

CHAPTER – 3 – MEMBERSHIP IN A COMPANY

Definition of member [Section 2(55)]

Subsection 1

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.

Subsection 2

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.

Subsection 3

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.

Mode of Acquiring Membership

A person may acquire the membership of a company in the following ways:

1. By subscribing to the MOA
2. By making an application to the company for the allotment of shares
3. By executing an instrument of transfer of shares as transferee
4. By consenting to the transmission of shares in his name
5. By acquiescence or estoppels
6. By holding the shares of the company as the beneficial owner in the records of the depository

Membership by acquiescence or estoppels

If any person allows his name without sufficient cause, to be on the register of members of the company or otherwise holds himself out or allows himself to be held out as a member, he will become member of the company. In such a case, such person is estopped from denying his membership.

In Re. M.F.R.D. Cruz, A.I.R. 1939 Madras 803, the plaintiff applied for 4,000 shares in a company but no allotment was made to him. Subsequently 4,000 shares were transferred to him without his request and his name was entered in the register of members. The plaintiff knew it but took no steps for rectification of the register of members. The company went into liquidation and he was held liable as a contributory. The Court held “when a person knows that his name is included in the register of shareholders and he stands by and allows his name to remain, he is holding out to the public that he is a shareholder and thereby he loses his right to have his name removed”.

Note:

- A subscriber to the memorandum cannot rescind the contract for the purchase of shares even on the ground of fraud by the promoters. (In Re. Metal Constituents Co., (1902)
- In accordance with the provisions of Section 10(2) of the Companies Act, 2013, all monies payable by any member to the company under the memorandum or articles shall be debt due from him to the company.

Mode of Cessation of Membership

A member ceases to be the member of the company soon his name is removed from the register of the members or register of the beneficial owner. Some of the modes of cessation of membership are:

1. By transferring of shares to someone else
2. Forfeiture of shares by the company in case of nonpayment of sum due by the member
3. When company exercise its lien on the shares for the recovery of unpaid amount due by the member

4. Death or insolvency of member
5. Conversion of shares into share warrants or stock
6. Buy back of shares by the company
7. Purchase of shares by the company under the tribunal order under section 242
8. Dissolution or winding up or striking off the name of the company
9. Cancellation of contract of membership in case of void or voidable allotment

Who may become a Member?

Subject to the Memorandum and Articles, any sui juris (a person who is competent to contract) except the company itself, can become a member of a company.

Some of the examples

- (a) Company may be a member of another company

But

- a subsidiary company cannot become a member of its holding company (except in certain cases).
- A company cannot become a member of itself.

- (b) A partnership firm is not a legal person and therefore cannot become a member of a company.

But

- A partnership firm can become a member of company registered u/s 8 of Companies Act.

- (c) Section 8 company can become a member of another company

- (d) A foreigner may become a member subject to the provisions of the FEMA,

But

- in the event of war with his country, he becomes an alien enemy and his power of voting and his rights to receive notices are suspended.

- (e) A Minor cannot become a member of a company.

But

- A minor can be transferee in case of fully paid up shares
- A minor can hold the shares in the name of his lawful guardian

Further

- After attaining majority, the minor, if he does not want to be a member, must repudiate his liability on the shares on ground of minority, and if he does so, the company cannot plead estoppel on the ground of his having received dividends during his minority or that he had fraudulently misrepresented his age in his application for shares.
- In case of unpaid up shares or uncalled up shares, if shares are transferred to a minor, the transferor will remain liable for all future calls on such shares so long as they are held by the minor even if the transferor was ignorant of his minority.
- If the company knows of his minority it may refuse to register the transfer, unless the transfer was made through the guardian.

- (f) An insolvent may be a member of a company as long as he is on the register of members.

He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee or Receiver.

- (g) A pawnee is not the absolute owner of shares. Thus he cannot be treated as the holder of the shares pledged in his favour, and the pawner continues to be a member and can exercise the rights of a member.

- (h) A receiver cannot exercise any of the membership rights attached to a share

- (i) A person who takes shares in the name of a fictitious person, becomes liable as a member.

- (j) 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.

Whether the holder of ADR/GDR can be considered as member of the company

In the view of clarification given by MCA

- A holder of ADR/GDR is neither the subscriber to the Memorandum nor a holder of the shares, his name cannot be entered in the Register of Members. Therefore, he cannot be called a member of the company.
- A holder of ADR/GDR may become a member of the company only on transfer/redemption of the GDR into underlying equity shares

Registration of Shares in the name of Public Office

The Companies Act, 2013 contains no provisions with regard to the registration of shares in the name of a public office. Shares cannot, therefore, be registered in the names of public offices like the Collector of Central Excise or the Commissioner of Income-tax etc.

Difference between Member and Shareholder

In the case of a Company limited by shares, the persons whose names are put on the Register of members are the members of the Company. They may also be called shareholders of the Company as they have been allotted shares and are holding them in their own right. In such a situation, the terms 'member' and 'shareholder' are interchangeably used to mean the same person.

However, in case of a Company limited by guarantee or an unlimited Company, a member may not be a shareholder, for such a Company may not have any share capital.

Sometimes a distinction is made between a member and a shareholder in a Company having share capital. The following are the differences:

BASIS OF DISTINCTION	MEMBER	SHAREHOLDER
Definition	Sec 2(55) of the Act defines member	It is not defined in Companies Act, 2013.
Meaning	It means a person whose name is entered in the register of members.	It means a person who holds shares in the Company.
Subscription to Memorandum	A person who subscribes to the Memorandum of Association immediately becomes the member even before the shares are allotted to him.	A person becomes a shareholder only when the shares are actually allotted to him.
Mandatory	Every private company shall have a minimum of two members and every public company shall have seven members, having a share capital or not.	Only a Company, having share capital can have shareholders. A Company limited by guarantee or unlimited Company not having share capital do not have any shareholders.
Share warrant	A holder of share warrant is not a member of the Company.	A holder of a share warrant is a shareholder in the Company.
Transfer of shares	A transferor of shares shall continue to be treated as the member of the Company until his name is removed from the register of members.	A transferor of shares immediately ceases to be a shareholder in the Company even though his name continues to appear in the register of members.
Death	In the case of death of a member, his legal representatives do not become the member of the Company till their names are entered in the register of members	In case of death of a member, his legal representative immediately becomes the shareholder in the Company even before his name is entered into the register of members.

A person who acquires the shares in the open market may be a shareholder but he does not become the member automatically. It is only when the name of the transferee is recorded in the register of members that he becomes the member. Thus, a person may be a shareholder but may not be a member.

Expulsion of a Member

The Department of Company Affairs (now, Ministry of Corporate Affairs) has clarified that an article for expulsion of a member is ultra vires the company. This is because such a provision is against

- the provisions of the Companies Act relating to the rights of a member in a company,
- the powers of the Tribunal as an appellate authority under
 - o Section 48 (Variation of shareholders' rights)
 - o Section 58 (Refusal of registration and appeal against refusal)
 - o Section 235 (Power to acquire shares of shareholders dissenting from scheme or contract approved by majority)
 - o Section 241 (Application to Tribunal for relief in cases of oppression and mismanagement)

Thus any power of the Board of Directors to expel a member by alteration of Articles of Association shall be illegal and void.

Register of Members etc. [Section 88]

- (1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—
 - (a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;
 - (b) register of debenture-holders; and
 - (c) register of any other security holders.
- (2) Every register maintained under sub-section (1) shall include an index of the names included therein.
- (3) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.
- (4) A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (1), called "foreign register" containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India.
- (5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2),
 - the company shall be liable to a penalty of 3 lakh rupees and
 - every officer of the company who is in default shall be liable to a penalty of Rs. 50,000.

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Rule 3 of Companies (Management and Administration) Rules, 2014

Register of members

- (1) Every company limited by shares shall, from the date of its registration, maintain a register of its members in **Form No. MGT.1**
- (2) In the case of a company not having share capital, the register of members shall contain the following particulars, in respect of each member, namely:-
 - (a) name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;
 - (b) date of becoming member;
 - (c) date of cessation;
 - (d) amount of guarantee, if any; any other interest if any; and instructions, if any, given by the member with regard to sending of notices etc.

