

Business law

Prepared by Dr. Galal Elmasry

MGM412

Lecture 4





مجموعة جامعة
الجميع الذكية
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The most important main themes of the lecture:

- 1- Introduction.
- 2- Company Identifiers.
- 3-Registration Of Companies.
- 4- Represntation and Presentation Of Companies.
- 5- Status Changes and Change Of Form.

1. INTRODUCTION:

1- Definition.

There are two conceptual definitions of a business entity in legal theory. In general, a business entity (company) is a business organization which represents: a union of generally two or more parties (natural and/or legal persons) created by a contract, with a status of a legal entity, in which these parties invest the capital and labour and as such, conduct a registered business activity under a joint name (business name) with the goal of making profit. A business entity can be formed and run by one person (one man company, Ger. Einmann Gesellschaft).

1. INTRODUCTION:

1- Definition:

Therefore, a business entity/company can be defined as a forprofit organisation with a status of a legal entity, formed by one or more natural or legal persons in which they permanently invest the capital (money, goods, rights) through their contributions, whose equity is divided into stakes, with the goal of conducting aregistered business activity on the market and gaining profit, and such an organisation is run by company members.

The elements of the general definition of a company are the following: company's goal, legal status, legal basis for the establishment, founders, permanent contributions, registration, equity capital, assets and liability. **In other words, companies have the following legal characteristics:**

1. INTRODUCTION:

- 1- Goal:** gaining profit, in accordance with financial regulations, which is distributed among its members.
- 2- Legal status:** positive law gives a company as a social creation the attribute of a legal entity, which means that it can sue and be sued.
- 3-Legal basis for the establishment:** it is generally a contract between founders (contract of incorporation), whereas in a one man company, a decision on incorporation represents a founding document.
- 4- Founders:** one or more persons (proprietorship and corporations), or two or more persons (partnerships), whether they are legal entities and/or natural persons, domestic and/ or foreign.

1. INTRODUCTION:

5- Permanent contributions: founders and investors invest their capital into a company in the form of permanent contributions, which generally cannot be withdrawn, except in special cases permitted by the law.

6- Registration: in our law, a company is obliged to be registered at a court, along with its activities (business operations), including other legally relevant facts prescribed by the law.

7- Equity capital: Equity capital is a financial category formed in a company from founders' contributions and subsequent investments. During the establishment of a company, it is initial equity capital, which increases with new investments.

8- Assets: a company's assets are separated from its members' assets and these two categories must not be legally confused.

9- Liability: as a legal entity, a company is held liable with its entire assets for its obligations created through transactions.

1. INTRODUCTION:

2- Types of business entities(companies):

- Business entities/companies are generally classified into:

- 1) Corporations (capital companies), and
- 2) Partnerships (personal companies).

- In addition to the aforementioned general classification, business entities are classified into the following:

- 1- a joint stock company.
- 2- a limited liability company.
- 3- a general partnership.
- 4- a limited partnership.

1. INTRODUCTION:

3- Legal nature of companies:

- Legal theory is not unanimous with regard to the legal nature of companies. In American theory, the legal nature of companies, especially of corporations, is compared to the nature of a person, individual (entity), the state and nationality.¹¹⁵ There are three basic theories in the European law: contract theory, institutional theory and mixed theory.¹¹⁶ Basic conceptions of these theories will be illustrated.
- According to the contract theory, a company represents an entity-contract. The basic postulate of this theory lies in the fact that a company is a contractual entity. This legal act regulates its legal structure, legal organization and all other functions of a company.

1. INTRODUCTION:

3- Legal nature of companies:

- A company is registered according to a contract and in a manner determined by a contract. Resolutions of other acts (statutes, rules) derive from the basic contract. The relations between founders (members) of an entity are determined, prima vista, by a contract. According to the advocates of this theory, if a contract does not include certain resolutions, then general rules of contract theory (law of obligations) should be applied. The institutional theory recognizes a company as a distinct and autonomous legal institution (individual, entity).
- The theory of a mixed legal nature of companies is based on the standpoint that companies are neither fully contracts nor institutions. The rules of contract law and legal rules, along with the autonomous rules stipulated in statutes and decisions of management bodies (rules of a company-institution) coexist parallelly in these entities.

1. INTRODUCTION:

4- Systems of establishing companies:

-Theoretically observed, the establishment of a company includes a set of legal and factual actions of founders (one or more) and a state authority, taken in accordance with a procedure prescribed by the law and meeting legal requirements, in order for the unity of capital and work to be recognized by a legal order so that it creates a legal entity. The system of establishment represents a set of legal rules which regulate the method and requirements of the establishment. There are three basic systems whereby companies are formed: concession, a normative system (the system of free establishment) and the system of the law or administrative act.

