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## What is a Company

⇒ Until the middle of the 19<sup>th</sup> century, the only way to do business was as a sole trader or as part of a partnership.

↳ Under both of these models, the proprietors were entirely responsible and liable for the actions of the business.

⇒ To drive the new economy forward, the concept of the limited liability company was introduced.

⇒ A limited company allows investors to risk only the piece of the share they buy in the company.

↳ When company become insolvent they lose their investment, but nothing more.

↳ This allows a separation of responsibility between:

Those that own the company  
(Shareholders)

Those that run the company  
(Directors)



### 3.1) The Company as a legal entity

⇒ The Limited Liability company is incorporated as an independent legal entity.

↳ It is recognised almost as a person in its own right.

↳ It has right to own property, make contracts and has legal liability over its action.

↳ Company can even entirely own other companies.

### # Types of Companies

⇒ There are four basic types of company that can be formed to carry out commercial activities.

⇒ First two are Sole trader & partnership.

⇒ Anyone can trade as a sole trader or as part of a partnership.

↳ There is no registration process and no legal need for any formal agreement or paperwork.

⇒ The only office action you need to take is to notify the tax authorities of your changes status and additional income.



⇒ The vast majority of start-up companies are however formed as Limited Liability Company

↳ To form a Limited company, you need to register it with the state.

↳ This is equivalent of obtaining a birth certificate for the company and normally involves a small set of forms to be completed, together with the preparation of the company's constitution.

⇒ For completeness, the fourth form of commercial company is the Public Limited Company or PLC

↳ Essentially, the structure is the same as for a limited company, but the shares are offered to the public.

↳ Most PLCs have shares that are traded on a public stock market, but this is not always the case.

## # Company Constitution

⇒ To regulate a company two documents are required, The Memorandum of Association and Article of association



Memorandum → regulate the external affairs

Articles → regulate the internal affairs

Memorandum → States the purpose for which the company has been established.

→ Shareholders are therefore aware of the purposes to which their funds are being put.

Articles → Regulates how the company manages its internal affairs

- Rights of the shareholders.
- Requirements for meetings.
- Power of the Directors
- ability of the company to borrow money and purchase properties.

→ The articles are a much longer document but a number of standard templates have emerged.

→ Most private companies formed in the UK use a standard template for their Articles known as Table A.



## # Role and rights of Shareholders

⇒ Each Shareholder has a voting right on certain company decisions.

↳ The more shares an individual owns, the more votes they have and therefore, the greater their control of the company.

⇒ Shareholders hand over the management of the company to the directors.

⇒ Shareholders <sup>(Resolution is put forward)</sup> are required to vote on matters that affect the structure of the company.

↳ Change name

↳ make any alteration to the memorandum or articles of association

↳ When the company wants to issue new shares.

### Resolutions

#### Ordinary

{ To pass more than 50% of  
share need to approve it }

#### Extraordinary

{ To pass more than 75%  
of share need to approve }



⇒ The company's article of association set out the decisions to be treated as extraordinary or special resolutions.

⇒ The shareholders have the right to appoint and dismiss directors usually through an ordinary resolution.

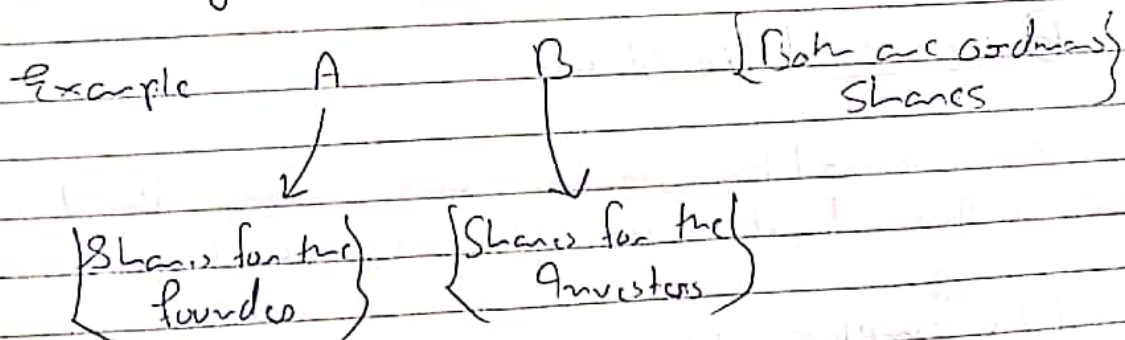
## # Company ownership and types of shares

### ① Ordinary shares

⇒ In the simplest cases, all the shares of a company will be the same and will be 'ordinary' in nature.

