

# **Members and Shareholders of a Company**

**Subject: Commerce**

**Lesson : Members and Shareholders of a Company**

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# Members and Shareholders of a Company

## Table of Contents

- Unit 5 : Members and Shareholders of a Company
  - 5.1 Meaning of a Member and a Shareholder
  - 5.2 Distinction between a Member and a Shareholder
  - 5.3 Modes of Acquiring Membership
  - 5.4 Who can become a Member of a Company?
  - 5.5 Rights and Liabilities of a Member
  - 5.6 Register of Members
  - 5.7 Cessation of Membership
  - Sections
  - Summary



# Members and Shareholders of a Company

## 5.1 Meaning of a Member and a Shareholder

The term "Member" denotes a person whose name appears on the Register of Members, and the term "Shareholder" refers to a person who holds shares in a company. The term "Member" has been explained in Section 41 of the Companies Act 1956 as follows:



Figure 5.1: Member & a Shareholder

(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.

### Case law 1

#### **Smt Nupur Mitra vs. Basubani P Ltd - [(1999) 35 CLA 97= Cal LT 1999(2) 264 (Cal HC DB)]**

In this case Smt Nupur Mitra filed a petition that her father, who was the promoter and the member of the company Basubani Pvt Ltd and whose name was mentioned in the Memorandum of Association, was not getting the subsequent shareholding registered in his name in the books of the company.

It was held by the Court that the issue of subsequent shares to the already existing members is not compulsory.

(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.

### Illustration:

The name of Mohan is found in the Register Of Members of a Company. But Mohan contends that he is not a member of the company. The company maintains that Mohan had orally agreed to become a member and hence, his name was entered in the register and so he is a member. In the end it was decided that contention of Mohan is valid because a person should agree in writing to be member of the company, oral agreement is not valid.

(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 company.

### Case law 2

#### **Balkrishan Gupta vs. Swadeshi Polytex - [AIR 1985 SC 520 = 58 Comp Cas 563 (SC)]**

In this case Balkrishan Gupta filed a case against Swadeshi Polytex. The dispute arose

# Members and Shareholders of a Company

when Swadeshi Polytex did not give notice of its extra-ordinary general meeting to Mr Balakrishna Gupta.

It was held that only members are to be called in the meeting and to be a member two conditions must be fulfilled i.e. a member must agree in writing and his name must be entered in register of members. It was further decided that a person holding shares of a company is considered an owner and hence enjoys all the rights of a member.

Thus we can conclude that the subscribers to the memorandum become members of the company by virtue of signing, the memorandum and neither allotment of shares nor the registration of their names in the register of members is essential. Further any person other than subscriber to the memorandum who agrees in writing to become a member and the one whose name appears in, the register of members or in the record of depository is a member. Hence a person whose name appears in the register of members, is presumed to be a member of the company and the onus is on him after that to prove that he is not a member, if a situation arises.

## 5.2 Distinction between a Member and a Shareholder

“Every shareholder of a company is known as a member while every member may not be known as a shareholder”. This statement can be justified by analyzing the following differences between the two:

**1) Subscriber to the Memorandum:** A person, who subscribes to the memorandum, becomes a member immediately, even though no shares are allotted to him. In such a case, till the shares are allotted to him, he is a member but not a shareholder.

### Illustration:

Suresh had subscribed to the memorandum of a company for 500 shares. The company was duly registered, but he ultimately took only 50 shares. The company was wound up and Suresh was held liable in the winding up of the company to pay for all 500 shares even though as a member they were never allotted to him.

**2) Transfer of Shares:** A transferor (or seller) who has transferred his shares ceases to be a holder of those shares as from the date of the transfer but he continues to be a member till such time the transfer is registered in the name of the transferee (buyer) in the books of the company (i.e. the register of members of the company).



Figure 5.2: Transfer of Shares

### Illustration:

Deewakar sells his shares to Iqbal. He fills up a share transfer form and hands it over to Iqbal along with the share certificate. Deewakar is no longer a shareholder as he has sold his shares to Iqbal. But the name of Deewakar continues to be on the register of

## Members and Shareholders of a Company

members till the transfer of shares is registered by the company in favour of Iqbal in its all the relevant documents.

