

## Definition of a member

Section 2(55) of the Companies Act, 2013 defines a "member" as follows:

"member", in relation to a company, means—

- (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

## Methods of becoming a member

The following are the methods of acquiring membership of a company.

**1. By subscribing to memorandum.** Section 2(55) provides that subscribers to the memorandum of a company shall be deemed to have become members of the company. In this case, neither application form, nor allotment of shares is necessary. On registration of the company, the subscribers will be entered as members in its register of members.

*Nominee of OPC.* As per section 4(1)(f), in the case of One Person Company, the name of the person who in the event of death of the subscriber, shall become the member of the company must be mentioned in the memorandum of association. Such a nominee will become member of the company, after the death of the subscriber to the memorandum of such company.

**2. By agreement in writing and entering of name in the register of members.** Section 2(55) provides that every other person who agrees in writing to become a member of the company, and whose name is entered in the register of members, shall be a member of the company. Both the conditions, namely : (i) agreement in writing and (ii) entering the name in the register of members must be satisfied. Thus, a person becomes a member of a company (i) when he applies for shares and shares are allotted to him; (ii) when he acquires the shares from an existing member by transfer or transmission of shares.

(a) *By allotment of shares.* A person who applies for shares in a company and shares are allotted to him, becomes a member of the company when his name is entered in the register of members of the company.

(b) *By transfer of shares.* A person may purchase shares from the open market and then he may apply along with an instrument of transfer, for transfer of the shares in his name. After the registration of the transfer, he becomes a member of the company as his name would be entered in the register of members.

(c) *By transmission of shares.* On the death of a member, his legal heir is entitled to get the shares transmitted to him in the register of members. In this case, instrument of transfer is not necessary. The legal heir has the option either to effect a transfer of the shares without becoming a member himself or get the shares transmitted to him. If he opts to get the shares transmitted to him, he becomes member of the company after his name is entered in the register of members in place of the deceased.

**3. By holding shares and whose name is entered as a beneficial owner.** Section 2(55) provides that every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository, shall be a member of the company.

**Note :** If the name of a person has been wrongly entered in the Register

of Member by a company, he should take prompt corrective action so that the company removes his name from the Register of Members.

### Members without being shareholders

The following persons are members of a company without being shareholders :

1. **Signatories to the memorandum.** The subscriber to the memorandum of the company is deemed to have become member of the company. His name is entered as a member in the register of members on the registration of the company. Even before any shares are allotted to him, he becomes member of the company. Thus, subscriber to the memorandum is a member of the company, without being a shareholder. Later on, he might also become shareholder of the company.

2. **Member of companies limited by guarantee.** Companies limited by guarantee do not have share capital. Therefore, in these companies there will be only members and not shareholders.

3. **Transferor of shares.** A transferor of shares who has sold his shares continues to be a member of the company until his name is replaced by that of the transferee.

4. **List B contributories liable for payment.** List B contributories are those who ceased to be members of the company preceding the winding up by reason of forfeiture, surrender or transfer of the shares. They are liable to pay the unpaid portion of the share money on the shares held by them in case of default by the present shareholders.

5. **A person may be liable as member by court.** A person may be held liable as a member of the company by an order of court.

### Shareholders without being members

Transferee of shares and legal heir of the deceased are shareholders without being members till their names are entered in the register of members. Under the Companies Act, 1956 a bearer of a share warrant was a shareholder, but not a member (this provision has been abolished by the Companies Act, 2013).

### Termination of Membership

A person cease to be a member in any of the following ways :

1. **Forfeiture of shares.** When the share allotted to him are validly forfeited.
2. **Sale of shares.** When he has sold his shares and transferee's name is entered in the register of members.
3. **Surrender of shares.** When he validly surrenders his shares to the company and they are accepted.

4. **Sale of shares by the company.** When his shares are sold by the company having lien on the shares in exercise of its right of lien.
5. **Death.** When he dies.
6. **Insanity.** When he becomes permanently insane.
7. **Insolvency.** When he becomes insolvent and his official assignee transfers the shares.
8. **Redemption of preference shares.** When the preference shares held by him are redeemed.
9. **Buy-back of shares.** When the shares held by him are tendered to him during buy-back and all the shares held by him are accepted by the company.
10. **Winding up.** When the company is being wound up.
11. **Tribunal's order under section 242.** Under section 242, the Tribunal may provide for the purchase of shares or interest of any member of the company by other member(s) thereof. Thus, a member whose shares are to be purchased by other member(s) or by the company ceases to be a member after his name is replaced by other member(s).

### Expulsion of a member

A company limited by guarantee such as cultural, religious and such other organisation may expel any member of the company as per the articles of association of the company and on the ground of mis-conduct. However, expulsion must be *bonafide* in the interest of the company as a whole.

A company limited by shares cannot expel any member of the company because it is against principle of corporate democracy.

### Rights of Members

## **Rights of Members**

Members of a company have several rights under the Companies Act which include the following :

- 1. Right to participate in general meetings.** Every member has the right to get the notice of general meetings of the company so that they can attend and participate in those meetings. They can vote by show of hands. They can demand poll and they can vote in case of voting by poll. The Companies Act provides for postal ballot and e-voting also. Members may also call for Extraordinary General Meeting for discussing a certain matter. However, the requisition for call of Extraordinary General Meeting must be signed by the members holding at least 10% of the paid up share capital of the company.
- 2. Right to copy of Annual Report.** Every member has the right to copies of Annual Report including Director's Report and audited Balance Sheet and Statement of Profit and Loss.

**3. Right to certain documents and books.** Members have the right to have copies of Memorandum of Association and Articles of Association. They have the right to inspect various registers of the company such as Register of Members, Register of Debenture holders etc. They also have the right to inspect Minute Books of the General Meetings, Proxies lodged for the General Meetings.