### Classes of shares

⇒ Within a share there can be different classes with slightly different rights between them.



{ Both can have different voting rights }

⇒ This is used to control founder always have the control over appointment of board of directors.



## ⑤ Preference shares

⇒ The dividend paid to ordinary share is uncertain and variable.

→ high if the company is doing good.  
→ low if it performs badly.

⇒ Preference share are a type of share that exists to provide some shareholders with a specific fixed dividend ahead of ordinary shareholders.

⇒ Do not normally have voting rights.

## ⑥ Redeemable shares

⇒ Redeemable shares are shares that the issuing company has the right to buy back from the shareholder.

## ⑦ Convertible shares

⇒ Convertible shares are shares that have the ability to change type and number.

## ⑧ Complex shares

⇒ Each of these special share type can be used in isolation or their properties can be merged to create complex shares.



## # Share option scheme

⇒ Share options are promises that the company makes to allow the purchase of shares in the future at a fixed price.

## 3.4) Shareholders agreements

⇒ In addition to the memorandum and articles which governs the behaviour of the company, shareholders can enter into additional agreements

→ To regulate the relationship between them and also to overcome any potential problem caused by a majority shareholding.

## 3.5) Roles and duties of directors

⇒ If a company is an independent legal entity, the directors are its mind and will.

⇒ Purpose of board of directors:

- Determine the mission of company
- Set strategy to achieve it.
- allocate the resources. etc...

⇒ Directors are accountable to the shareholders.



⇒ Unlike shareholders, each director on the board has a single ~~the~~ vote and all votes are considered equal.

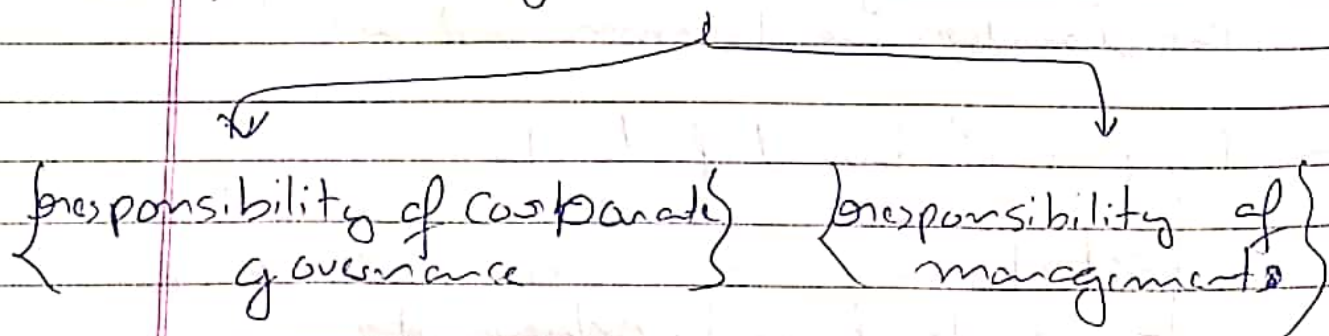
↳ Even if they are the majority shareholders, director can be outvoted in the board level decision.

⇒ The distinction between the board and the management can become blurred within a small start-up company.

↳ But it is important to try to separate the two roles.

## # Board Composition

⇒ Executive directors, which might include a managing director, technical director, marketing director etc. have dual roles.



⇒ There are likely to be times when there are conflicts of interest between the two roles.



⇒ The inclusion of strong and effective non-executive directors on the board will often help to address such conflicts and tensions.

⇒ Different aspect of the board <sup>responsibilities</sup> ~~responsibilities~~ can be dealt with through board committees.

→ Audit Committee

→ planning Committee etc.

## # Director's duties

→ Fiduciary duties

→ Duties of care and skill

→ Duties of interest management

→ Duties to third parties

→ Criminal acts

→ Duties during the winding-up of the company.

## !! Insolvency

⇒ A company becomes insolvent when it no longer has the financial means to settle its debts.

⇒ A good corporate lawyer will be very important to your company as it progresses.