

**E-contents for Mcom 2nd
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Vaniya Mahavidyalaya, Patna
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Subject: CORPORATE LEGAL FRAMEWORK

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Topic: MEMBERSHIP OF SHARES

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*** Who is a member of company?**

Section 2(55) of the companies act 2013 defines a member as: " The subscriber of the memorandum of companies 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. Every other person agrees in writing to become member of a company and whose name is entered in its register of members, shall be a member of the company. Every person holding equity share capital of a company and whose name is entered beneficial owner in the records of the depository shall be deemed to be a member of the concerned company."

*** Who can become a member?**

Provisions of the companies act, 2013 for various categories of person are given below:

- Minor- If the company allots shares to minor in ignorance of minority, following consequences shall follow:**
 - 1. The minor shall not be able to pay any calls remaining unpaid on the shares held by him.**
 - 2. The guardian cannot be compelled to pay the calls due on the share held by minor.**
 - 3. The minor can reject the allotment made to him. The company can reject the allotment made to the minor.**
 - 4. on attaining majority the minor does not automatically became member in company.**
 - 5. If on attaining majority, the minor does anything which shows that he has accepted membership, the minor shall be henceforth deemed to be a member.**
- Company- A company can become a member of any other company only if it is authorized by the MOA to purchase shares**

of any other company. A subsidiary company can not become a member of its holding company.

- **Societies registered under the Societies Registration Act, 1860- A cooperative society is a legal person therefore a cooperative society can become a member in a company.**
- **Trade union- A trade union registered under the Trade union Act, 1926 is a legal person to be a member in a company.**
- **Partnership firm- A firm is not a legal person. It cannot hold property in its own name so a firm cannot become a member in a company. A firm may be a member of licensed company (i.e promotional company or charitable company).**
- **Huf- HUF cannot become a member in a company in its own name.**
- **Trust- Shares cannot be allotted or transfer in the name of trust.**
- **Foreigner- A foreigner can become a member in a company by applying with the requirements of Foreign exchange management act 1999.**
- **Government- Central government or state government can become a member in a body corporate.**
- **Insolvent- An official receiver or official assignee is appointed by the court to receive the income and manage the estate of the insolvent. An insolvent may be a member of company. He remains a member so long as he's name appears on the register of members and that time he is intitle to vote.**

*** MODES OF ACQUIRING THE MEMBERSHIP**

- 1. By subscribing to MOA.**
- 2. By transfer of shares.**
- 3. By application and allotment of share.**

4. By succession- On the basis of the succession certificate the legal heirs of the deceased member get the right to be a member of the company.

5. Convertible debentures.

*** TERMINATION OR CESSATION OF MEMBERSHIP**

It can be divided in two ways-

1. Voluntary termination(by act of the parties)

2. Compulsory termination(by operation of law)

1.VOLUNTARY TERMINATION

- **When he transfers his shares to another person and so soon as the transferee is registered as member.**
- **When his shares are validly forfeited by the company.**
- **When he validly surrenders his shares to the company.**
- **When he holds redeemable preference shares and such shares are redeemed.**
- **By the buy back of shares by the company.**

2. COMPULSORY TERMINATION

- **When he dies and his shares are registered in the name of his legal representatives.**
- **When he is declared insolvent and his shares are transferred by the official receiver and the transferee is registered as member.**
- **when the trustee in insolvency of an insolvent member disclaims his shares.**
- **When he repudiates the contract of membership on the ground of misrepresentation in the prospectus, or on the ground of irregular allotment.**

- When his shares are sold in execution of a decree of the court.
- When the share warrants are issued to him in exchange of fully paid up shares.
- When the company is wound up.

*** DISTINCTION BETWEEN A MEMBER AND A SHAREHOLDER**

1. A registered shareholder is a member and a registered member may not be a shareholder.
2. A person may be a member without holding shares. No person can be a shareholder without holding a share.
3. A legal representative may not be a member until he applies for registration. The legal representative remains a shareholder though his name does not appear on the register.
4. A person who subscribes to the MOA immediately become the member. When the shares are allotted to subscriber they become shareholder.
5. On the transfer of share the person remains the member till the time the transfer is registered in the name of the transferee. A person who transfers his shares ceased to be a holder of shares from the date of transfer.
6. Members are essential for a company. Shareholders are not essential for every company compare to members.

*** RIGHTS OF A MEMBER**

1. Right to receive share certificate
2. Right to have his name in register
3. Right to transfer his securities
4. Right to receive notice of meetings

- 5. Right to receive dividend**
- 6. Right to inspect and obtain copies of registers, annual reports and etc**
- 7. Right to obtain copies of MOA and AOA**
- 8. Right to obtain copies of minutes**
- 9. Right to vote for resolution**
- 10. Right to obtain copies of profit and loss act, balance sheet, audit report and other documents.**
- 11. Right to make an application to company law board seeking an order for calling the AGM or EGM**

*** LIABILITIES OF A MEMBER**

- 1. Companies limited by shares- The liability of its members limited by the MOA. If any unpaid on the shares held by them is the liability of the members.**
- 2. Companies limited by guarantee- In this type of companies liability of members is limited to a fixed amount which members undertake to contribute to the assets of company in the time of winding up.**
- 3. Unlimited companies- In this type of company members have unlimited liability.**
