Members and Shareholders

Their duties and rights

A quick guide

Oifig an Stiúrthóra um Fhorfheidhmiú Corparáideach
Office of the Director of Corporate Enforcement

Plain English
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About this guide

We have produced this quick guide to explain some of the rights and duties of members and shareholders under the Companies Act.

What is a member?

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

What is a shareholder?

A shareholder is someone who buys and holds shares in a company which has a share capital – money invested in a company by its shareholders. A shareholder becomes a member once their name is entered on the register of members.

Some companies such as companies limited by guarantee (CLGs) do not have a share capital so their members are not shareholders.

Do all members have equal rights?

The rules on the rights of members and shareholders are set out in the company's constitution. The right to vote on important issues affecting the company may vary from company to company.

- In some companies with a share capital, each share equals one vote.
- In other companies, different classes (types) of shares may have different voting rights. For example, some shares may have no voting rights.

- In companies without a share capital, each member has one vote.

Can members transfer their shares?

In private companies, a member's right to transfer their shares to someone else may be limited. For instance, the constitutions of most private companies state that a member who wishes to transfer shares must:

- first offer the shares to existing members; and
- get the approval of the company's directors who may refuse to transfer the shares to someone they do not approve.

What duties do members have?

- A member must pay the money they agreed to pay the company as part of their membership.
- If a company is being wound up, each member must contribute to the company's debts as follows:
  - members of a company limited by shares have to pay only the amount that is unpaid on the shares they hold;
  - members of a company limited by guarantee have to pay only an agreed amount, which may be as low as €1; but
  - members of an unlimited liability company must pay all of the company's debts.

Members should supervise the performance of the company and its directors to protect their financial and other interests.

What rights do members have?

The rights of members are set out in the Companies Act and in the company's constitution. They are outlined below.

Right to company information

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

- the company's constitution;
- the resolutions – these are decisions made by vote of members usually at an annual general meeting (AGM) or extraordinary general meeting (EGM);
- minutes (details of what was said and agreed) at AGMs and EGMs;
- the company's registers, including the register of members;
- the company's financial statements including the directors' report and the auditor's report (if any); and
- the financial statements of any subsidiary (another company owned by the company) in the past 10 years.

Right to attend annual general meetings (AGMs)

Companies must hold an AGM within 15 months of their last AGM. The only exceptions are private limited companies (LTDs) and companies with just one member. Special rules apply where a company decides not to hold an AGM.

At the AGM, the members and directors will:

- discuss the company's financial statements, the directors' report and the auditor's report;

- discuss whether to pay a dividend (a payment to members from the company's profits) of an amount recommended by the directors;
- review the company's affairs;
- elect new directors to replace those stepping down; and
- appoint or re-appoint an auditor and decide how much they will be paid.

Right to receive notice of meetings

Members have the right to attend and vote at AGMs and EGMs and to get notice in writing of these meetings. The notice should:

- state the date, time and place of the meeting;
- outline what will be discussed at the meeting (the agenda); and
- include other relevant documents such as financial statements, the directors' report and the auditor's report (if any).

The notice should be sent:

- at least 21 days before the AGM;
- at least 7 days before an EGM for a private company (LTD) and a company limited by guarantee (CLG); and
- at least 14 days before an EGM for a public limited company (PLC).

Right to attend extraordinary general meetings (EGMs)

The directors may hold an EGM if they think one is needed, for example to get the members' approval for special business or to change the company's constitution.

Limited right to call an EGM

One or more members of a company who hold at least 10% of the paid-up share capital (the money that shareholders have paid for the shares a company has given them) and 10% of the voting rights (the power of shareholders to vote at company AGMs and EGMs), can 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 an EGM.

If the directors refuse to call an EGM, the members can call the meeting themselves. A member can also ask the Court to order the directors to call a meeting if it is not possible for a meeting to be called in a normal manner.

Right to vote at AGMs and EGMs

The decisions made by members at meetings are called resolutions. There are two types:

- 'ordinary' resolutions are used to decide most company business. They need a simple majority (50% plus one) of the votes cast at the meeting;
- special resolutions deal with certain important decisions. They need a 75% majority of the votes cast.

Members vote by raising their hand to indicate that they agree with a proposal. The votes are counted and the chairperson announces whether a proposal has been passed or not. This is normally sufficient unless a formal vote is called for.

Proxy rights

Any member who cannot attend a meeting can appoint someone (called a 'proxy') to attend the meeting on their behalf. A proxy has the same rights as the member to vote and speak at the meeting.

Dividends

A dividend is money paid from a company's profits which may be shared with the members. The directors propose the amount of the dividend and the members vote on this at the AGM. A company does not have to pay a dividend.

Rights in default situations

A company or one of its officers (such as a director or a company secretary) who does not obey the Companies Act is said to be in 'default'. If this happens, a member can demand that the company or officer correct the default within 14 days. If they do not do this, the member can ask the Court to order the company or officer to correct the default.

If an AGM is not held within 15 months of the previous AGM, a member can ask the Office of the Director of Corporate Enforcement (ODCE) to order the directors to hold the AGM.

Right to seek an investigation of a company

Some members (and other people such as a director or a creditor) can ask the court to appoint an inspector to investigate and report on the company's affairs. This includes:

- at least 10 members of the company; or
- a member or members holding 10% of the paid-up share capital of the company.

They must also notify the Director of Corporate Enforcement in writing of the application to appoint an inspector.

If the court appoints an inspector, they will take orders from, and report to, the court. The court may ask the members to pay the costs of the investigation.

Rights in cases of oppression

Oppression happens when the directors run a company against the interests of some members, or run it in a fraudulent or illegal way. For example, if a company excludes some members from general meetings or refuses to give them access to financial statements, this could count as oppression.

A member can ask the Court to correct the situation. The court decides how this is to be done.

Right to buy new shares (pre-emption rights)

This applies only to private companies. When new shares are being issued, the shareholders have a legal right to buy them first in proportion to their existing shareholding. However, the company can remove this right from its constitution by passing a special resolution at a general meeting.

Right to wind up the company

Members can decide to end a company's existence by either:

- a vote of 75% of those attending a specially called EGM; or
- a vote of 50% plus one if the company is unable to pay its debts.

A liquidator must be appointed at the EGM.

After the liquidator's costs and the money owed to creditors are paid, any remaining money is divided among the members in proportion to the number of shares they hold, depending on the rights attaching to their shares.

A member can also ask the 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;
- the company has illegal objectives; or
- someone is using the company to commit fraud.

Right to restore the company to the Register

When a company is struck off the Register of Companies, it no longer exists legally. A member can apply to the Companies Registration Office (CRO) within 12 months to restore the company to the Register. The CRO will do this if the company sends in its outstanding documents and pays all outstanding fees.

After 12 months, a member must apply to the court to restore the company.

A Property Management Company has up to six years to apply to the CRO to have the company restored to the Register.

Where can I get more information?

You can find more detailed information on members and shareholders on our website, *www.odce.ie*.

If you are unsure about members and shareholders and what you need to do under the law, you should get independent professional advice.

Disclaimer

This Quick Guide sets out some of the basic legal duties of members and shareholders. It is not a legal interpretation of any part of the Companies Act. The Director of Corporate Enforcement accepts no responsibility or liability for any errors, inaccuracies or omissions in this guide.

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Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

For Further Information contact:

Office of the Director
of Corporate Enforcement
16 Parnell Square
Dublin 1
Ireland

01 858 5800
Lo-call 1890 315 015

01 858 5801

info@odce.ie

www.odce.ie

Tá leagan Gaeilge den leabhrán seo ar fáil
An Irish version of this booklet is available