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Register of Members as per Companies Act, 2013

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REGISTER OF MEMBERS AS PER COMPANIES ACT, 2013

A Company is an artificial person and it is managed by its Board of Directors and it is the responsibility of the management to keep the details of accounts and its necessary informations transparently and carefully. One of most important responsibility of the management of the Company is to maintain its register of Members and index of other security. Companies Act, 2013 talks about the protection of interest of each and every stakeholder related to the Company and maintenance of register of Member is one of the most important way to protect the interest of the stakeholders of the Company as it contains all the necessary information related to shareholders and security holder of the Company. Register of members is the primary source of information which provides the all related informations shareholders/debentureholders/ other security holders in the Company. Hence, it is the duty of management to keep and maintain the proper register of members and other security holders, so that in case of inspection and enquiry the register will tell the true and correct positions.

GOVERNING SECTIONS AND RULES::

Every company shall keep a register of members in accordance with Section 88 of the Companies Act, 2013. Companies (Management and Administration) Rules 2014 discuss the particulars in the register of members.

TYPES OF REGISTERS ::

Every company is required to keep and maintain the following registers in such form and in such manner as prescribed under rule 3 and 4 namely:—

- Register of members separately for each class of equity and preference shares in form MGT-1;
- Register of debenture-holders separately for each class in form MGT-2; and
- Register of any other security holders separately for each class in form MGT-2.

The register of members needs to be maintained separately for each class of shares. According to rule 3(1), every company limited by shares is required to maintain a register of its members in Form MGT- 1 from the date of its incorporation. Proviso to the said rule allows a period of 6 months from the date of commencement of these rules to comply with the provisions.

According to rule 3(2), every company not having share capital is required to maintain the register of members with the following particulars in respect of each member:

- Personal details such as name, address etc. :-
 1. Name of the member;
 2. Address (registered office address in case the member is a body corporate);
 3. e-mail address;

4. Permanent Account Number or CIN;
5. Unique Identification Number, if any;
6. Father's/Mother's/Spouse's name;
7. Occupation; Status;
8. Nationality;
9. in case member is a minor :-
 - i. Name of the guardian and
 - ii. DOB of the member;
 - iii. Name and address of nominee;

- Date of becoming member
- Date of cessation
- Amount of guarantee, if any,
- Any other interest, if any
- Instruction given by member with regard to sending of notices etc.

In case of a company not having share capital, no particular format is prescribed. The company is at independence to maintain any format of its desire with above described particulars.

MANNER OF MAINTENANCE OF VARIOUS REGISTERS::

The Company shall maintain the register in following manner:-

Entries after allotment or transfer of shares, debentures or other securities::

As per rule 5 (1) of the Companies (Management and Administration) Rules 2014 the entries related to allotment or transfer of shares, debentures or other securities in the proper register shall be made within the Seven days (7) after the Board approval or if any Company has any committee related to this department then within seven days (7) after the Committee approval.

Other entries in Register ::

Rule 5 (3) of the Companies (Management and Administration) Rules 2014 provides that the Company is required to make entries in the respective registers within seven days after approval by the Board or committee in the following cases:

- Forfeiture;
- buy-back;
- reduction of shares;
- sub-division of shares, consolidation or cancellation of shares;
- issue of sweat equity shares;
- transmission of shares;
- shares issued under any scheme of arrangements, mergers, reconstitution;
- employees stock option scheme or any of such scheme provided under this Act; and;
- issue of duplicate or new share certificates or new debenture or other security certificates.

Reasons or reference of any change in status ::

Rule 5 (4) of the Companies (Management and Administration) Rules 2014 provides the need of the entries explaining and recording the reasons or reference for any changes in the status of member or debenture holder due to death or insolvency or change of name or transfer of shares to Investor Education Protection Fund, or any other reason.

The necessary reference of order shall be indicated in the respective register –If

- any rectification is made in the register by the company pursuant to any order passed by the competent authority under the Act,
- any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or Tribunal attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest.

Additional Disclosures related to listed Companies::

Rule 5 (7) and (8) prescribes certain additional disclosures in case of a company whose securities are listed on a stock exchange in or outside India. Such company shall make entries within fifteen (15) days from the date of such event :-

- the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation;
- the particulars of pledge, hypothecation, charge and lien created on any security of such listed company in connection with any joint venture company formed by it.

Maintainance of Register in electronic form ::

The registers may be maintained in electronic format after complying with the provisions of section 120 of the act read with rule 27, 28, 29 & 30 of the Companies (Management & Administration) Rules, 2014.

Place of Register::

According to rule 5(2) of the Companies (Management and Administration) Rules 2014, the registers are required to be maintained at the registered office of the Company.

Place of Register other than Registered office of the Company ::

By passing a special resolution, the company may keep the register(s) at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth (1/10th) of the total members entered in the register of members reside. Hence, for maintaining the books at any place other than registered office, approval of members is required.

Index of Register ::

Sub-section (2) of section 88 read with rule 6 of the Companies (Management and Administration) Rules 2014 provides for maintenance of index of register. Every company having not less than 50 members is required to include an index of names in its register maintained under the provision of sub – section (1) of section 88. Such

index shall be maintained in respect of each folio. It shall contain sufficient indication to enable finding the entries relating to that folio in the register. The company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.

