UNIVERSITY OF CAPE COAST

SBU 101
FUNDAMENTALS OF BUSINESS 1

Chapter Three

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TOPIC

LEGAL FORMS OF BUSINESS ORGANIZATIONS

OVERVIEW

- Legal forms of business organisations are structures through which businesses operate, each with its unique legal framework, liability implications, and tax requirements.

- Common forms include sole proprietorships, partnerships, limited liability companies (LLCs), cooperatives, and state-owned enterprises (SOEs), each catering to different business sizes, funding needs, and risk profiles.

SOLE PROPRIETORSHIP

- One person owns a sole trader business, although the organisation may employ more than one person.
- The sole trader's business will trade under the owner's name or a name chosen by the sole trader/owner.
- The sole trader must comply with the Registration of Business Names Act, 1962 (Act 151) as amended in 2012 (Act 837)
- Sole traders should avoid using a name registered to someone else.
- It is an unincorporated business owned and operated by one person.

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SOLE PROPRIETORSHIP

- It is the most common form of ownership.
- In Ghana, the owner has to meet business name registration requirements for tax purposes.
- A sole trader business is the simplest type of business organisation and the easiest to establish.
- Operates under minimal legal restrictions, including tax requirements.
- A sole trader can keep all the profits.

SOLE PROPRIETORSHIP

- A sole trader does not need to keep accounts but needs to ensure that they notify the Revenue Agency about their tax liability.
- To minimise tax liability, many sole traders will employ accountants to draw up their final accounts and advise them about tax avoidance (not tax evasion).
- Examples of sole trader businesses include small retailers, plumbers, builders, internet entrepreneurs, operators, barbers, etc.

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ADVANTAGES OF SOLE PROPRIETORSHIP

- Ease of start-up:
  - To start a sole proprietorship, you only need to secure any necessary state and local licenses or registrations.
- Profits:
  - As you are the sole owner of the firm, you are free to take all the profits and use them for whatever purpose you desire.
- Freedom of management:
  - Again, because you are the sole owner of the firm, you have total authority to take any action you see fit

ADVANTAGES OF SOLE PROPRIETORSHIP

- Few legal restrictions:
  - You have the freedom to operate anywhere in the country and to add or subtract products or services as you desire.

- Easy to resolve:
  - The ease of starting is only surpassed by the ease with which you can end it. You just stop doing whatever it is you are doing, and that ends it.
- Taxes:
  - Since you own and operate the firm, as the owner, you, rather than the business, are taxed, so only income tax is paid.

Disadvantages OF SOLE PROPRIETORSHIP

- Unlimited liability:
  - This is the most important disadvantage of a sole proprietorship.
  - There is no legal distinction between you and the business,
  - You are liable for all its debts.
  - If, for example, one of your vehicles incurs an accident, seriously injuring someone,
  - The owner of the property in question, all costs relating to the accident, including that of the injured person, would be borne by you.

Disadvantages OF SOLE PROPRIETORSHIP

- Difficulty in raising capital:
  - All businesses need money to operate and to grow.
  - Some may also need a great deal of money to purchase inventory or seasonal variations.
  - It sometimes becomes extremely difficult for a single person to already have, or to borrow, a large sum of money.

Disadvantages OF SOLE PROPRIETORSHIP

- Maintaining the overall direction of the business:
  - As the business expands, it becomes more complex and, therefore, quite difficult for one person to retain overall control to provide the necessary direction.

- The demise of the firm:
  - The death of the owner terminates the firm.
  - As the business has no separate existence and
  - It is just an extension of the owner; when the owner ceases to function, so too does the business.
  - Should someone else acquire the business, it will then be considered as a new firm.