**3) Company without Share Capital:** Companies limited by guarantee and having no share capital, and unlimited companies without share capital, can only have members, but not the shareholders because such companies do not have share capital.

### Illustration:

Bakery Ltd was a guarantee company formed on 20 September 2004. The company went into liquidation before one year of its coming into existence. In such a situation all the members of the company are liable to the extent of their guarantees as it is a company limited by guarantee and hence has only members and not shareholders.

**4) Holder of a Share Warrant:** A holder of a share warrant\* is a shareholder of the company but not a member, as his name is struck off the register of members. This means a person can be a holder of shares without being a member of the company.

### Case law 3

Kedar Nath Agarwal vs. Jay Engg. Works Ltd - [(1963) 33 Comp Cas. 102]

Kedar Nath a shareholder of Jay Engg. Works Ltd. was issued a share warrant from the company as he wanted to sell his shares. He sold the shares and claimed that he was still a member of the company.

It was held that although Kedar Nath has sold the shares of the company, as his name still appears in the register of members he continues to be a member till the time his name is removed from the register.

**5) Insolvency:** When a person becomes insolvent, his shares vest in his Official Receiver or Official Assignee. However, he continues to be a member of the company, even though he is no longer a shareholder.



**Figure 5.3: Insolvent**

### Illustration:

Bhuvan had purchased 100 shares of Piya Ltd Company. After a year Bhuvan became insolvent. Thereafter all his property, including shares, were vested with the Official Receiver. However Bhuvan still continued to be a member of the Piya Ltd. even though he was no longer a shareholder.

## Members and Shareholders of a Company

**6) Transmission (in case of death):** A legal representative of a deceased member becomes a shareholder immediately on the death of the member but he is not a member until he gets his name entered in the register of members.

### Illustration:

Mohan dies and his property, including shares, is inherited by Shyam, his legal representative. Mohan is no longer the shareholder. He is not in existence to hold the shares. Shyam now holds shares in his own right and, therefore, can rightly be called the shareholder for the shares of Mohan. But Mohan continues to be a member as his name still appears on the register of members. However, as soon as Shyam gets his own name registered in the register of member, Mohan will cease to be a member.

\*A Negotiable Instrument in which it is stated that its bearer is entitled to shares specified therein.

**7) Forfeiture / Surrender of Shares:** A person who has surrendered or the one whose shares are forfeited by the company is no longer a shareholder of the company. However, he may be held liable like a member to contribute towards the assets of the company, if winding up commences within one year of his ceasing to be member.

### Illustration:

Mahesh is a shareholder of Comma Ltd. Co. He has 300 shares of that company. He has not paid the second call for Rs 6000 on those shares even after repeated reminders by the company. His shares are finally forfeited by the company. The day this forfeiture is registered by the Comma Ltd. in its records Mahesh ceases to be a shareholder of the company.

**8) Member by Estoppel:** A person who knowingly, allows his name to appear in register of members, even though he knows he is not a shareholder is called as Member by Estoppel or an Estopped member. Such a person cannot deny his liability as a member of the company.

### Illustration:

Yakub has applied for allotment of 1,000 shares in a company. No allotment of shares is made to him by the company. Later on, without any further application from Yakub, the company transfers 1,000 partly-paid up shares to him and places his name in the register of members. Yakub, even though he knows that his name is placed in the register of members, does nothing to get his name removed from register of members. The company later makes a final call of shares and Yakub refuses to pay. In this case he cannot refuse to pay as he has been aware of all the facts throughout. Therefore he is member by estoppel and has to pay the pay unpaid amount.

