

Chapter 5: Members of a company

EXERCISE 1 [PAGES 73 - 75]

Exercise 1 | Q 1.1 | Page 73

QUESTION

Select the correct answer from the options given below and rewrite the statement:

_____ is a person whose name is entered in the Register of Members.

- Member
- Creditors
- Registrar

SOLUTION

Member is a person whose name is entered in the Register of Members.

Exercise 1 | Q 1.2 | Page 73

QUESTION

Select the correct answer from the options given below and rewrite the statement:

A person can be called as a Member when the name is entered in _____

- Register of charges
- Register of Members
- List of Members

SOLUTION

A person can be called as a Member when the name is entered in **Register of Members**.

Exercise 1 | Q 1.3 | Page 73

QUESTION

Select the correct answer from the options given below and rewrite the statement:

A _____ cannot be a member of a company.

- Foreigner
- Woman
- Minor

SOLUTION

A **Minor** cannot be a member of a company.

Exercise 1 | Q 1.4 | Page 73

QUESTION

Select the correct answer from the options given below and rewrite the statement:

When a person buys shares of a company by filling up an application form, the person becomes a member by _____.

- Application and allotment of shares
- Subscribing to Memorandum
- transmission of Shares

SOLUTION

When a person buys shares of a company by filling up an application form, the person becomes a member by **Application and allotment of shares**.

Exercise 1 | Q 1.5 | Page 73

QUESTION

Select the correct answer from the options given below and rewrite the statement:

_____ means a person ceases being a member of the company of membership.

- Termination of Membership
- Acquisition of Membership
- Subscription to Membership

SOLUTION

Termination of Membership means a person ceases being a member of the company of membership.

QUESTION

Select the correct answer from the options given below and rewrite the statement:

A member has the right to participate in General Meetings means, he has a right to

- Receive dividends
- receive notice and agenda of a meeting
- to transfer his shares

SOLUTION

A member has the right to participate in General Meetings means, he has a right to **receive notice and agenda of a meeting**

QUESTION

Match the pairs:

Group 'A'	Group 'B'
a) Insane person	1) Transfer of shares by operation of law
b) Foreigner	2) Cannot be a member
c) Transmission of shares	3) Cessation of membership
d) Surrender of shares	4) To get copies of Auditor's, Directors' Report, etc.
e) Right of Members	5) Can be a Member
	6) To attend a board meeting
	7) Duties of member
	8) Surrendering all assets to the company
	9) Demand or claim money from the company
	10) Transfer of shares by order of Secretary

SOLUTION

Group 'A'	Group 'B'
a) Insane person	Cannot be a member
b) Foreigner	Can be a Member

c) Transmission of shares	Transfer of shares by operation of law
d) Surrender of shares	Cessation of membership
e) Right of Members	To get copies of Auditor's, Directors' Report, etc.

Exercise 1 | Q 3.1 | Page 74

QUESTION

Write a word or a term or a phrase which can substitute the following statement:

End of membership of a person.

SOLUTION

Termination of membership

Exercise 1 | Q 3.2 | Page 74

QUESTION

Write a word or a term or a phrase which can substitute the following statement:

A person whose name is entered in Register of Members.

SOLUTION

Member

Exercise 1 | Q 3.3 | Page 74

QUESTION

Write a word or a term or a phrase which can substitute the following statement:

Book in which names of all members are entered.

SOLUTION

Register of Members

Exercise 1 | Q 3.4 | Page 74

QUESTION

Write a word or a term or a phrase which can substitute the following statement:

Becoming a member of a company.

SOLUTION

Acquisition of Membership

Exercise 1 | Q 3.5 | Page 74

QUESTION

Write a word or a term or a phrase which can substitute the following statement:

The subscribers of this document are considered as Members of the company.

SOLUTION

Memorandum

Exercise 1 | Q 4.01 | Page 74

QUESTION

State whether the following statement is True or False:

Buying shares is the most common way to become a Member of the company.

- True
- False

SOLUTION

True

Exercise 1 | Q 4.02 | Page 74

QUESTION

State whether the following statement is True or False:

Both, individuals and body corporate can be members of the company.

- True
- False

SOLUTION

True

QUESTION

State whether the following statement is True or False:

Legal competency to enter into contracts is one of the criteria to become a member of the company.

- True
- False

SOLUTION

True

QUESTION

State whether the following statement is True or False:

Limited Liability Partnership cannot be a member of the company

- True
- False

SOLUTION

False

QUESTION

State whether the following statement is True or False:

Karta of HUF can be a member of the company.

- True
- False

SOLUTION

True

QUESTION

State whether the following statement is True or False:

Member of the company is conferred with several rights.

- True
- False

SOLUTION

True

Exercise 1 | Q 4.07 | Page 74

QUESTION

State whether the following statement is True or False:

Member is entitled to profits of the company when a dividend is declared.