BUSINESS NAME/SOLE PROPRIETOR REGISTRATION

Did you know you must register your business if you are trading under a business name?read more

- Applicant may pick up a prescribed Form A from the in-house bank or download
- Submit filled forms at the Businessnames Registration Counter for Verification and Capturing or via Online
- Pay processing fee of GHS60.00 at the in-house bank or via Online
- Registrar Examines, Approves and issues Business name Registration Certificate
- CERTIFIED TRUE COPY(CTC) of Form A
- **Renewal each year at GH 25 cedis.**

Source : Registrar general's department

PARTNERSHIP

- A partnership is an association of two to twenty people who operate a business entity as co-owners.
- Two kinds of partnerships:
  - General partnership
  - Limited partnership
- The partnership would have to meet the requirements in the Incorporated:
  - Private Partnership Act, 1962 (Act 152)
  - Public-Private Partnership Act, 2020 (Act 1039).

PARTNERSHIP

- Partnerships often occur in professional services such as doctors, solicitors, etc.
- Partnerships will either adopt the name of the partners or trade under a suitable trading name.
- If the partners do not draw up a partnership agreement detailing the rights and obligations of each of the partners.

PARTNERSHIP

- Then, the Partnership Act will be used to determine the matter in the event of a dispute.

- In practice, partners will often draw up a partnership agreement.
- A partnership agreement
  - It is a written document and will either be in the form of a Deed of Partnership or Articles of Partnership.

PARTNERSHIP

- Both of these types of partnership agreements will usually be constructed by a solicitor and cover the following:
  - Induction and retirement of partners
  - Voting rights of each partner
  - The amount of money each partner is investing in the business
  - How the profit will be distributed amongst the partners
  - The procedures will be used to settle disputes/differences between partners.

PARTNERSHIP

- As in the case of a sole trader, the partnership has unlimited liability,
- This means that each of the partners is liable for the whole of any debt that the partnership incurs.
- A general partnership is one variation of the partnership vehicle wherein all partners participate actively in operating the business, sharing all the responsibilities involved in running the firm.
- Additionally, managing the partnership becomes increasingly complex. However, too many equal partners make decision-making almost impossible.

TYPE OF PARTNERS

- General partner:
  - Participate actively in the operation of the business, sharing all t
responsibility, profits and liabilities.

- Limited partner:
  - Has limited liability and does not take an active part in the management of the company.
- Secret partner:
  - An owner who takes an active role in the business but who does
want to reveal his/her identity to the public.

TYPE OF PARTNERS

- Silent partners:
  - An owner who takes no active part in the business but may be known to the public
- Dormant partner:
  - An owner who plays no active role and at the same time remains unknown to the public as a partner
- Nominal partner:
  - An individual who does not own the business but suggests to others by words or deeds that he is a partner

TYPE OF PARTNERS

- Senior partner:
  - A general partner who has been with the partnership a long time and owns a large share of the business.
- Junior partner:
  - An individual who has been with the business a short time and is not expected to assume great responsibility for major decisions.

THE PARTNERSHIP AGREEMENT

- A partnership Agreement is a written document that sets forth all the terms under which the partnership is to operate.

The agreement contains:

- Name of partnership.
- Purpose of the business.
- Duration of the partnership – how long the partnership will operate.
- Name and legal address of all partners.
- Contribution of each partner to the business which may consist of cash, building skills etc.

THE PARTNERSHIP AGREEMENT

- Terms specifying the distribution of profits and losses
  - since the income and expenses of the partnership are treated as ordinary income and expenses as far as state taxes are concerned
- Terms specifying the compensation of the partners
  - Some partners may be paid a salary or commission because of their activity in the business.
- Definition of profits
  - Since each partner is entitled to a specific percentage of profits, it is best to know how profits are determined, which expenses are costs of doing business and which are personal

THE PARTNERSHIP AGREEMENT

- Provisions for answering questions
  - These deal with how a new partner may be added or an old one deleted, how the partnership will be dissolved or sold and how assets will be distributed.

- Provisions governing how the absence or disability of a partner will be handled
  - e.g., will the partnership continue, and will the salary asset distribution remain the same?
- Provisions for altering the partnership agreement
  - With changing times and circumstances, partnership agreements should contain provisions to accommodate change.

