Handout 10 Company law

### Internet search

* AGM
* Piercing the corporate veil
* pre-emptive rights
* articles of association

### Teach your neighbours

**Text 1: What is a rights issue?**

A rights issue is an offering of rights to the existing shareholders of a company that gives them an opportunity to buy additional [shares](https://corporatefinanceinstitute.com/resources/knowledge/accounting/stockholders-equity-guide/) directly from the company at a discounted price rather than buying them in the [secondary market](https://corporatefinanceinstitute.com/resources/knowledge/finance/secondary-market/). The number of additional shares that can be bought depends on the existing holdings of the shareowners. Companies undertake a rights issue when they need cash for various objectives. The process enables the company to raise money without incurring [underwriting](https://corporatefinanceinstitute.com/resources/knowledge/finance/underwriting-overview/) fees. A rights issue gives preferential treatment to existing shareholders, where they are given the right (not obligation) to purchase shares at a lower price on or before a specified date. Existing shareholders also enjoy the right to trade with other interested market participants until the date at which the new shares can be purchased. The rights are traded in a similar way as normal equity shares.The number of additional shares that can be purchased by the shareholders is usually in proportion to their existing shareholding. Existing shareholders can also choose to ignore the rights; however, if they do not purchase additional shares, then their existing shareholding will be diluted post issue of additional shares.

(<https://corporatefinanceinstitute.com/resources/knowledge/finance/rights-issue/>)

**Text 2: Who are “limited partners” and “general partners”?**

A limited partnership has both limited and general partners. A limited partner is one who does not have total responsibility for the debts of the partnership. The most a limited partner can lose is his investment in the business. The trade off for this limited liability is a lack of management control: A limited partner does not have the authority to run the business. He is really more or less an investor in the business.

A limited partnership must have at least one general partner. The general partner or partners are responsible for running the business. They have control over the day-to-day management of the business and have the authority to make legally binding business decisions. The partnership agreement will specify exactly which partner or partners have certain responsibilities and which have certain authority. General partners are also subject to unlimited personal liability for the debts of the business. The general partners of a limited partnership are also jointly and severably liable for the debts of the business, just like partners in a general partnership. (<https://www.alllaw.com/articles/business_and_corporate/article12.asp>)

**Text 3: What are ordinary and preferred shares?**

Ordinary shares, also called common shares, are stocks sold on a public exchange. Each share of stock generally gives its owner the right to one vote at a company shareholders' meeting. Unlike in the case of preferred shares, the owner of ordinary shares is not guaranteed a dividend. The vast majority of shares sold on all of the U.S. stock exchanges are ordinary shares. An ordinary share represents a fraction of ownership in the corporation that issues it. As an owner, the shareholder gets a vote in the company's major decisions, decided at its shareholder meetings. The shareholder may or may not receive a dividend. The company's board of directors decides whether a dividend will be awarded, and how much it will be. The dividend represents the stock owner's share of the profits of the corporation over the past quarter or year.

A corporation may also issue preferred shares. These are a kind of hybrid of a stock and a bond. Their owners are guaranteed a set dividend payment. The price of the shares may rise or fall but is not as volatile as the common stock price. Investors in preferred shares are motivated primarily by the steady income from dividends.

(<https://www.investopedia.com/terms/o/ordinaryshares.asp>)