- True
- False

SOLUTION

True

Exercise 1 | Q 4.08 | Page 74

QUESTION

State whether the following statement is True or False:

Members of the company can attend general and Board meetings of the company.

- True
- False

SOLUTION

False

Exercise 1 | Q 4.09 | Page 74

QUESTION

State whether the following statement is True or False:

The right to appoint Director is given to Members.

- True
- False

SOLUTION

True

Exercise 1 | Q 4.10 | Page 74

QUESTION

State whether the following statement is True or False:

Minor can be the member of the company

- True
- False

SOLUTION

False

Exercise 1 | Q 5.1 | Page 74

QUESTION

Find the odd one:

- Subscribing to Memorandum
- Forfeiture of shares
- Application and allotment of shares

SOLUTION

Forfeiture of shares

Exercise 1 | Q 5.2 | Page 74

QUESTION

Find the odd one:

- Death or insolvency of member
- Application and allotment of shares

- surrender of shares

SOLUTION

Application and allotment of shares

Exercise 1 | Q 6.1 | Page 75

QUESTION

Complete the sentence:

A person whose name is entered in the Register of Members of a company is called

SOLUTION

A person whose name is entered in the Register of Members of a company is called **Member**.

Exercise 1 | Q 6.2 | Page 75

QUESTION

Complete the sentence:

In case of death or insolvency of a member, he will cease to be a _____

SOLUTION

In case of death or insolvency of a member, he will cease to be a **Member of a company**.

Exercise 1 | Q 6.3 | Page 75

QUESTION

Complete the sentence:

Members have a right to appoint and remove the _____

SOLUTION

Members have a right to appoint and remove the **Directors**.

Exercise 1 | Q 7.1 | Page 75

QUESTION

Select the correct option form the bracket.

Group A	Group B
Minor	_____

- Partnership firm
- Cannot become a member of a company
- Can become member of a company

SOLUTION

Group A	Group B
Minor	Cannot become a member of a company

Exercise 1 | Q 7.2 | Page 75

QUESTION

Select the correct option form the bracket.

Group A	Group B
Co-operative	_____

- Partnership firm
- Cannot become a member of a company
- Can become member of a company

SOLUTION

Group A	Group B
Co-operative	Can become member of a company

Exercise 1 | Q 7.3 | Page 75

QUESTION

Select the correct option form the bracket.

Group A	Group B
_____	Can hold shares in the name of partners

- Partnership firm
- Cannot become a member of a company

- Can become member of a company

SOLUTION

Group A	Group B
Partnership firm	Can hold shares in the name of partners

Exercise 1 | Q 8.1 | Page 75

QUESTION

Answer in one sentence:

Which individuals cannot become a member of a company?

SOLUTION

Individuals like minor, insolvent person, insane/lunatic person and Foreigner (if the provisions of the Foreign Exchange Management Act, 1999 do not allow to become a member) cannot become a member of the company.

Exercise 1 | Q 8.2 | Page 75

QUESTION

Answer in one sentence:

What is the common way of becoming a member of a company?

SOLUTION

Buying shares of a company is the most common and easiest way of becoming a member of a company.

Exercise 1 | Q 9.1 | Page 75

QUESTION

Correct the underlined word and rewrite the following sentence:

A Minor can be a member of a company.

SOLUTION

A **Karta of Hindu undivided firm** can be a member of a company.

Exercise 1 | Q 9.2 | Page 75

QUESTION

Correct the underlined word and rewrite the following sentence:

Partnership Firm can be a member of a company.

SOLUTION

co-operative society can be a member of the company.

EXERCISE 2 [PAGE 75]

Exercise 2 | Q 1 | Page 75

QUESTION

Explain the following Term/Concept.

Member

SOLUTION

(1) A person who is a subscriber to the Memorandum of Association of a company and whose name is entered in the Register of Members of a company is called a member of the company. The term 'member' also includes equity shareholders whose name is entered as a beneficial owner in the records maintained by Depository.

(2) A person becomes a member of the company when he agrees in writing to purchase shares of the company and his name is entered in the Register of Members of the company. Any entity i.e. person and organisation competent to enter into or make contracts can become a member of the company. The most common and easiest way to become a member of a company is to buy the shares of a company.

Exercise 2 | Q 2 | Page 75

QUESTION

Explain the following Term/Concept.

Transmission of Shares

SOLUTION

(1) Transmission of shares refers to the transferor passing of property or titles in shares by the operation of law from a member to his legal representatives. Such an automatic transfer of shares takes place in the event of death, insolvency, and insanity of a shareholder.

(2) When the transmission of shares takes place, the membership of the original shareholder is terminated. The heir or legal representative in the case of death, the official receiver in the case Of insolvency and administrator in the case of Insanity becomes the member of the company in the Place of original shareholder or member.

