

# 5 Company law terminology

## COMPANY LAW TERMINOLOGY IN CONTEXT

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Two points should be borne in mind:

- Even though the company law of EU Member States has gone through a process of harmonisation, there are still some differences between the Member States. This affects the use of terminology.
- There are also differences in terminology between England and the USA, which students and practitioners should be aware of to avoid confusion. A good example is the word **company** itself, which is used rather differently by English lawyers than by American lawyers.

This chapter will first take a brief look at the terminology associated with unincorporated forms of business organisation. It will then focus on the terminology of company law.

### 5.1 Which form of business enterprise?

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### 5.1 Which form of business enterprise?

If you are going to set up a business, you must choose whether to operate as a sole trader, a partnership or a company. To make an informed choice, you must be aware of the legal structure of these different types of business organisation.

One of the main legal distinctions in the classification of business enterprises is between enterprises that are **incorporated** and those that are **unincorporated**. The distinction is a very important one because of its legal consequences. Incorporation makes a business a separate **legal person**. An unincorporated business organisation is not a separate legal person. It is a **natural person** because the person (or persons) and the business are seen as one and the same.

## 5.2 Unincorporated business organisations

### 5.2.1 Sole trader

A **sole trader** is basically a one-man business. If a person operates a business alone, the business and the owner are one. The sole trader is entitled to the profits of the business but he is also responsible for its losses. If the business is in debt, then the sole trader is **personally liable** for those debts. This means that his private property, for example his home, can be called upon in order to pay off the creditors.

The advantage of operating as a sole trader is that you are your own boss. The disadvantage is that if your business fails, you risk losing everything.

**Note:** a sole trader is called a **sole proprietorship** in the USA.

### 5.2.2 Partnership

If you would rather work together with other people than alone, you might like to set up a partnership. A **partnership** is just a term used to describe the relationship between people who carry on a business together, with the intention of making a profit from that business. Partnerships are also referred to in English law as **firms** and the name under which their business is carried on is called the firm name.

There are a number of differences between the legal structure of a partnership and that of a company.

Table 1. *The characteristics of a partnership*

Legal person	Legal requirements	Decisions	Tax	Liability
No. Natural person.	Few.	A partner can bind other partners as an agent of the firm.	Income tax.	Personal liability of the partners Joint and several liability.

- **Unincorporated**, it is not a separate person in law. It is formed by the individual partners who are **natural persons**.
- There are few legal requirements as to how a partnership should be set up. You do not need to **register** a partnership. You do not even need a written agreement between the people who are going to form the partnership. However, it is usual, and indeed sensible, to make a written agreement, which is called a **deed** or **articles of partnership**.
- In English law, every partner is an **agent** of the firm. That means if a partner enters into a contract that is to do with the business of the partnership, it is as if the whole firm entered the contract. But a partner can only bind the firm if the contract is in the **ordinary course of the business**. For example, if a partner in a software firm enters into a contract to buy himself a private yacht, that would not be anything to do with the business of the partnership and then the other partners are not bound by the contract.
- The partners pay income tax as they are taxed as natural persons.
- If the partnership goes into debt, and the partnership is **dis-solved**, the creditors will be paid out of the **partnership property**. However, if that is not enough, the partners are then **personally liable**. That means their personal property can be taken to pay off the debts. **Joint and several liability** applies: a creditor can sue all the partners or any single one of them for the money he is owed.

The advantage of a partnership is that there are fewer legal requirements for a partnership than for a company. The disadvantage is that partners can be personally liable for the debts of the partnership. It is because of the personal liability of partners, that some partnerships are structured in a different way in order to limit that liability. These are the **limited partnership** and the **limited liability partnership**.

<sup>N</sup> Note: in English law, the word **firm** describes a partnership and it cannot be used to describe a **company**. A firm cannot be a company. That is different in the USA. American lawyers often use the two words interchangeably. This is because, under American law, the term company also covers the term partnership. Take the following example from an American textbook on corporate governance: 'Furthermore, when one firm controls a number of other firms held in the form of subsidiaries, the parent firm is referred to as a holding company.' Such a sentence would not be possible in an English legal textbook.

### 5.3 Incorporated business organisations

The most important form of incorporated business organisation is the **registered company**. In English law, a company is defined as an association of persons formed for the purpose of carrying on business in the name of that association. It must be **registered** and is then legally **incorporated**.

