

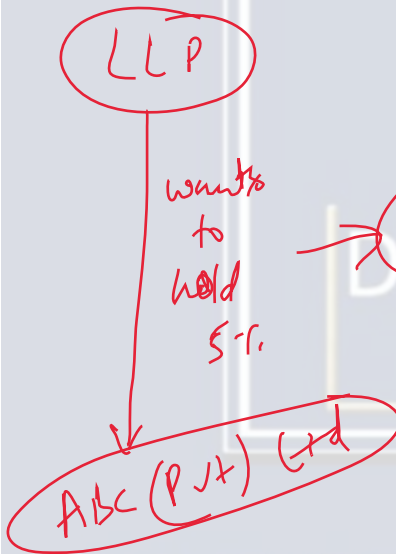
**MEMBERSHIP - CS EXECUTIVE - PAST EXAM Q-A**

Q. A Limited Liability Partnership can become member in a company incorporated under the provisions of the Companies Act, 2013. (June 17)

**Answer**

Subject to the Memorandum and Articles, any sui juris (a person who is competent to contract on its own behalf) except the company itself, can become a member of a company.

Yes, Limited Liability Partnership, being an incorporated body and separate legal entity, under the statute, can become a member of a company.



yes, Allowed

DEEPAK GAJRANI CLASSES

MAKE MY CAREER

Q. A trade union of auto drivers applied for shares in the fresh issue of a company. The company rejected the application, however, the Company was ready to allot shares in the Joint names of the members of the trade union. But the trade union members wanted the shares to be allotted only in the name of the trade union. Whether the rejection by the company to allot shares in the name of the trade union is justifiable?

Dec 2018 OS	4 marks
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Ans:

A trade union registered under the Trade Union Act, 1926 can be registered as a member and can hold shares in a company in its own corporate name [All India Bank Officers Confederation v. Dhanlakhmi Bank Ltd., (1997)].

Hence, a registered trade union can become members of a company.

If the Auto drivers association is a registered trade union then the rejection by the company to allot shares in its name is not justifiable.

But if it is not registered, then the members of the association can hold the shares in their joint names only and shares cannot be allotted in the name of the trade union.

✓  
READ  
UNREAD  
X

Bhuct vs Coleman  
vs  
Nandita Jain

Natural Person? → Sec. 10 of Contract Act.

MINOR

Can't acquire partly paid shares

Can acquire fully paid up shares

Because NO LIABILITY ON SHARES

Q. A <sup>an existing</sup> member of an incorporated company becomes **insolvent**. He claimed right to vote and receive dividend from the company. Referring to the provisions of the Companies Act, 2013 discuss whether his claim is valid.

⑥  
yes/no

(yes/no)