QUESTION

Explain the following Term/Concept.

Cessation of Membership

SOLUTION

Cessation or Termination of membership of a company means the discontinuation of membership. On the cessation of membership, the name of the member is removed from the Register of Members. In fact, his relationship with the company comes to an end.

QUESTION

Explain the following Term/Concept.

Acquisition of Membership

SOLUTION

Any person who is competent to enter into a contract can become a member (or acquire membership) of the company after fulfilling certain requirements for the membership in a company.

Membership in a company can be acquired by any one of the following ways. viz.

- (1) By subscription to the Memorandum of Association
- (2) By an application and the allotment of shares
- (3) By holding shares in a dematerialised form (Le. electronic form)
- (4) By agreeing to buy qualification shares (5) By transfer sale of shares
- (5) By succession (i.e. transmission of shares)
- (6) By nomination in the case of One Person Company (OPC). In the case of OPC, the nominee becomes the sole owner in the event of death, insanity or insolvency of the original owner.
- (7) By acquiescence i.e. by estoppel or holding out as a member of a company.

QUESTION

Explain the following Term/Concept.

SOLUTION

(1) The membership of a company is based on the written agreement between the member and the company. Since the membership is based on agreement (i.e. contract), it is necessary that the person must be competent to contract according to the provisions of the Indian Contract Act, 1872. Under Section 11 of the Contract Act, every person is competent to contract, who is of the age of majority and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

(2) Subject to the provisions of the Companies Act, Memorandum and Articles of the company any person is eligible to become a member of the company as follows:

(a) Individuals: A minor, insolvent, and insane/lunatic are not eligible to become a member. A foreigner can be a member of the company subject to provisions of FEMA, 1999.

(b) Organisation: Company, Co-Operative Society, Limited Liability Partnership. Karta of Hindu Undivided Family (HUF) and individual partners of a Partnership firm are eligible for membership in a company.

EXERCISE 3 [PAGE 75]

Exercise 3 | Q 1 | Page 75

QUESTION

Study the following case/situation and express your opinion.

Mrs. & Mr. A works in a Bank. They have a daughter named Ms. Z who is 11 years old:

- (a) Can Mrs. & Mr. A invest in shares of the company? (b) Can they buy shares in the name of their daughter Ms. Z?
(c) Justify your answer in (a) & (b) in one sentence only.

SOLUTION

(a) Mrs. and Mr. A can invest in shares of the company.

(b) Mrs. and Mr. A as a guardian of Ms. Z (their daughter) can purchase shares (on behalf of Ms. Z) in the name of Ms. Z.

(c) Mrs. and Mr. A is major (and eligible to buy shares) and their daughter Ms. Z who is 11 years old is a minor (not eligible to buy shares).

Exercise 3 | Q 2 | Page 75

QUESTION

Study the following case/situation and express your opinion.

M/s. ABC is a partnership firm owned by Dr. A. Dr. B and Dr. C. The doctors want to invest the profits of ABC in the shares of a company:

- (a) Can M/s ABC buy the shares of the company?
- (b) Can profits of M/s. ABC be invested in shares held in the names of Dr. A or Dr. B or Dr. C?
- (c) Are the doctors eligible to invest in shares of the company?

SOLUTION

- (a) M/s. ABC in its own name cannot buy the shares of a company because it not a registered entity.
- (b) Profits of M/s ABC partnership firm can be invested in the shares of a company in the name of Dr. A or Dr. B or Dr. C individually because a partnership firm can hold shares of a company in the individual names of partners.
- (c) The doctors individually are eligible to invest their profits in the shares of the company.

Exercise 3 | Q 3 | Page 75

QUESTION

Study the following case/situation and express your opinion.

ZEN Limited has some investible in profits. Please guide ZEN Limited with respect to the following:

- (a) Can ZEN Limited invest in the share of itself?
- (b) Can ZEN Limited invest in the Shares of TEN Limited?
- (c) Justify your answers in (a) & (b) in one sentence only.

SOLUTION

- (a) ZEN Limited Company cannot invest its investible profit in its own shares.
- (b) ZEN Limited Company can invest its investible profit in the shares of TEN Limited Company, only if its Memorandum of Association authorises it to do so.
- (c) ZEN Limited Company is a legal person, is eligible to become a member of another company by purchasing shares of that company but cannot invest its investible profit in its own shares.

EXERCISE 4 [PAGE 75]

QUESTION

Answer in brief:

State any four ways of acquiring membership of a company.

SOLUTION

The different ways to acquire membership of a company:

(1) By subscribing to the Memorandum: The subscribers to the Memorandum of Association of a company, who are signatories to the Memorandum are its members. Minimum members 7 in case of a public company, 2 in case of a private company, and 1 in case of One Person Company (OPC) are required to sign the Memorandum of Association. They are the first members of the company.

