

FORMS OF BUSINESS ORGANIZATION IN THE UNITED STATES

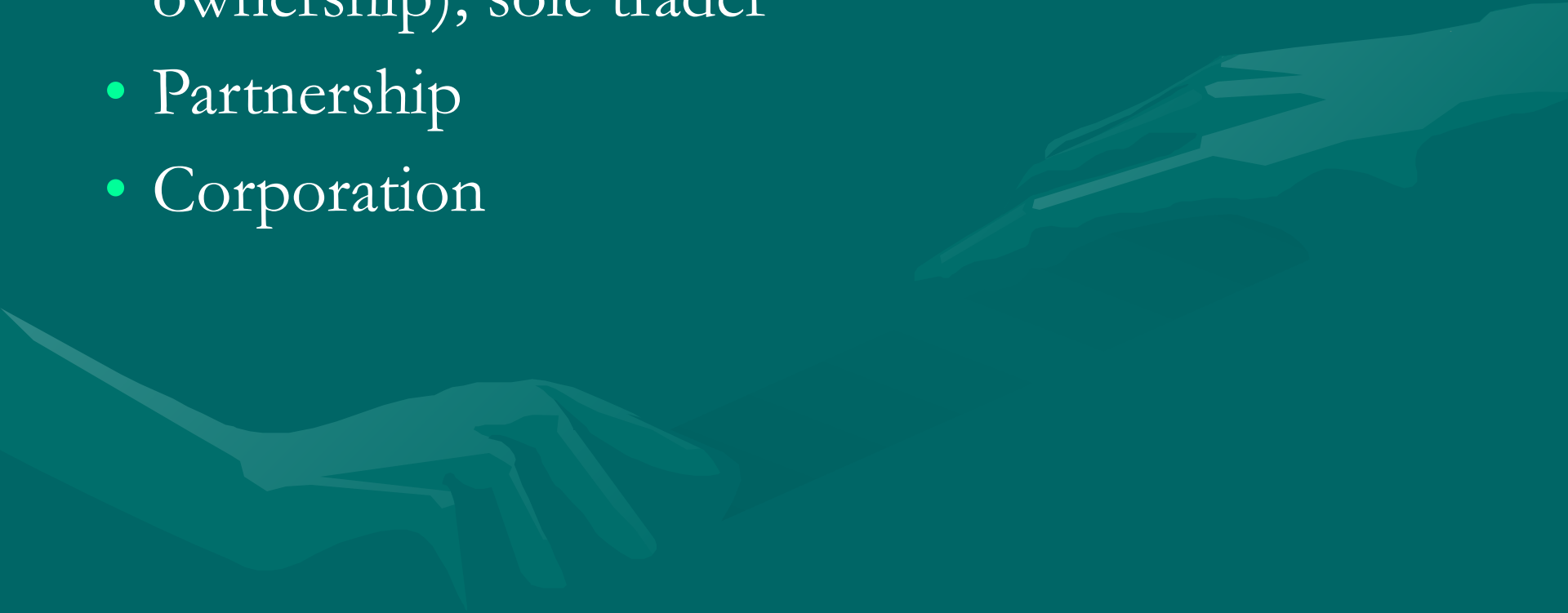
Unit 33

Preview

- Sole proprietorship
- Partnership
- Corporation
- Attributes of corporations
- Legal terms
- Exercise

Forms of Business Organization

- Sole proprietorship (or the individual ownership); sole trader
- Partnership
- Corporation



Factors taken into consideration

- Financial responsibility
- Control of operation
- Possibilities of growth and expansion
- Possibilities of capitalization
- Financial development



Sole proprietorship

- Business owned by one person
- Owner has relatively unlimited control over the business and enjoys all the profits
- Unlimited personal responsibility for the losses, debts and other liabilities
- Small retail stores, restaurants, farms etc.

