



CAIIB PAPER-4

Module-D Unit-20

**BANKING REGULATIONS AND
BUSINESS LAWS (BRBL)**



CAIIB Paper 4 (BRBL) Module D Unit 20-Membership of Company

Member Of A Company

According to Section 2 (55) of the Companies Act, 2013, the term member of a company means:

- 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
- Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members
- Every person holding shares of the company and whose name is entered as beneficial owner in the records of the depository.

Various Modes Of Becoming A Member Of A Company

- **By Subscribing to Memorandum of Association:** The Companies Act, 1956 and The Companies Act, 2013 provides that a subscriber of the memorandum of association shall be deemed to have agreed to become a member of the company.
- **Membership by Allotment of Shares:** A person may become a shareholder if he agrees to take shares in the company by allotment.
- **Transfer of Shares:** If a person buys shares of a company in the open market and then applies to the company to register him as a member, he becomes a member on registration of his name
- **Transmission of Shares:** On a death of a member, if the member has not made a nomination for the shares then the surviving joint holder (if any) or his legal representatives have the right to register themselves as members.
- **Membership by Acquiescence:** A person is deemed to become a member of a company if he allows his name to be put on the register of the members or otherwise holds himself out as a member even if there is no agreement to become a member.
- **Joint Membership:** When two or more persons hold shares in a company in their joint names, it is called a joint membership. In such a case the name of the member appearing first is considered to be the main member for the purpose of sending notices, dividend, etc.
- **Beneficial Owner in the Records of Depository:** Every person holding shares of the company and whose name is entered as a beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.

Who Can Be Members Of A Company?

- **Any Person competent to contract:** The Companies Act, 1956 (now ICA 2013) has not prescribed any qualifications for acquiring membership of a company. Hence, every person who is competent to contract can become a member of a

company. It, therefore, follows that a person who is incapable of entering into a contract cannot be a member.

- **Minor and persons of unsound mind:** Under the Indian Contract Act, 1872 minors and persons of unsound mind are incompetent at law to contract. Hence such persons cannot become members of a company. However, if a minor has by mistake been recorded as a member of the company, the company and the minor have a right to rescind the transaction and remove the name from the register of members. However, if a minor has been allotted shares and his name is entered into the register of members he incurs no liability during minority.
- **Company as a member:** As a company is a legal person it can become a member of another company provided it is so authorized by its memorandum of association. A company cannot buy its own shares and become a member of it
- **Partnership firm:** Since a partnership firm is not a legal person it cannot buy any shares in its own name and thus become a member of a company. The shares have to be bought only in the name of the individual partners of the partnership firm even though such shares constitute a part of the assets of the partnership firm.
- **Registered society:** A society registered under the Societies Registration Act, 1860 can hold shares in a company
- **Non-residents:** A non-resident cannot become a member of a company without complying with the requirements of the Foreign Exchange Management Act, 1999.
- **Fictitious Persons:** The Companies Act provides that any person who: (i) makes in a fictitious name an application to a company for acquiring or subscribing shares therein, or (ii) otherwise induces a company to allot, or register any transfer of shares to him or any other person in a fictitious name, shall be punishable with imprisonment for a term which may extend to five years.
- **Limited Liability Partnership:** A LLP, being an incorporated body under the statute, can become a member of a company.
- **Insolvent Person:** An insolvent person may remain 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.

Cessation Of Membership In A Company

- If a member transfers his shares to another person.
- If a member's shares are forfeited.
- If the shares are sold pursuant to a decree of a Court.
- If the member surrenders his shares to the company where such surrender is permitted.
- If he rescinds the contract to take the shares, e.g. on the ground of misrepresentation in the prospectus.
- If a member is adjudicated insolvent
- On the death of a member
- If redeemable preference shares are redeemed.

- If the company is being wound up.

Register Of Members

In terms of Section 88 of the Companies Act 2013

Every company shall keep and maintain the following registers

- ✓ Register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India
- ✓ Register of debenture-holders
- ✓ Register of any other security holders.

- Every register maintained under sub-section (1) shall include an index of the names included therein.
- 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.
- A company may, if so authorized 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.
- 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 three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.**

The Companies Act provides that every company shall keep a register of its members and enter following particulars:

- ✓ The name and address, and the occupation, if any, of each member
- ✓ In the case of a company having a share capital, the shares held by each member
- ✓ The date at which each person was entered in the register as a member
- ✓ The date at which any person ceased to be a member.

A company may, after giving not less than seven days previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members or the register of debenture holders for any period not exceeding in the aggregate forty-five days in each year.

Place Of Keeping And Inspection Of Register Of Members

The register of members is to be kept at the registered office of the company. It may be kept at any other place within the city, town or village in which the registered office is situated, if:

- Such other place has been approved for this purpose by a special resolution passed by the company in general meeting and
- The Registrar of Companies has been given in advance a copy of the proposed special resolution.

The registers are to be open during business hours to the inspection of any member or debenture holder without fee. Any other person has to pay a fee.

The liability of a member of a company depends upon the nature of the company.

- **Unlimited Liability Company:** The member is liable in full for all the debts of the company contracted during the period of his membership.
- **Company Limited by Guarantee:** The member is liable to contribute a sum of money agreed and specified in the liability clause of memorandum of association in the event of being wound up.
- **Company Limited by Shares:** The member is liable to pay the full nominal value of the shares and the liability of the member ends there. However, if the member has paid only a part of the amount of the shares then his liability is limited to the unpaid amount on the shares in respect of which he is a member.

Rights Of Members

Statutory Rights:

These are the rights conferred by the Companies Act. These rights cannot be taken away or modified by the memorandum of association or the articles of association.

- Priority to have new shares offered, in case the company proposes to increase capital.
- To receive notice of meetings, attend and vote at meetings.
- Transfer shares
- Receive copies of annual accounts of the company.
- To inspect the register of members, register of debenture holders and copies of annual returns.
- To apply to National Company Law Tribunal (NCLT), for calling an annual general meeting if the board of directors fails to call such a meeting.
- To convene an extraordinary general meeting of the company.
- Appoint the directors and auditors at the general meetings of the company.
- To approach the NCLT to order an investigation into the affairs of the company.

Documentary Rights

- These rights are conferred upon the members by the memorandum of association and the articles of association of the company.

Proprietary Rights:

- To be registered as a member in the company's register of members.
- No personal liability of a company's debts.

- To receive dividends (if declared by the board of directors and approved by the members at AGM).
- To participate in the distribution of assets in case of liquidation of the company.

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