(2) By an application and the allotment: This is the direct method of acquiring membership. An application for shares by an applicant in response to the invitation given by the company through its prospectus is an offer to subscribe for its shares. When the company makes an allotment of shares to him, it amounts to the acceptance of his offer. The applicant then becomes the shareholder and his name is entered in the Register of Members. He, thus, becomes a member.

(3) By holding shares in dematerialised form: When a person buys and holds shares in dematerialised form i.e. in electronic form in his name as a beneficial owner in the records of Depository, is a member of a company.

(4) By transfer of shares: After acquiring the shares by way of sale or gift, the buyer (transferee) is required to get the shares registered in his name in the Register of Members of the company. For this, an instrument of transfer signed by the buyer (transferee) and the seller (transferor) accompanied by the share certificates is to be lodged with the company. When the company approves of the transfer, the name of the transferee is entered in the Register of Members and thus, he becomes the member.

(5) By Transmission of Shares: The passing of ownership of shares from one shareholder to another by the operation of law is called the transmission of shares. In the event of the death of a member, his legal representative, in the case of insolvency, official receiver/Assignee, and in the case of insanity, administrator become the member of the company in the place of the concerned member.

(6) Nominee of One Person Company (OPC): One Person Company is a company which has only one person as a member. The nominee becomes the sole owner i.e. the member after the death or insanity or insolvency of the member.

(7) By Acquiescence: If a person's name is improperly entered in the Register of Members and the exercises rights of membership such as attending company meetings, accepting dividends, etc. and does not take any step to remove his name from the Register of Members. In such a case, he is estopped from denying this fact so as to

disown his liability as a member and is liable as a member of the company. It is also called membership by acquiescence or by the principle of estoppel.

Exercise 4 | Q 2 | Page 75

QUESTION

Answer in brief:

State any four ways of cessation membership of a company.

SOLUTION

The membership of a person may be terminated in any one of the following ways:

(1) Transfer of shares: The transfer of shares is affected by registering an instrument called 'Instrument of Transfer' with the company. When the company approves of the transfer, the Secretary strikes off (cancels) the name of the seller (transferor) from the Register of Members and' Thus the membership of the shareholder is terminated.

(2) Transmission of shares: Transmission of shares refers to transfer or passing of property or titles in shares by the operation of law from a member to his legal representatives. Such an automatic transfer of shares takes place in the event of death or lunacy or insolvency of a shareholder. When the transmission of shares takes place, the membership of the original shareholder is terminated.

(3) Buy-back offer by the company: Sometimes, to achieve certain objectives (for Instance reduction of share capital or number of shareholders) company repurchases or buys back its share from the market place. In that case, some members sell their shares to the company. After purchasing its own shares, the company cancels the names of the members from the register of members. This is one of the ways of termination of membership.

(4) Forfeiture of shares: When the company forfeits the 'shares on account of non-payment of call money, the membership of the shareholder whose shares are forfeited comes to an end.

(5) Surrender of shares: Surrender of shares mean the voluntary return of shares by a shareholder to the company for cancelling them, due to his inability to pay the call dues. When the company accepts surrender of partly paid-up shares, if permitted by its Articles, the membership of the shareholder is terminated.

(6) Right of lien exercised by the company: 'Lien' means claim on another's property as security. When the company sells the shares of a shareholder under some provision in the Articles of Association (e.g., to enforce a lien over the shares held by the debtor shareholder), the membership of the shareholder is terminated.

(7) Redemption of preference shares: Redemption means repayment of the nominal value of the fully-paid up shares by the company to the shareholders, after the expiry of

the stipulated period. When redeemable preference shares are redeemed to the shareholder by the company as per the terms of issue, the membership of that shareholder gets automatically cancelled

(8) Rescission by member: The term 'rescind' means to repeal or to cancel. When the member rescinds the contract to take the shares on the ground of misrepresentation in the prospectus or on the ground of irregular allotment, his membership stands cancelled with immediate effect.

(9) Winding-up: When a company is wound up or exists no more due to the process of law, the membership of all the members' stands terminated automatically.

Exercise 4 | Q 3 | Page 75

QUESTION

Answer in brief:

State the rights of members with regard to participation in general meetings.

SOLUTION

The rights of members with regard to participation in the annual general meeting:

- (1) The members have the right to receive notice, agenda and circulars of all general meetings.
- (2) They have the right to attend all annual general meetings of the company in person or by proxy.
- (3) They have the right to speak and express their opinions on the issues or matters under discussion in the meetings.
- (4) They have the right to vote on the resolution and proceedings in person or by proxy.
- (5) The members have the right to demand poll and vote at poll.
- (6) They have the right to call an extraordinary general meeting if the need arises. They also have the right to apply to the Company Law Board for calling an Extraordinary General Meeting of the company where it is impracticable to call such a meeting.

