of its balance sheet, profit and loss account, auditors' and directors' report which shall be sent to him by the company at least 21 days before the date of the Annual General Meeting.
24.	257	A member can give a notice to the company proposing a person for election as director at a general meeting along with a deposit of Rs. 500 at least 14 clear days before the meeting.
25.	302	Abstract of the terms and conditions of the appointment of Managing Director or Whole-time Director or Manager or variation of the terms shall be sent to every member within 21 days of the entering into the contract or of the resolution of the Board meeting.
26.	303 and 304	A member can inspect free of charge the register kept by the company containing particulars of directors, Managing Director, Manager and Secretary.
27.	307	A member shall have a right to inspect the Register of directors' shareholding during the continuance of the Annual General Meeting.
28.	372A	A member can inspect the register of loans, investments and guarantee/security and take extracts free of charge. Copy can be obtained by paying fees @ Re. 1 for every 100 words or part thereof.
29.	395	In respect of the offer made by the transferee company to purchase the shares of the transferor company, the dissentient members who have not accepted the offer may move to the Company Law Board/Tribunal.
30.	399	Members can make an application to the Company Law Board/Tribunal in respect of prevention of oppression, mismanagement and investigation of the affairs of the company.

6. Grievance of members and authority to be taken with

<i>Name of grievance</i>	<i>Can be taken up with</i>
<i>In case of public issue:</i> Non receipt of Refund Order Interest on delayed refund Allotment advise Share certificates Duplicates for all the above Revalidations	- SEBI - MCA - Stock Exchange - RTA
<i>In case of listed security:</i> Non receipt of certificates after:— transfer transmission conversion endorsement consolidation splitting duplicates of securities	- SEBI - MCA - Stock Exchange
Regarding listed Debentures: Non receipt of interest due redemption proceeds interest on delayed payments	- SEBI - MCA - Debenture Trustees - Stock Exchange
Regarding bad delivery of shares	Bad delivery cell of the SE
Regarding shares or debentures in unlisted companies	BCA
Deposits in collective investment schemes like plantations, etc.	SEBI
Units of Mutual Fund	SEBI
Fixed Deposits in Banks Finance Companies	RBI
Fixed Deposits in manufacturing companies	MCA

7. Filing of online complaint to the MCA

The Ministry of Company Affairs *vide* Notification No. GSR 56(E) dated 10th Feb., 2006 has prescribed e-Form for making complaint against the Company, therefore, now the complaint against any company except the NBFC and Listed company may be made electronically on the portal of the MCA. (Specimen of Complain Form has been given in Appendix 1):

7.1 Nature of complaints

Nature of complaints have been categorised for that purposes are as under:

- (i) *Complaint on shares or dividend*
 - (a) Non-receipt of certificate
 - (b) Non transfer of shares
 - (c) Non conversion of shares
 - (d) Non endorsement of shares after making payment of calls
 - (e) Non split of shares
 - (f) Non receipt of dividend warrant/cheques
 - (g) Non consolidation of share certificates
 - (h) Non receipt of shares issued on bonus
 - (i) Non receipt of duplicate share certificate or dividend warrants on submission of indemnity bond
- (ii) *Complaint on debentures or bond*
 - (a) Non receipt of interest

- (b) Non receipt of redemption amount
- (c) Non transfer of debentures
- (d) Non transmission of debentures
- (e) Non receipt of debenture certificate
- (f) Non split of debenture certificates
- (g) Non exchange of allotment letter
- (h) Non endorsement of debenture certificate after payment of call money
- (i) Non issuance of duplicate debenture certificate on submission of indemnity bond
- (iii) *Miscellaneous non-receipt*
 - (a) Non receipt of annual report
 - (b) Non receipt of letter of offer for right issue
 - (c) Non receipt of interest on delayed refund payment
 - (d) Non registration of change in address
 - (e) Non receipt of interest on delayed payment
 - (f) Non receipt of excess share application money

7.2 Requirement to file separate form for complaint against each company

It is required to file separate complaint against each company for each complaint so that the MCA may forward the same to the concerning Registrar for further action at his own end.

7.3 Complaint relating to the NBFC and Listed Company

It is required to file complaint relating to the listed company with the SEBI and/or Stock Exchange concerned and in case of a NBFC Company with the Regional Office of the Reserve Bank of India having jurisdiction over the company.

7.4 Fee for making complaint

There is no requirement for making payment of filing fee on complaint to the MCA against any company.

7.5 Tracking status of complaint

On receipt of complaint the MCA portal provide a reference number, the status of complaint may be verified by using the appropriate facilities.

