



Max Planck Institute  
LUXEMBOURG  
for Procedural Law

# "English Law and Legal Terminology"

Dr Stephanie Law

[Stephanie.law@mpi.lu](mailto:Stephanie.law@mpi.lu)

# Topics to be Covered this Semester

Main focus on:

- Contracts - 08.04;
- Torts - 15.04;
- Commercial Law - 13.05;
- Company Law - 20.05.

Exam: 03.06, 16.00-18.00 (HS 2).

Final class and return of exams: 17.06.



# Short Presentations and Written Exam

- Presentation of 3-5 minutes;
- 10 points for the presentation;
- 90 points for the final exam.



# Introduction to Company Law

- What is a company?
  - One way (of many) in which a business enterprise can be organised;
  - More than one person;
  - Management is distinct from ownership; management across different people through directors.
- Why establish a company?
  - Permanence of business, limited liability for violations of law and special rules applicable in case of insolvency.



# Introduction to Company Law

Distinguishing a company from a partnership:

- Partnership = another form of organising a business;
- No split between ownership and management of the business = all partners are jointly liable for debts;
- Partners have to use personal assets to satisfy liability, even e.g. if debts are incurred by another partner.
  
- With company = companies are distinct legal entities = liability of company members is limited.
- How? Debt belongs to company; members are never personally liable for company debt.



# Introduction to Company Law

- What is company law?
  - Laws governing organisation of companies;
  - Rules set out in statute – Companies Act 2006 – 760 pp
- [http://www.legislation.gov.uk/ukpga/2006/46/pdfs/ukpga\\_20060046\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/46/pdfs/ukpga_20060046_en.pdf)



Companies Act 2006

## Purposes?

- To provide a business organisation with legal and organisational structure;
- To facilitate investment through structure and risk management.



# Establishing a Company

Legal term for establishing a company?

- Establishment of a company = incorporation.

How to establish a company? 2 ways:

- By statute (which set out rules) → statutory company (not our focus – no shareholders; powers defined by statute and public interest – e.g. Transport for London);
- **By registration under the Companies Act** → registered company:
  - Payment of a fee;
  - Registration of certain documents with the Registrar or company.



# Establishing a Company

Effects of establishing a company:

- Business entity is characterised by law as a distinct legal person;
- What does this mean? Why establish a business as a company?
  - Company itself (not the individual members of it) can hold rights and obligations;
  - Can enter into contracts;
  - Can own property;
  - Can be sued and sue.

However: a company still requires individual natural persons to function, to conduct its business and to manage it.





# Establishing a Company

Formalities of establishing a company:

2 key documents = memorandum of association and articles of association.

1. Memorandum of association for registration:

- Sets out intention of establishers (subscribers) to set up a company and to become members of it (Section 8 CA 2006).



# Establishing a Company

COMPANIES ACT 1985

COMPANY NO. 4740415

LD3  
COMPANIES HOUSE  
LD3  
COMPANIES HOUSE

MLA1C2865x

0149  
30/01/04  
23/01/04

---

A PUBLIC COMPANY LIMITED BY SHARES

---

MEMORANDUM OF ASSOCIATION

of

VEDANTA RESOURCES PLC

---

1. The name of the Company is "Vedanta Resources plc".<sup>1</sup>
2. The Company is to be a public company.<sup>2</sup>
3. The registered office of the Company is to be situated in England and Wales.
4. The objects for which the Company is established are:
  - (a) To carry on the business of a holding company in all its branches, and for that purpose to acquire and hold either in the name of the Company, or in that of any nominee or trustee, investment shares, stock, debentures and debenture stock, bonds, notes, obligations and securities issued or guaranteed by any company, corporation or undertaking wherever incorporated or carrying on business, and debentures, debenture stock, bonds, notes, obligations and securities issued or guaranteed by a government, sovereign ruler, commissioner, public body or authority, supreme, municipal, local or otherwise, whether at home or abroad, and to leave money on deposit or otherwise with any bank or building society, local authority or any other party and to act as and to perform all the functions of a holding company, and to coordinate the policy management and administration of any companies, corporations or undertakings in which the Company is a member or participant or which are controlled by or associated with the Company in any manner.