Rule 5 of Companies (Management and Administration) Rules, 2014

Maintenance of the Register of members etc. under section 88

Time period within which entries shall be made in the register

Within 7 days after approval by the Board or committee

- In case of allotment or transfer of shares, debentures or any other securities
- In case of forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates

Time period for entering particulars related to pledge, charge, lien or hypothecation (In case of companies whose securities are listed on a stock exchange in or outside India)

Within 15 days of creating any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein.

Place of Maintenance of Register

- The registers shall be maintained at the registered office of the company.
- By passing special resolution, register may be kept
 - o at any other place within the city, town or village in which the registered office is situated or
 - o any other place in India in which more than 1/10th of the total members entered in the register of members reside.

Rule 6 of Companies (Management and Administration) Rules, 2014

Index of names to be included in Register

- (1) Every register maintained under sub-section (1) of section 88 shall include an index of the names entered in the respective registers and the index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found:
But the maintenance of index is not necessary in case the number of members is less than 50.

- (2) The company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.

Rule 8 of Companies (Management and Administration) Rules, 2014
Authentication of Registers maintained under Section 88

- (1) The entries in the registers maintained under section 88 and index included therein shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.
- (2) The entries in the foreign register shall be authenticated by the company secretary of the company or person authorised by the Board by appending his signature to each entry.

Rule 7 of Companies (Management and Administration) Rules, 2014
Foreign register of members, debenture holders etc. residing outside India

Authority of Company to keep Foreign Register outside India

A company which has share capital or which has issued debentures or any other security may,

- if so authorised by its articles, keep in any country outside India,
- a part of the register of members or of debenture holders or of any other security holders or of beneficial owners, resident in that country.

Intimation to ROC about the situation of foreign register in Form No. MGT-3

The company shall,

- within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in Form No.MGT.3 where such register is kept.

The company shall, in the event of any change in the situation of such office or of its discontinuance, shall,

- within 30 days from the date of such change or discontinuance, file notice in Form No.MGT.3 with the Registrar of such change or discontinuance.

Inspection and Closure of Foreign Register

A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least 2 newspapers circulating in the place wherein the foreign register is kept.

Other Relevant Provisions related to Foreign Register

- The foreign register shall be maintained in the same format as the principal register.
- If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.
- Entries in the foreign register shall be made simultaneously after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities.
- Every such duplicate register shall, for all the purposes of this Act, be deemed to be part of the principal register.
- The company shall—
 - (a) transmit to its registered office in India a copy of every entry in any foreign register within 15 days after the entry is made; and

(b) keep at such office a duplicate register of every foreign register duly entered up from time to time.

Place of keeping and inspection of registers, returns, etc. (Section 94)

- (1) The registers required to be kept and maintained by a company under section 88 shall be kept at the registered office of the company:
But such registers or copies of return may also be kept at any other place in India in which more than 1/10th of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company-
- (2) The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.
- (3) Any such member, debenture-holder, other security holder or beneficial owner or any other person may—
 - (a) take extracts from any register, or index or return without payment of any fee; or
 - (b) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section.
- (4) If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of 1000 rupees for every day subject to a maximum of 1 lakh rupees during which the refusal or default continues.
- (5) The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

Rule 14 of Companies (Management and Administration) Rules, 2014 Inspection of registers, returns etc.

- (1) The registers and indices maintained pursuant to section 88 shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide, by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding Rs. 50 for each inspection.
Explanation.- For the purposes of this sub-rule, reasonable time of not less than 2 hours on every working day shall be considered by the company.
- (2) Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of any such register or entries therein or return on payment of such fee as may be specified in the articles of association of the company but not exceeding Rs. 10 for each page. Such copy or entries or return shall be supplied within 7 days of deposit of such fee.

Rule 15 of Companies (Management and Administration) Rules, 2014 Preservation of register of members etc. and annual return

- (1) The register of members along with the index shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose; and

- (2) The register of debenture holders or any other security holders along with the index shall be preserved for a period of 8 years from the date of redemption of debentures or securities, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.
- (3) Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the Registrar.
- (4) The foreign register of members shall be preserved permanently, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture holders or any other security holders shall be preserved for a period of 8 years from the date of redemption of such debentures or securities.
- (5) The foreign register shall be kept in the custody of the company secretary or person authorised by the Board.