### Vocabulary in context

1. In the United States, there are no formalities that must be followed to start a **sole proprietorship** or **commence business** as a **sole proprietor (sole trader)**.
2. In a **general partnership** (commonly referred to as simply a “partnership”), each partner has unlimited liability for all of the partnership’s debts.
3. **Limited liability partnerships** (**LLPs**) allow for a partnership structure where each partner's liabilities is limited to the amount they put into the business.
4. A **limited partnership** (LP) exists when two or more partners unite to conduct a business in which one or more of the partners is liable only up to the amount of their investment. The **limited partners** have no management authority, and are not **liable for the debts** of the partnership. **General Partners** thus bear more economic risk than do limited partners, and in cases of financial loss, the GPs will be the ones which are **personally liable**.
5. *UK*: A **private limited company**, or **LTD**, is a type of privately held small business entity, in which owner liability is limited to their **shares**, the firm is limited to having 50 or fewer **shareholders**, and shares are prohibited from being publicly traded.
6. *UK*: A **public limited company** (legally abbreviated to **PLC**) is a limited liability company whose **shares** may be freely sold and traded to the public.
7. *US*: In a **limited liability company (LLC)** the owners are not personally liable for the company's debts or liabilities.
8. A company may be **set up** within the EU in the form of a **European public limited-liability company (Societas Europaea** or **SE)** on the conditions and in the manner laid down in this Regulation.
9. A **legal entity** has legal capacity to enter into agreements or contracts, **assume obligations**, **incur** and pay debts, sue and be sued in its own right, and to be held responsible for its actions.
10. The **corporate tax** rate is 15%.
11. In Latvia, **personal income tax** law was introduced in 1 January 1994.
12. A **promoter** acts on behalf of a corporation before it is formed. The promoter may be, but doesn't have to be, the same person as the corporation's **incorporator**.
13. The person who signs the memorandum of association with the company becomes a **member**.
14. A **dividend** is a cash payout a company gives **stockholders**.
15. As a company **director**, you must follow the company’s **constitution**.
16. The **board** **of directors** are directly accountable to the shareholders and each year the company will hold an **annual general meeting (AGM)** at which the directors must provide a report to **shareholders**.
17. During both types of meetings, it is common for **resolutions** to be passed. A resolution is simply a majority or **unanimous** decision taken by the directors or members on a particular matter pertaining to the business.
18. A corporate group or **group of companies** is a collection of **parent** and **subsidiary** corporations that function as a single economic entity through a common source of control.
19. *UK*: **Memorandum of association** is a document that regulates a company's external activities and must be drawn up on the formation of a registered or incorporated company. As the company's charter it (together with the company's **articles of association**) forms the company's **constitution**.
20. When your UK company formation is approved by Companies House they will create a Company **Certificate of Incorporation**.
21. *US*: Company **bylaws** are the rules that govern how a company is run and one of the first items to be established by the board of directors at the time a company is started.
22. *US*: **Articles of Incorporation** refers to the highest governing document in a corporation. The Articles of Incorporation generally include the purpose of the corporation, the type and number of shares, and the process of electing a board of directors.
23. A **rights issue** is an invitation to existing shareholders to purchase additional new shares in the company.
24. The **preemptive right** is a right belonging to existing shareholders of a corporation to avoid involuntary **dilution** of their ownership stake by giving them the chance to buy a proportional interest of any future issuance of common stock.
25. A **security** is a tradable financial asset.
26. **Ordinary shares** are also known as **equity shares**, or as **common stock** in the US. They carry voting rights in the company concerned.
27. If the company enters bankruptcy, **preferred stock (preference shares)** holders are entitled to be paid from company assets before common stock holders.

### Video: Governing the Corporation: Corporate Bylaws (Lawshelf) 0-6:30

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| What are corporate bylaws and how are they adopted? |  |
| The terms set forth in the bylaws…. |  |
| Difference between bylaws and articles of incorporation |  |
| Which issues are typically addressed in the bylaws? |  |
| The hypothetical ABC company’s bylaws – the provisions on the officers |  |
| The hypothetical ABC company’s bylaws – the provisions on the stockholder meetings |  |
| The hypothetical ABC company’s bylaws – the provisions on the voting requirements |  |
| Tailoring x standardising bylaws |  |
| Amending bylaws |  |

### Opening a meeting

*Arrange the following sentences chronologically*

1. After the coffee, we´ll **work through till** 11 o´clock.
2. Does everybody have a copy of the **agenda**?
3. First of all, I´d like to introduce myself to everybody. I´m Martin Svoboda, a partner at Svoboda Legal.
4. Petra Křížová, the head of our litigation team, **sends her apologies**.
5. Good morning everyone. If we're all here, **let's get started**.
6. Let´s **start the meeting by looking** at the agenda.
7. Now this is my new personal assistant, Ms. Jana Slavíková.
8. She is going to **take the minutes**.
9. She is **taking her annual leave** at the moment.
10. **The plan is that** we should work **from now till** 10.
11. Then there will be a short **break for coffee**.
12. We plan to finish the meeting at about 11am.
13. Well, let´s begin with some **organisational matters**.