1. INTRODUCTION:

4- Systems of establishing companies:

-Which system is going to be applied in a country depends on the attitude of the society towards economy and interference of the state in economic activity. Positive regulations generally combine these systems. However, one system always dominates. Most frequently, differences occur depending on the sector in which a company is established (financial sector) or depending on the founders (foreign investment).

2- Company Identifiers:

- Companies are participants in the market, and therefore they have a reasonable economic interest to acquire business reputation (image), and goodwill through their identifiers. It is very important for companies to differentiate in the market by their individual identifiers for prospective business partners as users of their services or buyers of their products. Hence, a company's identifiers have extensive significance for its differentiation in the market, regarding: the fulfilment of its business; the fulfilment of consumers' interests and consumer protection; the fulfilment and acquirement of legal security in the market; and the assurance of wider social interests.

Every company in the market achieves its individuality through the following compulsory identifiers: company name (trade name), company activity (company objects); head office; nationality (country of origin) and a unique identification number. In business practise, there are other identifiers by which a company achieves is recognition (e.g. management).

2- Company Identifiers:

1- Business name:

- The Bosnian term for business name (trade name, trading name) – “firma” originates from German law. In business practise, this term is usually used as a synonym for a company (company).
- This is due to a great economic significance of a business name in comparison with other status identifications of an entity. A business name represents an individual identification under which a company has the right and obligation to operate and to represent and sign itself in its operations. A business name is a name under which a company operates. This is precisely why a business name is the most significant mark of individualization and a status identifier inseparable from a company.

2- Company Identifiers:

2- Head office:

A company's head office is its compulsory element, i.e. it represents a constituent part of a business name. A company's head office is the place which is recorded as the head office in the register of companies. It is determined in a memorandum of association or the statute (Art. 10 of the LBE), and in practice it is determined in both acts. A head office is a compulsory element of a business name and therefore every company can have only one head office. Determination of a head office is a matter of freely expressed will of a company's founders. Generally, a head office is the place where business operations are managed from - the seat of the general management.

2- Company Identifiers:

3- Activity:

- Activity represents business operations that a company performs in order to accomplish its goals that are listed in the court register.
- Activity is often referred to as an object of business. A company can perform its activity in domestic or international transactions. Companies generally register a number of activities; usually activities that they assume could be the object of their business. Founders, i.e. company members are free in the determination of activities that are prescribed by the law and elaborated in bylaws.

3-Registration Of Companies:

1- Definition and subjects of registration:

- Registration is a documented entry of by the law prescribed facts and legal states of a company in the court or other register, by a prescribed procedure. Companies are registered in the register of companies (court register), whereas sole traders are registered in the register of individual entrepreneurs kept in municipalities.
- A court register has a significance of a public registry. The data listed in the court register are public and therefore, without any proof of a legal interest, anyone can review the data in the main registry along with the public data in the collection of identification documents in the register, and request to be issued an extract, i.e. a copy of public data from the main registry.

3-Registration Of Companies:

2- Object of registration and registration procedure:

- A register is a database which includes data and documents of subjects of registration which are obliged to be registered pursuant to the provisions of the LRBE, and it consists of the main register and a collection of registry documents. The main register represents the public section of the register, which contains data on the subjects of entry, and the collection of registry documents is a part of register that contains documents based on which the entry of data was made, as well as other supporting documents of proof and decisions made during the process of registration.
- The register is kept by a competent registration court which A court register contains data on legal states (situations) of legal status character which a company obtains during the period of its existence, from its establishment until its termination.

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3-Registration Of Companies:

- A court register contains data on legal states (situations) of legal status character which a company obtains during the period of its existence, from its establishment until its termination.

3- Types of registration:

- Types of registration in the court register can be classified according to a number of criteria. The most common method is their classification according to the effect of registration, into: final, temporary (conditional) and informative.

- A final registration is such a registration in which the listed facts are unconditional and final, with no time limitation. This type of registration includes: registration of establishment, organizational form change (transformation), status change registration, registration of status merger, and registration of termination of a company.

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3-Registration Of Companies:

A competent registration court shall remove an unsubstantial final registration by virtue of the office, or upon a request of a person with a legal interest.