# Members and Shareholders of a Company

**Table 5.1 Distinction between a Member and a Shareholder**

<b>Basis</b>	<b>Member</b>	<b>Shareholder</b>
Registration	A registered member may not be a shareholder because the company may not have a share capital	A registered shareholder is a member of the company.
Share Warrant	Holder of a share warrant is not a member as his / her name is struck off the register of members.	A person who holds a share warrant is a shareholder.
Legal Representative	A legal representative of a deceased member is not a member until he / she applies for registration.	A legal representative of a deceased member is a shareholder even though his / her name does not appear in the register of members.
Subscriber to Memorandum	A person, who subscribes to the memorandum of association, becomes a member immediately, even though no shares are allotted to him / her.	Till shares are allotted to the subscriber to the memorandum, he / she is just a member but not a shareholder.
Forfeiture/Surrender	A person may be held liable as a member to contribute towards the assets of the company, if the winding-up commences within one year of his / her ceasing to be a member.	A person who has surrendered his / her shares or his / her shares have been forfeited is no longer a shareholder of the company.
Member by Estoppel	A person who knowingly, allows his / her name to appear in the register of members, without being so, shall be held liable like a member.	A person held member by estoppel is not a shareholder.

From the above stated facts and illustrations it can be concluded, that a person may be a member but not a shareholder, or he may be a shareholder but not a member.

# Members and Shareholders of a Company

## 5.3 Modes of Acquiring Membership

Various ways in which membership of a company can be acquired:

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

**1) By Subscribing to Memorandum: - Section 41** of the act states "The subscribers of the memorandum of a company shall be deemed to become members of the company, and on its registration, shall be entered as members in its register of members"

This means that, such persons need not apply for shares, the moment they sign the memorandum they become members even though their name may not be there in register of members. Also allotment of shares to them is not necessary

### Case law 4

Official Liquidator vs. Suleman Bhai - [A.I.R. (1955) M.B.166.]

In this case Suleman Bhai was an original shareholder of the company and was allotted 200 shares that were entered under his name in the Memorandum of Association. But actually he paid only for 20 shares.

Held, he was liable in winding up of the company for all the 200 shares because his name was entered in the Memorandum for 200 shares.

**2) By Application and Allotment: -** An application for shares is an offer to take shares and its allotment means the acceptance of that offer by the company. When a company allots a certain number of shares in response to an applicant's application his/her name is entered in the register of members and applicant becomes the member of the company.

### Case law 5

Aldborough Hotel Co. Re, Simpson's case - [(1896) 4 Ch . App. 184.]

\* Qualification shares are the number of shares which a director is required to hold as per the articles.

Simpson, a builder, wrote to Aldborough hotel company offering to take up 300 shares on the condition that a contract for alterations to the hotel would be given to him. His offer was accepted and 300 shares were allotted to him. This contract was not made in writing and the company went into liquidation.

It was held that Simpson was not liable as a contributory in winding up because the agreement to take shares by Simpson was conditional on the contract for alterations being given to him.

**By Transfer of Shares:-** A person may become member of the company by purchasing shares of that respective company in the open market and then getting them registered in his name i.e. He will not be member just by acquiring shares, he will become member only when those shares are registered in his name in the company records. Transfer of shares is **voluntary** in nature.

# Members and Shareholders of a Company

## Illustration:

Rohit buys 5000 shares of Samsung Ltd. through a broker Sam Global Consultancy in the open market. He becomes a member of the company only when he receives a certificate from Samsung Ltd. about his shareholding.

**3) By Transmission or Succession of Shares:** - Unlike transfer, transmission of shares is involuntary in nature. Shares are transmitted automatically by operation of law, to a person who is entitled under the law to succeed to the estate of person in the case of the death or that person or his incapacity, lunacy and unsound mind automatically. Transferee does not require the instrument of transfer.



**Figure 5.4: Transmission or Succession of Shares**

## Illustration:

Sagar was the son of Satish. Satish had 400 shares of Compton Greaves Co. Satish died on 23 July 2008. Before his death he had made a will that after his death his son Sagar should get all his wealth. Therefore Sagar became the member of Compton Greaves Ltd. by transmission.

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**4) By Agreement to purchase qualification shares:-** In case of companies having share capital as per Section 266(2) "A person who signs and delivers to the registrar a written undertaking to take from the company and pay for qualification shares\* is in the same position as if he had subscribed to the Memorandum for a similar number. As such, he is also deemed to have become a member on the incorporation of the company".