8. Penalties prescribed under SEBI Act, 1992 for redressal of members' grievance

<i>Section</i>	<i>Default</i>	<i>Maximum penalty (Rs.)</i>	<i>Person liable</i>
15C	Failure by listed company or an intermediary to redress grievances of the investors.	1,00,000 per day of default or Rs. 1 Crore, whichever is less.	The listed company or intermediary who is required by the Board to redress the grievances, but who fails to do so.
15D(e)	Failure to refund application monies to the investors within the prescribed period.	1,00,000 per day of default or Rs. 1 Crore, whichever is less.	Any registered collective investment scheme including mutual fund committing the default.
15H(iv)	Failure to make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.	Upto Rs. 25 Crores or 3 times the amount of profits made, whichever is higher.	The person who is required under the Act, rules or regulations to make payment of consideration to shareholders who sold their shares.
15C	Failure by listed company or an intermediary to redress grievances of the investors.	1,00,000 per day of default or Rs. 1 Crore, whichever is less.	The listed company or intermediary who is required by the Board to redress the grievances, but who fails to do so.

<i>Section</i>	<i>Default</i>	<i>Maximum penalty (Rs.)</i>	<i>Person liable</i>
15D(e)	Failure to refund application monies to the investors within the prescribed period.	1,00,000 per day of default or Rs. 1 Crore, whichever is less.	Any registered collective investment scheme including mutual fund committing the default.
15G(i)*	Dealing by an insider either on his own behalf or on behalf of any other person in securities of a body corporate on any stock exchange on the basis of any information.	Upto Rs. 25 Crores insider or 3 times the amount of profits made, whichever is higher.	The concerned.
15G(ii)*	Communicating by an insider, any unpublished price-sensitive information to any person with or without his request for such information except as required in the ordinary course of business or as required by law	Upto Rs. 25 Crores insider or 3 times the amount of profits made, whichever is higher.	The concerned
15G(iii)*	Counseling, or procuring, by an insider, any other person to deal in securities of any body corporate on the basis of any unpublished price-sensitive information	Upto Rs. 25 Crores insider or 3 times the amount of profits made, whichever is higher.	The concerned insider.
15(H)(i)#	Failure to disclose the aggregate of shareholding in a body corporate before he acquires any shares in the body corporate.	Upto Rs. 25 Crores or 3 times the amount of profits made, whichever is higher.	The person who is required under the Act, rules or regulations to make such disclosure.
15(H)(ii)#	Failure to making a public announcement to acquire shares at a minimum price.	Upto Rs. 25 Crores or 3 times the amount of profits made, whichever is higher.	The person who is required under the Act, rules or regulations to make a public announcement at a minimum price.
15(H)(iii)#	Failure to make a public offer by sending letter of offer to the shareholders of the concerned company.	Upto Rs. 25 crores or 3 times the amount of profits made, whichever is higher.	The person who is required under the Act, rules or regulations to make a public offer.
15H(iv)#	Failure to make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.	Upto Rs. 25 Crores or 3 times the amount of profits made, whichever is higher.	The person who is required under the Act, rules or regulations to make payment of consideration to shareholders who sold their shares.
15HA	Indulges in fraudulent and unfair trade practices.	Upto Rs. 25 Crores or 3 times the amount of profits, whichever is higher.	Any person who indulges in fraudulent and unfair trade practices.

- * The penalty leviable under sections 15G(i), (ii) and (iii) pertains to defaults under the SEBI (Insider Trading) Regulations, 1992.
- # The penalty leviable under sections 15H(i) to (iv) pertains to defaults under the SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 1994.

9. Cessation of membership

Merely because a company has been ordered to be wound up, a member of company does not cease to be a member so long as requirement of section 41 read with section 150 continue to be complied with. [*National Steel & General Mills v Official Liquidator* (1990) 69 Comp Cas 416 (Del)].

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

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 On expulsion from membership

In the matter of expulsion of a shareholder by a public limited company, the following clarification has been issued by the Department of Company Affairs *vide* Circular No. 32 of 1975, dated 1-11-1975, which gives the Department's view.