4- Principles of registration in a court register:

There are several principles on which the registration of subjects in a court register is conducted:

- The principle of obligatority implies that, by the law, all companies are obliged to register in a court register.
- The principle of legality supplements the principle of obligatority. Basically, it stems from the normative system of the establishment of business subjects.
- The principle of formality is applied during the entire procedure of registration.

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3-Registration Of Companies:

- The principle of documentarity implies that the registration in the court register is conducted based on the presented documents and identifications that prove the facts relevant for registration.
- The principle of priority implies the priority of that subject which requested the registration first, i.e.
- The principle of constitutionality means that the real facts regarding the subject of registration become legal facts at the moment of registration.

4-Representation and Presentation Of Companies:

1- Definition:

-Representation implies taking legal actions in the name of and on behalf of another person. In a company, a legal representative is, exlege, the director or the president of the board of managers.

-The statute of a company can specify a wider circle of managers or employees as the company's representatives. If there are several representatives, the statute or some other act must separate and restrict the authority. Representation can be classified into legal, statutory, contractual and representation based on a unilateral declaration of will in the form of an authorisation.

4-Representation and Presentation Of Companies:

1- Definition:

-The function of a legal representative in corporations is performed by the management. Partnerships use different methods of representation as compared to corporations. Regardless of the type of partnership, the function of representation is implemented through the equality of all members/partners.

2- Power of attorney:

- Power of attorney is a legal foundation based on which a certain person called an agent or attorney-in-fact is authorized to represent another person, known as a grantor or principal. Power of attorney, in our legal system, is prescribed by the norms of the LoO.

4-Representation and Presentation Of Companies:

3- Procuration:

- Procuration (general power to represent) is a type of business authorisation that implies taking legal actions in the name of and on behalf of a company. It originates from the German legal circles and today it represents a common type of a business power of attorney. Procuration, comparatively observed, is legally defined in two ways, either within obligations or within commercial codifications.

4-Representation and Presentation Of Companies:

3- Procuration:

- Procuration is defined as the broadest business power of attorney, and therefore should not have any limitations. If nothing is specified, it is considered that procuration is issued to the entire company. It can be issued to a subsidiary as well, which must be explicitly specified and registered in the register of companies. Procuration is only issued to persons with business capacity. These individuals do not have to be related to a company. They can be employees, founders or third parties
- outside of the company. In business practise, procuration is often used so that the founders who do not perform any management functions in a company can keep full control over the company's operations, particularly with regard to the interest in company's assets.

5- Status Changes and Change Of Form:

- Status changes represent a set of legal and factual actions performed pursuant to the law, which lead to universal succession of property and a change of a legal status (position) of a company or entities affected by these changes.
- The changes occur in the economic and legal identity of entities, which is reflected in legal transactions. These changes lead to the formation of larger or smaller companies as the assets of existing companies merge to form a new company, merge to absorb, or split. Some forms of status changes represent aspects of integration or concentration of capital (merger by formation of a new company or merger by absorption), whereas others cause a splitting of existent assets into pieces and the formation of a multitude of subjects in economic life (split).

5- Status Changes and Change Of Form:

-There are various reasons for the implementation of status changes of companies:

1- Merger by formation of a new company:

A merger by formation of a new company represents merging of two or more companies of the same or different organizational form into a new company. It implies a merger of two or more companies for the purpose of establishing a new company without the implementation of a liquidation procedure. This is universal succession in terms of the obligation to obtain the predecessors' rights and liabilities. The decision on a status change is made by the general meeting in corporations, and by all members in partnerships.

5- Status Changes and Change Of Form:

2- Merger by absorption:

A merger by absorption is another form of fusion, which is more common in practice. By this status change, one or more companies are merged into another company, whereby they cease to exist as independent legal entities. They are assimilated, absorbed by the other company. A merger by absorption does not lead to the formation of a new company. A company which had absorbed other companies keeps its legal status, with a slightly changed structure of assets. Namely, the assets of the absorbed entities are included into its assets, forming a single, much stronger and more powerful unit. The absorbed companies are dissolved, deleted from the court register, and their legal successor is the company that absorbed them.

5- Status Changes and Change Of Form:

Hence, the company that absorbed other companies is liable for their obligations created prior to the merger, as a universal successor.

3-Split:

A split represents a type of status change in which one company is divided into two or more companies by transfer of assets and obligations, without a liquidation procedure. The new companies become its legal successors, jointly liable for its obligations.

5- Status Changes and Change Of Form:

4- Change of form:

A change of form is a transformation of a company from one type into another, in which the structure of ownership, assets, business name, as well as other company identifiers remain unchanged. All companies, excluding a general partnership and an open joint stock company can change its form.



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