Dec 2018 NS

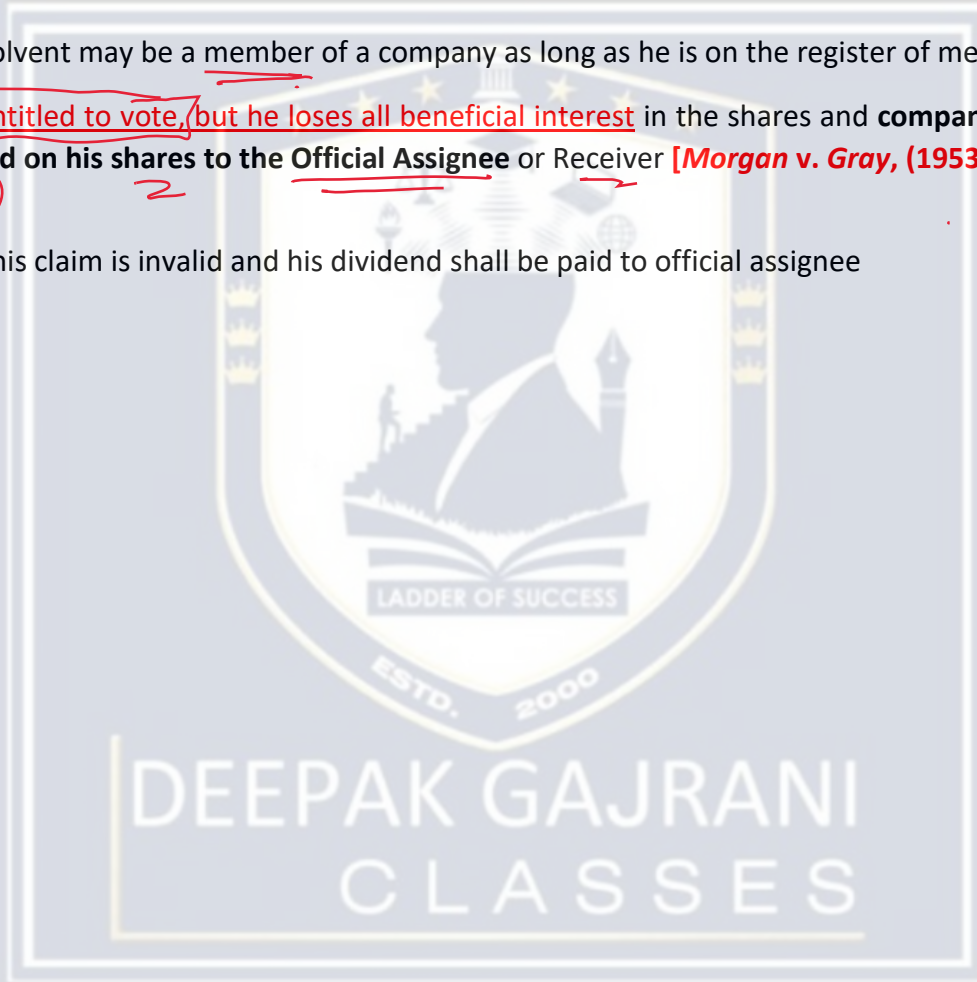
3 marks

Ans: An insolvent may be a member of a company as long as he is on the register of members.

① 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 [Morgan v. Gray, (1953)].**

②

Hence his claim is invalid and his dividend shall be paid to official assignee



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MAKE MY CAREER

*Holder of "GDR"*

*(yes/no)*

*?*

**Q. A holder of a Global Depository Receipt is a member of the company. Comment**

June 2019 OS	5 marks
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**Ans:**

As per Section 2(55) of the Companies Act, 2013, member in relation to a company means:

*ICSI*

- (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;

Since, holder of Global Depository Receipts is neither the subscriber to the Memorandum nor a holder of the shares, his name cannot be entered in the Register of Members.

Therefore, a holder of Global Depository Receipts cannot be called a member of the company.

The Overseas Depository Bank as referred in the 'Scheme' is neither the Depository as defined in the Companies Act and the Depository Act nor holding the share capital, therefore, it cannot be deemed to be a member of the company.

A holder of Global Depository Receipts may become a member of the company only on conversion of the GDR into underlying equity shares after following the procedure provided in the "Scheme"/ provisions of the Companies Act, 2013.

*V Singh*

**MAKE MY CAREER**



1st Part (Wrong) ??

Q. **Every shareholder of a company is known as member while every member may not be known as shareholder.** Comment

2nd Part (Correct)

~~TRUE~~  
~~FALSE~~

June 2019 NS	5 marks
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Ans:

A company is composed of, members, though it has its own separate legal entity. The members of the company are the persons who, constitute the company as a corporate entity.

In the case of a company limited by shares, the shareholders are the members. The terms "members" and "shareholders" are usually used interchangeably being synonymous, as there can be no membership except through the medium of shareholding.

Thus, generally speaking every shareholder is a member and every member is a shareholder.

However, there may be exceptions to this statement, e.g.,

1. In case of sale of shares, the seller continues to be member until the buyer gets his name registered in register of members, though **seller** is not a shareholder once he has given the delivery of shares to the buyer.
2. In case of sale of shares, the BUYER is NOT a member until the buyer gets his name registered in register of members, though he is a shareholder once he receives the delivery of shares from the seller.
3. In case of death of original member, the deceased member continues to be member till his name appears in the register of members, though he is not a shareholder. On the other hand, his legal heirs are shareholders but not the members till they get their name registered in register of members.
4. In case of INSOLVENCY of original member, the original member continues to be member till his name appears in the register of members, though he is not a shareholder because the possession of his shares is taken by official assignee.

