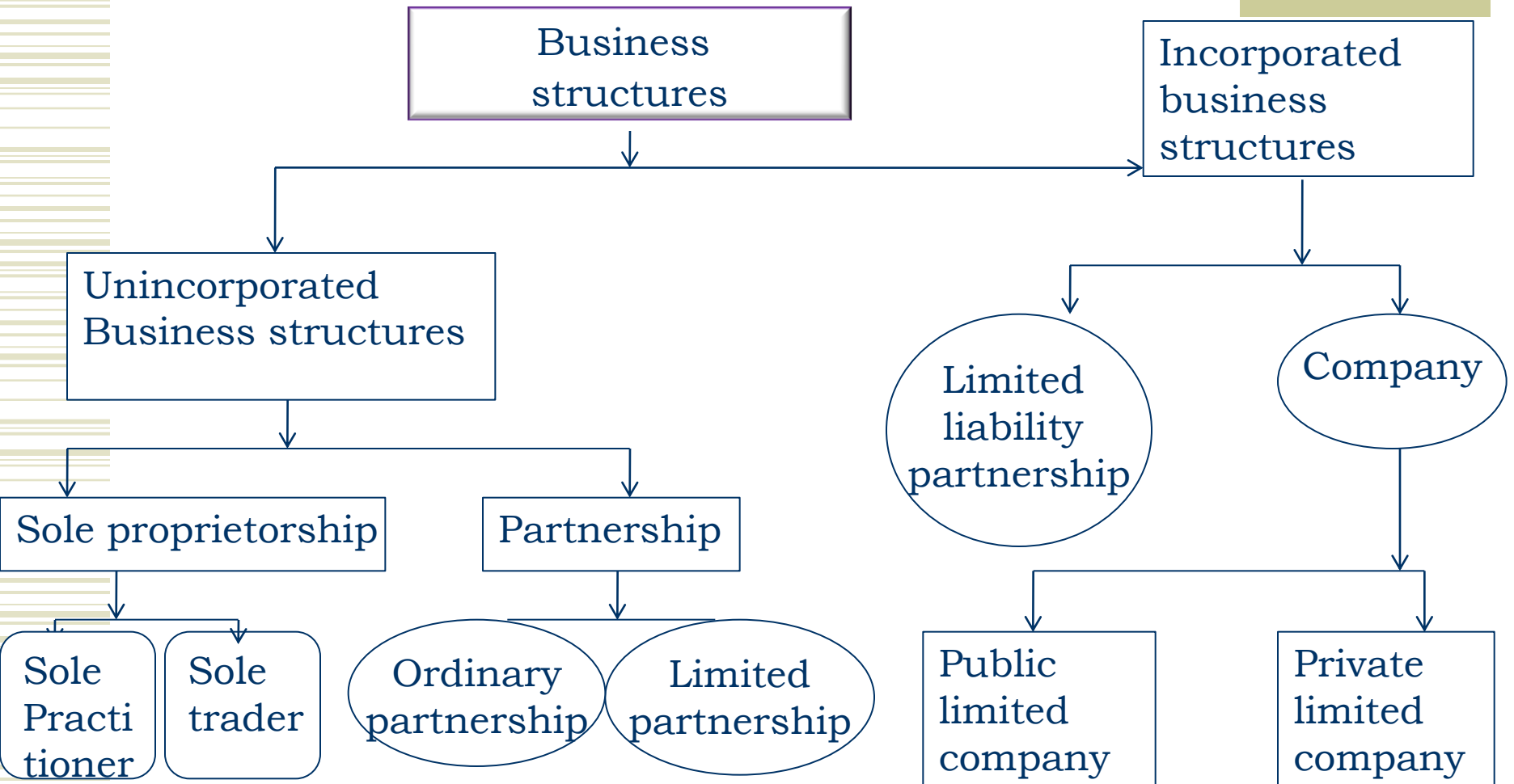




INTENSIVE LEGAL ENGLISH COURSE

Company Law

Business structures in UK



Key terms and expressions

Person: a human or organisation with rights and duties

- **legal person** (or legal entity, body corporate, artificial legal person U.E.)
- **individual** (or natural person U.E.)

Example: *“Incorporated business structures generally have legal personality”*

Key terms and expressions

Business organisation: syn. enterprise, undertaking
(U.E.)

Business: (i) deal, (ii) activity carried out by a
business organisation

Example:

- *to set up a business*
- *to run a business*

Company and corporation: are they synonyms?

Business organisations

Partnership: two or more persons who carry on a business with the purpose of profit

No legal personality – joint and several liability of partners

Company: a corporation formed to carry on a business with the purpose of profit

Legal personality – limited liability of members

Key terms and expressions

To incorporate means to form/to set up a business organisation having legal personality, a body corporate

Are the following sentences correct?

- *“The company was formed in 2010”*
- *“The partners signed a partnership agreement on the date of incorporation”*

Key terms and expressions

Glossary: are they synonyms?

- Business organisation and company
- Sole trader and sole practitioner
- Legal person and individual
- Company and corporation
- To form, to set up, to incorporate
- Partner and member

UK limited liability companies

Categories of **limited liability companies** in U.K.:

- **limited by shares**, with the purpose of profit;
- **limited by guarantee**, mainly designed for not-for-profit activities.

Limited liability companies by shares and by guarantee are divided into **private companies** (ltd) and **public companies** (plc).