RIGHTS OF PARTNERS

- Share in the management of the business.
- Share in the profits of the business.
- Receive interest on any advance made to the business.
- Receive compensation for expenses having to do with the business.

RIGHT OF PARTNERS

- Have full access to the books and records of the partnership
- Receive formal accounts of all business affairs
- Obligations of Partners.

SOME OBLIGATIONS OF PARTNERS

- Share in partnership losses
- Work, if necessary, without salary
- Make available to all partners information regarding business affairs.
- Abide by the majority vote of the partners' decisions regarding the operation of the partnership
- Give formal accounts of all business affairs.

COMPANY

- A company is an association of individuals united for a common purpose. It is permitted by law (Company Act, 2019 Act 992) to use a common name and change its members without dissolving the association.
- This is a business owned by a group of people who do not want to have unlimited personal liability for the debts of the business.
- The owners are not personally responsible for the debts of the business, so personal assets such as homes and personal bank accounts are safe

COMPANY

- Companies are managed by directors and owned by shareholders.
- The share owned by each person will often reflect the size of their investment in the company.
- In the case of small companies, the directors and shareholders are usually the same people
- A company must be registered at the Registrar of Companies Office. Every year, each company has to send to the Registrar an annual return and financial statements.
- This is because the accounts for the limited company have to be audited and made available to the public.

FORMATION DOCUMENTS

- Prior to its formation, the promoters would have to provide two important documents;
  - Memorandum and
  - Articles of associations.

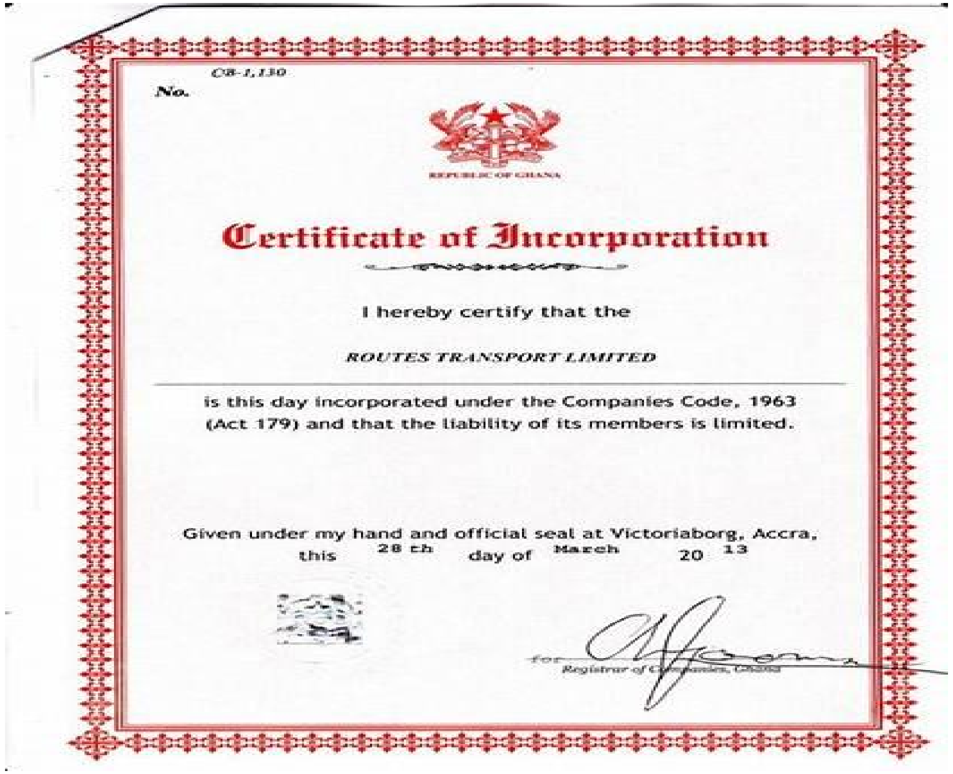
MEMORANDUM

- The Memorandum states:
  - the company's name
  - location
  - Share capital
  - And what the company can and can’t do (this latter section is contained in an “Objects Clause”).