Power to close register of members or debenture holders or other security holders (Section 91)

- (1) A company may close the register of members or the register of debenture holders or the register of other security holders for any period or periods not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any one time, subject to giving of previous notice of at least 7 days or such lesser period as may be specified by SEBI for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.
- (2) If the register of members or of debenture-holders or of other security holders is closed without giving the notice as 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
 - o shall be liable to a penalty of Rs. 5000 for every day subject to a maximum of 1 lakh rupees during which the register is kept closed.

Rule 10 of Companies (Management and Administration) Rules, 2014

Closure of register of members or debenture holders or other security holders

- (1) A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least 7 days previous notice and in such manner, as may be specified by SEBI, if such company is a listed company or intends to get its securities listed, by advertisement
 - at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and
 - at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and
 - publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company.
- (2) The provisions contained in sub-rule (1) shall not be applicable to a private company provided that the notice has been served on all members of the private company not less than 7 days prior to closure of the register of members or debenture holders or other security holders.

Registers, etc., to be evidence [Section 95]

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.

Declaration in respect of beneficial interest in any share [Section 89]

- (1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.
- (2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.
- (3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of 30 days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.
- (4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.
- (5) If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of Rs. 50,000 and in case of continuing failure, with a further penalty of Rs. 200 for each day after the first during which such failure continues, subject to a maximum of Rs. 5 lakh.
- (6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within 30 days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed.
- (7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of Rs. 1000 for each day during which such failure continues, subject to a maximum of Rs. 5 lakh in the case of a company and Rs. 2 lakh in case of an officer who is in default.
- (8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.
- (9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.
- (10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—
 - (i) exercise or cause to be exercised any or all of the rights attached to such share; or
 - (ii) receive or participate in any dividend or other distribution in respect of such share.

Rule 9 of Companies (Management and Administration) Rules, 2014

Declaration in respect of beneficial interest in any shares

1. A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as “the registered owner”), shall file with the company, a declaration to that effect in Form No.MGT.4, within a period of 30 days from the date on which his name is entered in the register of members of such company: Provided that where any change occurs in the beneficial interest in such shares, the registered owner shall, within a period of 30 days from the date of such change, make a declaration of such change to the company in Form No.MGT.4.
2. Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter referred to as “the beneficial owner”) shall file with

the company, a declaration disclosing such interest in Form No. MGT.5, within 30 days after acquiring such beneficial interest in the shares of the company:

Provided that where any change occurs in the beneficial interest in such shares, the beneficial owner shall, within a period of 30 days from the date of such change, make a declaration of such change to the company in Form No. MGT.5.

3. Where any declaration under section 89 is received by the company, the company shall make a note of such declaration in the register of members and shall file, within a period of 30 days from the date of receipt of declaration by it, a return in Form No. MGT.6 with the Registrar in respect of such declaration with fee.

Register of significant beneficial owners in a company [Section 90]

(1) Declaration to company by significant beneficial owner

Every

- individual (acting alone or together, or through one or more persons or trust),
- trust and
- persons resident outside India,

who holds

- beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or
- the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as “significant beneficial owner”),

shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed.

(2) Register of significant beneficial owner

Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(3) Inspection of Register of significant beneficial owner

The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(4) Filing of return of significant beneficial owners by company with ROC

Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(4A) Duty of Company to identify an individual who is a significant beneficial owner

Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.

(5) Notice by company to unregistered significant beneficial owner/person who knows significant beneficial owner

A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

- (a) to be a significant beneficial owner of the company;
 - (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
 - (c) to have been a significant beneficial owner of the company at any time during the 3 years immediately preceding the date on which the notice is issued,
- and who is not registered as a significant beneficial owner with the company as required under this section.