Company incorporation process in UK

Incorporation by registration with the Registrar of Companies (U.K.) can be carried on through

- the Companies House Web Incorporation Service
- a Formation Agent
- on paper forms sent directly to Companies House

Incorporation documents: memorandum of association, articles of association, application for registration

Incorporation of a limited liability company in UK

Contents of the **application** for registration:

- the type of company
- the new company's proposed name
- the address of the new company's registered office
- a statement of capital and initial shareholdings (total number of shares, the total nominal value and the rights attaching to the shares, etc.)

Incorporation of a limited liability company in UK

- a statement of the new company's proposed officers (directors, company secretary, etc.)
- the new company's **articles of association** (model articles/amended model articles/bespoke articles)
- a statement of compliance

The Companies House will then register the company and issue a **certificate of incorporation**.

Key terms and expressions

- Memorandum of association(UK)/articles of incorporation or charter (US)
- Articles of association (UK)/bylaws (US)
jointly referred to as ‘incorporation documents’ or ‘constitutional documents’
- Statute = Act of Parliament
- Law = piece of legislation, legal system
- Rule = principle of law

Appointment of directors

Company directors are generally appointed at **shareholders' meetings** by ordinary resolution or **by the existing directors** ('power to co-opt') - a communication must be sent to the Registrar of Companies.

- private limited companies (ltd) → at least 1 director
- public limited companies (plc) → at least 2 directors

Directors' duties and powers

- **Management** of the company's business
- Decision-making: passing resolutions at meetings of the **board of directors** (generally according to a majority rule)
- Power to act as **agents** of the company and **delegation** of powers (i.e. to a Managing Director or to an internal committee)

Termination of office

- Termination of directorship:
 - **Termination** upon the occurrence of a specified event
 - **Resignation** (at will) by prior notice
 - **Retirement** by rotation provided in the articles
 - **Removal** by the shareholders by ordinary resolution
 - **Disqualification** by the court

Key terms and expressions

- To manage the company's business
- To delegate powers to the managing director
- To confer powers to the directors
- To exercise the general powers of management
- To provide directors' termination of office
- To remove a director from office
- To impose legal duties upon directors

Membership rights

A shareholder may, depending on the class of share(s), be entitled to:

- attendance at **meetings** and **voting rights**
- **dividends**
- **capital redemption** on solvent liquidation
- **transfer** its shareholding
- **pre-emption rights**

Classes of shares

Common classes of shares:

- **Ordinary shares:** voting rights, right to dividends, right to capital redemption on solvent liquidation
- **Preference shares:** no voting rights, preferential right to a fixed dividend and to capital redemption on solvent liquidation

Transfer of shares

Transfer of shares in a company may be ruled by

- Articles of association
- Shareholders' agreement, if any
 - exercise of **voting rights** (veto power)
 - **limitations and restrictions** on the transfer of shares – **lock-up clause, pre-emption rights**

Shareholders' meetings

- **Annual general meetings** (A.G.M.) and **general meetings** (G.M.) of shareholders
 - approval of the accounts, declaration of dividends
 - appointment of directors and auditors
- ordinary, special and written **resolutions**

Company board and meetings

Meetings must be convened and held according to the rules set forth in the articles:

- **notice/call** (date, time and place of meeting, agenda, statement about proxy)
- **attendance** (in person or by proxy)
- **quorum**
- **voting** (on show of hands or poll)

Mergers and Acquisitions

A **merger** occurs when one company (merged company) is absorbed into another company (surviving company) and ceases to exist (also called **merger through incorporation**).

An **acquisition** may take place through: (i) an **asset deal** (business transfer agreement), or (ii) a **share deal** (shares acquisition agreement).

Negotiation process and pre-contractual liability

The parties set forth the rules governing the negotiation process in the following **preliminary agreements**:

- **Non-disclosure Agreement (or Confidentiality Agreement)**
- **Letter of Intent (or Memorandum of Understanding)**

Due Diligence

In corporate transactions, due diligence is an **investigation** process concerning information and data of a **target** company.

A due diligence can be **full** or **limited** (e.g. business/financial/industrial/legal/environmental due diligence)

A **pre-acquisition due diligence** is carried out in view of an intended acquisition. It provides pre-contractual in depth analysis and reduces the risk of post bargain litigation.

Execution Date and Closing Date

The parties to the transaction usually provide the effects of the sale to be **deferred** to **Closing**, due to **conditions precedent** (e.g. antitrust clearance, government authorisations) or **formalities** to effectively transfer the assets (e.g. notarial deeds for the transfer of real property).

Corporate transactions: common provisions

Price Adjustment clause

The value of the target may change in the period between the execution of the agreement and the Closing Date and also afterwards. For this reason a **price adjustment** clause may be provided in the contract.

Representations and Warranties

Representations and warranties are contractual guarantees regarding the legal and substantial status of the target company.

- **Legal Warranties** cover corporate aspects (including compliance and full title guarantee)
- **True, complete** and **correct** financial statements
- **Business Warranties** cover quality and consistency of **assets** (including stock, goodwill, contracts) and the conduct of business

Indemnity

As a consequence of **misrepresentations** or other liabilities by one party, the other party will be **indemnified** and **held harmless** from any claims/ liabilities/loss or damage.

Liability may be contractually limited (e.g. in time by a **term** or in quantity by providing an **aggregate liability** or **liability cap**).

Generally, the contractual indemnification is provided as an **exclusive remedy**.

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