### A problem question

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| Karel started making garden furniture in his shed as a hobby after he was made redundant two years ago. Over that period, he started selling his furniture to local people and now he has a reputation and a number of orders. Such is the demand that he is seriously considering setting up his own business, and OBI (a DIY store) has suggested that they would be prepared to order 300,000 CZK worth of furniture a month if Karel could guarantee delivery. Karel’s cousin Martin wants to join him in running the business but has told him that they must form a registered company if they are to expand their operation, particularly as they would need to rent larger premises and hire a number of workers if they were to meet the order from OBI. If the business is good, Karel considers forming companies in other European countries as well. This all sounds a little daunting to Karel and so he seeks your legal advice. |

### Meeting

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|  | Tasks |
| Person A (Chairperson ) opens the meeting and then invites the client to present his request. | *Welcome*  *Introduction*  *Apologies*  *Agenda* |
| Person B (Client Karel) presents his case | *“made redundant”* |
| Person C (Lawyer) presents information on a sole trader | *Is it a suitable business form for Karel? Explain.* |
| Person D (Lawyer) presents information on an unlimited company[[1]](#footnote-1) (“veřejná obchodní společnost”). | *Is it a suitable business form for Karel? Explain.* |
| Person E (Lawyer) presents information on a limited partnership company[[2]](#footnote-2) (“komanditní společnost”). | *Is it a suitable business form for Karel? Explain.* |
| Person F (Lawyer) presents information on a limited liability company. | *Is it a suitable business form for Karel? Explain.* |
| Person G (Lawyer) presents information on a joint stock company (public limited company). | *Is it a suitable business form for Karel? Explain.* |
| Persons H (Erasmus Lawyers) present information on a suitable business form in their respective European countries. | *The appropriate business form + advantages* |
| Person I (Lawyer) briefly summarises the business forms that could be appropriate for Karel |  |
| Person J (Lawyer) briefly summarises the business forms that are totally inappropriate for Karel |  |

### Articles of Association

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| **PROCEEDINGS AT GENERAL MEETINGS**  58. All business shall be deemed special that is transacted at an Extraordinary General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and the reports of the Board and Auditors, the election of Directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the Auditors.  59. No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the General Meeting proceeds to business; save as herein otherwise provided, two (2) Members present in person or by proxy shall be a quorum. At all times when the Company has one (1) and only Member, one (1) Member present at the General Meeting in person or by proxy shall be a quorum.  60. If within half an hour from the time appointed for the General Meeting a quorum is not present, the General Meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the Board may determine, and if at the adjourned General Meeting a quorum is not present within half an hour from the time appointed for the General Meeting, the Members present shall be a quorum.  61. The Chairman, if any, shall preside as chairman at every General Meeting of the Company, or if there is no such Chairman, or if he shall not be present within fifteen (15) minutes after the time appointed for the holding of the General Meeting or is unwilling to act, the Directors present shall elect one of their number to be chairman of the General Meeting.  62. If at any General Meeting no Director is willing to act as chairman or if no Director is present within fifteen (15) minutes after the time appointed for holding the General Meeting, the Members present shall choose one of their number to be chairman of the General Meeting. |

1. Is the necessity to hire a new secretary considered “special business”?
2. Are the proposed increased fees for the auditors classified as “special business”?
3. With only three members attending the general meeting, is this number sufficient to pass resolutions?
4. Max, one of the three members intending to participate, provided a power of attorney to John. Is the number of members present at the meeting sufficient?
5. John, the member intending to participate, was delayed by a traffic jam and arrived late for the meeting. What is the likely outcome based on the text?
6. What happens if none of the directors of the company is willing to act as the chairman of the general meeting?

### Case reconstruction: a landmark case in company law

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| “Management control of PRL has always been in the hands of the husband, ostensibly as chief executive under a contract of employment conferring on him complete discretion in the management of its business. The judge found that none of the companies had ever had any independent directors. The husband is a director of PRL Nigeria, but otherwise the directors are all nominal or professional directors, generally his relatives, who accept directions from him. The directors of PRL are Mr Murphy (the principal of its corporate secretary) and a lady in Nevis who appears to have been the couple's cleaner there.” |

*The parties to the case:*

*The facts:*

*The legal issue:*

### Revision

1. sole proprietor
2. limited partner
3. public limited company
4. legal entity
5. corporate tax
6. incorporation
7. memorandum of association
8. AGM
9. group of companies
10. subsidiary
11. bylaws
12. preemptive right
13. dividend
14. members
15. board of directors
16. securities
17. ordinary shares

1. The translation proposed in Chromá, M. (2021). *Introduction to legal English: 2020* (2nd ed). Karolinum, p. 269. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)