ARTICLES OF ASSOCIATION

- Articles of Association can loosely be described as the "rulebook of the company" because they will describe the conduct expected of/from the directors and govern administrative matters and the calling of meetings.
- The article of association is the legal document that governs how a company is run.

Certificate of incorporati


No. CB-1,130

REPUBLIC OF GHANA

Certificate of Incorporation

I hereby certify that the

ROUTES TRANSPORT LIMITED

is this day incorporated under the Companies Code, 1963 (Act 179) and that the liability of its members is limited.

Given under my hand and official seal at Victoriaborg, Accra, this 28 th day of March 20 13

for Registrar of Companies, Ghana

- The Certificate of Incorporation, often referred to as the "birth certificate" of a company and is issued (in the form of a single sheet of paper) by the Registrar of Companies, is conclusive evidence the company is duly incorporated under Act 992.
- The Certificate of Incorporation details when the company was formed, the company name and the company number.
- The company, which carries on a business in its name, exists as a separate entity in the eyes of the law.
- It can raise capital by either selling ownership (stock) or by borrowing (issuing bonds).

TYPES OF COMPANIES

- Section (7) of the Company Act 992 states that an incorporated company may be;
  - a company limited by shares
  - a company limited by guarantee
  - an unlimited company
  - an external company

TYPES OF COMPANIES

- Sec (9)(2) of the code states that a company of any of the foregoing types may either be a
  - a public company ;
  - Private company
    - Sec (9)(3) states that a private company shall be a company which by its regulation;
      - ❖Restricts the right to transfer its shares, if any,
      - ❖Limits the total number of its members and debenture holders to fifty
      - ❖Prohibits the company from making any invitation to the public to acquire any shares or debentures of the company; and
      - ❖Prohibits the company from making any invitation to the public to deposit money for fixed periods

ADVANTAGES OF FORMING A COMPANY

- Limited liability
- Perpetuity
- Funding sources
- Transfer of ownership
- Separation of ownership from management
- Expansion and contraction

DISADVANTAGES OF FORMING A COMPANY

- Cost, time and paperwork
- Taxation
- Red tape, paperwork and regulations
- Perils of increasing capitalisation
- State control
- Charter restrictions

COMPANY LIMITED BY SHARES(PRIVATE AND PUBLIC)

Company Limited by Shares is an association between two and fifty people with a set of objectives for either profit or non-profit basis. There are shareholders who are the owners of the company and directors, secretary and auditors who are the officers of the company. Its liability is limited ... read more

- Applicant may purchase a set of Limited Liability Forms from the in-house bank or via download
- Provide Consent letter from certified auditor by the Institute of Chartered Accountants, Ghana and must be registered as a Sole Proprietor/Partnership
- Form 3 must be witnessed by Commissioner for Oaths/Notary Public/Self-Declared
- A minimum of two directors is required. Each must submit Statutory Declaration & Consent Letter with the registion Form
- Submit filled forms at the Company Registration Counter for Verification and Capturing or via Online
- Pay two hundred and thirty Ghanaian Cedi (GHS 230) for Incorporation or via Online
  Also Filing fee of GHS 180 and 1% stamp duty on stated capital at the in-house bank or via Online
- Registrar Examines, Approves & Issues :
  Certificate of Incorporation
  Certified Copy(CTC) of Standard/Registered Constitution of the Company
  Certified Copy(CTC) of Form 3
- File Annual Returns at 60GHS together with Audited Account

Source : Registrar general's department

UNLIMITED LIABILITY COMPANY(PRIVATE AND PUBLIC)

Unlimited Liability Company has the same composition as a limited liability company except that the liabilities of its owners are unlimited. It is usually registered by professional body such as Law firms, Auditing and Architectural firms read more

