



Members and Shareholders

Their duties and rights



A quick guide

DAiSY
TRADERS



Plain English
Approved by NALA

Introduction

We have produced this information booklet to explain the role of members and shareholders in a company under the Companies Acts.

What is a member?

A member is one of the company's owners whose name has been entered on the register of members. Members delegate certain powers to the company's directors to run the company on their behalf.

What is a shareholder?

A shareholder is a person who buys and holds shares in a company having a share capital. They become a member once their name is entered on the register of members.

Many companies limited by guarantee do not have a share capital, and consequently, their members are not shareholders.

Do all members have equal rights?

In some companies with a share capital, each share equals one vote. In other companies, each member has one vote. However, a company's articles of association can make different voting arrangements. For instance, different classes of shares may give shareholders different rights in the company.



In addition, a member's share transfer rights in private companies may be restricted. For instance, common restrictions are that a member who wishes to transfer shares must offer them to the existing members of the company first and must permit the company's directors to refuse to register a transfer of shares to a person of whom they do not approve.

What are the duties of members?

An important duty of a member is to pay the money they are liable to pay by virtue of their membership. If a company is being wound up, each member has to contribute to the company's debts based on their liability limits. In a company limited by shares, members are only committed to paying the price of the shares allotted to them. In the case of a company limited by guarantee, members are liable to contribute a set amount, which may be as low as €1. However, the members of a company with unlimited liability are liable to pay all of its debts if it is wound up.

It is also essential that members take part in supervising the performance of the company and its directors to protect their financial and other interests.

What are the rights of members?

The rights of members are stated in the Companies Acts and in the company's memorandum and articles of association (its 'constitution').

Company information


A member has the right to obtain a copy of the following company documents:

- the company memorandum and articles of association;
- the resolutions and minutes of general meetings;
- the company registers including, for example, the register of members;
- the financial statements, directors' report and auditor's reports; and
- the financial statements of any subsidiary (another company owned by the company) in the past 10 years.

Members' meetings

The voting members of a company make decisions at its general meetings by ordinary or special resolutions. A decision by ordinary resolution is made by a simple majority (50% plus one) of the votes cast at the meeting. Decisions by special resolution require a 75% majority. The chairman declares on a show of hands that a proposal has been won or lost. This will usually be conclusive unless a formal vote is sought.

Most items of company business are decided by ordinary resolution. However, a special resolution is needed to make changes to a company's constitution.



Companies, other than companies with one member, must hold an annual general meeting (AGM) within 15 months of the last AGM. Usual AGM business includes:

- discussing the company's financial statements, the directors' report and the auditor's report;
- discussing any recommendation from the directors to declare a dividend;
- electing new directors to replace those stepping down; and
- appointing or re-appointing an auditor and deciding how much they will be paid.

Companies must give members at least 21 days' written notice of an AGM and of the business to be discussed at the meeting.

A company's directors can call an extraordinary general meeting (EGM) if they think one is needed, for example, to get the members' approval to take a certain course of action, such as considering proposed changes to the company's constitution. However, directors *must* call an EGM when the company's net assets (its assets minus debts) fall to 50% or less of the value of its paid-up share capital – the amount that shareholders have paid for the shares issued by the company.

Public companies must give 14 days' notice of the holding of an EGM. The EGM notice period for private companies is seven days, but it can be less once the members and the company's auditors agree. The minimum notice period may be up to 28 days if the meeting is considering particular business.

A member or several members of a company with at least 10% of the paid-up share capital and voting rights in the company can also require the company's directors to call an EGM. If a company doesn't have a share capital, members with at least 10% of the voting rights can require the directors to call the EGM. If the directors do not do so, the members can call the meeting themselves. Where it is impractical to call or conduct a general meeting, a member can ask the High Court to order the holding of a meeting in whatever manner it thinks fit.

Any member who has the right to vote at a general meeting of a company can appoint a person (a 'proxy') to attend the meeting on their behalf and use their vote. A proxy can also speak at the meeting for the member.

Right to a dividend

A dividend is money that a company pays to its shareholders from its profits. A company does not legally have to declare a dividend and only directors can propose whether it is to be paid. If this happens, the shareholders must vote in favour of it. Once a dividend is approved, all shareholders are entitled to payment.

Default situations

A company or any officer (director, secretary and so on) is in default when they do not obey the Companies Acts. If this happens, a member can serve a notice on the company demanding that the company or officer correct the default within 14 days. If they do not do this, the member can ask the High Court to order the company or officer to correct the default. If an AGM is overdue, a member can ask the Office of the Director of Corporate Enforcement (ODCE) to direct that it be held.

Company investigations

A minimum number of company members (either 100 members, 20% of the total membership or those holding 10% of its paid-up share capital) can ask the High Court to appoint an inspector to investigate and report on the company's affairs. The Court is free to order an investigation of whatever matters it thinks appropriate or it may refuse the request. If an investigation is ordered, the Court may also order the members to provide funds to cover the costs.

Cases of oppression

Oppression occurs when directors are running a company against the interests of some of its members or running it in a fraudulent or illegal manner. This could mean, for example, that members are being excluded from company general meetings or refused access to financial statements. A member can ask the High Court to correct such a situation. The Court is free to choose an appropriate remedy.

Pre-emption rights (private companies only)

Where new shares are being issued in private companies, the shareholders have a legal right of first refusal to purchase the shares in proportion to their existing shareholding. However, this right can be removed in the company's constitution or with the prior agreement of the shareholders owning 75% of the company's shares.

Winding up

Members can decide to end a company's existence by special resolution or, if it is unable to pay its debts, by ordinary resolution. This is done at a general meeting, at which a liquidator is appointed. After the creditors' debts and liquidator's costs are paid, any remaining money is divided among the members according to their entitlements (unless the articles of association provide otherwise).

A member can also ask the High Court to wind up a company if:

- the company can no longer achieve its aims;
- certain members no longer want to stay in business with other members;
- management cannot agree on how to move the company's business forward;
- the company has illegal objectives; or
- someone is using the company to commit fraud.

Restoration to the Register

When a company is struck off the Register of Companies, it no longer exists. Any member can apply to the Companies Registration Office (CRO) within 12 months to restore the company to the Register. The CRO will do so if the company sends in its outstanding documents and pays all outstanding fees. Outside the 12-month period, a member must apply to the High Court to restore the company.

Conclusion

A more detailed information book on members and shareholders is available under Decision Notice D/2002/1 from www.odce.ie.

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OUR PREVIOUS COMPANY SHAREHOLDERS