**Figure 5.5: Qualification Shares**

It same as a director of a public company who files an undertaking with registrar to take qualification shares he is in same capacity as a subscriber to the Memorandum.

# Members and Shareholders of a Company

## Illustration:

Mr. Rakesh was appointed as the director of Raheja Ltd. on 3 September 2005. He did not hold the necessary qualification shares to be director on that day. It was informed to him that once he acquired the requisite qualification shares he will be member of the company as other signatories of Memorandum are. Mr. Rakesh acquired the shares and was registered as a member of the company.

However the above Section **does not apply** to

- i. A company not having share capital
- ii. A private company
- iii. A company, that was a private company before becoming a public company.

**5) By Principle of Estoppel:-** (refer to 5.2.8) When a person allows his name to be on the register of members, or otherwise holds himself out, or allows himself to be held out as a member, he is deemed to be a member of the company. In such a case he is estopped from denying that he is a member. In the event of winding up, he will be liable, like other members, as a contributory.

## Illustration:

Mohammad allows his name to appear on register of members, without any agreement to become a member. He also holds himself out as a member of the company. The company goes into liquidation and his name is put on the list of contributories. He seeks to avoid liability, but he cannot do so as he is deemed to be a member of the company on the grounds of estoppel.

**6) By Beneficial Ownership: - A person holding equity shares of a company in dematerialized\* form becomes the member of the company when his name is entered as a beneficial owner in the records of the depository.**

## Illustration:

Suriender purchases 2000 shares of Reliance Ltd. for a Rs 50,000 on 14 July through a broker. He fills a transfer slip and completes all other necessary documentation and then tells the broker to get the shares dematerialized in his account. The broker does as directed and Suriender becomes beneficial owner of those shares and also a member of the company.

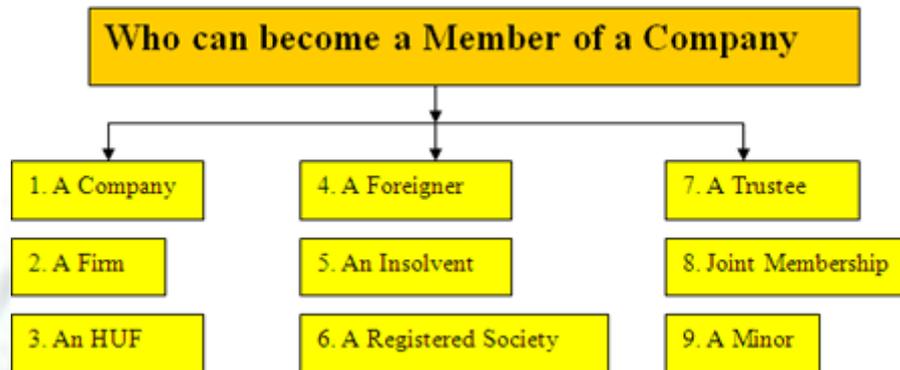
\*Qualification shares are the number of shares which a director is required to hold as per the articles.

\*Dematerialization is the process of converting physical shares into electronic form.

# Members and Shareholders of a Company

## 5.4 Who can become a Member of a Company?

After learning about the legal aspects of the process of becoming a member of a company, it becomes logical to ask a question: Who can become a member?. The Companies Act does not specifically prescribe any disqualification for any person that would debar a person from becoming a member. Membership of a person is subject to what is contained in memorandum and articles of association and also on the agreement between the member and the company



There are some special considerations, which have to be looked into to decide who can acquire membership of a company and who cannot. Some of these are :-

**1) A Company as a Member:** - Since a company is a separate legal artificial person, it can become member of another company, if it is so authorised by its articles and memorandum of association, or if it takes the shares of another company by way of a compromise or arrangement.

But a **company cannot become member by itself** or in other words company cannot acquire its own shares and the reason for it is that Section 77 of the Act which lays down "A company cannot acquire its own shares because it amounts to reduction of share capital without the sanction of the court, which is illegal"

### Case law 6

Trevor vs. Whitworth - [(1887) 12 App.Cas.409]

\* Company which is controlled by the Holding Company.