"Recently, a case has come to the notice of the Central Government where a public limited company has amended its Articles of Association by including a clause by a special resolution passed at the Extraordinary General Meeting of the company empowering the Board of directors of the company to expel a member in a case where the Board is *prima facie* of the view that activities or conduct of the member is detrimental to the interests of the company or that by reason of his continuance as a member, it would be prejudicial to the future of the company. The question whether such an amendment of the Articles of Association of a company is valid has been under consideration of the Department. After considering the scheme of the Companies Act, the Department is of the view that amendment of Articles of Association of a company providing for expulsion of a member by the management is opposed to the fundamental principles of the company's jurisprudence and is *ultra vires* of the company. Such a provision is repugnant to the various provisions in the Companies Act pertaining to the rights of a member in a public limited company and cuts across the scheme of the Act, as it has the effect of rendering nugatory the very powers of the Central Government under section 111 of the Companies Act, 1956 and the powers of the Courts under sections 107 and 395 of the Act and is,

therefore, void by the operation of the provisions of section 9 of the Act. The Articles of Association is a contract between the company and its members setting out the rights of members *inter se* under the contract, and expulsion of a member is not only a violation of this contract but it is also opposed to the principles of natural justice. Moreover, under section 23 of the Indian Contract Act, any agreement which is contrary to any law or opposed to public policy would be deemed to be unlawful and void. The Supreme Court in the case of *Bajaj Auto Ltd. v N. K. Firodia* (1971) 41 Comp Cas 1: AIR 1971 SC 321 has laid down the law as to the conditions on the basis of which directors could refuse a person to be admitted as a member of the company. The principles laid down by the Supreme Court in this case, even though pertaining to the refusal of a company to the admission of a person as a member of the company, are applicable even with greater force to a case of expulsion of an existing member. As under Article 141 of the Constitution, the law declared by the Supreme Court is binding on all Tribunals within the territory of India, any provision pertaining to the expulsion of member by the management of a company which is against the law as laid down by the Supreme Court will be illegal and *ultra vires*. In the light of the aforesaid position, it is clarified that assumption by the Board of directors of a company of any power to expel a member by amending its Articles of Association is illegal and void."

9.8 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.

10. Service of documents to the members

Section 53 relates to service of documents on members by company. The relevant provisions have been explained in the respective Part of the Book.

Appendix 1

Specimen of Investors Complaint Form

(Use separate forms for each company or complaint)

(Please select the appropriate item in the Nature of Complaint)

Note: All fields marked in * are to be mandatorily filled.

Dear Sir,

Kindly take up the matter with the company for immediate redressal of my complaint, particulars of which are as under

1. Name and address of investor

- | | |
|---|---|
| 1. (a) *Name of Investor | DILIP KUMAR JAIN |
| (b) *Address Line I | 204, BIJALI NAGAR |
| Line II | BICHOLI HAPSI ROAD |
| (c) *City | INDORE |
| (d) *State | MADHYA PRADESH |
| (e) *Country | INDIA |
| (f) *Pin code | 452001 |
| (g) *Phone | 0731 xxxxxxxx |
| (h) *e-mail ID | dkj_fcs3565@rediffmail.com |
| 2. (a) * Corporate identity number (CIN) of company | xxxxxxxxxxxxxx |
| (b) Global location number (GLN) of company | |
| (a) Name of the company | NIRAJ PETRO CHEMICALS LIMITED |
| (b) Address of the registered office of the company | 123, INDUSTRIAL AREA, MEHBOOB NAGAR, HYDERABAD (A.P.) |
| 3. *Nature of complaint | |

- ☒ Shares or dividend
☐ Debentures or bond
☐ Fixed deposits (non-receipt of amount)
☐ Miscellaneous non-receipt
☐ Others like complaint of serious nature
(i) Complaint on shares or dividend
☐ Non-receipt of certificate ☐ Transfer
☐ Conversion ☐ Endorsement
☐ Splitting ☐ Dividend warrant
☐ Consolidation ☒ Bonus
☐ Duplicate on submission of indemnity bond

(ii) Complaint on debentures or bond

- ☐ Interest ☐ Redemption amount
☐ Transfer ☐ Transmission
☐ Debenture certificate ☐ Splitting
☐ Exchange of allotment letter ☐ Endorsement
☐ Duplicate on submission of indemnity bond

(iii) Complaint on fixed deposits (non-receipt of amount)

- ☐ Interest ☐ Matured amount
☐ Premature payments ☐ Payment as per Company Law Board (CLB) order
☐ Interest on delayed payment

(iv) Miscellaneous non-receipt

- ☐ Annual report ☐ Offer for rights
☐ Interest on delayed refund payment ☐ Registration of change in address
☐ Any other (specify) ☐ Interest on delayed payment
☐ Call money ☐ Application money

4. (a) *Particulars of shares or debentures or fixed deposit or other security (fill in the details in respect of share certificate or debenture certificate or DEMAT account or fixed deposit receipt (FDR) or application form or other security)

I am having 200 Equity Shares in the LF No. 123456 on the record date 4th April, 2006 for the purposes of issuance of bonus shares in the ratio of 1:1 share, but the Company has not sent me the bonus share certificate for the 200 Equity Shares.