- (6) Duty of person receiving notice from company to provide information within 30 days
The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding 30 days of the date of the notice.
- (7) Power of company to approach NCLT in case of non-receipt of Information/satisfactory information
The company shall,—
(a) where that person fails to give the company the information required by the notice within the time specified therein; or
(b) where the information given is not satisfactory,
apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.
- (8) Power of NCLT to make order
On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of 60 days of receipt of application or such other period as may be prescribed.
- (9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of 1 year from the date of such order:
Provided that if no such application has been filed within a period of 1 year from the date of the order, such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125 [Investor Education and Protection Fund]
- (10) If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty of Rs. 50,000 and in case of continuing failure, with a further penalty of Rs. 1000 for each day after the first during which such failure continues, subject to a maximum of Rs. 2 lakh.
- (11) If a company,
- required to maintain register under sub-section (2) and file the information under sub-section (4) or
- required to take necessary steps under sub-section (4A),
fails to do so or denies inspection as provided therein,
- the company shall be liable to a penalty of 1 lakh rupees and in case of continuing failure, with a further penalty of Rs. 500 for each day, after the first during which such failure continues, subject to a maximum of 5 lakh rupees and
- every officer of the company who is in default shall be liable to a penalty of Rs. 25,000 and in case of continuing failure, with a further penalty of Rs. 200 for each day, after the first during which such failure continues, subject to a maximum of Rs. 1 lakh.
- (12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.



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The Companies (Significant Beneficial Owners) Rules, 2018

Meaning of significant beneficial owner [Rule 2(h)]

“Significant beneficial owner” in relation to a reporting company means an individual referred to in Section 90(1), who

- acting alone or together, or
- through one or more persons or trust,

possesses one or more of the following rights or entitlements in such reporting company, namely:

- (i) holds indirectly, or together with any direct holdings, not less than 10%, of the shares;
- (ii) holds indirectly, or together with any direct holdings, not less than 10%, of the voting rights in the shares;
- (iii) has right to receive or participate in not less than 10%, of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely: -

- (i) where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the individual,
 - (a) holds majority stake in that member; or
 - (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;
- (ii) where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF;
- (iii) where the member of the reporting company is a partnership entity (through itself or a partner), and the individual,-
 - (a) is a partner; or
 - (b) holds majority stake in the body corporate which is a partner of the partnership entity; or
 - (c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

Meaning of majority stake [Rule 2(d)]

"Majority stake" means;-

- (i) holding more than one-half of the equity share capital in the body corporate; or
- (ii) holding more than one-half of the voting rights in the body corporate; or
- (iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;

Duty of the reporting company [Rule 2A]

- (1) Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.
- (2) Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company shall in all cases where its member (other than an individual), holds not less than 10% of its:-
 - (a) shares, or
 - (b) voting rights, or
 - (c) right to receive or participate in the dividend or any other distribution payable in a financial year,

give notice to such member, seeking information in accordance with subsection (5) of Section 90, in Form No. BEN-4

Declaration of Significant Beneficial Ownership under Section 90 [Rule 3]

Every individual, who becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within 30 days of acquiring such significant beneficial ownership or any change therein.

Return of significant beneficial owners in shares [Rule 4]

Upon receipt of declaration under rule 3, the reporting company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of 30 days from the date of receipt of such declaration by it.

Register of significant beneficial owners [Rule 5]

- (1) The company shall maintain a register of significant beneficial owners in Form No. BEN-3.
- (2) The register shall be open for inspection during business hours, at such reasonable time of not less than 2 hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding 50 rupees for each inspection.

Notice seeking information about significant beneficial owners [Rule 6]

A company shall give notice seeking information in accordance with under sub-section (5) of Section 90, in Form No. BEN-4.

Application to the Tribunal [Rule 7]

The reporting company shall apply to the Tribunal,

- (i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or
- (ii) where the information given is not satisfactory,

in accordance with sub-section (7) of Section 90, for order directing that the shares in question be subject to restrictions, including

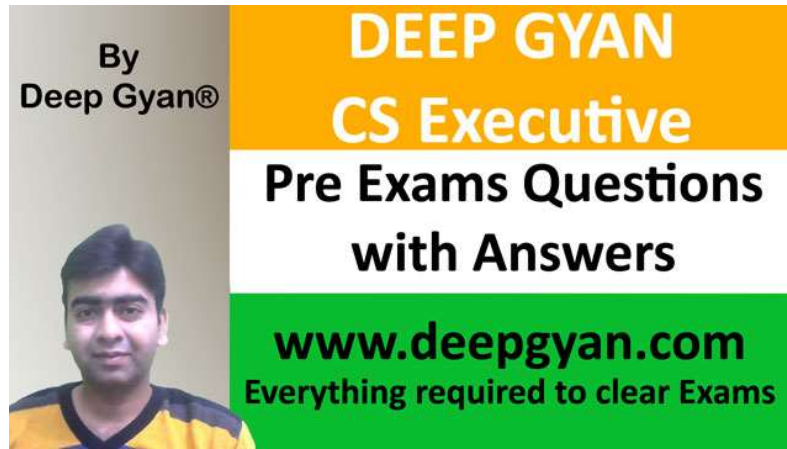
- (a) restrictions on the transfer of interest attached to the shares in question;
- (b) suspension of the right to receive dividend or any other distribution in relation to the shares in question;
- (c) suspension of voting rights in relation to the shares in question;
- (d) any other restriction on all or any of the rights attached with the shares in question]

