

## **CHAPTER ONE: INTRODUCTION TO COMPANY**

### **1. What is a company?**

A Company is body corporate created by incorporation under the law as a way to embrace the collection of individuals organised into what is known as corporate aggregate.

### **2. Types of companies**

#### **i) statutory companies**

These companies are or were formed under the special Acts of Parliament, which carefully define their powers. They are usually known as Statutory Authorities or Bodies are under the state control. E.g.: Bank Pertanian Malaysia, Petronas, Majlis Amanah Rakyat (MARA)

#### **ii) registered companies**

Companies are formed under the Companies Act 1965.

### **Types of registered companies**

#### **1. Companies limited by guarantee**

A company limited by guarantee is one which the liability of the member is limited by the memorandum to the amount which the members have undertaken or “guaranteed” to contribute to the assets of the company on winding up.

Usually these companies are formed for the purpose of providing recreation, religion, charity, art, science or any other and not involving the acquisition of profit but supported by subscription of their member.

The name for guarantee companies shall have the word “Berhad”.

#### **2. Unlimited companies**

A Company formed on the principle of having no limit placed on the liability of its members. The members are responsible for the whole liabilities of the company. The unlimited liability of a member will only arise if the company wound up and unable to meet its debts. A past member will only be liable if he had been ceased to be a member less than a year prior to the winding up. An unlimited company with a share capital may be private or public company.

#### **3. Companies limited by share**

A company is formed on the principle that members’ liability is limited by the memorandum of association to the amount if any unpaid on the share taken by them. There is no further liability attached to the holder of fully paid up share. He will not be required to contribute to the payment of the company’s debts should the company becomes insolvent.

#### 4. Private Companies

Have the following characteristics:

- It must have a share capital, i.e. is a company limited by share.
- Its memorandum or articles.
- Restrict the right to transfer its share
- Limit not more than 50 members
- Prohibit any invitation to the public to subscribe for any share in or debentures of the company; and
- Prohibits any invitation to the public to deposit money with the company for fixed period or payable at call, whether interest bearing or interest –free.
- The name of the company will normally ends with the words “Sendirian Berhad”.

#### 5. Exempt Private Companies

- A private company, which has less than 20 members and none of them whom, is a corporate body.
- It need not lodge audited account with the Registrar of Companies if it can satisfy certain condition.
- Normally will consist of family member who wished to avoid the consequences of a partnership.
- It may make loans to its directors or persons connected with the directors.

#### 6. Public Company

- A public company may offer shares and debentures to the public for subscription and the shares are freely transferable.
- Shares of the company may be offered to the public to raise the capital of the company.
- Shares are normally offered by way of prospectus, however an approval from the Securities of Commission must be obtain first. The company name will ends with “Berhad”.
- Private individual as well as the public may contribute capital of the company at large.

#### 7. Foreign Company

A foreign company desiring to establish a place of business within Malaysia must be registered. S332 (1) sets out the documents required to be lodged with the CCM for this purpose. Once the CCM issues a certificate in the prescribed form, it will be conclusive evidence that the requirement for registration has been complied with.

- Place of business in Malaysia.
- Encourage business transaction in Malaysia.
- Exemption of tax for 5 years.
- Only foreigner will be allows starting a foreign company.
- If cease operation must inform within 7 days to Registrar of Company.

## **A. ADVANTAGES ENJOYED BY A COMPANY**

The fact of incorporation gives the company several advantages over the partnership:

1. Upon incorporation the company becomes in law a separate legal entity distinct from its members: S 16(5) Companies Act 1965, and also as established in the case of *Salomon v Salomon & Co Ltd*.

The partnership, however, is an unincorporated association and does not have an identity separate and distinct from the partners themselves. It is a mere association of persons.

2. The property of the company belongs to the company and not the individual members.

*Case: Macaura v Northern Co. Ltd.*

The partnership, on the other hand, having no legal personality cannot hold land in its own right. The property of the partnership belongs to the partners collectively.

