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Introduction

A Company invites the Public to subscribe to its securities by issuing a prospectus. In response to that, potential investors apply to purchase shares. Company collects applications and classifies them. It also decides the allotment policy in consultation with representatives of the share market. After the completion of share allotment, allotted shareholders name is registered in Register of Members. Thus, they are considered member of the Company. Membership can be obtained in other ways also. Being a member of company certain rights are acquired in the same ways certain responsibility is also to be carried out.

4.1 Meaning and Definition of Membership

Meaning : A person is considered to be a member when his name is registered by written consent or through share application.

In short, to be a member a written consent and his name should be in Register of Members are required.

Definition : According to the The Companies Act “Member is a person who has subscribed to the Memorandum of Association of a Company and every other person who has agreed in writing to become a Member.”

According to the Companies Act 2013 “Share holder may keep their share with Depository Participant. These share holders are registered as beneficiary owner in the register of Depository Participant, considered as Member of Company, though they are not registered in Company’s Members’ Register”.

4.2 Member and Share holder

In common practice the terms ‘Share holder’ and ‘Members’ are used as substitutes of each other. However, from the legal point of view there is a difference between member and share holder.

4.2.1 Person may be a Member but not a Share Holder :

- (1) A person who has signed in Memorandum of Association becomes a member immediately even though he has not purchased shares.
- (2) In a company Limited by guarantee, member who has given guarantee for a certain amount, is considered as a member even if he has no shares.
- (3) The person who has transferred his shares to others name, is no longer a share holder. However he remains as member until his name is deleted from Register of Members.
- (4) A Company without Share Capital has no shareholder, but still there are members.

4.2.2 Person may be a Shareholder but not a Member :

- (1) Person who has purchased shares is a shareholder. But if he has not entered his name in register of members, he is not considered a member.
- (2) In case of death of a share holder, his legal representative becomes share holder, but is not member till he is not registered in register of members.

4.3 Difference between Member and Share Holder

No.	Points	Member	Share Holder
(1)	Meaning	The person is a member by written consent or his name is registered by share application in Members' Register.	The person who hold share is known share holder.
(2)	Signature	The person who has signed in Memorandum of Association is considering a Member.	Shareholder's Signature is not necessary in the Memorandum of Association.
(3)	Transmission of Shares	Legal representative becomes member after transfer of share and entry of his name Register of Members.	Legal representative became share holder after transmission of shares.

4.4 Who can Acquire a Membership ?

A Company that comes into existence by Law is an artificial person. It can exercise rights as a living person. According to law, any independent existence and personality unit can be member of the Company. For this, provisions of Articles of Association should be observed. The following persons or institutions can be made members.

4.4.1 A Living Person : Membership of a company is availed by a contract between person and company. According to the Indian Contract Act, any live individual person capable to do agreement can be a member of company. The person who is not capable to do agreement cannot be a member i.e. minor, insolvent, person of unsound mind.

Under certain circumstances the Indian Act has accepted minors also may be member.

4.4.2 Partners of the Firm : According to legal term, Partnership firm is not a person so it cannot be a member. But partners of a firm, individually or jointly, may become member of company.

4.4.3 Hindu Undivided Family : A Hindu Undivided Family cannot become a member in a Company but only the 'Karta' can purchase shares individually or jointly.

4.4.4 Trust : According to the new Companies Act a trust can purchase shares and become member.

4.4.5 Foreigners : Any foreigner can become member by holding shares of Indian company. However in the event of war or emergency with his native country a company may suspend the membership and rights of the particular person.

4.4.6 Joint Holder of Shares : When two or more persons hold shares in their joint names, then their names are jointly recorded in the Register of Members of the company. They are individually and jointly liable for the shares. For administrative simplicity the company corresponds with the shareholder, whose name appears first. Company sends notices, share certificates, dividend warrants, circulars, documents etc. in his name.

4.4.7 Company : As a company is a legal person having an artificial personality it can become a member in any other company. Company can be a member according to the Articles of Association. The following provisions shall have to be complied with :

- (1) Company may take membership of another company according to its own Articles of Association.
- (2) A Subsidiary company can not obtain membership of its holding company. However, in following circumstances, subsidiary company can become a member of the holding company.
 - (a) Representative of holding company passes away and subsidiary company holds shares as representative;
 - (b) Subsidiary company is a trustee of any member but has no personal interest in the trust;
 - (c) If the subsidiary company was already member before the execution of this law.