(b) *Period in relation to which the complaint relates: 4th April, 2006

(c) *Particulars of the complaint: Non receipt of 200 Bonus Shares

(d) *Other details if any, pertinent to information provided above

5. If complaint is not pertaining to items specified above, or if it is of a serious nature, please give information below along with detailed attachments.

Notes: 1. For Non-banking finance companies (NBFC), complaints are to be lodged with Reserve Bank of India (RBI).

2. For listed or plantation companies, complaints are to be lodged with Securities and Exchange Board of India (SEBI).

Attachments

1.	Optional Attachments, if any.	Copy of the allotment advise.
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Chapter 2

Register of Members

Synopsis

Important Provisions at a Glance

1. Contents of the Register of members
 2. Register of members mandatory in the computerised system of share accounting
 3. Attestation of entries made in the Register of members
 4. Penalty for non-maintenance of Register of members
 5. Place of keeping Register of members
 6. Inspection of Register of members and obtaining copy from the company
 - 7. Copy of register of member can be made available to a shareholder who carried inspection of the same**
 8. Requirement to keep Index of members
 9. Register and Index of debentureholders
 10. Shares and other securities held by a depository
- Appendix 1 Specimen of Board resolution for inspection of Register of members
- Appendix 2 Specimen of General meeting resolutions
- Appendix 3 The Companies (Preservation and Disposal of Records) Rules, 1966

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	Form Nos.
1.	150	Register of members.	
2.	151	Index of members.	
3.	163	Place of keeping Register of members, Inspection thereof, etc.	
4.	Companies (Preservation and Disposal of Records) Rules, 1956	Preservation of 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.

1. 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.

The Register of members may be kept in a format given in the Companies (Issue of Share Certificate) Rules, 1960 or in a form as near thereto as circumstances permit.

Following aspects are worth-noting here:—

- (i) Section 153 specifically provides that no notice of any trust, express, implied or constructive, shall be entered in the Register of members or of Debenture-holders.
- (ii) A company shall not enter in the Register of members a statement as to the fact that it has lien on the shares.
- (iii) In case of joint holders names, address, occupation, etc., of all persons will be entered in the Register of members in order of their application.
- (iv) If minors are shareholders of a company, the names of their guardians shall be entered in the Register of members — *Vide Circular No. 1968/5614, dated 26-2-1964.*

Section 153 states that no notice of any trust, express or implied or constructive, other than mutual trusts and such other trust as may be notified, shall be entered in the Register of members of a company. The company is not concerned whether a person held shares as a beneficiary himself or for the benefit of someone else. In the case of *Jose Pulikken v Damien Subsidies & Kuries Ltd. (2000) 39 CLA 180 (CLB)*, it was held that in any event the company was not concerned with the terms of the trust and if the trustee has violated the provisions of the trust it would be for the beneficiaries to challenge it.

2. Register of members mandatory in the computerised system of share accounting

Many companies, particularly those companies which have many shareholders, have computerised the procedure for maintenance of share accounting. In order to give authenticity to the practice of keeping accounts of security holders in the electronic mode, it is expected that in any future amendments to the Companies Act, necessary provision should be included therein. Meanwhile, where share accounting is computerized, the company is bound to keep the Register of members as prescribed in the Act, in respect of shareholders who have not opted for demat mode.

Section 68B requires that every listed public company, making initial public offer of securities for a sum of Rs. 10 crore or more, shall issue the same in dematerialised form as per the Depositories Act, 1996. SEBI in its DIP Guidelines, 2000 has desired that all public offer of securities in future shall be in dematerialised form.

3. Attestation of entries made in the Register of members

All the entries made in the Register of members shall be attested by an official duly authorized and any change in the Register for issue of new certificates in exchange of old share certificates and of duplicate certificate shall also be made and attested.

4. 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)]

5. 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. (See Appendix 1 & 2)

Under section 163(1) a shareholder is entitled to a copy of list of registered shareholders. Since names of shareholders of company have to be entered in 'register of members' as laid down in sections 150 and 151, contention that list of registered shareholders of company is not one of registers to be maintained under section 163(1), cannot be accepted. [*Nutech Agro Ltd. v Ch. Mohan Rao (2002) 39 SCL 310 (AP)*].

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.

6. 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. However, if trustees are registered as members, beneficiaries will not be allowed to inspect. Section 163(3) states that any member or debentureholder of the company or any other person may:—

- (i) take extracts from the Register of members without fee or additional fee as the case may be; or
- (ii) require a copy of Register of members or of any part thereof, on payment of rupee one for every one hundred words or a fraction thereof, required to be copied [section 163(3)(b) of the Act, read with rule 21A of the Companies (Central Government's) General Rules and Forms, 1956].