# Establishing a Company

## 2. Articles of association – the company's constitution:

- Sets out how the company should be governed;
- To be incorporated, a company must have articles of association prescribing regulations for it
- How shares should be issued/transferred; information about meetings, directors and voting rights;
- Formalities – single document and paragraphed;
- No rules as to content - diverges depending on specificities of companies;
- Potentially 'model rule' for limited companies if no specific articles are drafted.



# Establishing a Company

- Need for a certain format (there are model forms and info in Companies Act);
- Articles must be registered (for transparency and information of members and public);
- Articles form contract between company and its members;
- Certificate of registration is given if requirements met.

File Copy



## CERTIFICATE OF INCORPORATION OF A PRIVATE LIMITED COMPANY

Company No. 4740415

The Registrar of Companies for England and Wales hereby certifies that  
ANGELCHANGE LIMITED

is this day incorporated under the Companies Act 1985 as a private  
company and that the company is limited.

Given at Companies House, Cardiff, the 22nd April 2003



N04740415A



Companies House  
— for the record —

The above information was communicated in non-legible form and authenticated by the  
Registrar of Companies under section 710A of the Companies Act 1985



# Key Terminology

What is a **share** in a company?

- Interest in a particular company;
- Gives shareholder legally-enforceable rights (and obligations) in the company.

What is the stock exchange?

- Where share or stocks (a number of shares converted into a single unit) can be bought and sold.

What is a creditor/debtor?

- Someone to whom a debt is owed/who owes a debt.



# Key Terminology

What is insolvency?

- When a legal entity (e.g. a company) or a natural person cannot pay their debts.

What is liquidation?

- Process of bringing a business to an end, distributing its assets to claimants – assets are sold and value distributed.

What is a “going concern”?

- A company is a going concern when it is operating as a business.
- A company which has stopped its operations or is in liquidation – not longer a going concern.



# Types of Company

## 3 Limited and unlimited companies (Section 3 CA 2006)

- (1) A company is a “limited company” if the liability of its members is limited by its constitution. It may be limited by shares or limited by guarantee.
- (2) If their liability is limited to the amount, if any, unpaid on the shares held by them, the company is “limited by shares”.
- (3) If their liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up, the company is “limited by guarantee”.
- (4) If there is no limit on the liability of its members, the company is an “unlimited company”.



# Types of Company

5 Companies limited by guarantee and having share capital

- (1) A company cannot be formed as, or become, a company limited by guarantee with a share capital.
- (2) Provision to this effect has been in force— (a) in Great Britain since 22nd December 1980, and (b) in Northern Ireland since 1st July 1983.
- (3) Any provision in the constitution of a company limited by guarantee that purports to divide the company's undertaking into shares or interests is a provision for a share capital. This applies whether or not the nominal value or number of the shares or interests is specified by the provision.





# Establishing a Company

Characterisations of companies:

- Company limited by shares:
  - Liability of shareholder is decided upon by the amount he has to pay for his shares;
  - Liability is satisfied once he has paid the value of those shares;
- Company limited by guarantee:
  - The maximum contribution to liability is determined in advance by individuals (a specific, fixed amount to be paid in the event that liability arises – only when the company is dissolved);
  - Nothing due while company continues to operate.



# Establishing a Company

Characterisations of companies:

- Unlimited company:
  - Liability arises only where the company is dissolved; no liability while the company continues to operate;
  - Liability is not determined in advance as a fixed amount but every member must pay proportionate amount on dissolution.



# Establishing a Company

## 4 Private and public companies

- (1) A “private company” is any company that is not a public company.
- (2) A “public company” is a company limited by shares or limited by guarantee and having a share capital— (a) whose certificate of incorporation states that it is a public company...



# Establishing a Company

Key differences between a public and private company?

- Section 755-767 CA 2006.
- Public company:
  - Must have a minimum share capital of 50,000 GBP to obtain trading certificate – i.e. amount of capital of a company to be raised by issuing shares.
- Private company:
  - Cannot sell shares to public.
- Essentially: the possibility to offer shares to the public, and to raise capital by selling shares to the public.



# Capital in a Company

General meanings:

1. The value of a company's assets minus the debts owed to creditors;
2. The amount of money used to established a company and make a profit;
3. The company's total assets.

Specific meanings:

- Issued capital: amount of share capital issued;
- Paid up capital: amount paid up to the company;
- Minimum capital: amount required to register a company.