4.4.8 Other Institutions : Co-operative societies registered under the 'Co-operative Societies Act' can become member of a company by purchasing its shares, subject to the provisions of their constitutions and bye-laws.

4.5 Methods of becoming a Member

When a person holds shares of the company and when his name is entered in the Register of Members of the company, he becomes member of the company.

One can become a Member through the following ways :

4.5.1 Subscribing to the Memorandum of Association : A person who signs the subscription clause of the Memorandum of Association of a company automatically becomes a member of the company after getting Certificate of Incorporation. Generally, a written consent of the member is a precondition to become a member. However this condition does not apply to the signatories of the Memorandum of Association.

4.5.2 By Allotment of Shares : Company gives invitation to public to subscribe to its share by issuing prospectus. In response to such invitation, people apply to purchase shares. When the share applications are approved the name of the applicant to whom the shares are allotted is entered into Register of Members. As a result he becomes member of the company and acquires its membership.

4.5.3 By Transfer of Shares : When a shareholder sells his shares or transfer to some other person (transferee), then the transferee gets membership of the company. Such a transfer can be done be according to The Companies Act and Articles of Association.

4.5.4 By Transmission of Shares : When a shareholder dies or is declared insolvent or lunatic, transmission of share becomes inevitable through a legal procedure. Under such circumstances his successor or legal representative becomes the shareholder. As a result, his name is entered in Register of Members and he acquires membership. For the transmission of share he has to produce an authority letter to the company.

4.5.5 By Shares Acquired for Consideration other than Cash : Services of many persons are required until the company comes into existence and commence it's business. A Company gives fully paid up shares to the persons providing such services, as remuneration in consideration for their services. As a result, the names of such persons are entered in the Register of Members and they become member.

4.5.6 By Estoppel or Holding out : When a person sells his shares to others he loses his membership. In spite of not having membership : (1) he continues to be a member (2) holds out himself to be a member (3) utilizes his rights as member by fictitious behavior and as a result of which (4) any liability arises as a member, then he may deny that he is a member. Such behaviour is not acceptable as per law, he cannot enjoy any rights but he is a responsible as a member.

4.5.7 By Execution of Form of Renunciation : When the existing shareholder renounces his right of purchasing right shares, fully or partially in favour of some other person/persons, he executes the letter of renunciation. By virtue of the letter of renunciation, the other person becomes a shareholder, when shares are allotted to him, he requests for his name to be entered in the Register of Members. On the company's approval, his name is entered into the Register of Members and he acquires membership.

4.5.8 By Convertible Debenture Holder : If a debenture holder has convertible debentures, after a specific time period convertible debenture convert into Equity shares. Such a debenture holder becomes an equity shareholder and by virtue of that he becomes a member and his name is entered into the Register of Members.

4.5.9 By Acquiring Sweat Equity Share : A Company offers share on discount or without cash consideration to it's Directors, Employees having expertise. These shares are known as sweat equity shares. When such type of shareholders name is entered in the Register of Member becomes a member.

4.6 Termination of Membership

When a member's name is deleted from the Register of Members, membership comes to an end. Membership stands to be terminated under the following circumstances :

4.6.1 By Transfer of Shares : When an existing member sells all the shares held by him to another person/persons, then by share transfer process, membership is deleted from the Register of Members.

4.6.2 By Transmission of Shares : When a members passes away, or becomes insolvent or is declared of unsound mind then shares are transferred under the operation of law to the legal representatives. In this situation, the name of the original member is deleted.

4.6.3 By Forfeiture of Shares : When shareholder defaults in paying the amount of calls on his shares, his shares are forfeited after following legal procedure. On forfeiture of shares, his name is removed from the Register of Members and his membership comes to an end. There should be a provision in the Articles of Association for the procedure of forfeiture of share.

4.6.4 By Exercise of Lien on Shares : If there is a provision of lien on share in the Articles

of Association of the company and company exercise this to recover its dues from a member by selling his shares; his membership comes to an end when his shares are sold.

4.6.5 By Redemption of Redeemable Preference Shares : When a company has issued Preference share then it returns the amount of preference share on completion of redemption period. As a result the membership of preference shareholders came to an end.

4.6.6 By Making Share Allotment Void : When there is breach of provisions of the Companies Act for regular allotment of shares, then affected shareholder applies to make the irregular share allotment void. As a result his membership comes to an end.

4.6.7 By Liquidation/Winding up of Company : When Company winds up its business or goes into liquidation, then its business comes to an end, and memberships automatically come to an end.