EXERCISE 5 [PAGE 75]

Exercise 5 | Q 1 | Page 75

QUESTION

Justify the following statement.

Member and Shareholder are interchangeable terms.

SOLUTION

(1) According to the procedure under the Company Law, the name of a person who has been allotted shares (Le. a shareholder) has to be entered in the Register of Members. Thus, he becomes a member of the company. It is for this reason that the two terms 'member' and 'shareholder' are interchangeably used to mean the same person. However, this is true in the case of (i) a company limited by shares, (ii) a company limited by guarantee and having a share capital, and (iii) an unlimited company having a share capital.

(2) But in the case of a company limited by guarantee without share capital and an unlimited company without share capital, a member is not a shareholder. Thus, a member may or may not be a shareholder and Vice versa. A person who subscribes to the Memorandum of Association may not have been allotted any shares. He is a member but not a shareholder. A shareholder who has transferred his shares ceases to be a shareholder but continues to be a member till the transfer is registered. Thus, a person may be a member without being a shareholder, or he may be a shareholder without being a member.

Exercise 5 | Q 2 | Page 75

QUESTION

Justify the following statement.

A Foreigner can invest in shares of an Indian company.

SOLUTION

Foreigner (Non-Resident-NRI): A foreigner (NRI) can buy shares and become a member of a company but this is subject to Foreign Exchange Regulation Act, 1999 (FEMA 1999) under which the permission of the Reserve Bank of India is necessary before allotment of any shares is made to a foreigner. If at any time the foreigner becomes an alien enemy, his rights as a member of the company are suspended.

Exercise 5 | Q 3 | Page 75

QUESTION

Justify the following statement.

Insolvent person ceases to be the Member of the company.

SOLUTION

A person having insufficient assets to meet debts and liabilities is called an insolvent. It is illegal for an insolvent person to enter into any contract or agreement with another person. When a member of a company is declared by the court of law as insolvent. His official receiver or assignee transfers his shares in favour of his creditor in settlement of

his debts. On such transfer of shares, the membership of the insolvent member is terminated. Thus, an insolvent person ceases to be a member of the company.

Exercise 5 | Q 4 | Page 75

QUESTION

Justify the following statement.

Co-operative Society is eligible to be a member of the company.

SOLUTION

(1) A co-operative society is an association formed voluntarily by a minimum of 10 members or more having common economic interests to conduct business to render services to its members and to earn a reasonable profit for survival and growth. Co-operative Banks, Co-operative Housing Societies, Consumer Co-operative Stores, etc. are examples of the co-operative society.

(2) It is required to be registered under the cooperative societies Act of the concerned state. Registration of co-operative society is compulsory in all the states in India. A co-operative society being a registered entity (distinct from its members who formed it) can be a member of the company by purchasing shares in its own name.

Exercise 5 | Q 5 | Page 75

QUESTION

Justify the following statement.

Subscribers to Memorandum of Association are the first members of the company.

SOLUTION

(1) To subscribe means to signify one's assent or approval especially to sign the memorandum of association of a proposed new registered company and thereby become one of the first members of that company. Subscribers to the Memorandum of Association of a company, who are signatories to the Memorandum, are deemed to have agreed to become the members of the company. When the Company is registered their names are entered as the members In the Register of Members. Thus, in this case, neither an application nor the allotment of shares is necessary to become a member.

(2) The subscriber to the memorandum of Association in case of a public company is a minimum of 7 members and 2 in the case of Private Company and 1 in the case of One Person Company (OPC). They are the first members of the company.

Exercise 5 | Q 6 | Page 75

QUESTION

Justify the following statement.

Nominee of the member of OPC becomes its member of the death of the member.

SOLUTION

(1) According to Section 2 (62) of the Companies Act, 2013, a company which has only one person as a member called One Person Company (OPC). It is a private company. It is managed, operated, and controlled by a single promoter or member who has limited liability. According to the provisions made in the Act, either at the time of its formation or at the time of joining as a member, the promoter or member is required to record and register his nominee's name in the Memorandum of the one-person company.

(2) In the event of death or lunacy or insanity of the member of OPC, the nominee whose name is mentioned in Memorandum becomes the sole owner and manager of OPC.

Exercise 5 | Q 7 | Page 75

QUESTION

Justify the following statement.

Members of company are entitled to several rights.

SOLUTION

The rights of a Member of A Company:

(1) Right of accessing books and documents: The members have a right to receive (get) the copies of Memorandum of Association, Articles of Association, Auditors' and Directors' Reports, Balance Sheet and Profit and Loss Account. They have a right to inspect Register of Members, Register of debenture holders, Register of charges and investments and copies of annual returns, Minutes book of all general meetings, and proxies lodged for general meetings.