Non-Applicability [Rule 8]

These rules shall not be made applicable to the extent the share of the reporting company is held by,

- (a) the authority constituted under sub-section (5) of section 125 of the Act [Investor Education and Protection Fund];
- (b) its holding reporting company (Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.)
- (c) the Central Government, State Government or any local Authority;
- (d) (i) a reporting company, or
(ii) a body corporate, or
(iii) an entity,
controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
- (e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), infrastructure Investment Trust (InvITs) regulated by the Securities and Exchange Board of India,

- (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.



CS Executive Company Law Notes PDF

Rights/Powers/Liabilities of Members

So long a person's name stands registered in the books as a member, even if he has sold the share and has given the share certificates and the blank transfer deed duly signed, he alone is entitled to exercise the rights of membership [Balakrishna Gupta & Others v. Swadeshi Polytex Ltd. and Others (1985) 58 Com Cases 563 (S.C.); and Life Insurance Corporation of India v. Escorts Ltd. & Others (1986) 59 Com Cases 548 (S.C.)].

Individual Rights of Members

- (1) Right to receive copies of the following documents from the company:
 - (i) A copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements (Section 136)
 - (ii) Abridged financial statement and auditor's report in the case of a listed company (Section 136).
 - (iii) Report of the Cost Auditor, if so directed by the Government.
 - (iv) Notices of the general meetings of the company (Sections 101-102).
- (2) Right to inspect statutory registers/returns and get copies thereof without payment on any fee or on payment of prescribed fee. The members have been given right to inspect the following registers etc.:
 - (i) Debenture trust deed (Section 71);
 - (ii) Register of Charges and instrument of charges (Section 85 & 87);
 - (iii) Copies of contract of employment with Managing or Whole-time directors;
 - (iv) Shareholders' Minutes Book (Section 119);
 - (v) Register of Contracts, Companies and Firms in which directors are interested (Section 189);
 - (vi) Register of directors and key managerial personnel and their shareholding (Section 170);
- (3) Right to attend meetings of the shareholders and exercise voting rights at these meetings either personally or through proxy (Sections 96, 100, 105 and 107).
- (4) Over and above the rights enumerated above, the members have the following rights:
 - (i) To transfer shares (Sections 44 and 56 and Articles of Association of the company).
 - (ii) To resist and safeguard against increase in his liability without his written consent.
 - (iii) To receive dividend when declared (Section 123).
 - (iv) To have rights shares (Section 62).
 - (v) To appoint directors (Section 152).
 - (vi) To share the surplus assets on winding up (Section 320).
 - (vii) Right of dissentient shareholders to apply to Tribunal (Section 48).
 - (viii) Right of Nomination. (Section 72)
 - (ix) Right to file a suit or take any other action in case of any misleading statement or the inclusion or omission of any matter in the prospectus. (Section 37)

Collective Rights of Members

- Right to make application collectively to the Tribunal for relief in cases of oppression and mismanagement (Sections 241)
The shareholders in majority determine the policy of the company and exercise control over the management of the company. However, if and when the majority becomes oppressive or is accused of mismanagement of the affairs of the company, Section 241 read with section 244 of the Act, confers right, to certain prescribed number of members to apply to NCLT under Section 241 for relief in cases of oppression or for relief in cases of mismanagement respectively.
- Right to make a requisition to the Board of directors to call an extraordinary general meeting of the company (Section 100)
It is the duty of BOD to call EGM as and when required. But if Board of directors of the company does not call EGM as and when required, members can call EGM as per the provisions of Section 100.

