Membership of the company

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.

- Membership consists of those persons who constitute the company.
- The word 'member' includes a deceased member so long as his name is on the register of members.
- A member is not necessarily a shareholder, for an unlimited company or a company limited by guarantee may exist either with or without share capital.
- A person who agrees in writing to become a member of a company and his name is registered in the members of the company.

How to become a member :-

- ✓ By subscribing 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 or transfers shares
- ✓ ***Membership by agreement in writing :-*** *Agreement must be with the Company after its incorporation and not with the promoters of the company.*
    - *Only an agreement does not create status of membership :- If there is any condition precedent to be member , then that condition must be fulfilled first, otherwise such agreement won't create any effect.*
    - *Entry in the register of member is must to consider as a member*
- ✓ Deemed Member :-
    - By conversion of debentures into shares
    - By transfer of shares
    - By transmission of shares
    - By acquiescence of estoppel :- A person is deemed to be a member of company, if he allows his name , without any sufficient cause, to be on register of member of the company.
        - ***He can*** escape from his liability only after removing his name from the register of members on permissible grounds.

Shareholder v/s Member :-

Even though these are used in exchange of each others in the provision of the company law. But there are certain exceptions to this case, For example :- :-

1. A person may be holder of shares by transfer but will not become its member until and unless the transfer is registered in the books of the company in his favour.
2. A person whose transfer is registered will be the member of the company unless his name is removed from the register of members under section 150 of the companies Act 1956.

Case law :- Herdillia Unimers Ltd v/s Renu Jain

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

Who can become a member ????

1) Company = A company can be a member of another company if MOA provide so. But can't be a member of its own company or subsidiary company.
    a. Please note that whenever company buyback its shares it has to dispose them after buyback.
2) ***A registered co-operative society*** :- Yes, because a separate legal entity.
3) ***A Non-Resident Indian [NRI] :-*** Yes,Subject to rules provided by FEMA,
4) ***Minor :-*** Since the member is incapable to be entered into a contract , so he can only be admitted as member for his benefit. He won't incur any liability .
    a. ***Sh***ares will be allotted in the name of guardian.
5) **HUF :- The shares** can be registered in the name of KARTA.
6) ***Registered Trade Union/ LLP :- Both*** are registered and separate legal entities. So yes, can act as member of the company. But not partnership , as not a legal person …but partners can be member in their individual capacity or as joint holders.
    a. ***Joint holders will be counted as one for the purpose of quorum***
    b. If notice served to first holder , it will counted as notice served to all.
    c. A proxy will be appointed by all of them acting jointly subject to regulation 57 of Table 'A' .
    d. Transfer will be valid when signed by all members.
    e. Joint and several liability in case of unpaid calls of the company.

Que:- Whether preference shareholder is counted for the purpose of calculating 50 members under
section 3(1)(iii) of the Act?

Ans :- when a person Holds both equity nd preference shares of the company he will be treated as one member while entering the details in the register of the members. Preference shares are also shareholders so they are also counted for calculating the members of the company.

Question :- can a **Pawnee, receiver can be named as members ????**

Ans :- No, they can receive the benefits which could be given to members like dividend.

Rights of the Members :-

(*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 for relief in the case of oppression;
(*v*) to apply to the Court for relief in the case of mismanagement;
(*vi*) to apply to the Court for winding up of the company;
(*vii*) to share in the surplus on winding up;
(*viii*) the right to vote at all meetings; and many more …..

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

- ***On a valid surrender of shares***
- ***On transfer of shares***
- ***By rescission of contract of membership on ground of misrepresentation or mistake :- Where a person*** has subscribed for shares on basis of prospectus, he think doesn't contain any true fact or misleading, he can rescind the contract and claim compensation.
- ***On Bankruptcy of a member***
- ***On forfeiture of shares***
- ***On death of member***

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.

Important points :-

- ✓ **Register of members mandatory in the computerised system of share accounting**
- ✓ **Attestation of entries made in the Register of members**
- ✓ **Penalty for non-maintenance of Register of members :- may extend to Rs.500 for every day default continues.**
- ✓ **Place of keeping Register of members :- Registered office.**
- ✓ **Inspection of Register of members and obtaining copy from the company ;-**
  Member & debentureholders without payment of any fees
  Other person Rs.10 charged
  Inspecction period should not be less than 2 hours given by the company.

Requirement to keep Index of members :- Ye question mere IPCC ke law exam me aaya tha ☺

Where the company has more than fifty members,
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.
This index should be kept with other registers of the company.
If default made in complying the above provision, there would be penalty u/s 151 which may extend to Rs.500.

Regards
Renu.