(2) Right to make fundamental corporate decisions: The members have exclusive rights and powers to make fundamental corporate decisions on the issues like

- (1) Change of Registered office of the company
- (2) Change of objects of the company
- (3) Increase in Authorised capital
- (4) Change or amendment of Articles of Association
- (5) Acquisition, merger and take over by the company
- (6) Appointment of sole selling agents and
- (7) Winding-up of the company.

(3) Right to participate in General Meetings: The members have the right to receive notices, agendas, and circulars of all general meetings. They also have the right to attend general meetings. or appoint proxies, vote on resolutions and proceedings in person or by proxy, to demand and vote at a poll, demand to call extraordinary general meetings, etc.

(4) Right to appoint and remove a director: The members have the right to hold annual general meetings and extraordinary general meetings to elect and remove directors by way of voting rights.

(5) Right with respect to the company's accounts and its audit: The members have the right to approve and adopt annual accounts and auditors' report in annual general meetings. They also have the right to appoint or re-appoint auditors of the company, decide their remuneration, and to remove the auditors.

(6) Right to participate in the profits of the company: The members have the right to approve dividends and share dividends declared by the directors and get the dividend within 30 days of its declaration in the annual general meeting.

(7) Shareholding Right: The members have a right to receive a share certificate from the company within the specified time. They also have the right to transfer shares. To get the Rights issue and Bonus issue shares.

(8) Right to receive surplus assets: The members have the right to share the surplus assets of the company (after the settlement of all dues payable to stakeholder) at the time of the Winding up of the company.

(9) Right to class action suit: The members jointly have the right to file a suit against the company or its directors in an appropriate court of law for mismanagement, misappropriation of money, corruption, or any fraudulent; the unlawful or wrongful act or omission or misleading statements in the Audit report. The shareholders holding 10% of voting rights or any 100 members jointly can apply to the tribunal for redress. They also have a right to demand investigation in the affairs of the company. If a situation arises they have the right to file a petition for winding-up (closing down) the company.

Exercise 5 | Q 8 | Page 75

QUESTION

Justify the following statement.

Members of the company have some fundamental corporate decision-making rights.

SOLUTION

(1) The members of a company have exclusive rights and power to make fundamental corporate decisions on the issues (matters) such as alterations (change) of registered office clause of the Memorandum of Association, increase in the authorised capital if it needs more fund for modernisation or development, change of the object of the company by passing an appropriate resolution in the general meeting of the company.

(2) In this respect, the members of the company have the power to amend Articles of Association, acquisitions, mergers, and takeovers by the company, appointing a sole-selling agent and Winding-up of the company by passing appropriate resolutions in the general meetings of the company

Exercise 5 | Q 9 | Page 75

QUESTION

Justify the following statement.

Transfer of shares results in termination of membership.

SOLUTION

(1) Transfer of shares refers to the passing of ownership and possession of shares from a shareholder to another person by way of sale or gift. The shares cannot be transferred by mere delivery.

(2) The transfer of shares is affected by registering an instrument called 'Instrument of Transfer' with the company. When the company approves of the transfer, the Secretary strikes off (cancels) the name of the seller (transferor) from the Register of Members, and thus the membership of the shareholder who has transferred the shares is terminated.

EXERCISE 6 [PAGE 75]

Exercise 6 | Q 1 | Page 75

QUESTION

Answer the following question:

Explain the circumstances when Member is not a shareholder and vice-versa.

SOLUTION

(A) Member without being a shareholder: Although the terms 'member' and 'shareholder' are used interchangeably and mean the same person, in the following circumstances member is not a shareholder:

(1) Signatories to the Memorandum of Association: Sometimes, a person who subscribes to the Memorandum of Association may not have been allotted any shares. In that case, until he is allotted any share, he is not called a shareholder of the company.

(2) Company Limited by Guarantee Amount: In the case of a company limited by guarantee having no share capital or an unlimited company having no share capital, there will be only members but no shareholders.

(3) Membership by Acquiescence/Estoppel: If a person's name is improperly entered in the Register of Members and the exercises rights of membership such as attending company meetings, accepting dividends, etc. and does not take any step to remove his name from the Register of Members. In this case, he is a member but not a shareholder. So, he is estoppel from denying this fact so as to disown his liability as a member.

(4) Transfer of shares: The shareholder who has transferred his shares to another person ceases to be a shareholder but continues to be a member till the transfer is registered and the name of the transferee is recorded in the Register of Members.

(5) Transmission of shares: In the event of death or lunacy of a member, his legal heir or representative automatically becomes the shareholder. He is entitled to have his name entered in the Register of Members. He can do so by making an application to the company supported by legal evidence of his title. The deceased person ceases to be a shareholder but continues to be a member of the company until the transmission of shares is completed (effected).