4.6.8 By Amalgamation/Merger of Companies : When a Company is merged into some other company, or a new company is established to amalgamate two or more companies, then the members of the company lose their existence and their membership in such a company. Of course, they acquire membership to the new company, according to specified conditions.

What you have learnt in this chapter

The investor applies to invest in securities of a company on the basis of prospectus. The Company collects applications and allots shares to investors. Once share applications are approved the names of the applicants who have been allotted shares are entered into Register of the Members. Thus a person acquires membership.

Definition and Meaning of Membership :

Meaning : A person whose name is registered by a written consent or by share application is considered to be a member of Company.

Definition : According to The Companies Act "Member is a person who has subscribed to the Memorandum of Association of a Company and every other person who has agreed in writing, to become a Member."

In short, to be a member a written consent and his name should be in Register of Members. Shareholders who are registered as beneficiary owner in the Register of Depository Participant, are considered Member of Company.

Member and Shareholder : There is difference between member and shareholder. Person may be a member but not a shareholder : (1) A person subscribing to the Memorandum of Association (2) In a company, limited by guarantee, a person who has given guarantee for certain amount (3) One continues to be a member, until his name is removed from the Register of Members, as a result of transfer of shares. (4) the company does not have share capital.

Difference between Member and Shareholder : (1) Meaning (2) signature (3) transmission of share

Who can Acquire a Membership ? Companies come into existence by Law and are artificial persons. They can exercise rights as a living person. According to law any independent existence and personality unit can be member of Company as per the provisions of Articles of Association. (1) An Individual (2) Partners of the firm (3) 'Karta' of Hindu Undivided family (5) Trustee (6) Joint holder of shares (7) Foreigners (8) other institutions.

Methods of becoming a Member : (1) Subscribing to the Memorandum of Association (2) By allotment of shares (3) By transfer of shares (4) By transmission of shares (5) By shares acquired in consideration other than cash (6) By estoppel or holding out (7) By execution of letter of Renunciation (8) By partly convertible debentures (9) By sweat equity shares

Termination of Membership : (1) By transfer of shares (2) By transmission of shares (3) By forfeitures of shares (4) Exercise of Lien on shares (5) On redemption of preference share (6) By making share allotment void (7) By liquidation of company (8) By amalgamation / merger of companies

Exercise

1. Select the suitable options from the options given :

- (1) Which clause of Memorandum of Association is to be signed to be considered as member ?
(A) Capital clause (B) Objective clause (C) Subscription clause (D) Liability clause
- (2) Members of a partnership firm may acquire membership of company...
(A) can be member (B) firm and partners can be member jointly
(C) cannot be member (D) only firm can acquire
- (3) Sweat equity shareholders...
(A) do not get membership. (B) get membership
(C) get partial membership (D) membership is suspended
- (4) With whom will the company communicate in case of joint share holding ?
(A) with the first shareholder (B) with all the shareholders
(C) with the second holders (D) with the last holders
- (5) Which document is issued by the company to collect capital ?
(A) Memorandum of Association (B) Articles of Association
(C) Prospectus (D) Share certificate
- (6) Shares are given as consideration to the service provider to the company...
(A) do not acquiring membership (B) are offered post of the manager
(C) acquire membership (D) acquire partial membership

2. Answer the following questions in one sentence :

- (1) Who decides the allotment policy for share ?
- (2) Which element is essential to be a member ?
- (3) What is to be presented to a company in transmission of share ?
- (4) Where are the names of approved shares entered ?
- (5) Whose agreement creates Membership of company ?
- (6) Who can acquire membership in a Hindu Undivided Family by purchasing share ?
- (7) Whose membership is suspended in case of war ?
- (8) Which letter of a shareholder authorizes to an other person to become a member ?
- (9) Who can be allotted sweat share ?
- (10) Which type of share is redeemable ?

3. Answer the following questions in short :

- (1) Define membership and give its meaning.
- (2) "A person may be member but may not be a shareholder" - Explain.
- (3) "A person may be shareholder but may not be a member" - Explain.
- (4) Under what circumstances can a subsidiary company acquire membership of holding company ?
- (5) How can a convertible debenture holder become a member ?

4. Answer the following question point wise :

- (1) Differentiate between member and shareholders.
- (2) Give the information regarding joint shareholding.
- (3) Explain the methods to become member through share transfer and share transmission.
- (4) "A Member holds out himself to be a member is responsible as member." Explain this statement.

5. Answer the following question in details :

- (1) Who can acquire membership ?
- (2) Explain methods to obtain membership.
- (3) Explain circumstances for termination of membership.

