

LEGAL ENGLISH COURSE

Torino, 10-17-24 Ottobre 2014

LESSON 3



aiga

Associazione Italiana :: ::

Giovani Avvocati :: ::

SEZIONE DI TORINO

www.sligneducation.com – info@sligneducation.com

Business organisations

A business can be carried out through different types of business organisations.

1. **sole trader**: one-person business, unlimited liability

2. **partnership**: no legal personality, joint and unlimited liability

3. **company**: legal personality, limited liability (corporation in U.S.)

Business organisations

Partnerships and **companies** are business organizations with the purpose of profit.

They differ mainly for:

- **legal personality** of the business organization;
- **nature of liability** of persons held out as partners or members;
- **sharing profits and losses** of the business organization.

Partnerships

In the course of carrying out the partnership's business, the partners will incur debts and other obligations. **Partners are liable for the debts and obligations** of the partnership without limit → **unlimited liability.**

Liability of partners to outsiders is joint; each partner is liable for the entire obligation → **joint liability**

Different types of partnerships in U.K.

General partnership → A general partnership involves two or more owners carrying out a business purpose. General partners share equal rights and responsibilities in connection with management of the business, and any individual partner can bind the entire group to a legal obligation. Liability is several and joint among the partners, meaning that each partner is liable for the entire obligation.

Different types of partnerships in U.K.

Limited Partnership (LP) → it is an incorporated business organisation where one or more **general partners** run the business and have unlimited liability for the debts of the partnership. One or more **limited partners** make their contribution to the LP but do not take part in the management of the business; their liability is limited to the contribution. LPs need registration to be formed.

Different types of partnerships in U.K.

Limited liability partnership (LLP) → it is a hybrid between a partnership and a limited company. The LLP may be formed by one or more members, needs registration to be incorporated as a **legal person**, and members have **limited liability** for the debts of the LLP. The main users of the LLP structure are professional firms (such as firms of solicitors and accountants).

Limited liability companies

A **company** is a corporation with rights and obligations distinct from those of its members. Liability of members is limited to the contribution made to the company's capital → **limited liability**.

The limitation of liability of members is the consequence of the incorporation of an artificial legal person → **legal personality**.

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 charitable purposes.

Companies limited by shares are divided into **private companies limited by shares** (ltd) and **public companies limited by shares** (plc).

Private limited companies (ltd)

In U.K. a **private limited company (ltd)** must be incorporated in accordance with the provisions of Companies Act 2006. A private company must be registered to be incorporated as a **legal person**.

Members have **limited liability** for the company's debts. The company can issue **shares** but cannot offer them to the public in order to raise funds.

Public limited companies (plc)

In U.K. a **public limited company (plc)** must be incorporated in accordance with the provisions of Companies Act 2006. A public company must be registered to be incorporated as a **legal person**. Members have **limited liability** for the company's debts. The company may offer its **shares** to the public and apply to join the stock markets as a publicly-traded (or listed) company.

Limited liability companies

Other differences between private and public companies:

- no **minimum capital requirement** for private limited companies / £50,000 for public companies;

- two **shareholders** needed for public companies / **single person** private companies are allowed.

Incorporation process

The registration of a company takes place through the submission of the incorporation documents →

- **memorandum of association (UK)/articles of incorporation (US)**
- **articles of association (UK)/bylaws (US)** .

Incorporation documents

Company registration takes place through the submission of the incorporation documents

Company details:

- **business name**
- **registered office**
- **company's objects**

Incorporation documents

- **statement of capital and initial shareholdings**
(number, classes of shares and nominal value of shares)
- **type of company**
- **liability of members**
- **association and subscription clause**

Articles of association

Articles of association

The articles set forth the rules and regulations for the **company's management** and **corporate governance** and provide various contents, such as:

- **company officers** (directors, company secretary, supervisory boards, etc.)

Articles of association

- shareholders'/board **meetings** and **resolutions**
(notice/call, quorum, voting procedure)
- **shares** (classes of shares, issuance procedure, transfer of shares) and **dividends**
- Powers of **directors** (appointment, removal, resignation, etc.)

Company's management

The power to take decisions on behalf of a company is divided between **directors** and **members**.

There are a number of **powers** which are exercisable only by the members, such as the power to change the name, objects, articles, share capital and various powers in relation to the issue of shares and meetings.

Directors

The **powers of directors** are laid down in the articles and include in particular the power to **manage the business** of the company.

Generally, decisions of the directors must be taken either at a **board meeting** at which a quorum is present or by unanimous agreement, subject to the director's power to delegate, e.g. to a **managing director**.