**4. Right to vote and make major corporate decisions.** As per the Companies Act, a company has to pass ordinary resolution or special resolution in the general meeting, depending on the matter for taking major corporate decision such as change of registered office, buy-back of shares, amendment of articles, mergers and acquisitions, etc. Every member of a company limited by shares and holding equity shares therein, has right to vote on every resolution placed before the company.

**5. Right to appoint directors.** Members have the right to appoint and remove the directors.

**6. Right to appoint auditors.** Members have the right to appoint and remove the auditors.

**7. Right to pass accounts.** Members have the right to pass the annual accounts at the Annual General Meeting of the company.

**8. Shareholder's right to dividend, rights shares and bonus shares.** Shareholders have the right to dividend declared by the company. Shareholders have the right to get offer for **rights shares**. They are also entitled to **bonus shares** declared by the company. They are entitled to share certificate, if the shares are in physical form.

**9. Right to transfer the shares.** They have the right to freely transfer the shares in case of public company.

### Who may be member

A person who is competent to contract can become a member of a company.

The position of certain person to acquire membership of a company is discussed below :

**1. Minor.** A minor is incompetent to contract. A contract with a minor is absolute void. A company may allot shares to a minor, and his name may be entered in the register of members, but he is not liable as a member. On attaining majority and becoming aware that his name is entered in the register of members; may opt to repudiate his membership within a reasonable time. Where he does not repudiate his membership, his liability as shareholder commences. For example, after attaining majority, if he accepts dividends from the company, it would be assumed from his conduct that he has opted to become liable as a shareholders.

There is nothing in the Companies Act, 2013 which prohibits a minor

7. Foreigner - can become member subject to provisions of FEMA, 1999.

### Members and Shareholders

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8. HUF - can be shareholder of a co. through the name of the karta  
from becoming a member of a company. The agreement, when a minor wants to become a member of the company, will be signed by his guardian. A minor can be admitted as a member of a company limited by shares by transfer of transmission of shares in his name. The shares in such a case should be fully paid up with no obligation attached thereto.

2. **Company.** A company has separate legal entity. Therefore, it can become a member of a company.

3. **Partnership.** A partnership firm does not have a separate legal entity. Therefore, it cannot buy shares in its own name. A partnership firm can buy shares as assets of the firm in the name of individual partners. However, a partnership firm can be a member of company licensed under section 8 of the Companies Act, 2013 as a charitable institution.

4. **Limited Liability Partnership.** Limited Liability Partnership (in short, LLP), being a legal person, can become a member of a company.

5. **Co-operative Society.** A registered co-operative society (Trade Union) can become a member of a company.

6. **Insolvent.** A person who was a member of a company before insolvency, can remain as a member notwithstanding his insolvency, unless the articles provide otherwise. During insolvency, the beneficial interest in the shares of the insolvent would vest in his official assignee.

### 9. Shareholding of Govt. Ceasing to be a Member

A person may cease to be a member of a company by transfer of shares, death, forfeiture of shares, surrender of shares, on winding up of the company and otherwise in accordance with the articles of association of the company.

### Liability of Members

Liability of members depends on the type of the company.

1. **Unlimited Liability Company.** Every member will be liable in full for all the debts of the company contracted during the period of his membership. However, the creditors of an unlimited company cannot sue the members directly. If the company fails to pay the creditors, they can resort to winding up and the liquidator will call upon the members to contribute to the assets of the company so that the liquidator can settle the claims of the creditors and the expenses of winding up.

2. **Company limited by Guarantee.** Each member will be liable to contribute to the assets of the company, in the event of winding up, a sum of money specified in the liability clause of the memorandum of association.

3. **Company limited by Shares.** The liability of a member will be liable to contribute the full nominal value of his shares. If he has already paid the full nominal value of his shares, he is not liable to contribute any more. Now-a-days, most of the companies are limited by shares.

## Joint Shareholders

**Meaning of Joint Shareholder.** When two or more persons hold one or more shares in a company jointly, they are called joint-shareholders.

**Provisions of the Companies Act.** The following are the provisions of the companies as regards joint shareholding of shares :

**1. How counted.** For the purposes clause 68 of section 2, which defines private company, the joint shareholders shall be treated as a single member while calculating the number of members. It may be noted that the articles of a private company must limit the number of its members to two hundred. Similarly, joint shareholders will be counted as single member for the purposes of quorum.

**2. Share certificate.** The delivery of share certificate to one of joint holders named first in the registered of members is sufficient.

**3. Notice and other documents.** Saving of notice to one of the joint holders named first in the register of members is sufficient. Similarly, sending documents to one of the joint holders named first is sufficient.

**4. Dividend.** The company may pay dividend to the joint holder named first in the register of members, unless all of them have given in writing to the company to pay dividend to a particular joint holder.

**5. Quorum.** Joint-holders will be counted as one person for the purposes of quorum.

**6. Transfer of shares.** When the joint-holders sell their shares, all of them have to sign the instrument of transfer or instruction slip as the case may be.

**7. Transmission of shares.** In case of death of a joint-holder, the right devolves on the legal heir of the deceased jointly with the survivor(s) joint-holder(s).

**8. Right to attend meetings and to vote.** If there is a provision in the articles as regards attending of meetings by the joint-holders and exercise of right to vote in meetings, these rights will be governed by the articles. However, the rules should not violate the provisions of the Act.

In the absence of such provision in the articles, the joint-holders can individually take part in the meetings and vote on resolutions decided by show of hands. However, in case of poll, the joint-holders will exercise their right to vote acting together. They can appoint proxy acting jointly.