

## Clause (55) Member

“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. (Effective from 12.09.2013)

### 1. Meaning of ‘Member’

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;

As per the definition, a person can't be treated as member of the company unless his name is entered in the Register of members of the company.

The term ‘member’ is different from that of ‘shareholder’. A shareholder can be shareholder by acquiring shares but will not be member till his name entered in the Register of Members of the company. This definition is relaxed in case of section 244 where even a shareholder is treated as a ‘member’.

In case of a company limited by guarantee and not having share capital the person who provides the guarantee will become its member as soon as his name is entered in the Register of Members.

### 2. Position of registered owner of the shares vis-à-vis beneficial owner

A person whose name is entered in the Register of Member shall be treated as member irrespective of whether he holds the beneficial interest or not. The holder of beneficial owner (under section 89) is not recognised as a member.

### 3. Subscriber to the shares

A person who agrees to subscribe memorandum of association the company shall be treated as a member of the company, once the company is registered. His name shall also be entered in the register of members.

As held in *U.P. Oil Mills Co. Ltd. v. Jamna Prasad* [[1933] 3 Comp. Cas. 256 (All.)], “Words ‘shall be deemed to have agreed to become members of the company’ as occurring in section 30 of the 1913 Act/ section 41 of the 1956 Act [corresponding to section 2(55) of the 2013 Act] mean that the subscribers of the memorandum of a company are to be treated as having become members of the company by the fact of the subscription; by merely subscribing to the memorandum of association a person becomes member of the company.”

### 4. Agreement in writing and entry in register

In *Balakrishna Gupta v. Swadeshi Polytex Limited* [[1985] 58 Comp Cas 563], Supreme Court has held that unless a person agrees in writing to become member of the company and unless his name is entered in the Register of Members he cannot be considered as Member of the Company. No oral application will be valid. “The privileges of a member of a company can be exercised only by that person whose name is entered in the register of members”.

In *Sree Ayyanar Spinning & weaving mills Limited v. Rajendran V.V.V.* [1973 43 CompCas 225 Mad], it was held that there cannot be oral application and an application in writing has to be submitted for becoming member of the Company.

### 5. Membership by transfer

In case of a person who acquired shares by acquiring from other person, he will not become the member till the transfer of shares is registered by the company and his name is entered in the register of members of the company.

### 6. Membership by transmission

In *Indian Chemical Products Limited v. State of Orissa* [1966 SCR 380] it was held that in case of a transmission of shares unless intimation of transmission is submitted in writing which constitutes an agreement in writing the legal heir cannot be admitted as member of the Company.

### 7. Partnership firm as a member

As per Departments Circular No. 4/72 dated 09.03.1972, a firm not being a person cannot be registered as a member of the Company.

Such firm can be a member of section 8 company.

In the case of partners, a firm as such cannot be registered as a member, but the partners in their individual names may be registered as joint holders of the shares. If any change occurs in the partnership and the shares are to continue to remain as assets of the firm, a transfer of the shares may be effected by means of a regular instrument of transfer.

## 8. Company as a member of another company

A company being an artificial person and a body corporate, can acquire shares in other company provided it is authorised by its memorandum or articles of association of the company. However, a company cannot buy its own shares.

## 9. Minor as member

As per the departments clarification vide Circular No. 1968/5614 dated 26.02.1964, it was stated that the minor is not capable of entering into a contract for acquisition of shares. But he can hold shares in the name of the guardian. Further, a minor may inherit the shares.

## 10. LLP as a member of the company

Unlike a partnership firm, LLP is a body corporate as provided in section 3 of the Limited Liability Partnership Act, 2008. Hence, it can become a member of the company and hold shares in its name.

## 11. Society as a member

Department's Clarification dated 24.11.1962 has clarified that "a society registered under the Societies Registration Act, 1860 should not be deemed to be a 'body corporate' within the meaning of the aforesaid provisions [Refer to Section 2(7) (i) of the Companies Act, 1956 (currently refer section sub clause (i) of clause 11 of section 2 of the Act, although such a society can be treated as a 'person' having separate legal entity apart from the members constituting it and thereby capable of becoming a member of a company under section 41(2) of the Companies Act, 1956."

## 12. Joint members If more than one person jointly applies for and are allotted shares in a company, each one becomes a member as held in *Narandas Munmohandas Ramji v. Indian Manufacturing Co. Ltd [(1953) 23 Com Cases 335]*

In the case of joint holders, they can insist on having their names registered in such order as they may require, and they may also require their holdings to be split into several joint holdings with their names in different orders, so that all of them may have a right to vote as first named holder in one or other of the joint holdings as held in *Re, Saunders (TH.) & Co. [(1908) 1 Ch 415]*, and *Burns v. Siemens Brothers Dynamo Works Ltd [(1919) 1 Ch 225]*. Where a man purchased shares jointly with his wife's name, she became entitled on his death as a surviving joint owner to

have the shares registered in her name as held in *Deputy Commissioner v. M.D. Aikman [(1934) 4 Com Cases 218, 223 (Oudh)]*.

The Department has clarified vide Letter No. FI/24/SE/80, dated 05.09.1980 that there is no need of transfer deeds for transposition of names i.e. change in the order of names of joint shareholders provided such request is made by all shareholders jointly to the Company. However, where the change in the order of names is required in respect of a part of the holding, execution of a transfer deed will be required.

In the case of a private company, the private company, may refuse to split any holdings of shares if such splitting will cause an increase in the number of its members beyond the statutory maximum provided for a private company by section 3(1)(iii)(b).

### **13. Nominee joint members.**

Where the shares of a company were registered in the joint name of the company and one of the directors, it was held that the director was a nominee of the company for that purpose. He could act jointly with the company and not individually. He had no rights of his own in respect of the shares and was not entitled to bring proceedings on the basis of being one of the registered holders as held in *Exchange Travel (Holdings) Ltd., Re [(1991) BCLC 728 (Ch D)]*.

### **14. HUF as member**

HUF is not a juristic person, although it is a person for purposes of the Income-tax Act, 1961. HUF is represented by its Karta. There is no legal bar on HUF to invest its money in shares and securities and the Companies Act does not prohibit membership of HUF. In case of an HUF, the shares can be registered in the name of 'A' as Karta of HUF as held in *Vickers Systems International Limited v. Mahesh P. Keshwani [(1992) 13 Com Cases 317 (CLB)]*.

*(To be continued...)*

*Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30<sup>th</sup> September, 2016.*