Voting Rights of Members

Section 47 of the Act, provides that every member of a company limited by shares and holding equity share capital therein, shall have right to vote on every resolution placed before the company.

- In case of voting by show of hands, every member shall have only 1 vote (irrespective of his/her shareholding in the company).
- In case of voting by poll, e-voting, voting through postal ballot, every member shall have voting right in proportion to his share in the paid up equity share capital of the company.

Voting rights of Preference Shareholders

Preference shareholders ordinarily vote only on matters directly affecting the rights attached to preference share capital and on any resolution for winding up of the company or for the repayment or reduction of the equity or preference share capital.

However, where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

Shareholders' Pre-emptive Rights with regard to further issue of share capital (Right Shares)

Pre-emptive rights mean right to prevent or stop something. In case of company limited by shares, Pre-emptive rights mean right to preserve the shareholders' proportionate dividend, liquidation and voting rights.

Section 62 of the Companies Act, 2013 secures shareholders' pre-emptive rights with regard to the further issue of share capital by the company.

Provisions w.r.t right shares are discussed in chapter 2.

Variation of Member's Rights [Section 48]

- (1) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than $\frac{3}{4}$ th of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—
 - (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
 - (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that classBut if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of $\frac{3}{4}$ th of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.
- (2) Where the holders of not less than 10% of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

Provided that an application under this section shall be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (3) The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.
- (4) The company shall, within 30 days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

Power to Nominate (Section 72)

- (1) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.
- (2) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.
- (3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.
- (4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

Rule 19 of Companies (Share Capital and Debentures) Rules, 2014

Nomination by securities holders

- (1) Any holder of securities of a company may, at any time, nominate, in Form No. SH.13, any person as his nominee in whom the securities shall vest in the event of his death.
- (2) On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.
- (3) Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No. SH.13 any person as nominee.
- (4) The request for nomination should be recorded by the Company within a period of 2 months from the date of receipt of the duly filled and signed nomination form.
- (5) In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either-
 - (a) to register himself as holder of the securities ; or
 - (b) to transfer the securities, as the deceased holder could have done.
- (6) If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, 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 share or debenture holder(s).
- (7) All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to any such notice or transfer as aforesaid as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.
- (8) A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company.
The Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.

- (9) A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in Form No. SH.14.
- (10) The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.
- (11) When the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in Form No. SH.13 specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

Cases where liability of Members become unlimited

According to Section 7(7), where a company has been got incorporated

- by furnishing any false or incorrect information or representation or
- by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or
- by any fraudulent action,

the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit.

Provided that before making any order under this sub-section,—

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Shareholders' Democracy

Democracy means the rule of people, by people and for people. In that context the shareholders democracy means the rule of shareholders, by the shareholders, and for the shareholders in the corporate enterprise, to which the shareholders belong.

Under the Companies Act the powers have been divided between two segments: one is the Board of Directors and the other is of shareholders. The directors exercise their powers through meetings of Board of directors and shareholders exercise their powers through General Meetings.

According to Section 179, subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers and to do all such acts and things, as the company is authorised to exercise and do.

But this power is subject to provisions of

- AOA
- MOA
- Company Law
- Shareholders Resolutions
- Shareholders Agreement

Thus, BOD shall work in accordance to the will of Shareholders.

Shareholders' Agreement

Shareholders' agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter se shareholders' rights and obligations.

Such agreements are specifically drafted to provide specific rights, impose definite restrictions over and above those provided by the Companies Act. SHA creates personal obligation between the members signing such agreement however, such agreements do not become a regulation of the company in the way the provisions of Articles are.

In India, courts have upheld that in case of any conflict between the Articles and the SHA, the former will always prevail.

In India, the decisions of Courts on shareholders' agreements are not uniformly inclined in a direction. Therefore, it is difficult to come to clear and crisp answers as to enforceability of shareholders' agreements.

VETO POWER

A veto – Latin for “I forbid” – is the power to unilaterally stop an official action, especially the enactment of legislation. A veto may give power only to stop changes, thus allowing its holder to protect the status quo.

Under Companies Act, 2013, there are some instances where BOD can't take decision. The consent of the shareholders is mandatory to approve any decision or transaction. This is said to be the veto power or veto right of shareholders of the company.

Details will be discussed later.