(6) On Insolvency of a Member: Though shares of the insolvent member are taken possession by (held) by the Official Receiver or Assignee appointed by the court. An insolvent member continues to be a member but not a shareholder of the company.

(B) Shareholder without being a Member: As explained above the transferee. i.e. buyer of the shares, legal heir representative in the case of death of a member. The official receiver or assignee in the case of insolvency of members are the shareholders but not the member of the company.

Exercise 6 | Q 2 | Page 75

QUESTION

Answer the following question:

Explain the eligibility of memberships of a company.

SOLUTION

The eligibility of membership in a company can be explained with particular reference to certain categories of persons as explained below:

(A) Individual:

(1) Minor: A person below the age of 18 years is called a minor. A minor cannot enter into a contract and therefore cannot be a member of the company. However, the parent or guardian can purchase and hold shares of the company on behalf of the minor.

(2) Insolvent: A person having Insufficient assets to meet debts and liabilities it is called an insolvent. Since the beneficial rights of shares are held by the official assignee or Receiver, the solvent person stops being a member of the company.

(3) Insane/Lunatic: A person who is mentally deranged or of unsound mind is called a lunatic. A lunatic cannot have the ability to enter into a contract and hence lunatic/insane person is ineligible for membership of a company.

(4) Foreigner (Non-Resident-NRI): A foreigner (NRI) can buy shares and become a member of a company but this is subject to Foreign Exchange Regulation Act, 1999 (FEMA 1999) under which the permission of the Reserve Bank of India is necessary before allotment of any shares is made to a foreigner. If at any time the foreigner becomes an alien enemy, his rights as a member of the company are suspended.

(B) Organisations:

(1) Company: A company, being an artificial person, can become a member of another company. If so authorized by its Articles or Memorandum. But a company cannot become its own member since a company cannot acquire its own shares because it amounts to a reduction of capital without the sanction of the court. Similarly, a subsidiary company cannot become a member of its holding company.

(2) Co-operative Society: A co-operative society is a registered entity or legal person, is eligible for the membership of a company.

(3) Limited Liability Partnership (LLP): As a Limited Liability Partnership (LLP) is a juristic or legal person, it is eligible for the membership of the company

(4) Hindu Undivided Family (HUF): Like a partnership firm, a Hindu undivided family cannot become a member of a company. However, the head of the Hindu undivided family, i.e. Karta can purchase shares of a company and can become a member of the company.

(5) A Partnership firm: A partnership firm cannot become a member of the company as it has no separate legal Status distinct from the partners. However, it can hold the shares of a company in an individual name of partners.

(6) Trust: Trust refers to a group of commercial enterprises combined to control the market for any commodity. A registered trust is eligible for the membership of the company.

Exercise 6 | Q 3 | Page 75

QUESTION

Answer the following question:

Explain different ways to acquire membership of company briefly.

SOLUTION

The different ways to acquire membership of a company:

(1) By subscribing to the Memorandum: The subscribers to the Memorandum of Association of a company. Who are signatories to the Memorandum are its members. The minimum members 7 In the case of a public company. 2 in case of a private company and 1 in case of One Person Company (OPC) are required to sign the Memorandum of Association. They are the first members of the company.

(2) By an application and the allotment: This is the direct method of acquiring membership. An application for shares by an applicant in response to the invitation given by the company through its prospectus is an offer to subscribe for its shares. When the company makes an allotment of shares to him, it amounts to the acceptance of his offer. The applicant then becomes the shareholder and his name is entered in the Register of Members. He, thus, becomes a member.

(3) By holding shares in the dematerialised form: When a person buys and holds shares in dematerialised form i.e. in electronic form in his name as a beneficial owner in the records of Depository is a member of a company.

(4) By transfer of shares: After acquiring the shares by way of sale or gift, the buyer (transferee) is required to get the shares registered in his name in the Register of Members of the company. For this, an instrument of transfer signed by the buyer (transferee) and the seller (transferor) accompanied by the share certificates is to be lodged with the company. When the company approves of the transfer, the name of the transferee is entered in the Register of Members and thus he becomes the member.

(5) By Transmission of Share: The passing of ownership of shares from one shareholder to another by the operation of law is called the transmission of shares. In the event of the death of a member his legal representative, in the case of insolvency official receiver/Assignee and in the case of insanity administrator becomes the member of the company in the place of the concerned member.

(6) Nominee of One Person Company (OPC): One Person Company is a company which has only one person as a member. The nominee becomes the sole owner i.e. the member after the death or insanity or Insolvency of the member.

(7) By Acquiescence: If a person's name is improperly entered in the Register of Members and the exercises rights of membership such as attending company meetings, accepting dividends, etc. and does not take any step to remove his name from the Register of Members. In such a case, he is estoppel from denying this fact so as to disown his liability as a member and is liable as a member of the company. It is also called membership by acquiescence or by the principle of estoppel.

