

Register of Members (Sec 88)

1. Maintenance of registers

Every company is required to keep and maintain the following registers in such form and in such manner as prescribed under rule 3 and 4 namely:—

- (a) register of members separately for each class of equity and preference shares in form MGT-1;
- (b) register of debenture-holders separately for each class in form MGT-2; and
- (c) register of any other security holders separately for each class in form MGT-2.

The register of members needs to be maintained separately for each class of shares.

According to rule 3(1), every company limited by shares is required to maintain a register of its members in Form MGT- 1 from the date of its incorporation. Proviso to the said rule allows a period of 6 months from the date of commencement of these rules to comply with the provisions.

According to rule 3(2), every company not having share capital is required to maintain the register of members with the specified particulars in respect of each member:

- (a) Personal details such as name, address etc.
- (b) Date of becoming member
- (c) Date of cessation
- (d) Amount of guarantee, if any,
- (e) Any other interest, if any
- (f) Instruction given by member with regard to sending of notices etc. [Rule 3(2)]

In case of a company not having share capital, no format is prescribed. The company is at liberty to maintain any format with above particulars.

Proviso to rule 3(1) allows a period of 6 months from the date of commencement of these rules to comply with the provisions. The period of 6 months is prescribed in both the above cases to ensure that the registers are in conformity with the provisions of the Act. This implies that these details are to be compiled only for the members who stood on the register of members on the date on which such information is being collected. However, the said was changed through the Companies (Management and Administration) Amendment Rules, 2016. The new proviso affirms the view that only existing members shall be entered in the new register. However, the time limit has been removed. Similar proviso has been inserted in rule 3(2).

Every company which issues or allots debentures or other security (as defined in clause (81) of section 2) is required to keep and maintain the register of debenture holders or any other security holders in Form MGT-2, separately for each class as prescribed under rule 4. Unlike rule 3 of these Rules, rule 4 does not stipulate any period to comply with the provisions. Hence, the companies having outstanding debentures or any other securities shall comply with the provisions of this section and rule forthwith.

2. Manner of maintenance of various registers

Rule 5 prescribes the place of keeping registers, manner of making entries etc. According to rule 5 (1), the entries in the registers are required to be made within seven days from the date of approval of allotment or transfer of shares, debentures or any other securities, as the case may be. Such approval is the approval by board or its committee.

Further rule 5 (3) provides that the company is required to make entries in the respective registers within seven days after approval by the Board or committee in the following cases:

- a) forfeiture
- b) buy-back
- c) reduction
- d) sub-division, consolidation or cancellation of shares
- e) issue of sweat equity shares
- f) transmission of shares
- g) shares issued under any scheme of arrangements, mergers, reconstitution
- h) employees stock option scheme or any of such scheme provided under this Act; and
- i) issue of duplicate or new share certificates or new debenture or other security certificates

According to rule 5(4), the entries explaining and recording the reasons or reference for any changes in the status of member or debenture holder due to death or insolvency or change of name or transfer of shares to Investor Education Protection Fund, or any other reason.

In case of any rectification made due to any order passed under section 88, reference of the order shall be given in the register. Further, in case of directions given by judicial or revenue authority or by SEBI or NCLT which has the effect of attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, the necessary reference of such order shall be indicated in the respective register.

The registers may be maintained in electronic format after complying with the provisions of section 120 of the act read with rule 27, 28, 29 & 30 of the Companies (Management & Administration) Rules, 2014.

3. Additional disclosures applicable to listed companies

Rule 5 (7) and (8) prescribes certain additional disclosures in case of a company whose securities are listed on a stock exchange in or outside India. Such company shall make entries within 15 days from the date of event

- a) the particulars of 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

- b) the particulars of pledge, hypothecation, charge and lien created on any security of such listed company in connection with any joint venture company formed by it.

The above mentioned additional disclosures requirement as stated in rule 5(7) is applicable not only on companies whose securities are listed on stock exchange in India but also on those companies whose securities are listed outside.

4. Place of maintenance

According to rule 5(2), the registers are required to be maintained at the registered office of the company. However, by passing a special resolution, the company may keep the register(s) at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside. Hence, for maintaining the books at any place other than registered office, approval of members is required.

5. Index of registers

Sub-section (2) of section 88 read with rule 6 provides for maintenance of index of register. Every company having not less than 50 members is required to include an index of names in its register maintained under the provision of sub - section (1) of section 88. Such index shall be maintained in respect of each folio. It shall contain sufficient indication to enable finding the entries relating to that folio in the register.