\*\* Company which controls the other company.

In this case the Company was authorized by its articles to purchase its own shares. Trevor a shareholder sold his shares to the company. Before the full price of the shares was paid to him, the company went into liquidation. During liquidation Trevor made a claim for the balance of the amount owed by the company for the shares he had sold.

It was held that the transaction was ultra vires and the company had no power to purchase its own shares, and hence the claim of Trevor failed.

The provisions of Section 42 provides that "A subsidiary company\* cannot become a member of its holding company\*\*. Any allotment or transfer of shares in a company to its subsidiary is void". But it **does not apply** to the following cases:

## Members and Shareholders of a Company

- i. Where the subsidiary company is considered as the legal representative of a deceased member of the holding company: or
- ii. Where the subsidiary company is a trustee and the holding company or any of its subsidiaries is not beneficially interested under the trust.
- iii. Where a subsidiary became a member of the holding company before 1st April 1956, such a company may continue as a member, but may not vote at meetings of a holding company or any class of its members.

\*Company which is controlled by the Holding Company.

\*\*Company which controls the other company.

**2) A Firm cannot be a Member:** - Since a partnership firm is not a separate legal entity having a separate entity from that of the partners, therefore it cannot become a member of a company.

**3) An HUF cannot be a Member:** - A HUF (Hindu Undivided Family) cannot become a member in its own name. This is because an HUF does not enjoy a separate legal entity. A HUF can purchase shares in a company through its Karta. In other words it is only the Karta who becomes a member of the company and not the other members of the HUF.

### Illustration:

Shares cannot be held in the name of 'M B Batra HUF', but shares can be held in name of 'MB Batra-Karta' of 'M B Batra HUF'.

4) A Foreigner: - As per the Indian Contract Act 1872 a foreigner can become a member of a company but he has to fulfill certain conditions for example he has to take permission from the Reserve Bank of India under the Foreign Exchange Regulation Act, 1999. However the right of a foreigner as a member is to be suspended if he becomes an alien enemy.



Figure 5.6: A Foreigner

### Illustration:

Marie, a British national bought some shares of Rajbhog Ltd., an Indian company. She forgot to take the necessary permission from the RBI. She was told till the time she took the permission she could not become a valid member of the company. Marie took permission of the RBI and was subsequently entered as member in register of members of that company.

**5) An Insolvent:** - An insolvent cannot become a member of a company, but a member who becomes insolvent may be a member of the company. Although the beneficial interest in his shares will be with that of the official receiver<sup>11</sup>. He does not cease to be member of company on becoming insolvent, unless articles specifically provide for that.

### Illustration:

## Members and Shareholders of a Company

Sudha becomes insolvent and her property, including shares, vests in the official receiver or official assignee. The official receiver or assignee is holding the shares in his own right. Therefore, Sudha is no longer the shareholder, though she continues to be a member of the company.

**6) A Registered Society:** - A society registered under Societies Registration Act, 1860, can hold shares in its own name and is a member provided there is a provision for that in Articles and Memorandum.

**7) A Trustee cannot be a member:** - A trustee cannot become a member of a company as a trustee, but he can be member in his personal capacity.

**8) Joint Membership:** - When two or more than two persons hold shares jointly in a company; it is called as joint membership. Joint membership is legal only when articles provide for it. The articles also provide for the maximum number of joint holders in an application, which is generally three.

### Case law 7

Sham Sunder Kukreja vs. Hindustan Lever Ltd - [(2001) 44 CLA 38=33 SCL 624] In this case Sham Sunder Kukreja, the petitioner, was the original allottee of the shares of Hindustan Lever Ltd. The shares in his name were fraudulently transferred in the name of a third person. The transfer was effected clearly in contravention of the law. The details of transfer were lost by the company and hence the company made the petitioner joint holder in shares with the third person.

It was held that a joint shareholder is also an 'investor' and he can file an application for rectification of the register of members.