Exercise 6 | Q 4 | Page 75

QUESTION

Answer the following question:

Explain how a membership of company terminates.

SOLUTION

The membership of a person may be terminated in any one of the following ways:

(1) Transfer of shares: The transfer of shares is affected by registering an instrument called 'Instrument of Transfer' with the company. When the company approves of the transfer, the Secretary strikes off (cancels) the name of the seller (transferor) from the Register of Members and thus the membership of the shareholder is terminated.

(2) Transmission of shares: Transmission of shares refers to transfer or passing of property or titles in shares by the operation of law from a member to his legal representatives. Such an automatic transfer of shares takes place in the event of death or lunacy or insolvency of a shareholder. When the transmission of shares takes place, the membership of the original shareholder is terminated.

(3) Buy-back offer by the company: Sometimes, to achieve certain objectives (to, Instance reduction of share capital or number of shareholders) company repurchases or buys back its share from the market place. In that case, some members sell their shares to the company. After purchasing its own shares, the company cancels the names of the members from the register of members. This is one of the ways of termination of membership.

(4) Forfeiture of shares: When the company forfeits the 'shares on account of non-payment of call money, the membership of the shareholder Whose shares are forfeited comes to an end.

(5) Surrender of shares: Surrender of shares mean the voluntary return of shares by a shareholder to the company for cancelling them, due to his inability to pay the call dues. When the company accepts surrender of partly paid-up shares, if permitted by its Articles, the membership of the shareholder is terminated.

(6) Right of lien exercised by the company: 'Lien' means claim on another's property as security. When the company sells the shares of a shareholder under some provision in the Articles of Association (e.g., to enforce a lien over the shares held by the debtor shareholder), the membership of the shareholder is terminated.

(7) Redemption of preference shares: Redemption means repayment of the nominal value of the fully-paid up shares by the company to the shareholders, after the expiry of the stipulated period. When redeemable preference shares are redeemed to the shareholder by the company as per the terms of issue, the membership of that shareholder gets automatically cancelled.

(8) Rescission by member: The term 'rescind' means to repeal or to cancel. When the member rescinds the contract to take the shares on the ground of misrepresentation in the prospectus or on the ground of irregular allotment his membership stands cancelled with immediate effect.

(9) Winding-up: When a company Wounds up or exists no more due to the process of law, the membership of all the members stands terminated automatically.

QUESTION

Answer the following question:

Explain Rights of a Member of company.

SOLUTION

The rights of a Member of a Company:

(1) Right of accessing books and documents: The members have a right to receive (get) the copies of Memorandum of Association, Articles of Association, Auditors' and Directors' Reports, Balance Sheet and Profit and Loss Account. They have a right to inspect Register of Members, Register of debenture holders, Register of charges and investments and copies of annual returns, Minutes book of all general meetings and proxies lodged for general meetings.

(2) Right to make fundamental Corporate decisions: The members have exclusive rights and powers to make fundamental corporate decisions on the issues like

- (1) Change of Registered office of the company
- (2) Change of objects of the company
- (3) Increase in Authorised Capital
- (4) Change or amendment of Articles of Association
- (5) Acquisition, merger and take over by the company
- (6) Appointment of sole selling agents and
- (7) Winding-up of the company.

(3) Right to participate in General Meetings: The members have the right to receive notices, agenda and circulars of all general meetings. They also have right to attend general meetings or appoint proxies, vote on resolutions and proceedings in person or by proxy, to demand and vote at a poll, demand to call an extraordinary general meeting, etc.

(4) Right to appoint and remove a director: The members have the right to hold an annual general meeting and extraordinary general meeting to elect and remove directors by way of voting rights.

(5) Right with respect to the company's accounts and its audit: The members have the right to approve and adopt annual accounts and auditors' report In annual

general meetings. They also have the right to appoint or re-appoint auditors of the company, decide their remuneration and to remove the auditors.

(6) Right to participate in the profits of the company: The members have right to approve dividend and share rate ably dividend declared by the directors and get the dividend within 30 days of its declaration in the annual general meeting.

(7) Shareholding Right: The members have a right to receive a share certificate from the company within the specified time. They also have the right to transfer shares, to get the Rights issue and Bonus issue shares.

(8) Right to receive surplus assets: The members have the right to share the surplus assets of the company (after the settlement of all dues payable to stakeholder) at the time of the winding-up of the company.

(9) Right to class action suit: The members jointly have right to file a suit against the company or its directors in an appropriate court of law for mismanagement, misappropriation of money, corruption or any fraudulent; the unlawful or wrongful act or mission or misleading statements in the Audit report. The shareholders holding 10% of voting rights or any 100 members jointly can apply to the tribunal for redress. They also have a right to demand investigation in the affairs of the company. If a situation arises they have the right to file a petition for winding-up (closing down) the company.