

WEEK 4.1.

MEMBERSHIP

If a company has shares, shareholders are 'members'

A person is a member of a company if they:		ss 9; 231
a) are a member of the company on its registration; or		
b) agree to become a member of the company after its registration and their name is entered on the register of members; or		
c) become a member of the company under section 167 (membership arising from conversion of a company from one limited by guarantee to one limited by shares).		
A member in relation to a managed investment scheme means a person who holds an interest in the scheme		s 9
Members are named in the application for registration of the company		s 120(1)
How Many?	A company must have at least one member	s 114
	Public Co No limit on number of members	
	Private Co Must have no more than 50 non-employee shareholders	s 113(1)
Age Limit	No age limit – minors can become shareholders	Steinburg v Scala (Leeds)
	BUT The contract with the company pursuant to which they become a shareholder is voidable at the option of the minor	
	Minors can repudiate at any time before turning 18 or within a reasonable time.	
	YES Discharges all future obligations	
	NO Money paid, including purchase price, are not recoverable unless there has been a total failure of consideration	

Considered

1	Obtaining Membership	2
2	Transferring Membership	2
3	Transmission of Membership (death or bankruptcy)	3
4	Ceasing to be a member	4

1. OBTAINING MEMBERSHIP

4.1.MEMBERSHIP

Details of each company member are recorded in the Register of Members		s 169
First members	Stated in the application for registration	s 117(2)(c)
Subsequent Members	Can obtain membership by: <ul style="list-style-type: none"> • Issue of new shares • Transfer from another member • Transmission (death or bankruptcy) • Conversion of debentures or exercise of options into shares • Purchase 	

2. TRANSFERRING MEMBERSHIP

Legal title	Share certificate is evidence of legal title	s 1070C(2)	
Transferability	A shareholding is freely transferrable, subject to constitution		
	Public Co	Required to have freely transferrable shareholdings	ASX Rules
	Private Co	Directors may refuse to register a transfer of shares for any reason	s 1072G

MECHANICS OF TRANSFER

Transferee member may have their name included in the Register of Members by lodging a registration form with the company		s 1071D
Directors are not required to register a transfer unless: <ol style="list-style-type: none"> Transfer and share certificate are lodged with registered office of company; Any fee payable on registration has been paid; and Directors have been given any further information they reasonably require 		s 1072F(2) (Replaceable)
Company cannot register transfer unless proper instrument of transfer is delivered to the company		s 1071B (not replaceable)
Except	Where transfer of a security was through a prescribed C&S Facility – e.g. CHES – ‘Clearing House Electronic Sub-register System’	s 1071B(1)
NB	Failure to comply with above is an offence	s 1311(1)

3. TRANSMISSION (DIFFERENT TO TRANSFER)

DEATH – REPLACEABLE RULES?

Do they die with a valid will?		
YES	Shares vest in shareholder's personal representative	s 1071A(1)
NO	Shares vest in public trustee	s 1071A(5)
NB	Directors may insist on being provided with sufficient evidence such of probate of the will, or letters of administration of the estate, of a dead person	s 1071B(13)
Do they own the shares jointly		
YES	the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.	s 1072A(5)
NO	the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.	s 1072A(5)
Where not held jointly	<p>(2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:</p> <p>(a) the personal representative may:</p> <p>(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or</p> <p>(ii) by giving a completed transfer form to the company, transfer the shares to another person; and</p> <p>(b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.</p> <p>(3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.</p> <p>(4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.</p>	s 1072A

BANKRUPTCY

Shareholding will vest in trustee in bankruptcy	s 58 Bankruptcy Act
Trustee in bankruptcy is to be registered as the holder of the shares	s 1072E(6), (7)

4. CEASING TO BE A MEMBER

Can cease to be a member by: