# COMPANIES ACT, 1956 SECTION 41.

**Section 41 Definition of *member***

(1) the subscribers to the memorandum of the company shall be deemed to have agreed to become members of the company, and on registration , shall be entered as member in its register of members
(2) Every other person who [agrees in writing ] to become a member of the company and whose name is entered in the register of members, shall be a member of the company
(3) [Every person holding equity shares of the company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be members of the company.

**Subscribers to memorandum Section 41 (1)**

Test of membership is whether the name of a person appears on the register of members of the company. A subscriber to memorandum is not the member until his name appears in the register of members he shall be deemed to have agreed to become member of the company but it shall be held that he becomes ispo facto member on the incorporation of the company and is liable for the shares he has subscribed, subscriber cannot repudiate on the ground that he was induced by mis representation
Nor he can plead that he subscribed to MOA subject to certain reservations.

**Person agreeing in writing to become member:[ section 41 (2)]**

Every other person who agrees in writing to become member of the company and whos name is entered in the register of members, shall be the member of the company

A person purchasing blank share transfer form whose name is not entered in the register of members shall not be member of the company
A transferee of shares is not the member until his name is entered in the register of members
Share holder is a member and member is share holder and two terms are inter changeable, but a share holder by transfer is not a member until his name is entered in the register of members of company.
For subscriber no application or allotment is necessary to become member of the company

**In other cases there are two cases to become member of the company**

1 there is an agreement in writing to become member of the company and

2. That his name is entered in the register of members of the company both the conditions are cumulative and have to be satisfied to enable him to exercise the rights of the members. But when the person becomes the member , he is entitled to exercise the rights of member until he ceases to be the member as per the provisions of the Act.

**Rectification of register:**

There must be agreement in writing where there is no return application or written request or written agreement for allotment of shares to the petitioner and two other companies non compliance with the provision of law was a sufficient cause to order rectification register of members

**Contributory 'holder of shares' and 'shareholder' and 'member'**

A contributory is defined in section 428 of the companies Act, 1956 the contributory under section 428 includes the holder of any shares which are fully paid up
Merely being contributory cannot file winding up petition there are two more conditions to be satisfied , the shares of which he is contributory :

1. where originally allotted to him
2. have been held by him and registered in his name for at least 6 months during the 18 months immediately before the commencement of winding up
3. transmitted to him due to the death of the holder , this applies to the death of natural person

**Membership by *transfer of shares***

A share is transferable but while a transfer may be effective between transferor and transferee from the date of transfer until transfer is registered in the companies register the transfer is effective between transferor and transfree and not against company. a person whose name is entered in the register of members is entitle to dividend , notwithstanding that he has parted with the interest in shares

The directors under articles of association may refuse to register the transfer directors are required to act bonafide and not arbitratory the transferor as constructive trustee of transferees may file a petition under section 397 & 398 the transferee who

**Forms and procedure**

For transfer of shares an instrument in the prescribed form, duly stamped, executed bt transferor and transferee together with share certificates or if no share certificate issued, the letter of allotment should be submitted to the company

Depository deemed to be member Section 41 (3) inserted by depositories Act, 1996 provides that every person holding equity share capital of the company and whose name is entered as beneficial owner in the records of the depository

Depository
Members holding equity shares of the company and whose name is entered as beneficial owner in the records of depository are to be deemed to be members of the company

**Register of members:**

Under section 150 and 151 read with section 41 (3) the company has to keep a register of members and index if its members exceed 50

**Deceased member –** the word "member" includes deceased member so long as his name is on the register of member

Transmission of shares – In case of transmission of shares by operation of law, the company must register the name of heir or legal representative as a member only on application in writing to be come a member.

**Joint holder –**

Joint holders in a company are not single members; each of the joint holders is separate member

NRI - NRI can subscribe to MOA & become member subject to permission of RBI & compliance with FEMA

**Minor can purchase fully paid up shares –**

As per Indian Contract Act, 1872 a minor is not competent to enter into any contract for purchase of shares, there is no bar to minor to purchase fully paid up shares provided the name of guardian and not of minor is entered in the register of members
[Circular No. 8/18(41)/63 – PR, dated 2-11-1963]

Partnership firm – partner ship firm not being a separate legal entity as contemplated under section 41 of the companies Act, 1956 so it cannot be a member of the company

[Circular No.4/72 dated 9-3-1972 govt. of India publication

**Company**

Company being separate legal entity can be the member of the company

**HUF**

HUF can be member through karta

**Receiver**

The receiver appointed by court Under CPC only holds the property under his control under the order of the court but the property does not vest in him. The privilege of member can be exercised only by the person whose name is entered in the register of members the receiver cannot be considered as member unless in a proceeding concerning to which the company concerned is a party and an order is made therein, mere appointment of receiver to his property cannot deprive a person from voting in meeting

**President and governor –**

As regards subscription of the memorandum of association or membership by the central government or state government this will be done or registered only on the name of President in case of Central Government and Governor in case of state government

**Administrator general**

Constituted under Administrator General Act, 1963 is a corporate sole and can be member of the company.

Public office –
Public office is not the is not the corporate sole and therefore cannot be the member of the company.

**Society registered under societies Act, 1860 –**

Board of trustees v. state of delhi AIR 1962 SC 458 it has been decided that society should not be considered as 'body corporate' within the meaning of aforesaid provision of the companies Act, although such a society can be treated as person having separate legal entity separate from members constituting it and there by capable of becoming member of the company

Charitable trust or society as member –
DCA is of the view that shares in the company being property of a trust can be held in the name of trustees simpliciter without describing them as trustees and if the trustee constitute the society registered under societies Registration Act, 1860 the shares can be held in the name of society.

Trade union –

Trade union registered under the trade union Act, 1962 is a body corporate with attendant requirement it is separate legal person it can be registered as member of the company and can hold shares in its own name

Actions against the company by members –
A member under section 41 of the companies Act, 1956 can maintain action against the company –
(i) to enforce the personal right (right to vote, to attain meeting )
(ii) a representative action under order no 1, rule 8 of civil procedure code, 1908on behalf of himself and other shareholders, such action can be maintained if the same is directive action in such a director action, it is not to enforce a personal right of shareholder, under Indian company law only the person who is on the register of members of the company is a member /share holder of the company

Rule of Internal management in Foss v. Harbottle:
In this case rule has been laid down that prima facie every action must be brought in the name of the company to remedy a wrong done to it

The action in respect of a wrong alleged to be done to a company or association is prima facie the company or association it self
Where the alleged wrong is a transaction which might be made binding on the company or association and all the members by simple of the members , no individual member of the company is allowed to maintain an action in respect of that matter

Locus standi – the issue of locus standi is governed by the rule in foss v. harbottle thus, prima facie, where a wrong is done to the company the derivative action should not be available and the individuals share holder should ask either the board of directors or the general meeting to commence litigation in the company ‘s name. derivative action was not allowed against alleged wrong doing receiver since such action could be bought by the board of directors or general meeting

Exception to the rule in foss v. harbottle –

Every suit for redress of individual wrong cannot considered with matter of internal management the rule of internal management as stated in foss v. harbottle does not apply to:

(1) an act which is ultra vires the company or illegal or
(2) an act which constitutes the fraud against the minority and the wrong doers are in control of the company or
(3) a resolution which requires special majority but is passed by simple majority
(4) The resolution which ultra vires or illegal or is a fraud on the minority or is not bonafide or for the benefit of the company as a whole or intended to discriminate between the majority shareholders and minority shareholders is illegal and can be questioned by a separate action in the civil suit.