# People who Make up a Company

1. Promoter
2. Directors
3. Company secretary

## 1. Promoter:

- The person who takes the first steps to establish/ incorporate the company;
- The promoter is a fiduciary towards the company →  
owes certain legal duties to the company and its members  
– e.g. cannot make a secret profit out of it's establishment as a company.



# People who Make up a Company

## 2. Directors:

- The company = artificial legal person → requires natural persons to do its business;
- These are directors; more than 1 = a **board** of directors;
- Public companies = at least 2 directors;
- Private companies = at least 1 directors.

## Duties of directors under Companies Act:

- Act within their powers; promote the company; exercise reasonable care, skill and diligence, avoiding conflicts;
- Directors are also fiduciaries and have obligations as they can affect the interests of the company.



# People who Make up a Company

## 2. Directors:

- Particular powers, rights and duties of directors for specific company are set out in the articles of association:
  - Will depend on character and size of company;
  - Bigger company – roles for management (day-to-day) and director (policy and important decisions);
  - Smaller company – director more like manager.
- General powers, right and duties:
  - Delegation of powers to a managing director or Chief Executive Officer (CEO);
  - Obligations to act in good faith, in best interests of the company.





# People who Make up a Company

## 3. Company secretary:

- Public companies require a secretary – v important;
- Not necessary for private companies but often appointed;
- Duties differ depending on size and character of the company;
- General duties:
  - Administrative role;
  - Arranges and prepares meetings of the board;
  - Drafts minutes;
  - Keeps registers and records;
  - Can enter into contracts on behalf of the company.



# People who Make up a Company

Current officers

**28 officers / 19 resignations**

## [KUMAR, Deepak](#)

Correspondence address  
**30 Berkeley Square, London, England, W1J 6EX**

Role **ACTIVE** Appointed on  
**Secretary** **18 January 2006**

Nationality  
**British**

## [AGARWAL, Anil](#)

Correspondence address  
**30 Berkeley Square, London, England, W1J 6EX**

Role **ACTIVE** Date of birth Appointed on  
**Director** **September 1952** **16 May 2003**

Nationality Country of residence Occupation  
**Indian** **United Kingdom** **Chairman**

## [JR, Edward T Story,](#)

Correspondence address  
**30 Berkeley Square, London, England, W1J 6EX**

Role **ACTIVE** Date of birth Appointed on  
**Director** **November 1943** **1 June 2017**

Nationality Country of residence Occupation  
**American** **United States** **President /Chief Executive Officer**

## [PAREKH, Deepak](#)

Correspondence address  
**30 Berkeley Square, London, England, W1J 6EX**

Role **ACTIVE** Date of birth Appointed on  
**Director** **October 1944** **1 June 2013**

Nationality Country of residence Occupation  
**Indian** **India** **Director Chairman**

## [RAJAGOPAL, Ravi](#)

Correspondence address  
**8 Buxton Gardens, London, United Kingdom, W3 9LQ**



# Shares in a Company

Share:

- Interest in a particular company;
- Gives shareholder legally-enforceable rights (and obligations) in the company.

How can a person obtain shares?

- Buy shares from another member/shareholder on stock exchange;
- Directly from an issuance of the company (unlimited shares can now be issued, allowing companies to raise unlimited funds – unless limitation included in articles).



# Shares in a Company

What does a share look like?

- As such, a share cannot be seen/touched = **intangible**;
- Physical representation in a **share certificate** = the formal document, confirming the shareholder is registered as a member of the company;
- Evidence of the shareholder's title in the shares but not a title document (i.e. its transfer will not transfer shares).