If you set up a registered company, the company is a separate **legal person**, separate from you. The advantage of the company being a legal person is that, in general, you will not be personally liable for the wrongful acts or the debts of the company. The disadvantage of choosing to do business in the form of a company is that there are many legal requirements which you must fulfil.

Table 2. *The characteristics of a company*

Legal person	Legal requirements	Decisions	Tax	Liability
Yes. It is incorporated as a separate person at law.	Many. A company must register and make public its annual accounts.	The main decision is the board making body of directors. Shareholders in the AGM can veto or approve board resolutions.	Corporation tax.	In general no personal liability. Directors will only be held personally liable for a breach of duty. Shareholders have no personal liability for the debts of the company once they have paid for their shares.

<sup>N</sup> Note 1: the American legal term for such a registered company is **corporation**. English terminology also refers to corporations; it means either a company or a public authority that has been incorporated. The English often use the term corporation to indicate a large company, for example Shell or Unilever.

<sup>N</sup> Note 2: in this chapter, references to the term 'company' will be used in the English legal sense of the word to mean only an incorporated, separate legal person.

## 5.4 The legal structure of a registered company

The most popular form of registered company is the **limited liability company** (which is the one used as a standard company in this chapter). If a company is a limited liability company, **shareholders** are not personally liable for the debts of the company. Once they have paid for their shares, their liability ends.

Note: shareholders may also be referred to as **members** or **owners** of the company.

### *Legal person*

A company's incorporation creates three separate pillars:

- the company;
- its membership; and
- its management.

Once registered, a company becomes a separate person in law. As a legal person, it can, for example, own property, commit crimes and torts and enter into contracts.

While each individual company is a separate legal person, it is common to find groups of companies headed by a **holding company** (or **parent company**). The business of a holding company consists wholly or mainly in holding shares or securities in one or more companies in the group, which are its **subsidiaries**. A holding company must produce **group accounts**.

## 5.5 Formation of a company

The creation of a new company needs a **promoter**. The promoter's task is to set up a registered company. The promoter will deal with administrative aspects, such as registering the company, but he may also be active in acquiring **capital** for the company and entering into preliminary agreements.

This may require the promoter to enter into **pre-incorporation contracts**. A pre-incorporation contract is where a person enters into a contract on behalf of a company that has not yet been incorporated.

Note: a promoter can be a person, an agency or another company.

## 5.5.1 Registration

To become incorporated, the company must **register**. Once registered, the company will be issued a **certificate of incorporation**. Incorporation in both England and the Netherlands requires detailed documentation that outlines the structure of the company. The procedure can easily take weeks.

Note 1: in the USA, reference is made to **filing** rather than registering.

Note 2: in general, incorporation is a simpler matter in the USA. The requirements of the states vary, but the state of Delaware is famous for its speed in incorporating businesses, with documentation that is sometimes no longer than a page.

## 5.5.2 Types of companies

In English law, an important distinction is made between a **public company** and a **private company**. This distinction is found in many civil law countries, for example Germany and the Netherlands.

### *Public company*

A **public company** may offer its shares to, and borrow money from, the public. For example, as Manchester United football club is now also a public company, you could buy shares in it and become a shareholder. To be incorporated, a public company must have a minimum subscribed **share capital**.

It must be clear whether the company is a public or a private company. For example, the name of an English public company must end with the suffix **public limited company**, which is abbreviated to 'Plc' and a Dutch public company would end with NV.

### *Private company*

A **private company**, unlike a public company, may not offer its shares to, or borrow money from, the public at large. In England a private company does not need a minimum level of share capital to register or commence trading. This is not necessarily the

case in other EU countries. In the Netherlands, for example, a private company is also required to have a minimum level of share capital before incorporation, although that amount is less than the amount required for a public company.

The name of an English private company must end with the word **limited**, abbreviated to 'Ltd'. In the Netherlands, you can see that a company is a private company because it has the initials BV after the name.

## 5.6 The company's constitution

When you register a company, you must hand in the documents that deal with the company's constitution. The constitution of English companies is governed by two main documents: the **memorandum** and the **articles of association**. In practice the memorandum and articles of association are often attached together. In the Netherlands, for example, there is one main constitutional document (the 'statuten'): it contains the same information as the two English documents.

<sup>N</sup> Note: the Dutch term 'statuten' is usually translated by the English term articles of association.