- Applicant may purchase a set of Limited Liability Forms from the in-house bank or via download
- Provide Consent letter from certified auditor by the Institute of Chartered Auditors and must be registered as a Sole Proprietor/Partnership
- Form 3 must be witnessed by Commissioner for Oaths/Notary Public/Self-Declared
- Submit filled forms at the Company Registration Counter for Verification and Capturing or via Online
- Pay two hundred and thirty Ghanaian Cedi (GHS 230) for Incorporation or via Online
  Also filing fee of GHS 180 and 1% stamp duty on stated capital at the in-house bank or via Online
- Registrar Examines, Approves & Issues :
  Certificate of Incorporation
  Certified Copy(CTC) of Certificate to Commence Business
  Certified Copy(CTC) of Standard/Registered Constitution of the Company
  Certified Copy(CTC) of Form 3
- File Annual Returns at GHS 60 together with Audited Account

Source : Registrar general’s department

COMPANY LIMITED BY GUARANTEE(PRIVATE OR PUBLIC)

This is a company that has the liability of its members limited to amounts that they respectively undertake or guarantee to contribute to the assets of the company in case of liquidation.The company is also not permitted to make profits, for example social enterprises, non-governmental organizations (NGOs), churches and charities

- Applicant may purchase a set of prescribed regulations and a set of Form 3A from the in-house bank or via Download
- Provide Consent letter from certified auditor by the Institute of Chartered Auditors and must be registered as a Sole Proprietor/Partnership
- A minimum of two directors/executive members is required. Each must submit Statutory Declaration & Consent Letter with the registion Form
  A minimum of one subscriber required.
  Secretary (Corporate Body Acting as A Secretary/ Individuals) required.
  Private Company Limited by Guantee can have 2 to 50 members
- Form 3A must be witnessed by Commissioner for Oaths/Notary Public/Self-Declared
- Submit filled forms at the Company Registration Counter for Verification and Capturing or via Online
  Pay processing fee of GHS270.00 at the in-house bank or via Online
- The Registrar issues:
  Certificate of Incorporation
  Certified Copy(CTC) of Standard/Registered Constitution of the Company
  Certified Copy(CTC) of Form 3A
- File Annual Returns at Fifty Ghanaian Cedi(GHS 50) together with Audited Account

Source : Registrar general’s department

BOARD OF DIRECTORS

- The board is elected by the stockholders
- And is charged with overseeing the general management of the firm
- To ensure that it is being run in a way that best serves the stockholder's interest.
- The board should be a diversified one.
- Diversity in skills, knowledge, experience, age, gender and ethic
- Boards have the scope to consider a wider range of perspectives and generate a richer, more informed discussion of issues facing the company.

RESPONSIBILITY OF THE BOARD

- Setting corporate strategy, overall direction, mission, or vision
- Hiring and firing the CEO and top Management
- Controlling, monitoring, or supervising top management
- Reviewing and approving the use of resources
- Caring for shareholder interests.
- Mediating top management disputes and disagreements.
- Approving important financial decisions and reporting these to shareholders.

BOARD MEMBERSHIP

- Generally, the smaller the company is, the less active is its board of directors.
- The board tends to be dominated by directors who are also owner-managers of the company.
- As the company grows and goes public, the boards become more active in terms of roles and responsibilities.
- Internal directors or management are officers or managers employed by the company.
- But those from outside may be executives of other firms and not employees of the board's company.

CORPORATIVE SOCIETIES

- A certain number of business units are non-profit.
- They are formed to confer on their members certain benefits in the way of club facilities, discount trading or value for money.
- They make profits on the year's trading, but these are not profits in the normal commercial meaning of the word.
- They represent overpayment by the members for the services they have received and are usually called surpluses.
- The main idea of some early cooperative societies was to buy foodstuffs at wholesale prices and sell them (to members only) at market prices. Cooperatives have been set up in and across towns and villages in Ghana.

