MBA –III Semester,
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Unit: 3
Topic: Members of a Company
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Members of a Company

In the ordinary commercial usage, the term '**Member**' denotes a person who holds shares in a company. The members or the shareholders are the real owners of a company. They collectively constitute the company as a corporate body.

The ultimate authority in matters relating to the appointment and removal of the directors, auditors and other managerial personnel lies with shareholders. The powers of the Board are also subject to the control and supervision of the general body of the members.

Meaning and Definition

The Companies Act divides the members into three classes. According to Sec. 41 of the Companies Act, the three classes of members are:

1. The persons who have subscribed to the Memorandum of a company.

2. Every other person who has agreed in writing to become a member of the company and whose name has been entered in the Register of Members.

3. Every person holding equity share capital of a company and whose names are recorded as beneficial owner in the depository records are considered as members of the concerned company.

From the above, it is clear that all the subscribers to the Memorandum are deemed to be the members of the company even though their names do not appear in the Register of Members. But the Act provides that their names must be entered in the Register on its registration. As regards the second category of members, the criteria of membership are-

1. the person must have agreed in writing to become a member, and

2. his name must have been entered in the Register of Members. If any one of the conditions is not satisfied, the person shall not be a member under this Act.

For the third category of members also 2 conditions are to be fulfilled to become the member of the company such as

i. The person must hold equity shares of the company.
ii. His name must be entered as beneficial owner in the records of the depository.

A member can be distinguished from a shareholder in the following circumstances:

1. A registered member of a company having no share capital is not a shareholder since the company itself has no share capital.

2. A person who holds a share warrant is a shareholder but he is not a member of the company.
3. The legal representative of a deceased member is only a shareholder but not a member. To acquire membership, the legal representative of the deceased member should apply to the company and get his name registered in the register.

Who can become a member?

The company law does not prescribe any disqualification, which would depart a person from becoming a member of a company. It appears that any person who is competent to enter into valid contract can become a member of a company. The reason is obvious. Subscribing for shares is basically a contract between the company and the shareholder. However, the Memorandum or Articles may impose certain restrictions or restrain certain persons from acquiring membership in a company. In the absence of any express provision regarding the capacity of a person, the provisions of the Contract Act shall apply.

As regards to certain special category of persons, the judiciary has laid down certain principles for acquiring membership in a company. They are as follows:

1. **Minors**: A minor, is not a competent person to enter into a valid contract. As such, he is disqualified to acquire membership. However, minors may be allotted

shares. On attaining majority, the minor can avoid the contract. But the minor should repudiate the contract within a reasonable time.

2. **Lunatic and Insolvent**: A lunatic cannot become a member. An insolvent, however, can become a member and is entitled to vote at the meetings of the company. But his shares vest in the Official Receiver when he is adjudged insolvent.

3. **Partnership Firm**: A partnership firm may hold shares in a company in the individual name of partners as joint holders. But the shares cannot be issued in the name of the partnership firm, as it is not a legal person in the eye of law.

4. **Company**: A company, being a legal person, can become the member of another company in its own name. But a company can subscribe for the shares of another company only when it is authorized by Memorandum. Similarly, a subsidiary company cannot buy the shares of its holding company.

5. **Foreigners**: Foreign national can be members of companies registered in India. For that permission of RBI is mandatory. When he turns an alien enemy, his right as a member will be suspended.

6. **Fictitious Person**: A person who takes the shares in the name of fictitious person becomes liable as a member. Besides, such a person can be punished for impersonation under section 68-A.

Modes of acquiring membership

As per Sec. 41 of the Companies Act, a person may acquire the membership of a company

1. by subscribing to the Memorandum before the registration of the company.

2. by agreeing to become a member

   a. by applying for the shares offered by a company.
   b. by becoming a transferee of a share or shares and being placed on the register of members.
   c. by transmission of shares on succession to a deceased or bankrupt member and the consequent registration in the register of the company.
   d. by holding out shares and by allowing his name to be retained on the register.

Besides, there is another method of becoming a member of a company i.e. "**Membership by Qualification Shares**". If a person agrees to become a director of a company, he is deemed to have accepted to become a member of that company. On his appointment, certain shares should be allotted to him. The Companies Act provides that any one who agrees to become a director of a public company should take at least one share before his appointment. Such shares are known as qualification shares.

Rights of the Members

The members of a company enjoy several rights and they are the ultimate authority in the matters of the company and its management. Their rights can be grouped under three heads. They are detailed below:

1. **Statutory Rights**: These are the rights conferred upon the members by the Companies Act. These rights cannot be taken away by the Articles of Association or Memorandum of Association. Some of the important statutory rights are given below
   i. Right to receive notice of meetings, attend, to take part in the discussion and vote at the meetings.
   ii. Right to transfer the shares [in case of public companies].
   iii. Right to receive copies of the Annual Accounts of the company.
   iv. Right to inspect the documents of the company such as register of members, annual returns, etc.
   v. Right to participate in appointments of directors and auditors in the Annual General Meetings.
   vi. Rights to apply to the Government for ordering an investigation into the affairs of the company.
   vii. Right to apply to the Court for winding up of the company.
   viii. Right to apply to the National Company Law Tribunal for relief in case of oppression and mismanagement under Secs. 397 and 398.
2. **Documentary Rights**: In addition to the statutory rights, there are certain rights that can be conferred upon the shareholders by the documents like the Memorandum and the Articles of Association.
3. **Legal Rights**: These are the rights, which are given to the members by the General Law.