### *Memorandum of association*

The **memorandum of association** is primarily concerned with the external regulation of the company. It contains a number of compulsory clauses:

- the name of the company, whether it is a limited liability company and whether it is a private or public limited company;
- the address of the registered office;
- the **objects clause**: this clause states the business or the purpose for which the company was incorporated;
- the nominal capital of the company and its arrangement of shares.

### *Articles of association*

The **articles of association** deal primarily with the internal running of the company. The document includes articles on:

- organising general meetings;
- the appointment and powers of directors; and
- the types of shares that can be issued.

The articles of association are the bible of the company. If you are a director and act in a way that conflicts with the articles, you will be in breach of your director's duty. Articles are **binding** but they may, nevertheless, be altered by **special resolution** (this is where a 75% majority of the shareholders vote in favour of the change).

<sup>N</sup> Note: in the USA, generally only one document needs to be filed: this document is often referred to as the **articles of incorporation**. It is not as detailed as the English or Dutch documentation. The rules for the internal running of the corporation are set out in a separate document, the **bylaws**, which does not have to be filed.

## 5.7 Financing the company

There are two main ways of bringing **capital** into the company: by issuing shares or by borrowing money.

### 5.7.1 Shares

**Shares** represent the investment of a shareholder in a company. **Share capital** is the term given to the capital raised by issuing the company's shares. Can a company issue as many shares as it wants when it wants to? The answer to that is no: the amount is fixed in the company's memorandum. It is called the **authorised share capital**: the total **nominal value** of the shares that a company is authorised to issue.

<sup>N</sup> Note: in the USA, it is common to refer to shareholders as **stockholders**.

### *Offering shares to the public*

If a public company invites the public to buy its shares, it must give accurate information about those shares. This information is contained in:

- a **prospectus** when shares are being issued by a new company and
- in **listing particulars** if the company is not new, but already listed on the Stock Exchange.

It is against the law to put any untrue information in these documents. It is also against the law for a private company to offer its shares to the public. Information concerning the shares may affect the market value. For this reason, in English law it is a criminal offence for a person to use confidential information about the company in order to buy or sell the shares at a profit. This practice is known as **insider dealing** or **insider trading**.

### 5.7.2 Loan capital

Share capital is not the only source of finance for a company. Credit arrangements are also vital. The term **loan capital** refers to money borrowed by a company, in its capacity as a legal person. A **bond** is a certificate issued by a public company, promising to repay the borrowed money at a specified time, at a fixed rate of interest. A document that acknowledges a credit arrangement between a company and a **creditor** is also known as a **debenture**. A person who has a debenture is also referred to as a **debenture holder**.

The person or institution lending the money may be either a secured creditor, meaning the lender has some form of security in case the company later fails to pay back the loan, or an unsecured creditor, in which case the loan is not protected.

### 5.8 The management of the company

The term **corporate governance** is often used to describe the way in which companies are run. A company is a separate legal person but people must manage it. The directors form the management of the company.

### 5.8.1 Director

In English law, there is no legal definition of **director**. It can be 'any person occupying the position of director, by whatever name called'. This means that a person need not formally have the title 'director' to be one. In practice, the term is applied to anyone who is responsible for the management of a company, because he is on the board of directors and takes part in the decision-making. A director of a company need not be a natural person; a company could act as a director of another company. A director is said to be an **officer** of a company.

#### *Appointment of directors*

All directors, except the very first directors, are appointed according to the rules laid down in the articles of association. The articles usually state that directors will be appointed on an **ordinary resolution** (in other words, if a majority of the shareholders vote for them).

#### *Types of directors*

There are various types of director:

- **Executive director (USA)**: often referred to as an **inside director**: this is usually a full-time officer of a company, with the task of day-to-day management. Many company directors hold service contracts, in other words, they are salaried employees of the company. Sometimes, in small private companies, each shareholder is an executive director. In that case, it is possible that they are not paid as directors.
- **Non-executive director (USA)**: often referred to as an **outside, independent** or **non-management director**: a non-executive director is not a salaried employee, nor is he responsible for the day-to-day management of the company. Non-executive directors are usually chosen for their expertise or public recognition in some particular field. They are not salaried employees, but they are paid for their services. The idea is that they are independent of the company and can be objective.
- **Managing director (or chief executive officer, the CEO)**: this is the director who is in charge of the whole company.