Maintenance of Foreign Register ::

As per Sub-section (4) of section 88 read with rule 7 of the Companies (Management and Administration) Rules 2014 deals with maintenance of foreign register. A company may, if so authorised by its articles, keep in any country outside India, in the same format as the principal register, a part of the register referred to in sub-section (1), called "foreign register". Such register records the details of the members or debenture holders or of any other security holders or of beneficial owners, resident in that country. This register would contain the details of only of the residents of that country where it is kept. Such register shall be deemed to be part of the company's principal register to which it relates. The company shall file with the Registrar a notice of the situation of the office where such register is kept in Form MGT – 3 within 30 days from the date of the opening of any foreign register. In the event of any change in the situation of such office or of its discontinuance, the notice in Form MGT – 3 shall be filed with the Registrar. A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place where in the foreign register is kept.

Entries for joint holders::

In cases of joint – holders, Companies are required to make entries in the register of members, debenture – holders or other holder of securities in the names of all joint holders by giving particulars of joint holders. The seniority of the joint holders depends upon the order of names in the register and determines entitlements to various rights.

Entries for Minor::

Entries for minor shall be made in his/ her guardian name as minor is not competent to contract and could neither apply for shares nor enter into any contract to acquisition by transfer of shares, they may not become members in their own name. Only in case of inheritance, a situation could arise in which a minor may be owner of shares as per of succession law. In such situation, minor can hold shares through his/her guardian.

Authentication::

The Entries in the registers and index included therein shall be authenticated by-

- the company secretary of the company or;
- any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.

The Entries in the foreign register shall be authenticated by –

- the company secretary of the company or
- any other person authorised by the Board by appending his signature in each entry.

Entries to be a prima facie evidence::

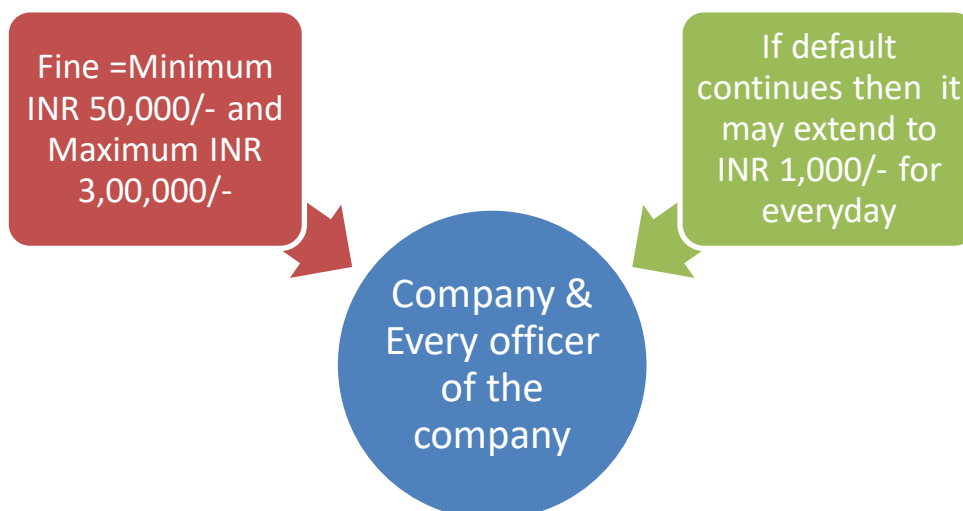
According to section 95, the registers, their indices and copies of annual returns are prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act. The effect of a prima facie evidence is only to create a presumption of truth but this presumption may be subject to contradiction.

Preservation of registers::

Rule 15 of the Companies (Management and Administration) Rules 2014 provides for preservation of registers. The register of members along with the index is to be preserved always and kept in the protection of the company secretary of the company or any other person authorized by the Board for such purpose. The register of debenture holders or any other security holders along with the index are to be preserved for a period of **eight (8) years** from the date of redemption of debentures or other securities, as the case may be, and kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose. The foreign register of members shall be preserved permanently, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture holders or any other security holders shall be preserved for a period of **eight(8) years** from the date of redemption of such debentures or securities. The foreign register shall be kept in the protection of the company secretary or person authorised by the Board.

PENALTY::

As per section 88 (5) of the Companies Act, 2013 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 and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.



CONCLUSION ::

Register of Members is the sureness factor for the shareholder/debentureholder or security holder as the register of members is your primary source of who holds shares in the company. It is a requirement of the Companies Act 2013, that management shall keep register of members of the Company up to date. Failure to do will provides the fine and penalty for the company and its concerned officers.

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DECLARATION

I, Tanu Tyagi D/o Mr. Ramkumar Tyagi having my office at first floor, House No. 970, Sector-21D, Faridabad, hereby declare that the article, "Register Of Members As Per Companies Act, 2013" has been written by me on the basis of legal facts and contents have not been copied from anywhere except legal provisions under various enactments.

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