(S)

MAKE MY CAREER

Exam  
 Q. Ram Singh is a <sup>EXISTING</sup> shareholder of Alexandra India Ltd. The Board of directors of the company are of the view that the conduct of Ram Singh has been detrimental to the interest of the company. Further, the Board also noted that Ram Singh is director in a company which is a competitor company of Alexandra India Ltd. HARMFUL

The Articles of Association of Alexandra India Ltd. permit expulsion of members. BOD have POWER → a OK Not OK

The Board unanimously decided to expel Ram Singh from the company. Discuss the relevant provisions of Companies Act, 2013 in this regard.

If Ram Singh files a case against the Board whether he will win the case ?

RIGHT WRONG

Dec 2019 NS	5 marks
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Yes (RAM) → will win case !!!

Ans:

A controversy has arisen as to whether a company had powers to insert an article in its Articles of Association relating to expulsion of a member by the Board of Directors of the company where the directors were of the view that the activities or conduct of such a member was detrimental to the interests of the company.

The Department of Company Affairs (now, Ministry of Corporate Affairs) clarified that an article for expulsion of a member is opposed to the fundamental principles of the Company Jurisprudence and is ultra vires the company, the reason being that such a provision will be against the provisions of the Companies Act relating to the rights of a member in a company, the powers of the CG as an appellate authority under Section 111 of the Old Act and the powers of the Court under Sections 107, 395 and 397 of Old Companies Act, 1956.

These sections correspond to sections 38, 58, 48, 235 & 241 of the Companies Act, 2013 respectively having the same impact as earlier provisions.

Further, according to Section 6 of the Companies Act, 2013, the Act shall override the Memorandum and Articles of Association and any provisions contained in these documents repugnant to the provisions of the Companies Act, 2013 shall be void.

Therefore, any assumption of the powers by the Board of Directors to expel a member by alteration of Articles of Association shall be illegal and void.

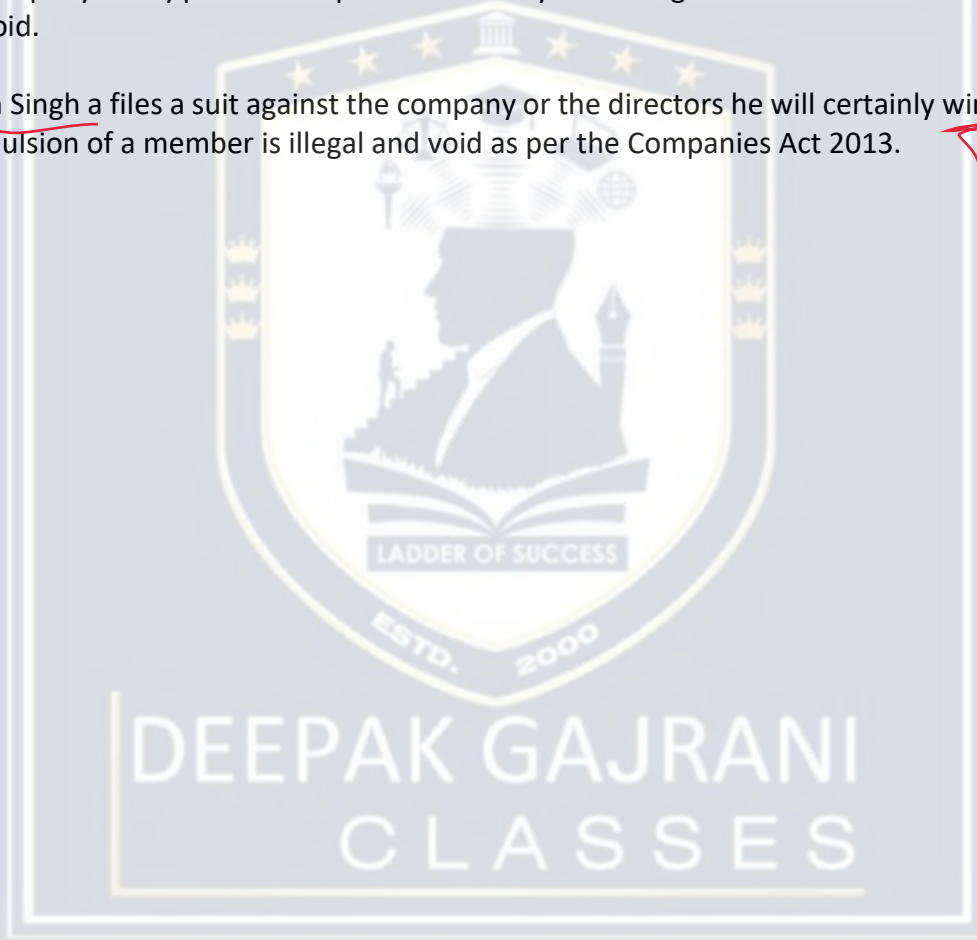
The Supreme Court in the case of Bajaj Auto Ltd. v. N.K. Firodia [1971] 41 Com Cases 1 has laid down the law as to the conditions on the basis of which directors could refuse a person to be admitted as a member of the company. The principles laid down by the Supreme Court in this case, even though pertain to the refusal by a company to the admission of a person as a member of the company, are applicable even with greater force to a case of expulsion of an existing member.