### 5.8.2 Board of directors

The **board of directors** consists of all the individually appointed directors. At its head is the **chairman**, who may or may not also be the managing director.

The board has general management powers, as laid down in the company's articles of association. It is the major decision-making body of the company. It can also delegate powers to committees of one or more directors, or to a managing director or other executive directors. The board has to answer to the shareholders.

**N** Note: in some countries, for example the Netherlands and Germany, there may be two boards: a board of directors and a **supervisory board**. The task of the supervisory board is to advise and supervise the board of directors. Small companies may elect to have a supervisory board, but large companies must have a supervisory board as well as a board of directors.

Be aware that the English and Americans do not have supervisory boards and often tend to find the whole idea a rather odd one.

### 5.8.3 Directors' duties

Although the directors run a company, they cannot treat it as if it were their own property. So if you are a director, you owe duties to the company. You hold your duties to the company as a whole, in other words you are responsible to the shareholders as a body and not to individual shareholders. **Directors' duties** are of two main types: a duty of care and skill, and fiduciary duties.

#### *The duty of care and skill*

This **duty of care and skill** is comparable to the American **business judgment rule**. It is basically a duty not to act **negligently** (see Chapter 3) in managing the company. You are not liable if you have done your best, but you have made a mistake because you did not have specialist knowledge or experience. For example, if you are a director of a life insurance company, that does not mean you have the knowledge of a doctor. The most important thing is that you have acted honestly for the benefit of the company.

**N** Note: more is expected of professional directors than of the directors of a small family business.

#### *Fiduciary duties*

Take the following case: company X wants to **take over** company Y. A director is appointed to make a report on the advantages and disadvantages of this possible take over. That director, however, will make £500,000 if the take over goes ahead. By agreeing to write the report, he has put himself in an impossible position: his personal interests could prevent him from giving independent and impartial advice to company X. If he recommends a take over he gets £500,000; if he does not, he gets nothing. His duty to the company and his personal interests are hopelessly at odds.

The rules concerning **fiduciary duties** are strict. As a director, you must always act with honesty and integrity. You must use your powers for the benefit of the company and not for your own benefit. Where there is a **conflict of interest** between a director's personal interests and those of the company, those of the company must come first. That means, in our example, if you honestly believe the take over is not in the interests of the company, that is what your report must say, even if you will lose the £500,000.

A director should, however, take care not to put himself in such a conflict of interest situation. As a director you are under a duty to **disclose** to the company any personal interests, which could cause a conflict of interest situation. If you act against the interests of the company and in your own interest, you will be in **breach of directors' duties**. A director could be **personally liable** for such a breach.

### 5.9 Auditor

All company **annual accounts** have to be checked by an auditor unless the company is a 'small company', having a turnover of less than a certain amount. An **auditor** is an accountant whose duty it is to investigate and report upon the company's accounts. Although paid by the company, an auditor must remain independent.



## 5.12 Winding up a registered company

If a company is **insolvent** (another term for **bankruptcy**), it will have to stop trading and be brought to an end. A winding up **petition** is then handed in to the court. The company is kept 'alive' as a legal person just as long as is necessary to sort out all of its affairs. This process is known as **winding up**. Once the process of winding up is complete, the **liquidation** of a company has been achieved.

### *The role of the liquidator*

A **liquidator** is appointed to wind up the company. Once appointed, only the liquidator may deal with the **assets** of the company. His role is to take control of the company, gather in the assets belonging to the company and pay off the creditors. There is a fixed **order of priority** in a liquidation. The liquidator cannot choose whom he will pay out and in what order. He must work according to a fixed list. Each category of creditors on the list is paid off in full before moving on to the next category on the list. That means, if there are few assets, creditors lower down on the list will get little or nothing. As you can imagine, creditors with security are in a better position than creditors without security.

### *Alternatives to winding up*

There are circumstances in which winding up the company would not be the best option for the creditors. The company could attempt to reach an understanding with the creditors to avoid insolvency procedures. In some cases, the best option for all concerned may be not to wind up the company, but to help the company get up and running again.

