

INCORPORATION OF COMPANIES

For a Limited Company to be incorporated under the Companies Act 2014 it must prepare and file with the Registrar of Companies the following (Section 17(1)):

- a. Memorandum & Articles of Association or a Company Constitution in the case of a Private Limited Company
- b. Statement of Nominal Capital
- c. The minimum shareholding needed to qualify to be a director of the company
- d. Directors' written consent to act
- e. A declaration of compliance with the Act in relation to incorporation, normally declared by a Solicitor.
(all of the above are set out as fields of date in the standard Form A1)

TYPES OF COMPANIES:

There are 4 types of companies:

Private Limited Company – by far the most common form of company. Generally, the directors, the management and the shareholders are the same persons. If the company meets the size criteria, then it can avail of certain exemptions: exemption from filing full financial statements in the Companies Registrations Office and exemption from an audit of the financial statements by an independent firm of Registered Auditors.

Designated Activity Company – used by companies to restrict their activities to just one or two principle objects.

Company Limited By Guarantee not having a share capital – this form of company is used mainly by the Charities and other “Not For Profit” entities.

Public Limited Company – the form adopted by large / publicly listed companies.

- **PRIVATE COMPANIES** (Section 14(4))

For a company to be a private company, it must meet 3 strict conditions:

- a. Restrict the right to transfer shares (they must firstly be offered to existing shareholders before being offered to 3rd parties)
- b. The number of members must not exceed 50
- c. Prohibit the invitation to the public to subscribe for shares or debentures (i.e. not listed on a stock exchange)

- **CHARACTERISTICS OF LIMITED COMPANIES:**

- a. It is a separate legal entity, quite distinct from the shareholders.
- b. It can sue and be sued in its own name in law.
- c. The liability of the shareholders is limited to the amount of their paid up capital (known generally as “Limited Liability”).
- d. It can survive the death of any shareholder as shares are transferrable property.
- e. It must comply with the Companies Acts, particularly in relation to:
 - i. Formation procedure
 - ii. Maintenance of Accounting Records
 - iii. Financial Statements and Audit (if not audit exempt)

- iv. General Meetings (these no longer apply to Private Companies unless opted for)
- v. Content of Memorandum and Articles of Association OR in the case of a Private Company, the Company Constitution.
- f. In large companies, routine decisions are taken by Management, strategic decisions are taken by the Board of directors.
- g. In the case of almost all private companies, the directors, the management and the shareholders are the same people (e.g. “Personal Service Companies” used by Subcontractors in the IT and Pharma sector through which to charge for services provided, normally on an exclusive basis).

MEMORANDUM AND ARTICLES:

These tend to be very detailed documents and apply to all companies other than Private Limited Companies:

a. **Memorandum of Association:**

Provides information for people not generally involved in the company. There are 5 " Clauses"

- i. Name clause: All companies should have a unique name.
- ii. Situation of the Registered Office of the company.
- iii. Objects clause: Sets out the activities which the company may engage in.
- iv. Clear statement of Limited Liability viz that the liability of the shareholders is limited to their contributed capital.
- v. Statement of Nominal Capital – generally set at 1,000,000 shares. This is not necessarily the amount of shares actually issued.
- vi. Directors' written consent to act and Secretary's consent also.

b. **Articles of Association:**

Are basically a set of rules governing the internal running of the company. The members are bound by these rules and they include:

- i. When general meetings should be convened.
- ii. Notice period for the convening of meetings and proposal of resolutions to be considered.
- iii. Rules governing the transfer of shares (important for Private Companies).
- iv. Authorisation limits of Directors re: Contracts, Loans, etc.

Many companies adopt the Model Sets of Memorandum and Articles of Association when they are being set up. These are referred to as Table A, Table B (most common) and Table C. They are set out as Schedules to the principle Act which is the Companies Act (2014).

Share Capital

Types of Shares:

Preference Shares:

These are shares which carry a fixed dividend which is paid out of profits before ordinary dividends. On a “Winding Up”, preference shares are repaid before ordinary shares. Preference shares do not carry voting rights at general meetings.

Ordinary Shares:

Holders of ordinary shares vote at General Meetings. They carry no fixed dividend and if there are no profits, there can be no dividends. They are the last to be repaid on a “Winding Up”. The value of these shares reflect future earnings potential

Debentures:

There are loans by 3rd parties to the company. A document called an “indenture” is drawn up and sets out:

- i. Repayment dates.
- ii. Date interest is due and payable.
- iii. Details of security (if any).
- iv. Procedures to be followed if the company defaults (i.e. Appointment of a receiver to recover the debt).