**9) Limited Liability Company(LLP)** – An LLP being a separate entity (like a company) may become member of a company.

**10) A Minor as a Member:** - Section 11 of Indian Contract Act 1872 provides that "Every person competent to contract, who is of the age of majority according to the law to which he is subject to, and who is of sound mind, and not disqualified from contracting by any law can enter into a contract". From this Section it is clear that a **minor cannot enter into a contract**. In India, a contract with a minor is absolutely null and void. Neither the minor nor his guardian can be made responsible for the payment of calls.



Figure 5.7: Minor as a Member

# Members and Shareholders of a Company

## Case law 8

Palaniappa vs. Official Liquidator, Pasupati Bank Ltd - [A.I.R. (1942) Mad.470] Palaniappa as guardian of his minor daughter applied for the shares of a company Pasupati Bank Ltd. The shares were allotted in the name of his daughter, describing her as a minor. After sometime the company went into liquidation and the father was placed in the capacity of a contributory.

It was held that neither the father nor the minor daughter was liable to pay to the company as a contributory.

If directors, in ignorance of the fact of minority, allot the shares to a minor, and enter his / her name in the register of members, the company can repudiate such allotment when they come to know of applicant's minority status. Similarly, a minor can also repudiate the contract, but in both the cases, the company must repay to minor the money received in respect of shares.

The position changes the moment a minor attains majority. If the name of minor continues to appear in register of members and neither part repudiates the allotment, the minor cannot be held liable till the time he is a minor. But where a minor receives a dividend on attaining majority, thereby intentionally permitting the company to believe that he is a member, and then he / she becomes member by estoppel.

## Case law 9

Miss Nandita Jain vs. Bennet Coleman and Co. Ltd. -Appeal No.5 of 1980, decided on 14-12-1981.

In this case the guardian of Miss Nandita Jain, a minor, transferred his shares of Bennet Coleman & Co. in her name. These shares were fully paid up and hence had no further liability. The company refused to accept Nandita as a member. She filed a petition against the company for not accepting her as a member.

It was held in her favour that while in the transfer of partly paid up shares, the company may refuse to register a minor as a member, in case of fully paid up shares a minor's name is entered in the register of members, if he / she happens to acquire shares by way of transfer or transmission.

Thus a minor can be a member of a company only in respect of fully paid up shares, provided he / she acquired them by way of transfer or transmission.

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## Illustration:

M/s Mon Paper Ltd. receives an application for transfer of 1,200 equity shares of Rs.10 each fully paid up in favour of Mr. Batra. On scrutiny of the application form it is found that the applicant is a minor. In this case M/s Mon Paper Ltd. can give membership to Mr. Batra for 1,200 shares because the shares are fully paid up & no further liability is attached to them.

## Rights of a Member:

## Members and Shareholders of a Company

A person who is a member of a company enjoys many rights. These rights are mentioned in the memorandum and articles of association of the company. Some of the rights of a member are listed below:-

- Right to obtain copies of the memorandum and articles of the company, certain resolutions and agreements, trust deeds, minutes of proceedings of general meetings, balance sheet and profit and loss account of the company [Section 39]
- Right to alter the memorandum and articles of association of the company.
- Right to inspect certain books and registers namely, register of members, register of debenture holders, register of charges, minute books, register of investments, etc.
- Right to receive the statutory report.[Section 165 (ii)]
- Right to receive notices and circulars relating to general meetings of the company [Section 172]



**Figure 5.8: Right to Vote at all General Meetings**

- Right to vote at all general meetings, either in person or by proxy. In case the member is a body corporate, the right to appoint a representative to attend a general meeting on its behalf-[Section 187]
- Right to requisition an extra-ordinary general meeting or be a party to joint requisition (Section 169)
- Right to receive dividend when declared [Section 206]
- Right to appoint directors and auditors in annual general meetings [Section 224,225]
- Right to obtain share certificate from the company within the specified time [Section 113]
- Right to apply to the **Tribunal**
  - i. For prevention of oppression and mismanagement [Section 397,398]
  - ii. For investigation of the affairs of the company [Section 235]
  - iii. For refusal of the company to register a share [Section 111]
  - iv. For rectification of register of members [Section 111]
- Right to present a petition to a High Court for the winding up of the company [Section 439]
- Right to share in the assets of the company on its winding up, after distribution to Creditors .etc [Section 475,511]
- Right to transfer shares subject to the provisions of the companies Act and articles of association [Section 82]