- **Voluntary arrangement:** here a legally binding, voluntary arrangement is made between the company and its creditors. It could be that an agreement is made with the creditors to settle a debt immediately by repaying only part of it or a plan is drawn up to offer a way of paying debts and avoiding insolvency.
- **Administration order:** it may be there is still hope that the company can survive if it is given a chance. In that case, an **administration order** puts the company management into

## 5.10 Disputes between shareholders and management

The board of directors can put forward its decisions, in the form of **resolutions**, to be voted on by the shareholders at the **annual general meeting** (AGM).

In effect it is the **majority shareholders** who make the company decisions. It is difficult for **minority shareholders** to stop a resolution being passed if the majority of the shareholders are in favour of it. In general, minority shareholders cannot look to the courts for support if they are dissatisfied, as the courts will not interfere in matters of internal management.

But what if the management is guilty of fraud, or the directors are in breach of their fiduciary duties, or your rights as a shareholder have been ignored? In certain circumstances, individual members can go to court. This is called bringing a **minority action**. Shareholders can defeat the board of directors by taking action on behalf of the company to prevent wrongdoing or to enforce their own personal rights. An action by a minority shareholder (or minority shareholders) is either a **derivative action**, if the shareholder is suing because of a wrong to the company, or a personal action, if brought by a member to enforce a personal right.

## 5.11 The company in default

It may be the case that a company has failed to repay a loan, or the interest on a loan, to a creditor. This is an **event of default**. The creditor can then appoint a **receiver** to go into the company and make it comply with the terms of the loan. Receivers are often solicitors or accountants.

**Note:** in English legal terminology there is a distinction between a **receiver** and a **liquidator**. A receiver and a liquidator have separate functions, although physically they may be the same person. A receiver is appointed to help a creditor obtain payment of a debt. He is not there to bring a company to an end: this is the task of a liquidator.

the hands of a special **administrator**. The administrator then runs the business. The administrator must be given the opportunity to get the company running in that time. That is why no creditors can demand payment while the order is in place. The order creates a so-called **moratorium**, or **suspension of payments**, for a fixed period.

#### COMPANY LAW VOCABULARY

**Administrator:** a practitioner appointed by an **administration order**. His task is to save the company from being wound up by getting it up and running again.

**Agent:** a person given the authority by a principal to enter into contracts on the principal's behalf.

**Annual accounts:** a detailed record of a company's financial situation that must be produced each year.

**Annual general meeting (AGM):** meeting of the shareholders of a company, which takes place once a year.

**Articles of association:** document which regulates the way a company's internal affairs are managed. It consists of regulations governing the rights of the members and the internal structure of the company.

**Articles of incorporation:** document filed in the USA to incorporate a company.

**Articles or deed of partnership:** written agreement setting out the structure of a partnership. It is not a legal requirement.

**Assets:** property owned by a person or company that has monetary value.

**Auditor:** a member of a recognised body of accountants who examines (called auditing) a company's annual accounts.

**Authorised share capital:** this is the amount of capital a company can raise by selling its shares.

**Bankruptcy:** technically, in English law, this term applies where an individual is unable to pay his debts. A company is said to be insolvent, an individual bankrupt. Informally, it is used to describe both. In the USA, the distinction is not made.

**Binding:** legally enforceable.

**Board of directors:** the board consists of the individual directors. It is the ultimate decision-making body of a company and determines the delegation of power.

**Bond:** a certificate issued by a public company (or government) promising to repay borrowed money at a specified time and at a fixed rate of interest.

**Breach of director's duties:** where a director has acted in a way inconsistent with the duty of care and skill and fiduciary duties owed to the company.

**Bylaws:** in the USA, the internal structural aspects of the corporation are set out in bylaws, which do not have to be filed.

**Capital:** the net worth of a company; money, property and any other assets.

**Certificate of incorporation:** this is issued to a registered company on incorporation.

**Chairman:** an appointed director who presides over meetings of the board of directors and general meetings.

**Company:** in English law, an association of persons formed for the purposes of a business carried on in the name of the association. It is legally incorporated and is a legal person, separate from its individual members. In the USA, the word applies to a wide range of activities and can be used to describe private corporations as well as partnerships.

**Company constitution:** in English law, the constitution of a company is governed by two main documents, the memorandum and articles of association.

**Conflict of interest:** where there is a conflict of interests between a director's personal interests and those of the company, those of the company must prevail.

**Corporate governance:** term often used to describe the way in which companies are directed and controlled.

**Corporation:** in English law, a legal body, such as a limited company or public authority, which has been incorporated. It is often used to indicate a large company. Likewise, in the USA, the term also means an association of shareholders that is a separate legal person.

