

Quick Notes

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# Membership v Shareholding

The legal distinction, the rights it controls, and why conflating the two has real practical consequences under CAMA 2020 and the UK Companies Act 2006.



# Two terms, two concepts

Used interchangeably in practice — yet they sit on entirely different legal foundations

## A · Membership

### A statutory status.

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Conferred only by **entry in the register of members**. The register is the definitive — and only — gateway to membership rights.

A subscriber to the memorandum becomes a member at incorporation; everyone else, only when their name is entered.

**Source · S.105 CAMA 2020 · SS.112–113 CA 2006**

## B · Shareholding

### A proprietary concept.

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Rooted in **equity and property law**. A share is an intangible asset whose rights are defined by the constitution and articles.

It may be held **legally** (on the register) or **beneficially** (an equitable interest — without registration).

**Asset · Transferable · Beneficially holdable**

# Who counts as which?

The same person may be one, the other, both — or neither.

| Status                          | Member?             | Shareholder?                |
|---------------------------------|---------------------|-----------------------------|
| Subscriber to memorandum        | Yes — automatically | Yes                         |
| Name entered in register        | Yes                 | Yes (legal holder)          |
| Transferee, not yet registered  | No                  | Yes (beneficial)            |
| Beneficiary behind a nominee    | No                  | Yes (beneficial)            |
| Nominee on the register         | Yes                 | Legal only — not beneficial |
| Personal representative (death) | No — until elected  | Holds as property           |

**Quick note** • A person holding shares beneficially is *a shareholder* but *not a member* — and therefore cannot vote, receive notices, or sue.

# The statute does the work.

Two regimes, the same architecture — membership is a register-keyed status.

## Nigeria

### CAMA 2020

#### §105

Defines a **member**: subscribers to the memorandum + every person entered in the register of members.

#### §346

Standing for the **derivative action** — expressed in terms of membership, not economic ownership.

#### §354

Petition for relief from **oppression / unfair prejudice** — open to members.

#### §179

Transmission of shares on **death** — PR holds as property, must elect to be registered.

## United Kingdom

### Companies Act 2006

#### §§112–113

Defines a **member**: subscribers + persons who agree to become members *and* whose name is entered in the register.

#### §994

Relief from **unfair prejudice** — petition available to a *member* of the company.

#### Principle

Both regimes treat registration — not beneficial economic interest — as the trigger for statutory rights.

# Rights belong to the register

Side-by-side: governance rights against the company

| Right                       | Registered member                                           | Beneficial holder                                     |
|-----------------------------|-------------------------------------------------------------|-------------------------------------------------------|
| Vote at general meetings    | Yes — one vote per share unless articles say otherwise.     | No direct vote — must act through registered nominee. |
| Receipt of notices          | Direct from the company; entitled to all statutory notices. | None — relies on nominee to pass information through. |
| Attend & speak at meetings  | Yes — full participation rights.                            | No standing to attend in own right.                   |
| Dividends & economic return | Paid as legal holder — may hold on trust.                   | Equitable entitlement through trust / contract.       |
| Standing to bring suit      | Derivative actions, unfair-prejudice, winding-up petitions. | No direct standing — must register first.             |

## Bottom line

Economic ownership  $\neq$  governance power. The register is the switchboard.

# Three Remedies. One Gatekeeper

Each statutory remedy is keyed to membership, not economic interest.

## Remedy 01

### Derivative action

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Source · S.346 CAMA

A suit brought on the company's behalf to right a wrong done to it.

**Standing** is expressed in terms of membership — not economic ownership.

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**Beneficial owners** must first secure registration or act through the registered nominee.

## Remedy 02

### Unfair prejudice petition

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S.354 CAMA · S.994 CA 2006

Petition for relief where the company's affairs are conducted in a way unfairly prejudicial to a **member**.

A member's status — not size of holding — opens the door.

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Beneficial owners have **no direct standing**, however large their economic exposure.

## Remedy 03

### Winding-up petition

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Members-only remedy

A member may present a petition to wind up the company on just-and-equitable grounds.

Reserved for those on the register.

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A nominee holding bare legal title can petition; the beneficial owner alone cannot.