# Shares in a Company

**ABP PROPERTY SOLUTIONS LTD**  
**Company Number: 10565104**  
**REGISTER OF SHAREHOLDERS AT 16 JANUARY 2017**

<b>Name</b>	<b>ALISON BROWN</b>							
<b>Address</b>	5 BREAMISH, ELLINGTON, NORTHUMBERLAND, NE61 5LJ							
<b>Security</b>	<b>A - £1.00 A CLASS ORDINARY FULLY PAID</b>				<b>Date Entered</b> 16/01/2017		<b>Date Ceased</b>	
<b>Special Rights</b>	EACH SHARE IS ENTITLED TO ONE VOTE IN ANY CIRCUMSTANCES AND A SHARE OF DIVIDEND PAYMENTS OR ANY OTHER DISTRIBUTION.							
<b>Date Entered / Ceased</b>	<b>Transaction Type</b>	<b>Units</b>	<b>Par Value Per Share</b>	<b>Paid Up Value Per Share</b>	<b>Certificate No</b>	<b>Distinctive Numbers</b>	<b>Transferred To/From, Redeemed, Reissued</b>	<b>Balance</b>
16/01/2017	Subscription	1	£1.00	£1.00	1			1
<b>Name</b>	<b>BETHAN PRICE</b>							
<b>Address</b>	1 SHILLINGTON CLOSE, MANCHESTER, GREATER MANCHESTER, M28 0YF							
<b>Security</b>	<b>A - £1.00 A CLASS ORDINARY FULLY PAID</b>				<b>Date Entered</b> 16/01/2017		<b>Date Ceased</b>	
<b>Special Rights</b>	EACH SHARE IS ENTITLED TO ONE VOTE IN ANY CIRCUMSTANCES AND A SHARE OF DIVIDEND PAYMENTS OR ANY OTHER DISTRIBUTION.							
<b>Date Entered / Ceased</b>	<b>Transaction Type</b>	<b>Units</b>	<b>Par Value Per Share</b>	<b>Paid Up Value Per Share</b>	<b>Certificate No</b>	<b>Distinctive Numbers</b>	<b>Transferred To/From, Redeemed, Reissued</b>	<b>Balance</b>
16/01/2017	Subscription	1	£1.00	£1.00	2			1

-1-



# Who are the Members of a Company?

- Subscribers to memorandum of association;
- Persons entered on register of members in addition;
- Termination of membership on removal from register (transfer of shares/dissolution).

If company is limited by shares, members = shareholders; persons become shareholders by buying shares on the stock exchange.

Obligations: liability limited by shares.

Rights: right to vote at meetings; entitlement to dividend (profits declared by directors, divided between shareholders).



# General Meetings of a Company

Meetings = opportunity to take important decisions.

Certain decisions (e.g. change to articles) can only be taken by shareholders at general meeting via special resolution (meeting of all shareholders; cf class meetings – one class of shareholders).

Public company requires Annual General Meeting:

- AGM called by directors, deals with various issues;
- Members informed of dividend declared;
- Accounts considered;
- Changes to board of directors can be voted on.

Extraordinary General Meeting: discretionary by directors but required e.g. when there is a considerable fall in the company's assets.



# Remedies of Shareholders

What if a director/board of directors acts in an unlawful way?

What if this act or omission causes loss to a) the shareholders or b) the company?

- If the personal rights of an individual shareholder have been violated = **personal action**.
- If the rights of a group of shareholders have been violated = **representative action** on behalf of the group.
- If the company has been harmed = **derivative action** by individual shareholder; damages go to the company.





# Remedies of Shareholders

Derivative action limits: *Foss v Harbottle* (1843) 2 Hare 461

- Where company harmed by directors' conduct, proper claimant is the company itself (not shareholders);
- As distinct legal person, company can sue;
- If directors' conduct could be sanctioned by majority decision of shareholders, little scope for legal action;
- However, if conduct = fraud on minority, and claim brought by company precluded by directors, minority shareholder group could sue.

Under Companies Act: derivative action possible re directors' breach of skill and care duties; still exceptional.



# Winding Up of a Company

A company is terminated/dissolved when its name is removed from the Company Register.

Process to dissolve a company = liquidation/winding up.

- All company assets/everything it owns turned into money (e.g. by selling property);
- Money is used to pay creditors (those owed the debts);
- Surplus (leftover money) divided between shareholders.

When does this happen?

- Normally if the directors decided to stop trading as a company, or if it is unable to pay debts.



# Winding Up of a Company

What does winding up involve?

- A liquidator is appointed to turn assets into money;
- Voluntary liquidation = initiated by stakeholders;
- Compulsory liquidation = court order sought by creditor.

What if the company is solvent/insolvent when liquidated?

- If solvent = assets provide enough funds to pay all creditors; any surplus divided between shareholders;
- If insolvent = assets do not provide enough to pay all creditors; main objective is to pay creditors (in a hierarchy); shareholders will not receive anything.



Exam: 03.06, 16.00-18.00 (HS 2).

Final class and return of exams: 17.06.





Max Planck Institute  
**LUXEMBOURG**  
for Procedural Law

