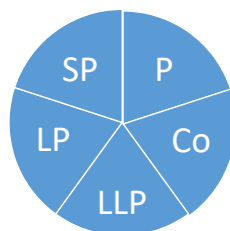


Santa Clara University Law School  
"Business and the Environment"  
Singapore 2018

Doing Business in Singapore I  
Business Organisations

Types of Business Organisations

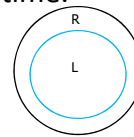
- A business can be run using various structures. The following are the most common:



- Choosing a wrong type of organisation may affect the business and may affect the owner of the business.
- Can you convert from one form of business to another?

## SOLE PROPRIETORSHIP - PRELIMINARIES

- To operate a sole proprietorship, one has to register with ACRA:  
<http://www.acra.gov.sg>
- Why does the law require registration?
- However, there are some limited exceptions.
- If you do not fall within the exceptions and you don't register it is an offence.
- Registration is cheap and fast.
- Aside from *registration*, you may need to get *licensing* which is handled by other agencies/authorities:  
<https://licences.business.gov.sg>
- If licensing is required that may cost more and take more time.



## SOLE PROPRIETORSHIP - LIABILITY

- The sole proprietor is personally liable for the *business debts* and his personal assets can be seized to satisfy business debts, as there is no separation between the sole proprietor and his business.
- Similarly, if he has some *personal debts*, can the business assets be seized?

## SOLE PROPRIETORSHIP - DISSOLUTION

- Dissolution of a sole proprietorship is generally straight forward and can be:
  - Voluntary or
  - Involuntary.

## PARTNERSHIP - PRELIMINARIES

- The Partnership Act defines a partnership as a group of persons carrying on a business in common with a view of profit.

## PARTNERSHIP - PRELIMINARIES

- For there to be a valid partnership, does there have to be a written agreement?
- The minimum number of partners is \_\_\_\_\_ and the maximum is *generally* 20.
- The registration and licensing process (if any), is the same as that for sole proprietorships.

## PARTNERSHIP – LIABILITY

- In relation to *business debts* incurred by the partnership, the partners can be personally liable and their personal assets can be seized to satisfy business debts, as the partnership is not a separate legal entity.
- Example:
  - A & B are partners
  - Partnership Debts: \$100,000
  - Partnership Assets: \$0
  - A's personal Assets: \$150,000
  - B's personal Assets: \$200,000
  - What can the creditor do?

## PARTNERSHIP – LIABILITY

- However, in relation to *personal debts* incurred by partners, can all of the partnership assets *or* only the debtor partner's share, be sought after?
- Example:
  - A & B are partners
  - Partnership Debts: \$0
  - Partnership Assets: \$100,000
  - A's personal Debts: \$70,000
  - How much of the partnership assets can be sought after by the creditor?

## PARTNERSHIP - RELATION BETWEEN PARTNERS

- The Partnership Act provides that unless the contract provides otherwise, all partners share profits and losses/liabilities equally.
- The Partnership Act provides that unless the contract provides otherwise, all partners have the equal right to manage the business.

### PARTNERSHIP - RELATION BETWEEN PARTNERS

- The Partnership Act provides that all partnership property belongs to partners.
- Case Example: *Ponnukon v Jebaratnam*:
  - Plaintiff and Defendant entered into a partnership to develop a piece of land.
  - Partnership tried to obtain a loan from bank to buy the land, but was not successful.
  - Subsequently, Defendant got a loan from his relatives and bought the land.
  - Later the Plaintiff brought an action stating that the land belonged to the partnership.
  - What do you think the court decided?
- How can this issue of who owns what, be made clearer?

### PARTNERSHIP - RELATION BETWEEN PARTNERS

- Partners owe a fiduciary relationship towards each other; ie: they owe a duty of trust towards each other.
- What could be some examples of a breach of such duties?

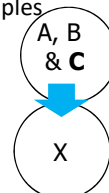
## Breach of Fiduciary Duties?

- Ritz-Carlton (US) and KMS, an Indonesian company, entered into a hotel partnership to run Ritz-Carlton Bali Resort which belonged to KMS.
- Later, Ritz-Carlton decided to build another hotel in competition to the Ritz-Carlton Bali Resort.
- What do you think the court decided?



## PARTNERSHIP – RELATIONSHIP WITH THIRD PARTIES

- If a partner enters into a *contract* with a third party, is the firm or the other partners bound to the third party?
- The answer may be “Yes”, if the partner in question has:
  - Actual authority to do so *or*
  - Implied (ie: usual) authority to do so *or*
  - Apparent (ie: outwardly appears to have) authority to do so.
- Note: Though we are talking about partners, in relation to the question of whether someone has authority to act on behalf of another, similar principles apply to directors/employees/agents.