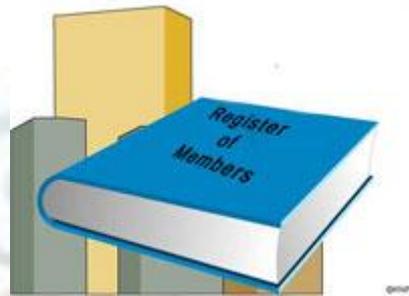
These rights are valuable for keeping the management of the company functioning correctly, and also they are in the best interest of the share-holder.



# Members and Shareholders of a Company

## 5.6 Register of Members

Section 150 makes it obligatory for every company to keep a register of its members which must contain the following relevant information, such as: The names, addresses and occupations, if any, of the members. In the case of a company having share capital, the shares held by each member, distinguishing each share by its number and the extent to which the shares have been paid up.



**Figure 5.9: Register of Members**

- iii. The date on which each person was entered in the register as a member.
- iv. The date on which each person ceased to be a member.
- v. If the shares have been converted into stock, then the amount of stock held by each member.
- vi. In case of **Joint holders**, names of all the joint holders must be entered

### Details not to be registered in register

**Trusts are not to be entered on the register:** Sometimes the shares of a company are belong to somebody and they are registered in somebody else name. The person in whose name such shares are registered is a trustee and the other person is only a beneficiary. "No notice of any trust, express, implied or constructive, shall be entered on the register of members or of debenture holders" this is because trustees are personally liable for their obligations.

### Case law 10

Murshidabad Loan Office Ltd. vs. S.C.Chakravarti - [A.I.R. (1943) Cal. 440]  
The shares of the Murshidabad Loan company belonged to a person named S.C. Chakravarti. In the company records the shares were registered in the name of his wife. The company sued S.C.Chakravarti for the unpaid calls on the shares.

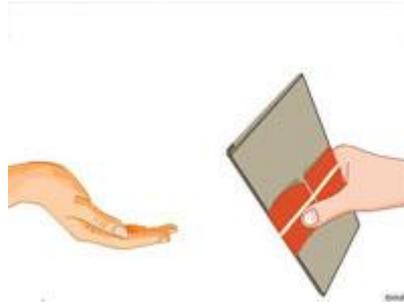
It was held that even though the husband was the real owner of the shares, it was the wife who was liable as the shares were registered in her name.

**Place of register** should be communicated to the registrar of companies and if there is any change in it, the same should be communicated to the registrar. The register should be kept at the registered office of the company unless some other place has been approved by a special resolution in the general meeting and the registrar, has been given an advanced copy of that [Section 163]

### Inspection of the register

The members can inspect the register free of charge, whereas the non-members have to pay a fee, as may be prescribed by the act.

## Members and Shareholders of a Company



**Figure 5.10: Inspection of the Register**

### **Illustration:**

A member requested the company in which he held shares to provide him a copy of the register of members and he paid the necessary fees. The Company replied after 15 days saying the company cannot do so. As per Section 163 the company cannot reject the applicant's request to give him a copy of the register of members

**Index of members:** Every company having more than fifty members must keep an index of members, unless the register is in the form of an index. The index should also be kept at the same place as the register of members.

**Closure of the register of members:** As per Section 154, a company may, after giving not less than seven days notice by an advertisement in a local newspaper, close the register of members, for a period of not more than 45 days in a year, but not exceeding 30 days at a time.

**Penalty:** In case of default by company in giving above information, the company and every officer of the company, who is in default, shall be liable to a fine, which may extend to Rs 50 for each day during which the default continues.