The company shall cause any copy required by any person as aforesaid, to be sent to that person within a period of ten days, exclusive of non-working days, commencing on the day next after the day on which the requirement is received by the company. [Section 163(4)]

Further every company, public or private, shall keep register of members in one or more books, separately for equity shares and preference shares. Where there are different issues/series of preference shares, each issue/series will be recorded in a different book.

7. Copy of register of member can be made available to a shareholder who carried inspection of the same

Right u/s 163 to seek a copy of the register of member accrues to a member who carried out an inspection, so that a share holder who did not carried out an inspection cannot demand a copy of register of member and make a petition to CLB to furnish a copy of the register. [*Sravya Finance & Investment (P) Ltd Vs. Kumars Metallurgical Corporation Ltd* Comp Cas 139 24 May 2006]

8. 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 the register of members is itself in such form as would constitute an index, like where the register is arranged alphabetically, there is no need for an index.

Within 14 days from the date on which any alteration is made in the register of members, the company shall also make necessary alteration in the index. The index shall also be kept at all times at the same place where the register of members is kept.

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.

9. 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.

10. 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.

Appendix 1

Specimen of Board resolution for inspection of Register of members

RESOLVED THAT the Register of Members, Index of Members, Copies of Annual Return and other documents be kept at (Place) for inspection by members during business hours on any working day in the manner provided under the Companies Act and Articles of Association of the company.

RESOLVED FURTHER THAT Shri MM, the Company Secretary be instructed to make necessary arrangements for keeping the records at the aforesaid place and for inspection by members and comply with all other requirements in this regard.

Appendix 2

Specimen of General meeting resolutions

I. Shifting place for keeping Register of members at place other than registered office

RESOLVED THAT pursuant to the provisions of section 163 and other applicable provisions, if any, of the Companies Act, 1956, the Register of Members and Index of Members, in respect of Shares/Securities issued by the Company and the copies of all Annual Returns, prepared under sections 159 and 160, together with the copies of the certificates and documents required to be annexed thereto under sections 160 and 161, be kept at the office of Registrar & Share Transfer Agents of the Company viz. Karvy Computershare Private Limited, at or at any other place of office of Registrar & Share Transfer Agents, in New Delhi."

Explanatory Statement to the above Resolution

The Company had obtained approval of members at its 11 Annual General Meeting held on, for keeping the Register of Members, Index of Members and copies of Annual Return, etc. at the office of the then Registrar and Share Transfer Agents of the Company viz. M/s. MCS Limited, New Delhi, or any other Registrar and Share Transfer Agents, as may be appointed by the Board of Directors from time to time, in New Delhi.

The Board of Directors of the Company at its meeting held on, have appointed M/s. Karvy Computershare Private Limited, as Registrar and Share Transfer Agents, having office at, with effect from

In view of this, fresh approval of the members is desirable/required for maintaining the Register of Members, Index of Members and copies of Annual Return etc. at the new address of Registrar & Share Transfer Agent of the Company.

None of the Directors is, in any way, concerned or interested in this resolution. The Board of Directors recommend the resolution for approval of the members.

II. Shifting place for keeping Register of Debenture holders at place other than registered office

RESOLVED THAT pursuant to section 163 and other applicable provisions, if any, of the Companies Act, 1956 the Company's Register of Debentureholders, Index of Debentureholders and copies of all its Annual Returns prepared under section 159 and other applicable provisions, if any, of the said Act, together with the copies of certificates and documents required to be annexed thereto under section 161 of the said Act, be kept on and from at the office Ltd., the Registrars and Debenture Transfer Agents of the Company, situate at,, instead of being kept at the registered office of the Company.

Explanatory Statement to the above Resolution

..... Ltd. was entrusted with the work of Registrars to the Debenture issue of the Company in for the issue of 2,06,093,% Secured Convertible Redeemable Debentures of Rs. 180 each for cash at par.

The Debentures were allotted by the Board of Directors to successful applicants on

The Board appointed Ltd., as Registrars and Debenture Transfer Agents of the Company with effect from As Registrars and Debenture Transfer Agents, Ltd., will record all particulars of, and relating to, the allotment of Debentures by the Company, attend to the registration and certification of the Transfer of Debentures of the Company, maintain the Register of Debentureholders and Index of Debentureholders, prepare Annual Returns to be filed by the Company with the Registrar of Companies,, and do all such other work as is normally done by the Registrars and Debenture Transfer Agents.

With a view to enabling the Registrars and Debenture Transfer Agents to carry out their duties expeditiously it is considered desirable to keep the Register of Debentureholders, Index of Debentureholders and copies of all Annual Returns of the Company prepared under section 159 of the Companies Act, 1956, together with the copies of the certificates and documents required to be annexed thereto, at their office in, instead of at the registered office of the Company as at present.