3. The company can sue and be sued in its own name: Sections 16(5) and 350 of the Companies Act 1965. Thus, an action against the company is not an action against the members of the company.

On the other hand, the partnership does not enjoy this advantage. An action against the partnership is essentially an action against the partners themselves.

4. The limited company has limited liability. This means that the members' liability for the company's debt may be limited to the amount unpaid on their shares. In the case of a company limited by guarantee, their liability may be limited to the amount of guarantee given by each member.

In the case of the partnership, each partner will be liable to the full extent of the firm's debts.

5. The company has perpetual succession. This means that the death of any member does not result in the dissolution of the company.

In the case of the partnership, the death of a partner will result in the dissolution of the partnership.

6. Shares in a company are generally more freely transferable although in private companies there would usually be a restriction on the right to transfer shares.

In a partnership, however, when a partner wishes to leave the partnership, it would usually result in dissolution of the firm.

7. In a private limited company, the maximum number of members is 50. In a public limited company, there is no such limitation.

The number of members in a partnership is ordinarily limited to 20. There is however no limit for partnerships formed for purposes of carrying on a profession or calling.

8. The company also enjoys an advantage in relation to borrowing power. Companies may give security in the form of a floating charge in addition to a fixed charge or a guarantee.

The partnership may only rely on fixed charges and guarantees as security. It cannot create floating charges.

## **B. DISADVANTAGES OF A COMPANY**

While companies enjoy the above privileges, they also suffer a few disadvantages:

1. The formation of a company requires the satisfaction of cumbersome formalities.
2. There are many disclosure requirements that companies have to meet.
3. There are also many rules under the Companies Act 1965 that have to be complied with.
4. On the other hand, the formation of a partnership is simple, and may be formed informally.

Company	Partnership
A company must have a written constitution ie, memorandum and articles of association.	There need not be a written partnership though it is usual.
A company is a separate legal person so may (i) Own property, (ii) contract in its own name, (iii) sue/be sued in its own name. Shares in a company are in principle transferable though the rights of transferable though the right of transfer may be restricted.	A partnership is not a separate person- the partners personally (i) Own property, (ii) are liable on contracts, (iii) are liable if sued A partner cannot transfer his status as partner to someone else without the consent of all other partners.
There is no maximum number of members; but for a public company there is a minimum of two. The owner (members) of a company as such is neither its managers (directors) nor its agents. Capital subscribed by members for their share cannot ordinarily be returned to them but (in a limited company) they are not liable for its debts once they hold fully paid shares.	The maximum number of partners is 20. However most professional partnerships are no longer subject to a maximum. The owners (partners) are entitled to share in its management and are agents of the firm for carrying on its business in the usual way. Partners may withdraw capital but are still liable without limit for firm's debts to its creditors.

Companies can borrow in the same way as individuals but only in the same way as individuals but only for purposes covered by their objects. They can use current assets as security by creating floating charge. Both in their formation and in their subsequent trading and other activities companies are subject to a number of statutory rules of procedure and supply of information available to the public.	Partners have unrestricted powers of borrowings in terms of amount and purpose. They cannot create floating charge but can mortgage fixed assets.  Partnership may be created informally and need not disclose any information about their affairs (except to the registrar of businesses).
The dissolution of a company usually entails a formal liquidation.	Partnership can be dissolved by mere agreement of the partners but the creditors have first claim on the assets and some general legal principles apply.

### Learning outcome

- 1) Identify the different types of company.
- 2) Identify the differences between company and partnership.
- 3) Understand and appreciate the characteristics of different types of companies that are available in commercial transaction.

### Exercise

- 1) What are the two forms of limitation of liability?
- 2) What is the most important advantage a public company enjoys in comparison to a private company?
- 3) What is the main (ie, structural) difference between a company and a partnership?
- 4) Make a comparison between a private and public company.