**Creditor:** one to whom a debt is owed.

**Debenture:** a document acknowledging a debt for a capital sum that is to be repaid by a company on a certain date, with interest payable at a fixed rate. In the London financial markets, the word debenture is used primarily to denote a secured loan. Reference may be made to a naked debenture, which is a debt without security. In the USA, a debenture is usually an unsecured loan.

**Debenture holder:** a creditor of the company.

**Derivative action:** an action by a minority shareholder (or minority shareholders) is a derivative action if the shareholder is suing in the name of the company.

**Director:** in English law, there is no legal definition of director but, according to legislation, the term director includes any person occupying the position of director, by whatever name called.

**Directors' duties:** include the duty of care and skill and fiduciary duties.

**Disclosure:** to disclose involves revealing details about an act or transaction. Directors are under a duty to disclose any personal interest that could lead to a conflict of interest situation.

**Dissolution:** here the term refers to bringing a partnership to an end.

**Dividend:** a sum paid to shareholders by a company when in profit, the amount being in proportion to their shareholding.

**Duty of care and skill:** the so-called **business judgment rule** means that a director must not be negligent in the management of his company, but that he will not be liable for mere errors of judgment.

**Event of default:** an event that means a creditor can now call in his loan.

**Executive director (inside director):** this is usually a full-time officer employed by the company to manage company business.

**Fiduciary duties:** a director is under an obligation to exercise his powers for the benefit of the company and not for his own benefit. He owes a general duty of trust, honesty and integrity towards the company.

**Filing:** in the USA, reference is made to filing rather than registering a company.

**Firm:** partnerships are referred to in English law as firms and the name under which their business is carried on is called the firm name. In the USA, the word company is used synonymously with firm, whereas in English law a firm is never a company.

**Group accounts:** group accounts must be drawn up by a holding company where there is a parent/subsidiary relationship.

**Holding company (or parent company):** the business of a holding company consists wholly or mainly in holding shares or securities in one or more companies within the group, which are its subsidiary companies.

**Incorporation:** the issue of an incorporation certificate creates an independent legal person.

**Insider dealing/trading:** using confidential information about a company in order to buy or sell its shares at a profit.

**Insolvent:** a company is insolvent if it can no longer pay its debts. **Insolvency** procedures will then be followed.

**Joint and several liability:** partners may be collectively liable and individually liable.

**Legal person:** once registered, a company becomes a separate person in law. This artificial legal person can own property, commit crimes and torts and conclude contracts.

**Limited liability company:** in England, a registered company where the shareholders' liability in the event of a winding up is limited to any amount that has not yet been paid for their shares. It is the most usual form of trading company. The American limited liability company is not the direct equivalent of the English limited liability company, as it is something of a hybrid between a corporation and a partnership.

**Limited liability partnership:** is a separate legal entity, giving its members the benefit of limited liability while keeping the internal structure of a partnership.

**Limited partnership:** one where a distinction is made between general partners and limited partners. Limited partners have invested in the company, but have no active function. These limited partners are not personally liable for the debts of the partnership beyond the capital they have invested already.

**Liquidation:** a company is brought to an end, often because of insolvency.

**Liquidator:** the one appointed to supervise the winding up of a company.

**Listing particulars:** document offering shares or debentures to the public where the company is listed already.

**Loan capital:** capital that has been obtained on credit.

**Majority shareholder:** one who holds sufficient shares in a company to influence the decision-making.

**Management:** those who direct or run a business.

**Managing director (or chief executive officer):** a director in charge of the management of a company.

**Members:** the members of a company are the **shareholders**.

**Memorandum of association:** legal document regulating a company's external activities. It states the company's name, objectives, registered office, domicile, the amount of the company's nominal capital and the number and amount of shares.

**Minority action:** an action brought by a single shareholder or small number of shareholders.

**Minority shareholder:** one who does not hold sufficient shares in a company to command an influential position.

**Moratorium:** a **suspension of payments** is initiated for a fixed period so that no-one except the administrator can deal with the assets of a company during that period.

**Natural person:** this is a human being rather than an artificial person, such as a registered company. A natural person has the right to participate in a wider variety of legal transactions than a legal person.

**Nominal value:** the face value of a share rather than its market value.

**Non-executive director (outside, independent or non-management director):** this is not a salaried employee and he is not actively involved in daily management.