Having regard to the provisions of section 163 of the Companies Act, 1956, the prior consent of the shareholders by a special resolution is required to be obtained for keeping the documents mentioned in the preceding paragraph at any place other than the registered office of the Company. The special resolution set out in the Notice is to comply with this requirement. The proposal is to keep the documents in Ltd's offices with effect from None of the Directors is interested in this resolution.

An advance copy of the special resolution set out under item No. of the Company's Notice, and which is proposed to be passed at this meeting, has been delivered at the Office of the Registrar of Companies,, as required by the said section 163.

Appendix 3

The Companies (Preservation and Disposal of Records) Rules, 1966

In exercise of the powers conferred by sub-section (1) of section 642 read with sub-section (1A) of section 163 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely: —

1. Short title and commencement.—(1) These rules may be called The Companies (Preservation and Disposal of Records) Rules, 1966.

(2) They shall come into force on the 1st February, 1966.

2. Destruction of documents.—The documents specified in column (1) of the Schedule to these rules, kept by a company under section 163 of the Companies Act, 1956, may be destroyed after the expiration of the period indicated against them in column (2) of the said Schedule.

3. Preservation of documents beyond the period prescribed.—Notwithstanding anything contained in these rules, the Registrar of Companies may, by order in writing, direct any company to preserve any of the documents mentioned in column (1) of the said Schedule beyond the period specified for retention in the corresponding entry in column (2) thereof.

4. Register of documents destroyed to be maintained.—A company shall maintain a register in the form set out in the Appendix annexed hereto wherein it shall enter brief particulars of the documents destroyed and all entries made therein shall be authenticated by the secretary or such other persons as may be authorised by the Board for the purpose.

5. A contravention of any of these Rules shall be punishable with fine which may extend to five hundred rupees.

THE SCHEDULE

[See rules 2 and 3]

<i>Name of documents</i>	<i>Period</i>
(1)	(2)
(1) Register of members commencing from the date of the registration of the company ...	Permanent.
(2) Index of members ...	Permanent.
(3) Register of debenture-holders ...	15 years after the redemption of debentures.
(4) Index of debenture-holders ... redemption of debentures.	15 years after the
(5) Copies of all annual returns prepared under sections 159 and 160 and copies of all certificates and documents ... required to be annexed thereto under section 160 and 161 the Registrar.	8 years from the date of filing with

APPENDIX

[See Rule 4]

<i>Particulars of documents destroyed</i>	<i>Date and mode of destruction with the initials of Secretary or other authorised person</i>
(1)	(2)

Chapter 3

Closure of Register of Members and Debentureholders

Synopsis

Important Provisions at a Glance

1. Purpose of closure of Register of members or debentureholders
 2. Period for closure of Register of members or debentureholders
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Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	Form Nos.
1.	154	Power to close Register of members.	
2.	Listing Agreement	Clause 15 & 16 — Closure of Register of members by listed companies.	

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.

1. 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. [*Jose Pulikken v Damien Subsidies & Kuries Ltd.* (2000) 39 CLA 180 (CLB)].

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. [*Killick Nixon Ltd. v Dhanraj Mills (P) Ltd.* (1983) 54 Comp Cas 432 (Bom)].

2. 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. A company may decide the book closure subject to the compliance with certain requirements under the Act. Whenever there arises a need to close Register of members, a company may after giving not less than seven days previous notice by advertisement in some newspapers circulating in the district in which the registered office of the company is situated, close the Register of members or the Register of debentureholders 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.

As per the Listing agreement, the listed companies are required to give advance notice of atleast 21 days before closure of books and in the case of dematerialized securities, the notice period is reduced to 15 days.

If the Register of members or of debentureholders is closed without giving the notice provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the register is so closed.

3. Notice of closure of Register of members to contain, *inter alia*, date of Annual General Meeting or other purposes

Being a good secretarial practice for issuance of any notice pursuant to section 154 should also contain the purpose behind the book closure like the day, date, time and venue of the company's Annual General Meeting, payment of dividend, issuance of bonus shares, issuance of offer for right shares, redemption of debenture or preferential shares, etc. The notice shall be released well in advance of the scheduled date of Annual General Meeting or other purposes for which it has been closed.

Section 53(3) provides that a document advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly served on the day on which the advertisement appears, on every member of the company who has no registered address in India and has not supplied to the company any address within India for giving notice to him.

4. Press announcement for closure of books

It would be adequate if an advertisement is issued in one English newspaper circulating in the district in which the registered office of the company is situated by giving not less than seven days advance notice from the commencement of the book closure. (Appendix 1)

Publication in the daily official list of stock exchange cannot be said to be advertisement in newspaper and is not in conformity with requirements of section 154(1). [*Talayar Tea Co. Ltd. v Union of India* (1991) 71 Comp Cas 95 (Mad)].