The differences between shares and debentures can be summarised as follow:

Shareholder	Debenture Holder
A shareholder is a part owner of the company.	A debenture holder is a creditor of the Company.
There is no security of Capital.	A debenture is normally secured.
A shareholder is remunerated by a share of profits (if any).	A debenture holder is paid interest which must be met whether or not profits are made.
A preference share has priority over an ordinary both as to dividend and repayment of capital.	A debenture has priority over both preference and ordinary shares both as to interest and repayment of capital.
Dividends are paid out of “After-Tax” profits.	Interest is deducted in computing profits (i.e. Tax Allowable).

SHAREHOLDERS' MEETING

There are 3 types of shareholders' meetings:

1. Statutory Meeting (Public companies only):

Held between 1 month and 3 months after commencing business. 14 days notice is given. The Statutory Report is laid before the meeting and gives information about the company, the shares issued, the directors and the secretary and any contracts requiring approval by the shareholders.

2. Annual General Meeting (AGM)

Held once in each calendar year. The maximum time of elapse from one AGM to the next AGM is 15 months. The first AGM must be held within 18 months of incorporation. The business conducted includes:

- a. Consideration of and approval of the financial statements and directors' report
- b. Declaration of a dividend.
- c. Election and re election of offices
- d. Appointing and fixing the remuneration of auditors (if no audit exempt)

The above business is "normal" business and a simple majority is required to approve resolutions. Any other business is deemed special business and a 75% majority is required.

3. Extraordinary General Meeting (EGM)

Any other meeting is an EGM. EGMs are convened to consider extraordinary business only. Example: acceptance of take over bids, engagement in non-routine contracts, decision to voluntarily wind up the affairs for the company.

An EGM can be convened by shareholders without the approval of the directors, provided those calling the meeting hold at least 10% of the equity capital or voting rights.

- **Resolutions:**

Ordinary Resolution

- Relate to normal business only.
- Proposed at AGMs.
- Requires a simple majority (51%) to be passed.
- 14 days notice required.

Extraordinary Resolution

- Special business.
- Can be proposed at AGMs & EGMs.
- Requires $\frac{3}{4}$ ths majority to be passed.
- 14 days notice required.

Special Resolution

- Special business.
- Proposed at EGMs only.
- Requires a $\frac{3}{4}$ ths majority to be passed.
- 14 days notice required.

<u>SOLE TRADER</u>	<u>PARTNERSHIP</u>	<u>LIMITED COMPANIES</u>
FEATURES:	FEATURES:	FEATURES:
Normally a small business. Easy to form. No legal requirements in formation other than registration of business name. Proprietor is the sole decision maker.	An association of people carrying on a business with a view to profit. Membership cannot exceed 20. Deed of partnership is drawn up. Must register business name. Partnership cannot survive the death of a partner. Joint decision makers. Each partner empowered to commit partnership into contract. In recent years, partnerships permitted to avail of limited liability ("LLP" typically follows the business name).	Corporate body which can sue and be sued under its own name. i.e. separate legal entity. It can succeed owners. Number of members is unrestricted (except in the case of a private company cannot exceed 50). Must conform with Companies Act (2014) re: formation, accounts and meetings. Decisions are taken by board of directors appointed by the shareholders in general meeting. In large companies, routine decision making normally delegated to management.
	REGULATED BY:	REGULATED BY:
	Partnership Act 1890	Companies Act (2014)
ADVANTAGES:	ADVANTAGES:	ADVANTAGES:
Enjoy all profits. Decision making process straight forward.	Greater access to capital leading to growth prospects; decisions are shaped by partners. Decisions can be good as Partners may come from a varied background with complementary experiences i.e. blend of dissimilar skills.	Substantial access to capital so that growth prospects are good for viable companies. Decision making can be very effective given composition of the board. Limited Liability. The shareholders control the composition of the board.
DISADVANTAGES:	DISADVANTAGES:	DISADVANTAGES:
Wholly liable for all debts. Makes all decisions unaided. Advice difficult/costly to obtain. Limited sources of finance available (personal funds, borrowing power, accumulated profits). Suffers all losses.	Unless "LLP", then jointly liable for all debts. High possibility of disagreement leading to break-up of the partnership. Decision making process might be slowed up. Must have complete trust in one other which might not be forthcoming.	A lot of legal requirements which must be met. Eg. AGM, annual accounts, annual audit, prospectuses. Profit shared by all members. Possible disagreement among directors which could lead to poor decision making.