v.v. dup for Exam

As, under Article 141 of the Constitution, the law declared by the Supreme Court is binding on all courts within the territory of India, any provision pertaining to the expulsion of a member by the management of a company which is against the law as laid down by the Supreme Court will be illegal and ultra vires.

In the light of the aforesaid position, it is clarified that assumption by the Board of directors of a company of any power to expel a member by amending its articles of association is illegal and void.

If Ram Singh files a suit against the company or the directors he will certainly win the case, as expulsion of a member is illegal and void as per the Companies Act 2013.



# MAKE MY CAREER

Q. <sup>(H)</sup> Reliable Ltd. holds 75% of the paid-up share capital in Trust Ltd. <sup>(S)</sup>

Board of directors of Trust Ltd. decides and resolves to hold 10% of the paid-up share capital in Reliable Ltd. The Board's proposal was also approved by Trust Ltd. in its general meeting. <sup>(H)</sup>

However, certain members of Trust Ltd. objected to the decision on the ground that both the Board's proposal and the resolution of the general meeting are in violation of the provisions of the Companies Act, 2013. Examine. (Dec '15)

See 19  
Abs. Prohibition

V. G. Imp for Exam

Ans -

Hidden Point

Section 19 of Companies Act, 2013 provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Further this shall not apply in following cases:

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

In the present case Trust Ltd. is the subsidiary of Reliable Ltd. which is holding 75% of the paid-up share capital of Trust Ltd.

It does not fall in any of the exceptions given above.

A subsidiary cannot hold shares in its holding company. Hence, the objection raised by some of the members that company is in violation of the provisions of Companies Act, 2013 is correct.

MAKE MY CAREER



Q. ABC Ltd. holds **75% equity share capital of DEF Ltd.** and **controls composition of Board** of Directors of DEF Ltd.

ABC Ltd. goes for public issue for raising further share capital. Board of Directors of ABC Ltd. allot 10% of the issue to DEF Ltd.

Referring to the provisions of the Companies Act, 2013, examine the validity of Board's decision to allot 10% of issue to DEF Ltd.

DEF Ltd. **holds certain number of shares as a legal representative** of a deceased member of ABC Ltd. and **has a right to vote** at a general meeting of ABC Ltd. **in respect of such shareholding**, will this right be affected by issue of 10% to DEF Ltd. by ABC Ltd. ?(Dec'17)

Ans.

In accordance with the provisions of the Companies Act, 2013, as contained in Section 19(1), a subsidiary company shall not either by itself or through its nominees hold shares in its holding company **and** no holding company shall allot or transfer its shares to any of its subsidiary companies **and** any such allotment or transfer of shares of a company to its subsidiary company **shall be void.**

Therefore, ABC Limited cannot allot 10% shares of public issue to DEF Limited, in view of the above provisions. Allotment of shares to DEF Limited shall be void.

Further, in the following circumstances, where a subsidiary can hold the shares of its holding company: -

1. Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
2. Where the subsidiary company holds such shares as a trustee; or
3. Where the subsidiary company is a shareholder even before it became a subsidiary company of its holding company.