4.1 Procedure for closure of Register of members/debentureholders in the case of a listed company

In the case of a listed company, it is necessary that the company shall advise the stock exchange in which its shares are listed atleast 7 days in advance, about the Board meeting which would consider the annual accounts including proposal to recommend dividend. Such a company is required to give advance notice of 21 days before the Register of members is closed and 15 days in case where the shares are in D-mat. Further that three copies of the public notice published u/s 154 shall be sent to the stock exchange as soon as published in terms of clause 31 of the Listing agreement.

The company shall intimate the stock exchange by letter/fax/telegram within 15 minutes of the closure of the Board meeting about the decision of the Board related to (Appendix 2)—

- (a) all dividends and/or cash bonuses declared or recommended or the decision of the Board to pass any dividend or interest payment;
- (b) the total turnover, gross profit/loss, provision for depreciation, tax provision and net profit for the year with comparison with the previous year and the amounts appropriated from reserves, capital profits, accumulated profits of past year or other special source to provide wholly or partly, for the dividend even if this calls for qualification that such information is provisional or subject to audit.

Appendix 1

Specimen of notice under section 154

MMG LIMITED

Regd. Office: Moti Magri Industrial Scheme, Udaipur (Raj.)

NOTICE TO MEMBERS

NOTICE is hereby given pursuant to section 154 of the Companies Act, 1956, that the Register of members and Share Transfer Books of the Company will remain closed from xx.xx.xxxx to xx.xx.xxxxx

(both days inclusive) for the purpose of payment of dividend to the shareholders for the period ended on xx.xx.xxxx.

FURTHER NOTICE is hereby given that the 27th Annual General Meeting of the members of the Company will be held at the Registered Office of the Company on the xx.xx.xxxx at 3.00 P.M. where the business, stated in the notice of Annual General Meeting dated xx.xx.xxxxr, as sent to all the members by post together with the annual report for the year ended xx.xx.xxxx, will be transacted.

Place: Udaipur
Dated:

By order of the Board
MMG LIMITED
R. Shridhar
COMPANY SECRETARY

Appendix 2

Specimen of Board resolutions

I. Closure of Register of debentureholders

RESOLVED THAT the Register of Debenture-holders and Debenture Transfer Books of the Company be closed between xx.xx.xxxx to xx.xx.xxxx (both days inclusive) for the purpose of payment of interest.

RESOLVED FURTHER THAT the text of the advertisement to be published in this regard, submitted to this meeting and initialed by the Chairman for the purpose of identification, be approved and that Ms. AJ, the Company Secretary be and is hereby authorised to arrange for its publication in newspapers.

RESOLVED FURTHER THAT Ms. AJ, the Company Secretary be and is hereby authorised to intimate stock exchanges and comply with all other formalities in this regard.

Alternate Resolution

RESOLVED THAT X & Co (Private) Ltd., the Registrars and Transfer Agent of the company, be and are hereby authorised, subject to the provisions of section 154 of the Companies Act, 1956 and the relevant provisions contained in the trust deed in this behalf to close the register of Debenture Stockholders of the company for a period not exceeding 15 days immediately preceding the due date of payment of interest on the debenture stock of the company and to arrange for the publication of the required notice in the press.

II. Closure of Register of members

RESOLVED THAT in accordance with the provisions of section 154 of the Companies Act, 1956 and in accordance with the requirements of the Listing Agreement, the Company's Register of members and the share transfer books be closed from xx.xx.xxxx to xx.xx.xxxx (both days inclusive) for the purpose of declaration and payment of dividend.

RESOLVED FURTHER THAT Ms. AJ, the Company Secretary of the Company be authorised to give notice of the book closure to the Stock Exchanges where Company's shares are listed and also to issue a notice in the newspapers under section 154 of the Companies Act, 1956.

Alternate Resolution

RESOLVED THAT the Register of members and Register of share transfers of the Company be closed from 25th September to 30th September, 2006 (both days inclusive) for the purpose of Annual General Meeting and payment of dividend pursuant to the Listing Agreement of the Company with the Stock Exchange(s) and as per section 154 of the Companies Act, 1956, and that Ms. AJ, the Company Secretary be and is hereby authorized to make arrangement for publication of notice in the news papers and intimate to the Stock Exchange(s), CDSL, NSDL and Share Transfer Agent of the Company.