FRANCHISING

- **Franchising** is a business model in which a franchisor grants the rights to an individual or company (the franchisee) to operate a business under the franchisor's brand, name, and established system.
- The franchise owner will pay the owner (of the business idea) money to use their business idea.
- The person selling the idea is known as the **Franchisor,** and the person purchasing the right is known as the **Franchisee.**
- A good Franchise example is McDonald's business, a KFC business that will allow others to use their trading name for a fee/share of the profit.

CHARITIES/NOT-FOR-PROFIT ORGANISATIONS

- The overriding objective of these types of organisations is something other than making a profit
- Organisations aiming to look after the needy , a charitable group providing for the homeless, famine-stricken, mentally ill, and the elderly , e.g., Help the Aged
- Organisations aiming to provide educational services or arts organisations.
- Organisations aiming to protect the environment.

STATE-OWNED ENTERPRISES

- **State-owned enterprises (SOEs)** are businesses or organisations owned and operated by the government.
- They are established to provide essential goods and services, support economic development, and sometimes generate revenue for the state.
- SOEs exist in various sectors, including energy, transportation, healthcare, and banking.
- While they can drive national progress, they may also face challenges like inefficiency, political interference, and financial mismanagement.
- Effective governance and strategic management are key to their success.

STATE-OWNED ENTERPRISES

Examples of state-owned enterprises include:

- •Electricity Company of Ghana,
- •Ghana Water Company,
- •Ghana National Petroleum Corporation (GNPC),
- •Volta River Authority (VRA) , etc.

REASON FOR SETTING UP STATE OWNED-ENTERPRISES

- Natural right.
- Security
- Fundamental importance.
- Social necessity.
- Natural monopolies
- Heavy capital cost

PRIVATIZATION

- Privatization refers to transferring ownership, operation, and control of a government or public entity to a non-government or private enterprise.
- The process is carried out to make sure the public firm or organization becomes more disciplined and more efficient with respect to the market's expectations.
- There are multiple ways in which privatization could be achieved.
- As a result, the stocks of the companies become inaccessible to the general public (Chandra, 2018).

REASONS FOR PRIVATIZATION

- Improved efficiency
- Enhanced competition

- Better revenue generation
- No external influence
- Diversified functioning

METHODS OF PRIVATIZATION

Asset Divestiture

- This is the process whereby the government or public sector operators raise capital by issuing the firms to private investors.

Public Tender

- Companies sell their shares to those with the highest bid presented through a public tender

Infrastructure partnership

- As the name implies, this type of partnership between public-sector and private-sector firms le to collaborations to handle infrastructure development, involving huge expenditure.

ADVANTAGES OF PRIVATIZATION

- Resources are efficiently used
- Facilitates healthy competition
- Risk-sharing with government
- No political influence
- Enhanced productivity

DISADVATAGES OF PRIVATIZATION

- Private players may enter the market, establishing a monopoly
- Less transparent
- Higher cost to consumers

DIVESTITURE

- A divestiture (or divestment) is the disposal of a company's assets or a business unit through a sale, exchange, closure, or bankruptcy.
- A partial or full disposal can happen, depending on why management opted to sell or liquidate its business resources.
- Examples of divestitures include selling intellectual property rights, corporate acquisitions and mergers.

Reasons for divestiture

- To sell off redundant business units.
- To generate funds.
- To increase resale value
- To ensure business survival or stability.
- To comply with regulators.

How is a divestiture carried out?

- Companies divest to efficiently manage their asset portfolio. There are multiple options to go about the process and effectively execute the disposition.
  - Partial sell-offs
    - Selling a business subsidiary to another company to raise capital and apply the funds to more productive core units instead.
  - Spin-off demerger
    - A business strategy wherein a company's division or unit is separated and made into an independent company.

How is a divestiture carried out?

- Split-up demerger
  - When a company splits up into one or more independent companies, the parent company is consequently dissolved or ceases to exist.
- Equity carve-out.
  - A corporate approach wherein the company sells a portion of its wholly-owned subsidiary through initial public offerings or IPOs and still retains full management and control.

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