# Who do the articles bind?

Privity follows the register — not the beneficial chain.

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The Articles of Association bind the company and its members only — not necessarily the beneficial shareholders outside the register.

## Bound by articles

### The company & its members

- The company itself
- Every person on the register
- Subscribers from incorporation
- A nominee holding bare legal title

Each is in privity by virtue of registration.

## Not bound by articles

### Beneficial holders

- Beneficiaries under a trust
- Unregistered transferees
- Holders of equitable interests
- Investors through nominee chains

Their rights are *against the nominee*, not the company.

# Transfer ≠ membership

A share moves contractually; a member is made by the register

01

## Transfer executed

Beneficial interest passes to the transferee — equity recognises the new owner.

02

## Limbo period

Transferee holds equitable interest — but **cannot vote**, cannot sue, has no notices.

03

## Register updated

Name entered. Statutory membership crystallises. Voting, notices, standing — all unlocked.

“ A person who acquires shares but is not yet entered on the register has no right to vote. The register is the definitive — and only — gateway to membership rights.

Doctrine · Source document

**Implication for boards.** Until the register reflects a transfer, the prior holder remains the company's counterparty for governance purposes — votes, notices, dividends, and any cause of action.

# Four scenarios. One register

Where conflating the two terms creates real consequences

## 01 Nominee arrangements

The nominee is the legal member; the beneficiary has the economic stake.

**Consequence:** votes follow the nominee. Beneficiaries influence governance only by contract or instruction — never directly.

## 02 Succession on death

Personal representatives hold the shares as *property* — but membership does *not* automatically transmit.

**Consequence:** the PR must formally elect to be registered before exercising any membership right. (s.179 CAMA)

## 03 M&A due diligence

A register check tells you the legal holders — not who really controls the company.

**Consequence:** undisclosed nominees and multi-layered beneficial chains can mask the true acquirer of control.

## 04 Empty voting & hidden ownership

Activists can build economic exposure through derivatives without appearing on the register — and vice versa.

**Consequence:** votes get cast by parties with little or no real economic stake.

# Treating them as the same

Five places where loose drafting and loose thinking go wrong.

## Risk 01

### Standing failures in litigation

Beneficial owners assume they can petition or bring derivative suits — and discover too late that they cannot.

## Risk 02

### Defective resolutions

Votes purportedly cast by unregistered transferees can render special and ordinary resolutions vulnerable.

## Risk 03

### Mis-served notices

Notices sent only to beneficial owners do not satisfy the company's statutory duty toward registered members.

## Risk 04

### Privity gaps in shareholder agreements

Articles bind members; beneficial holders sit outside privity unless separately contracted in.

## Risk 05

### Arbitration & enforcement complications

Disputes between beneficial holders and the company collide with arbitration clauses written for members.

# What to Remember

Three lines that resolve almost every question in this area.

01

## Registration confers membership.

No entry on the register — no member status. Subscribers aside, this is universal.

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02

## Membership confers statutory rights.

Voting, notices, attendance, derivative suit, unfair-prejudice petition, winding-up.

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03

## Beneficial ownership alone confers none of them.

Economic exposure is real — but governance power flows through the register.

### Drafting heuristic

If your clause turns on *governance*, name **members**. If it turns on *value*, name **shareholders**. Choosing the wrong noun is the bug.

One sentence to take away

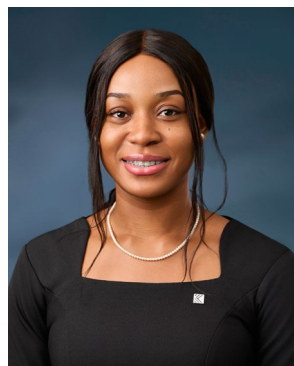
**The register is  
the gateway. Everything  
else follows from it.**

# Authors



**Okechukwu  
Ekweanya**

Partner, Corporate  
Governance



**Abasiemediong  
Etuk**

Senior Associate,  
Corporate Governance



**Muhammad  
Abubakar-Sadiq**

Associate, Corporate  
Governance

[counsel@kennalp.com](mailto:counsel@kennalp.com) | [www.kennalp.com](http://www.kennalp.com)

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