Chapter 4

Nomination for Shares and Securities

Synopsis

Important Provisions at a Glance

1. Who may use nomination facilities?
2. Nomination by holder of partly paid up shares or debentures
3. Nomination for part of the holdings
4. Who can be nominated?
5. Procedure for making nomination
6. Advantages of making nomination
7. Effect of nomination upon transfer of shares
8. Change in nomination
9. Nomination made by joint holders
10. Options to nominee upon death of share or debentureholder
11. Procedure for transmission of shares in favour of nominee
12. Rights of nominee
13. Nomination is in respect of present holding and not future holding
14. Option for holdings in D-mat form and physical form
15. Voting right in case where the d-mat of shares are pending

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	Form Nos.
1.	109A	Nomination by shareholders and debentureholders.	2B
2.	109B	Transmission of shares on death of members or debentureholders.	

Sections 109A and 109B contain provisions regarding nomination facility to shareholders and debentureholders. Section 58A(11) relates to nomination facility to deposit-holders of a company. Rules 4CCC and 5D of the Companies (Central Government's) General Rules and Forms, 1956 and Form 2B has also prescribed procedural guidelines pertaining to use of the nomination facility by shareholders, debentureholders and deposit-holders of a company.

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.

1. 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. Where the shares or debentures of a company are held by more than one person jointly, the jointholders may together nominate a person to whom the shares or debentures shall vest in the event of death of all the joint holders. Form 2B itself states that it is to be filled in by individual applying singly or jointly, if jointly, only up to two persons. Following important observations in this regard may be noted.

2. 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. In case if there are any calls in arrears at the time of death of the holder of shares/debentures, the nominee becoming holder of shares/debentures by virtue of the nomination made in his favour, would be subjected to all the rights and liabilities to which the deceased shareholder/debentureholder is entitled.

3. 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.

4. 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 one folio but the combination of joint names differs from one folio to another, they can appoint different nominees for their holdings under different folios.

5. 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.

6. Advantages of making nomination

Nominations avoid legal formalities and complication, which may arise in the case of death of a shareholder or debentureholder or depositor of a company. After making valid nomination by a member, the shares in, or debentures of a company and deposits in a company vest in the nominee on the death of the holder or on the death of all the joint holders, as the case may be. Nomination actually nullifies all the complications and hassles involved in a case where a holder dies intestate and shares/debentures are to be transmitted in favour of his/her legal representative or heir. Nomination removes the requirement as to obtainment of probate or succession certificate.

7. Effect of nomination upon transfer of shares

In case, shares in respect of which nomination has been made are transferred, the nomination shall automatically stand rescinded. The same position is applicable in respect of transfer of debentures and renewal/repayment of deposits.

8. 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.

9. Nomination made by joint holders

Joint holders upto two may appoint a nominee for the shares/debentures/deposits held by them in a company by preparing and signing Form 2B and sending the same to the company concerned for necessary registration. In case if one of the jointholders dies, the shares/debentures will get transmitted in favour of the surviving holder. Nomination will remain intact but nominee will have a right to shares/debentures/deposits only upon the death of all the joint holders.

Surviving jointholder can make fresh nomination revoking the old nomination because upon the death of a jointholder, he will become the sole owner.

10. 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.

11. 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.

12. 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:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share or debenture, until requirements of the notice have been complied with. [Section 109B(4)]

13. Nomination is in respect of present holding and not future holding

While making nomination the shares/debentures need to be identified by way of furnishing Distinctive Nos. etc., in Form 2B. Therefore, any shares/debentures which may be acquired in future after making nomination cannot be identified now.

Therefore, the nomination made will not extend to further acquisition of shares in future. If shares are acquired in future and got transferred in the same folio then similar nomination will have to be made in future covering the further acquisition of shares under nomination.

14. Option for holdings in D-mat form and physical form

D-mat shareholders are given an option as to election of nominee at the time of opening of D-mat account. The company will not recognise nomination made in respect of holdings in D-mat form.

D-mat shareholders, who have part of their holdings in physical form, are entitled to make nomination in prescribed Form 2B in respect of shareholdings in physical form only.

15. Voting right in case where the d-mat of shares are pending

In respect of shares held in a fungible form in a depository, wherein registration of transfer of shares is instantaneous, bringing the name of the transferee as a beneficial owner in the record of the depository in terms of section 41(3), until and unless such transfer is also either prohibited or stopped during the book closure period, voting rights on the shares so acquired cannot be taken away, as every shareholder whose name is on the Register of members on the day of general body meeting will have a right to attend and vote as he is the one who will be interested in the affairs of the company as shareholders on the day of the meeting. Therefore, the timing of acquisition of shares is immaterial as far as voting rights are concerned. [*United Western Bank Ltd., In re* (2002) 38 SCL 34 (CLB)].