Shareholders' rights

The powers and rights given to **members** depend in many cases on the holding of a particular proportion of the company's shares or votes.

Membership rights

- **subscription** of shares and **register of members** (shareholding, number and class of shares, amount paid on each share)

Shareholders' rights

- **classes of shares** (ordinary and preference shares)
- **voting rights** (depending on the class of shares)
- **meetings** (calling, resolutions, etc.)
- **dividends** (and other distributions)
- **pre-emption rights** (also dealt with in the shareholders' agreement, if any)

Shareholders' rights

A **dividend** is a payment to the shareholders of the company which provides them with a return on their investment.

Company's profits available for distribution are **realised profits** which have been so declared by the board of directors. Should the company by ordinary resolution declare dividends, directors may decide to pay **interim dividends**.

Shareholders' rights

The capital of a company may be divided into preference and ordinary shares.

Ordinary shares are a class of shares which entitles the shareholder to voting rights and dividends. **Preference shares** are a class of shares giving the holder a preferential claim to dividends and to corporate assets upon liquidation.

Shareholders' rights

The transfer of company shares may be limited or prevented by means of **rights of pre-emption** (or preemptive rights).

A right of pre-emption may create a shareholder's privilege to purchase newly issued shares or to be offered the purchase of another shareholder's shares before they are offered to third parties.

Shareholders agreement

A **shareholders' agreement** is entered into at the time of the company's incorporation or subsequently.

Generally, the purpose of this agreement is to limit or restrict the shareholders **right to sell their shares** and to restrict or determine the **exercise of the voting right** by the shareholders.

Dissolution and winding-up

Winding-up (or **liquidation**) of a company is the process by which the life of a company is brought to an end. Voluntary **liquidation** refers to a process which may be instigated by the members where the company is solvent.

Once the liquidation process is complete, the company is **dissolved**.

Insolvency proceedings

Insolvency proceedings are aimed at dealing with companies in a state of insolvency, i.e. companies which are unable to pay their debts.

In case of cross-border insolvency, the **Council Regulation 1346/2000** provides rules for dealing with insolvency at an international level (main proceedings and secondary proceedings).

Bibliografia e sitografia

Legal English Dictionaries:

- ◆ *Dizionario di Inglese Legale Applicato, EN>IT, IT>EN, S. de Palma, Filodiritto Editore 2012*
- ◆ *American Legal English: Using Language in Legal Contexts (English for Academic and Professional Purposes), Debra Suzette Lee, Charles Hall, Marsha Hurley, University of Michigan Press/ESL;*
- ◆ *Black's Law Dictionary-Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, Henry Campbell Black, Martina N. Alibrandi, M. J. Connolly, St. Paul, Minn. West Publishing Co.;*
- ◆ *Burton's Legal Thesaurus, W.C. Burton, MacMillan Reference Books;*
- ◆ *Cassell English-Legal Dictionary and Handbook, Samuel Jarman, Cassell Academic;*
- ◆ *Dictionary of Law, P.H. Collin, Peter Collin Publishing;*
- ◆ *Dictionary of Legal Terms, Steven H. Gifis, Barron's;*
- ◆ *Law Dictionary: Technical Dictionary of the Anglo-American Legal Terminology Including Commercial and Political Terms, Von Beseler, B. Wuestefeld, De Gruyter;*
- ◆ *Mellinkoff's Dictionary of American Legal Usage, David Mellinkoff, West Pub Co;*
- ◆ *Real Life Dictionary of the Law, Gerald N. Hill and Kathleen Thompson Hill, General Publishing Group.*

Bibliografia e sitografia

Online Legal English Dictionaries:

- ◆ <http://www.encyclo.co.uk/cat/Legal>
- ◆ <http://dictionary.law.com>
- ◆ <http://dictionary.lp.findlaw.com/>
- ◆ <http://legal-dictionary.thefreedictionary.com/>
- ◆ <http://www.duhaime.org/LegalDictionary/A.aspx>
- ◆ <http://www.nolo.com/dictionary/wordindex.cfm>
- ◆ <http://www.lawinfo.com/lawdictionary/>

Law books:

- ◆ “*Cases and Materials in Company Law*”, L. Sealy, S. Worthington, Oxford University Press 2011
- ◆ “*Business law*”, Stephen Judge, Palgrave MacMillan, 2010
- ◆ “*English Legal System*”, Ed. Sweet and Maxwell 2010
- ◆ “*English for Contract and Company Law*”, Chartrand, Millar, Wiltshire, Ed. Thomson, London 2008
- ◆ “*Sale and Purchase Agreement: un contratto commentato*”, G. De Nova, Giappichelli Ed.