**Objects clause:** a clause in the memorandum of association setting out the purpose for which the company was incorporated.

**Officer (of a company):** one invested with authority for a particular position. In English law, a director is an officer of a company.

**Order of priority:** the liquidator must pay creditors according to a list of priorities.

**Ordinary course of business:** a partnership will be bound by contracts entered into by an individual partner, if covering the usual type of business conducted by the firm.

**Ordinary resolution:** a simple majority vote by shareholders.

**Owners:** the owners of a company are the **shareholders**.

**Partnership:** the relationship between persons carrying on a business in common with a view to profit. It is unincorporated and therefore not a separate legal person.

**Partnership property:** property that is jointly owned by the partners. Assets that have not been transferred to the partnership remain the property of the individual partners.

**Personal liability:** where an individual is held liable, for example, a sole trader is held liable for the debts of his business.

**Petition:** certain civil actions are started by petition, for example, a winding up petition is presented to the court in order to liquidate a company.

**Pre-incorporation contract:** where a person enters into a contract on behalf of a company which has not yet been formed.

**Private company:** a company that may not offer its shares and debentures to the public.

**Promoter:** one who organises the setting up of a new company.

**Prospectus:** document in which shares or debentures are offered to the public for the first time.

**Public company:** a public company must have a minimum subscribed share capital. It may seek finance by offering its shares and debentures to the public. If it is a public limited company, it is one incorporated with limited liability.

**Receiver:** when the company has failed to repay a debt to a creditor, a receiver will take control of the property in question for the benefit of the creditor. He is not appointed to wind up a company.

**Register:** to be noted on an official list; a **registered company** is listed on the Companies Registry.

**Resolution:** a formal proposal, usually voted upon at a meeting.

**Share capital:** the total amount which a company's shareholders have contributed or are liable to contribute as payment for their shares.

**Shareholder:** one who holds shares in a company.

**Shares:** interest held by a shareholder in a company, measured by a sum of money for the purposes of liability and **dividend**.

**Sole proprietorship:** the American term for a sole trader.

**Sole trader:** an unincorporated, one-man business, where the owner of the business is personally liable for any losses arising from his business.

**Special resolution:** a company resolution, which is only valid if approved by 75% of the votes cast at a meeting. Twenty-one days notice must be given.

**Stockholders:** in the USA, shareholders are referred to as stockholders (as they own one or more shares of stock).

**Subsidiary:** a subsidiary company is one that is held by a parent company.

**Supervisory board:** in some countries, companies may have a supervisory board that advises and supervises the board of directors. The USA and England do not have a two-tier system of management, although they may use advisory committees.

**Take over:** where one company wants to take over the control of another company.

**Unincorporated:** a business organisation that is not incorporated is not a separate legal person.

**Voluntary arrangement:** rather than enter into winding up proceedings, a company can make a voluntary arrangement with its creditors for repayment, if supervised by a qualified insolvency practitioner.

**Winding up:** process by which a registered company is dissolved. A winding up can be compulsory or voluntary.

## COMPANY LAW KNOWLEDGE QUESTIONS

1. A partnership is **unincorporated**. What does that mean?
2. What is meant by the term **legal person**?
3. Why would an English lawyer never describe a company as a **firm**?
4. What may a **public company** do that a private company may not?
5. If a company is a **limited liability company**, what does that mean?
6. What is the purpose of **articles of association**?
7. Explain the difference between an **executive director** and a **non-executive director**?
8. What is a **derivative action**?
9. What are the **fiduciary duties** owed by a director to a company?
10. If the company has gone into **liquidation**, who is appointed to wind up the company and what is his task?

## COMPANY LAW CASE DISCUSSION

Giles is a director of Acme Ltd, a car company. He also has a large shareholding in Peterson Ltd, but Acme does not know this. Peterson enters into contractual negotiations with Acme to develop a new engine. Giles encourages Acme to enter into a contract with Peterson, because if Peterson gets the contract it will double the value of his shareholding in Peterson.

Acme's articles of association state that loans above £300,000 cannot be granted unless the board of directors have agreed to the loan. Yet without consulting the board, Giles agrees to lend Peterson £500,000 of Acme's money to help pay for researching the new engine.

Acme finds out about Giles' shareholding in Peterson and the loan of £500,000. Explain to Acme what its rights are in company law.