## PARTNERSHIP – RELATIONSHIP WITH THIRD PARTIES

- If a partner commits a *tort or wrongful act* (eg: he is negligent) *in the course of the partnership business*, which affects a third party, would the firm or the other partners be liable to the third party?
- Eg: A & B are partners of a modeling agency and B assaults a model who suffers injuries; is the firm liable for the losses?
- Note: Though we are talking about partners, similar principles apply to directors/employees/agents.

In the course of Partnership Business ?

- *Lim Kok Koon v Tan Cheng Yew:*
- Lawyer who was partner in law firm, took cheques from the client issued to his name to act as a “personal trustee” – eg: make investments.
- Lawyer absconded with the money.
- Was the law firm liable to the client?



## PARTNERSHIP - DISSOLUTION

- Since more than one person is involved, the dissolution process may be more complicated. For instance, if one partner wants to end the partnership and the other partner does not want to – the matter may have to be brought to court.

### Limited Partnership

- This is a new form of business organization introduced in 2009.
- There must be a minimum of 2 partners (at least one general partner and one limited partner).
- To carry on operations as a LP, must also be registered with ACRA. Licensing from other authorities may also be required.

### Limited Partnership - Features

- A general partner would be liable for the all debts and obligations of the LP.
- A partner registered as a limited partner would not be liable to third parties for the debts and obligations of the LP beyond the amount of his “agreed contribution”.
- However in return, the limited partner cannot take part in the management of the LP. If he does so, he would become liable for all the debts and obligations of the LP.
- LP does not have separate legal entity.

### Limited Partnership – When Suitable?

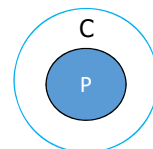
- A limited partnership is *very much like an ordinary partnership* with the exception that the limited partner has limited liability to the extent of his “agreed contribution” and he cannot take part in management.
- Thus an LP is especially attractive to an angel investor who just wants to make an investment without incurring more liability than what he invested or agreed to. =
- Eg: A & B are partners; A does something wrong in the course of partnership business which causes a loss to C. Who can C sue and to what extent?

## Limited Liability Partnership – Preliminaries

- This is a new form of business organization introduced in 2005.
- There must be a minimum of \_\_\_\_ partners.
- To carry on operations as a LLP, must also be registered with ACRA. Licensing from other authorities may also be required.
- Registration process less complex compared to registering a company (eg: need not submit a constitution) but slightly more complex compared to setting up a sole proprietorship or partnership.

## Limited Liability Partnership – Features

- The LLP combines features of both a partnership and a company.
- Internally – it is like a partnership (eg: unless contract provides otherwise: every partner has a equal share of profits, equal say in management, etc).
- Externally – it is like a company (eg: partnership property belongs to the LLP, there is limited liability, it has perpetual succession, etc). In relation to dissolution too, it is like a company (ie more complex and expensive).
- Eg: A & B are partners of an LLP named “C”.  
If C has incurred a debt; can A or B be personally liable for it?



## Limited Liability Partnership – When Suitable?

- LLPs are ideal for persons who want to have the informality of running a business which is characteristic of partnerships but who at the same time want limited liability which is characteristic of companies. [...](#)
- Some may still prefer setting up a company compared to a LLP because, for instance, a company would generally be in a better position to raise finance. Why?
- Some may still prefer setting up a partnership compared to a LLP because, for instance, the LLP being a limited liability organisation, there are some statutory duties/liabilities, breach of which can result in criminal liability.

## COMPANY - PRELIMINARIES

- Companies have also to be registered with ACRA. Licences from other authorities may also be required.
- The registration process is slightly more complex and expensive compared to registering other organisations.
- It is more complex because a “constitution” has to be lodged. The constitution has to provide basic information about the company and also contain rules governing the internal management of the company.
- But note: private companies can use model constitutions provided by ACRA (either in part or in whole) if they want to.

#### COMPANY – DISSOLUTION

- In relation to dissolution, the process may also be more complex and expensive compared to the dissolution of other types of organisations.

#### COMPANY - SEPARATE LEGAL ENTITY

- Though comparatively more complex and expensive to set up and dissolve, a company may be attractive because it creates a separate legal entity.
- The separate legal entity concept has various implications:

## CONSEQUENCES (1): SEPARATE LEGAL ENTITY

- Firstly, a company unlike a partnership can own property in its own name.
  - Eg: A & B own a business named “C” – can they buy property (eg: shop) in the *name* of C?
- However, correspondingly also note: property of the company belongs to the company and not to the members (ie: shareholders) or directors.
  - Eg: A runs a business named “C” and takes things out of C for his personal use; could he face consequences?

## CONSEQUENCES (2): SEPARATE LEGAL ENTITY

- Secondly, debts of the company belong to the company and not to the members (ie: shareholders) or directors.
  - Eg: A & B own a business named “C” and C has incurred a debt; would A & B be personally liable?

