Company Law

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Business Associations

- In order to do business, individuals or groups must adopt a legal structure
- Such structures are known as **Business Associations**

Types: Sole Trader

- The owner is the business
- The owner may hire employees who receive compensation, but who have no influence on how the business is managed

Types: Partnerships

- To form, two or more partners (owners) are necessary
- Partners are the managers
- Partners may hire employees

Types: Limited Liability Partnership

- A hybrid form of a partnership
- Consists of “members” rather than “partners”
- Members must register the LLP
- Operates like an ordinary partnership, but limits the liability of members to the money they have invested

Types: Company

- Also known as a “corporation”
- Management is separated from ownership
- Owners are “shareholders”
- A corporation is considered a “legal person”

And Then What?

- Once all documents are filed and approved, the Registrar issues the new company a Certificate of Incorporation
- Thereafter, the company can now engage in business

Advantages? Disadvantages?

- Sole Traders
- Partnerships
- Limited Liability Partnerships
- Companies

How is a Sole Tradership Created?

How is a Partnership Created?

How is a Company Created?

- Registration is controlled by *statute*; it is done through a government office known as "*Registrar of Companies*"
- Three documents are required:

1. **Memorandum of Association** (details the founders ["subscribers"] intention to establish a company
2. **Articles of Association** (the main document, which functions like a constitution; addresses issuing/transfer of shares, general meetings, voting rights, how the directors will run the business)
3. **Memo and Arts** (lists the name of the company, its registered office, business objectives, and whether the company is limited by shares or guarantee)

How is a Business Association "Capitalized"?

Compare:

- Sole Trader
- Partnership
- Company

1. Shares ("equity securities"—may be ordinary or preferred. Represents intangible property)
2. Debentures/bonds ("debt securities")

Why is a Company Considered a "Legal Person"?

- Can sue/be sued
- Can buy/sell/hold property
- Limited liability
- Perpetual Existence

3 Types of Companies

1. “Limited by Shares”
2. “Limited by Guarantee”
3. Public/private

"Limited by Shares"

- This means that the company has shareholders, and that the liability of the shareholders to creditors of the company **is limited to the capital originally invested**
- What exactly is this amount? It is the nominal value of the shares and any premium paid in return for the issue of the shares by the company

“Limited by Guarantee”

- Most of these types of companies are “**nonprofits**” (they do not distribute their profits to their members, but either retain them within the company or use them for some other purpose)
- Thus, there are no shareholders
- Such companies are used for charities, community projects, clubs, and societies

Public/Private

- “Public” companies are listed on stock exchanges, and sell shares to the public (public offerings)
- “Private” companies do not sell shares to the public, but are subject to less government restrictions

Who are the Cast of Characters?

Sole traders:

- Owner
- Employees

(continued)

Partnerships and LLPs:

- Generals (managers)
- Limiteds (investors)
- Employees

(continued)

Companies:

- Promoters (persons who intend and then undertake to create a company)
- Directors (policy makers; hire managers; hold annual meetings; declare dividends)
- Managers/officers (manage everyday business operations)
- Secretary (administrative officer; prepares meetings, drafts minutes; maintains records)
- Shareholders (receive dividends; vote)
- Employees

Concepts and Vocabulary

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Agent/Law of Agency

An **agent** is a person given the authority by a principal to enter into contracts on her/his behalf

Law of Agency examples:

1. Each partner on behalf of the partnership
2. Officers of the company

Authorized Share Capital

The amount of capital a company can raise by selling its shares

Director’s Duties

1. To act within their powers
2. To promote the success of the company
3. To exercise independent judgment
4. To exercise reasonable care, skill, and diligence
5. To avoid conflicts of interest
6. To not accept benefits from third parties
7. To declare interests in proposed transactions or arrangements

Disclosure

Companies must share certain information with their shareholders and the public, e.g., their constitution, their financial status

Directors are required to disclose any personal interest that could lead to a conflict of interest

Fiduciary Duties

A company director/officer is under an obligation to exercise her/his power for the benefit of the company and not her/his own benefit

Ultra Vires

An action by a company officer or director which exceeds their legal power or authority

The East India Company

- The British East India Company was a private corporation formed in December 1600 to establish a British presence in the lucrative Indian spice trade, which until then had been monopolized by Spain and Portugal.
- The company eventually became an immensely powerful agent of British imperialism in South Asia and the de facto colonial ruler of large parts of India. Partly because of endemic corruption, the company was gradually deprived of its commercial monopoly and political control, and its Indian possessions were nationalized by the British crown in 1858.
- It was formally dissolved in 1874 by the East India Stock Dividend Redemption Act (1873).

4 Facts About the East India Company

1. In the 17th and 18th centuries, **the East India Company relied on slave labor** and trafficked in slaves from West and East Africa
2. **The East India Company controlled its own army**, which by 1800 comprised some 200,000 soldiers, more than twice the membership of the British Army at that time. The company used its armed force to subdue Indian states and principalities with which it had initially entered into trading agreements, to enforce ruinous taxation, to carry out officially sanctioned looting, and to protect its economic exploitation of both skilled and unskilled Indian labor.

Facts (continued)

3. Beginning in the early 19th century, **the East India Company illegally sold opium to China** to finance its purchases of Indian tea and other goods.

4. The company's management was remarkably efficient and economical. **During its first 20 years the East India Company was run from the home of its governor,** Sir Thomas Smythe, and had a permanent staff of only six. In 1700 it operated with 35 permanent employees in its small London office. In 1785 it controlled a vast empire of millions of people with a permanent London staff of 159

Questions?