The subsidiary company, however, as referred above shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

MAKE MY CAREER

Q. Virat, a person of 21 years of age is pursuing MBA (Finance) course at a reputed recognized business school. He is **not a shareholder** of Grow (Pvt.) Ltd. He wishes to inspect the register of investments in securities not held in company's name and annual return of Grow (Pvt.) Ltd. He also wants to take copies thereof. Examining the relevant provisions of the Companies Act, 2013; advise. Virat whether he would be successful in this regard. (June'16)

**Answer**

**Section 187** read with rule 14 of Companies (Meetings of Board and its Powers), Rules, 2014 provides that every company shall maintain Register of Investment in securities not held in company's name in Form MBP-3.

Sub-section 3 of the section provides that such **register shall be open to inspection by any member or debenture holder of the company without any charge during business hours** subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

Thus, in the given case **Virat who is not a member of the company is not eligible to inspect the Register of Investment** in securities not held in company's name.

Section 94 provides that copies of annual return filed under section 92 shall be kept at registered office of the company.

Further the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner during business hours without payment of fees **and by any other person** on payment of such fees as may be prescribed under Companies (Registration office & fee) Rules, 2014. Further he may take a copy of the return on payment of such fees as may be prescribed in above said rules.

Hence, **Virat may inspect and take copy of Annual Return** and not the Register of Investment in securities not held in company's name.

**MAKE MY CAREER**

Q. *Pioneer Fisheries Ltd. has borrowed an amount of Rs. 50 crore from a financial institution. The annual general meeting of the company was held on 1<sup>st</sup> September, 2015. Examining the provisions of the Companies Act, 2013, state as to **who will sign and certify the annual return** while filing the same with the Registrar of Companies after the annual general meeting. (June'16)*

**Answer**

As per section 92 of the Act, every company shall prepare a return in E-form MGT 7 containing the **required particulars as they stood on the close of the financial year** and **signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.**

Moreover, the annual return, filed by a listed company OR, by a company having paid-up capital of 10 crore rupees or more OR turnover of 50 crore rupees or more, shall be **certified by a company secretary in practice (Form No. MGT 8)**, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

Here, it may be noted that borrowed amount is not any criteria for deciding about the authority/ eligibility of the person to sign and certify the annual return.

Thus, in the absence of information about whether the company falls under the listing or paid up share capital or turnover category discussed above, it would not be wise to pronounce whether its annual return shall be signed and certified by a practising company secretary or not.

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CLASSES

MAKE MY CAREER

Q.. A2Z Management Services Limited is a **listed company quoted at Bombay Stock Exchange Limited**. The company closed its register of debenture holders in June and August 2016 **for 12 and 21 days respectively**.

The **Chief Financial Officer (CFO)** of the company has informed the Secretary of the company **to consider closing the register in December for another 15 days** for some strategic reasons. Referring to the provisions of the Companies Act, 2013, examine the validity of the above action of the company. (June'17)

**Ans.**

By virtue of the provisions of the Companies Act, 2013, as contained in **section 91(1)**, a company may close the register of members **or** the register of debenture-holders **or** the register of other security holders for any period or periods **not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any one time.**

In the given case, A2Z management Services Limited has closed its register of debenture holders for **12 and 21 days** in June and August, 2016 respectively. Therefore, the closure is within the time limits prescribed in section 91(1) as each closure **has not exceeded 30 days.**

If the company closes the register again in December, 2016 for **another 15 days**, the **aggregate closure during the year would be 48 days which will exceed the prescribed time limit of 45 days.**

Hence, the **proposal of CFO of the company is not valid** under the above provisions of the Companies Act, 2013.

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MAKE MY CAREER



Q7. Fabulous Ltd. is in the process of finalisation of its **annual return**. It is a listed company with paid-up capital Rs. 1 crore. The company seeks your advice on the following :

(1) Who **will sign the return** on behalf of the company ?

(2) What are the requirements of **certification of annual return** by a practising Company Secretary? (June'18)

**Ans.**

(1) As per section 92 of the companies act, 2013, every company shall prepare its annual return containing the required particulars as they stood on the close of the financial year and shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

Whereas in case of **one Person Company and small company**, the annual return shall be **signed by the company secretary, or where there is no company secretary, by the director of the company.**

(2) Every listed company, **or** a company with paid up share capital of 10 crore or more **or** a company with turnover of Rs. 50 crore or more, shall be required to get a certificate by the practicing company secretary (PCS) stating the facts that the requirements of the companies act, 2013 and rules there to have been complied with and annual return discloses the facts correctly and adequately.



**MAKE MY CAREER**