## CONSEQUENCES (2): SEPARATE LEGAL ENTITY

- However there are some narrow exceptions to this rule to prevent abuses.
- For instance, section 340(1) of the Companies Act provides that when a company is being wound up or is being sued, if it appears that the business of the company is carried out with the intention to defraud creditors, the persons responsible could be made liable for the debts of the company.
- Also note: because of the limited liability, there is a need to protect \_\_\_\_\_ and so there is \_\_\_\_\_ regulation.  
Eg: may need to have auditors; may have to submit reports/returns to ACRA.  
Breach of some duties may result in criminal liability.  
Thus a company is also more complex to run.

## CONSEQUENCES (3): SEPARATE LEGAL ENTITY

- Thirdly, being a separate legal entity, potentially the company can have perpetual succession, ie, even after its original members/directors have died, the company can still carry on operations. This is good as there will be no \_\_\_\_\_.

## CONSEQUENCES (4): SEPARATE LEGAL ENTITY

- Fourthly since a company is a separate legal entity – it can sue and be sued in its own name.
  - Eg: if “C” is a company and X has caused it a loss, who can sue X?
- However, there are exceptions,
  - such as where there is fraud, whereby members can bring an action on behalf of the company.
  - Eg: A & B are members (ie shareholders) of a company C. A is also the director of C. If he misappropriates money from C, whose loss is it? Who can sue A?

## COMPANY - TYPES

- There are several types of companies. However, when commencing operations, a typical business which wants to set up a company, would register a “private company” “limited by shares” (abbreviated as “Pte Ltd”).
- The term “limited by shares” means that the members’ (ie: shareholders’) liability to company is limited by their shares.
- The term “private company” refers to a company whose constitution has:
  - restrictions on share transfers and
  - limit the number of members to 50.



## COMPANY - TYPES

- A “public company” unlike a private company would not have such restrictions/limitations. Thus for instance, companies listed in the Stock Exchange would be public companies.
- Why wouldn't a typical business which intends to set up a company, commence by registering a public company limited instead of, a private company? [-](#)

## COMPANY -TYPES

- Note: a foreign business which intends to set up a company in Singapore (or a Singapore business which intends to set up a company overseas) may set it up either in the form of a “branch” or a “subsidiary”. Some differences between branches and subsidiaries are as follows:

	Branch	Subsidiary
Legal status:	Not a separate legal entity from the overseas parent company	Separate legal entity from the overseas parent
Liabilities belong to:		
Profits/assets belong to:		

	SP	P	LP	LLP	Co
US	Yes	Yes	Yes	Yes	Yes Private and Public: Corp or Inc
UK	Yes	Yes	Yes	Yes	Yes Private: Ltd Public: Plc
Japan	Yes	Yes (Go-meï Gaisha)	Yes (Go -Shi Gaisha)	Yes (Yugen Gaisha)	Yes (Kabushiki Kaisha) Public: Various types
China	Yes	Yes (普通合伙)	Yes (有限合伙)	Yes (特殊普通合伙)	Yes Private: 有限公司: Public: 股份有限公司
India	Yes	Yes	No	Yes	Yes Private: Pvt Ltd Public: Plc
Malaysia	Yes	Yes	No	Yes	Yes Private: Sdn Bhd Public: Bhd
South Korea	Yes	Yes Hapmyoung Hoesa (	Yes Hapja Hoesa H):	No	Yes Private: Yuhan Hoesa Public: Jusik Hoesa

	SP	P	LP	LLP	Co
Is owner taxed individually: Yes or No?					
Generally is owner personally liable for business debts: Yes or No?					
Are there formalities/documentation: Little or Some or Lots?					
Are there criminal liabilities for failing to observe various matters: Little or Some or Lots?					

## Discussion Question

- A (a foreigner) is running a travel agency with B (a Singaporean) who has contributed capital but does not take part in the day to day management of the business.
- C buys some tickets from the agency which is subsequently not honoured by the airlines. When C later turns up at the agency to confront A, he finds that the shutters are down. He also later finds out that A has disappeared.
- Thus C wants to sue B instead, whom he has managed to trace. Assuming the price of the tickets is \$10,000, the profit/loss sharing ratio between A and B is 50-50 and B is innocent, discuss the extent of B's liability.

## Summary

- When setting up a business organisation, there are five common types of organisations to choose from.
- All types of business organisations have to be registered in one way or another. Licensing may also be required.
- Unincorporated business organisations, namely sole proprietorships and partnerships, expose the owners to unlimited personal liability. The same is true of general partners in a limited partnership.
- Incorporated business organisations such as companies and limited liability partnerships generally do not expose the owners to unlimited personal liability. But to balance this, the law imposes more duties and liabilities in relation to the running of these types of organisations, breach of which may result in criminal liabilities. Further, it is comparatively more complex and expensive to set up and dissolve such organisations.
- The best type of organisation to choose depends on the circumstances/needs and choosing the wrong type of organisation may affect the business and may affect the owner of the business.

## Reading:

- Chapter 10 of Ravi Chandran