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

6. Registers and index maintained by a depository

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.

The term “depository”, as defined in clause (e) of sub – section (1) of section 2 of the Depositories Act, 1996 means a company formed and registered under the companies Act, 1956, and which has been granted a certificate of registration under sub – section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992.

In other words, Depository is an entity maintaining a system to record ownership of shares or other securities in dematerialised form which negates the drawbacks relating to physical certificates of shares. The shares are issued in the name of the depository, which remains as the registered owner but does not get any rights attached to these shares. The beneficial owners are the investors at large. Section 11 of the Depositories Act, 1996 casts duty on the depository to maintain the register of beneficial owners.

7. Maintenance of foreign register

Sub-section (4) of section 88 read with rule 7 deals with maintenance of foreign register. A company may, if so authorised by its articles, keep in any country outside India, in the same format as the principal register, a part of the register referred to in sub-section (1), called “foreign register”. Such register records the details of the members or debenture holders or of any other security holders or of beneficial owners, resident in that country. This register would contain the details of only of the residents of that country where it is kept. Such register shall be deemed to be part of the company’s principal register to which it relates.

The company shall file with the Registrar a notice of the situation of the office where such register is kept in Form MGT – 3 within 30 days from the date of the opening of any foreign register. In the event of any change in the situation of such office or of its discontinuance, the notice in Form MGT – 3 shall be filed with the Registrar.

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 as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place where in the foreign register is kept.

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 with the principal register after the board or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be. Additionally, a copy of every entry in any foreign register shall be transmitted to the registered office of the company in India within 15 days after the entry is made. A duplicate register of every such foreign register is required to be maintained at registered office. Every such duplicate register shall, for all the purposes of this Act, be deemed to be part of the principal register. Further where a foreign register is maintained by a company, any entry with regard to transfer, transmission, allotment, beneficial ownership etc. shall be made in such foreign register only and shall not be required to be maintained in its principal register or any other foreign register. However, the company shall maintain duplicate register of such foreign register as stated above. Summarising these provisions, as soon as foreign register is maintained, the details regarding foreign shareholders required to be kept in such foreign register shall be transferred therein and thereafter be maintained therein and shall likewise be transferred to principal register on discontinuance thereof.

The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

8. Entries for joint holders and minors

In cases of joint – holders, companies are required to make entries in the register of members, debenture – holders or other holder of securities in the names of all joint holders by giving particulars of joint holders. The seniority of the joint holders depends upon the order of names in the register and determines entitlements to various rights.

Since, minor is not competent to contract and could neither apply for shares nor enter into any contract to acquisition by transfer of shares, they may not become members in their own name. Only in case of inheritance, a situation could arise in which a minor may be owner of shares as per of succession law. In such situation, minor can hold shares through his/her guardian. According to Department's circular no. 1968/5614 dated 26- 2 - 1964, names of guardians of minor should be entered in the register of member with a view to comply with the provision of law in this respect. Though the ministry's circular was issued under the old Companies Act, 1956, it is still relevant to provisions of new Companies Act, 2013. In spirit of compliance of law, the views of ministry/ department still holds good for compliance.

9. Authentication of entries in the register

According to rule 8, the entries in the registers and index are to 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 these entries shall be mentioned in the register. For a foreign register, the entries are to be authenticated by the company secretary of the company or person authorised by the board by appending his signature to each entry.

It appears that the expression "any other person" is used to mean any competent individual whether officer of the company or not. Any person may be authorised by the board to authenticate the register. The word "person" may be described properly to mean individual or natural person.

10. Entries to be a prima facie evidence

According to section 95, the registers, their indices and copies of annual returns are prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act. The effect of a prima facie evidence is only to create a presumption of truth but this presumption may be subject to rebuttal.

11. Preservation of registers

Rule 15 provides for preservation of registers. The register of members along with the index is to be preserved permanently and kept in the custody of the company secretary of the company or any other person authorized by the board for such purpose. The register of debenture holders or any other security holders along with the index are to be preserved for a period of eight years from the date of redemption of debentures or other securities, as the case may be, and kept in the custody of the company secretary of the company or any other person authorized by the board for such purpose.

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 eight years from the date of redemption of such debentures or securities. The foreign register shall be kept in the custody of the company secretary or person authorised by the board.