

Chapter 13 Membership

Here, basic guidance to the end-of-chapter questions will be provided.

1. Define the following terms:

- **member;**
- **no-access order;**
- **beneficial ownership;**
- **people with significant control.**

Term	Definition
member	Section 112 of the CA 2006 provides two ways in which a person can become a member: <ul style="list-style-type: none"> • the subscribers of a company's memorandum are deemed to have agreed to become members and, upon the company's registration, they become members; • every other person who agrees to become a member of the company and whose name is entered in its register of members becomes a member of the company
no-access order	An order of the court stating that a request to inspect the register of members was made for a proper purpose, which directs the company to not comply with the request
beneficial ownership	The beneficial owner of shares is the person who ultimately owns or controls those shares
person with significant control	A person is a person with significant control if that person: <ul style="list-style-type: none"> • holds, directly or indirectly, more than 25 per cent of the company's shares or voting rights; • holds the right, directly or indirectly, to appoint or remove a majority of the company's directors; • has the right to exercise, or actually exercises, significant influence or control over the company

2. State whether each of the following statements is true or false and, if false, explain why:

- **a member will also be a shareholder;**
- **in order to become a member of a company, a person must expressly agree to become a member;**
- **a minor cannot become a member of a company;**
- **anyone can inspect the register of members free of charge;**
- **a person who holds 25 per cent of a company's shares will be a PSC;**
- **a person's membership of a company will be terminated if he is declared bankrupt.**

- **A member will also be a shareholder:** This statement is false. Whilst a member will usually be a shareholder and vice versa, there are instances where this will not be the case (e.g. where a company has no share capital).
- **In order to become a member of a company, a person must expressly agree to become a member:** This statement is false. Persons who subscribe to the company's memorandum are *deemed to have agreed* to become members, even if they have not expressly agreed.
- **A minor cannot become a member of a company:** This statement is false. A minor can indeed be a member of a company, but due to issues involving a minor's contractual capacity, there are risks involved in registering a minor as a member.
- **Anyone can inspect the register of members free of charge:** This statement is false. A member can inspect the register free of charge, but anyone else must pay a fee.
- **A person who holds 25 per cent of a company's shares will be a PSC:** This statement is false. The relevant criterion provides that a person will be a PSC if they hold, directly or indirectly, *more than 25 per cent* of the company's shares.
- **A person's membership of a company will be terminated if he is declared bankrupt:** This statement is true, although there are certain formalities that will need to be complied with for this to occur (e.g. the shares are registered in the name of the trustee in bankruptcy).

3. 'The introduction of the PSC register will go a long way towards making company ownership more transparent.'

Do you agree with this statement?

Introduction

- Every essay should begin with a succinct introduction that demonstrates that you understand the essay question. Briefly explain what the essay is about and set out what the essay will discuss and how it will be structured.
- This essay requires a discussion of the PSC register and the extent to which it will improve the transparency of company control.

The transparency of corporate control

- Begin by looking at the problem that the PSC register was designed to remedy. Note that shares can be registered in the name of a nominee, and distinguish between the legal owner of shares and the beneficial owner. Note how the existence of beneficial owners can make identifying who controls a company difficult.
- This lack of transparency means that companies can be used to engage in nefarious and illegal conduct, such as money laundering and tax evasion.
- You may choose to briefly discuss the s 793 notice and the weakness of it (namely that it requires a person to know or have reasonable cause to believe that a person has an interest in the company's shares).

The PSC register

- You may choose to briefly look at the developments that led to the introduction of the PSC register (e.g. the various Anti-Money Laundering Directives).
- Briefly set out the legal requirements relating to the PSC register and what a PSC is. Point out that the law relating to the PSC register goes further than that required by the 4AMLD as UK law requires companies to allow any person to inspect the PSC register free of charge.
- Discuss the advantages and disadvantages of the PSC register in its current form. There are now a number of useful sources that have analysed PSC register data that have revealed notable inaccuracies and weaknesses in the data provided.

Conclusion

- Every essay should end with a conclusion. Briefly summarise the main points/arguments and, if possible, come to a conclusion regarding the essay topic (i.e. which of the opposing views has the stronger arguments).

4. Dragon Tools Ltd ('DT'), a subsidiary of Dragon plc, has recently issued a batch of 1,500 shares, as follows:

- **Sutton & Co, a local firm of solicitors that is in the process of transferring its business to a LLP, purchases 100 shares;**
- **Doogie, a teenager who made millions after creating a UK-based social media site called MyFace, purchases 1,000 shares.**
- **DT could not find buyers for the remaining 400 shares and so DT itself purchased them.**

Including the 1,500 shares, DT has issued 3,500 shares. Doogie requests to see a copy of DT's register of members, as he intends to use this information to (i) determine whether he should attempt to takeover DT, and; (ii) he wishes to use the information to market MyFace to DT's members. The board agree to Doogie's request and he obtains a copy of the register of members. However, he notices that his name has not been entered into the register.

Discuss the above, paying particular attention to (i) whether Sutton & Co and Doogie are members of the company; (ii) what rules should have been followed following the issue of shares, and; (iii) whether any laws have been breached.

Sutton & Co

- The first issue to discuss is whether Sutton & Co is a member of DT. Currently, Sutton & Co is an ordinary partnership and, as it has no corporate personality, the shares should be registered in the names of the partnership's partners and their names should be entered into the register of members. However, the partnership's name can be entered into the register of members if all the partners of Sutton & Co agree, in which case, the partners will be held liable as members.

- Once Sutton & Co becomes a LLP, the shares could be transferred to the LLP and the LLP could be entered into the register of members. As a LLP has corporate personality, the LLP would become liable as a member.
- Based on what we are told, there is nothing to indicate that Sutton & Co would be a person with significant control (PSC).

Doogie

- Doogie is a teenager who owns 1,000 shares in DT. We are not told how old he is, only that he is a teenager. If he is a minor, then the company is free to refuse to register him as a member. This is useful as DT would be unable to enforce the contract against Doogie whilst he remains a minor and the contract is voidable whilst Doogie is a minor. If Doogie is not a minor, then no issue arises.
- If Doogie is a minor, then the company is free to not add his name to the register of members, in which case, Doogie will not be a member.
- If Doogie is not a minor, then he can apply for an order rectifying the register.
- As Doogie owns 1,000 of DT's 3,500 shares, he will be a PSC and so DT will need to indicate this in the PSC register.

DT's purchase of its own shares

- DT could not find a purchaser of the remaining 400 shares, so it purchased them itself. This is not permitted as s 658 of the CA 2006 prohibits a company from purchasing its own shares (discussed at 17.2). There are exceptions to this, but there is no indication that these apply here.
- A breach of 658 results in a criminal offence being committed by the company and every officer who was in default. In addition, the acquisition of the 400 shares will be void.