The reason for maintaining a register of members is that the register is a "**Prima facie**" evidence of its contents as well as membership. It provides an answer to the query whether a person is a member or not.

### **Illustration:**

Four thousand shares of the Cosmos Ltd a company were transferred to the plaintiff Sujit who had not applied for them. Sujit did not insist on removal of his name from the register of members although he knew his name appeared in the register. After some time Cosmos Ltd went into winding up and Sujit was held liable as a contributory because his name appeared as supporting evidence in register.

# Members and Shareholders of a Company

## 5.7 Cessation of Membership

It is not the case that once a member always a member. The membership of an individual can come to an end in any of the three ways: By an Act of the Parties By Operation of Law By Expulsion of a Member.

### (i) Cessation by an act of the parties

This comes in effect as a result of

- When the member transfers to another person and the shares are registered in the name of the transferee. **transfers his / her shares**
- When the shares are **forfeited** for non-payment of calls in the manner provided in Articles.
- When he / she makes a valid **surrender** of shares to the company.

### Illustration:

A company was having heavy losses and its shares were partly paid up. Mohan a member of the company, surrendered ten shares to the company and the Board of Directors of the company accepted the surrender. This is not a valid surrender because there was no condition for the forfeiture.

- When the company sells the members shares in exercise of its over his shares and the buyer is registered in his place. **lien**
- When a member who was a holder of **redeemable preference shares** and those shares have been redeemed now.
- When a member rescinds the contract of membership on the ground of **misrepresentation in the prospectus or irregular allotment.**
- When a member gets **share warrants** issued in exchange for share certificates of fully paid shares.

### (ii) Cessation of membership by operation of law

- When the member dies and his / her shares are registered in his / her successor's name.



Figure 5.11: Death of a Member

### Illustration:

Ram Kumar is the son of Shyam. Shyam had bought 3000 shares of Unitech Ltd and made a will that after his death his son should get his wealth in shares. Shyam died and

# Members and Shareholders of a Company

after his death his wealth in shares was transferred to his son Ram Kumar. Therefore Shyam ceases to be a member of the company.

- When a member is declared insolvent and the official assignee files a disclaimer.
- When a member's shares are sold in execution of a decree of the court and the purchaser is registered as a member.
- When the company is being wound up.

### (iii) Expulsion of member (only in exceptional case)

A company cannot provide as such in its articles to expel a member. "Bajaj Auto Ltd V.N.K Firodi (1971) 41 Comp.Cas.338 clarified that any assumption of the powers by the Board of directors to expel a member by alteration of the articles of association is illegal and void".

However, only a company limited by guarantee, which is in nature of a club, school, committee, association, political organization etc. has the power to provide in its articles for the expulsion of a member on the ground that his / her act or conduct is detrimental to the interests of the company.

### Illustration:

A company amends its articles of association to provide for expulsion of a member by the Board of Directors. If, in the opinion of the Board of Directors, the conduct of the person concerned is prejudicial to the interests of the company. Thereafter the Board of Directors expelled the member by passing a resolution to that effect. This kind of an expulsion is invalid because the expulsion is opposed to fundamental principles of the company.

## Sections

IMPORTANT SECTIONS	
SECTION	DESCRIPTION
Section 41	Definition of the term "Member"
Section 115(5)	Capacity of holder of share warrant.
Section 11 of Indian contract act	Capacity of minor to enter into a contract.
Section 150	Register of members.
Section 154	Closure of register
Section 163	Place of register.

# Members and Shareholders of a Company

## Summary

### A Member and A Shareholder

- A member is a person whose name appears in the register of members and a shareholder is a person who holds shares.

### Membership

#### Modes of Acquiring Membership

- Membership can be acquired by subscribing to the Memorandum, Application and Allotment, Transfer, Transmission etc.

#### Persons who can be Member

- Persons who can be members of a Company are, Minor, Insolvent etc. These persons enjoy certain rights and have some liabilities as well.

#### Register of Members

- Every company needs to maintain a register of members which should contain details of the shareholders

### Cessation of Membership

- By act of the parties
- By operation of law
- By Expulsion of the Member