Partnership

- Association of two or more persons as co-owners to carry on a business for profit
- Based upon voluntary agreement of partners
- Profits and losses shared equally unless otherwise agreed



Partnership

- Every partner liable without limit to creditors for debts of the management with equal authority
- Utilize more capital, labor and skill than sole proprietorships



Partnership

- Unlike an incorporated company, a partnership does not have a legal personality of its own; partners are liable for the debts of the firm



Partnership

- On leaving the firm they remain liable for debts already incurred;
- They cease to be liable for future debts if proper notice of retirement has been published

Corporation

- Artificial person created under law and empowered to achieve a specific purpose
- Formed upon the issuance of a certificate of incorporation by the appropriate government authority



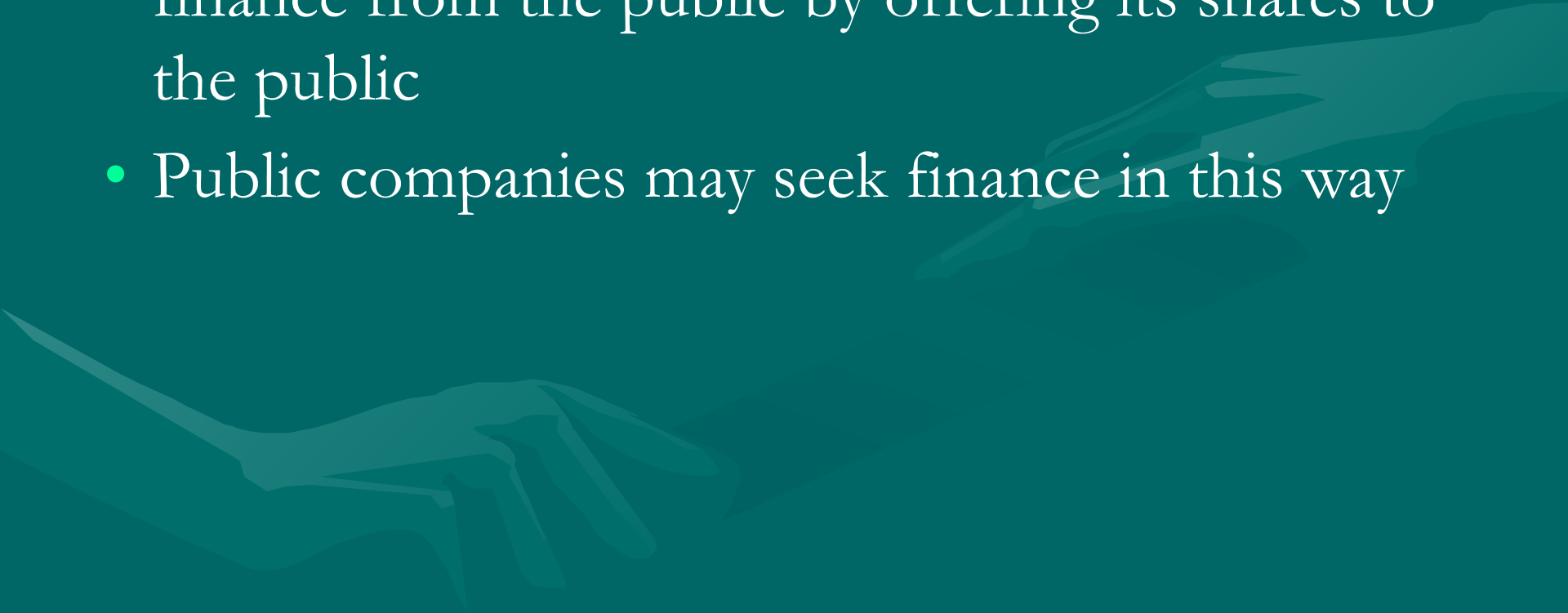
Companies

- Private
- Public



Companies

- Private companies – prohibited from seeking finance from the public by offering its shares to the public
- Public companies may seek finance in this way



Application for registration

- The name of the company
- Situation of the company's registered office
- Whether the liability of members is to be limited
- Whether the company is private or public
- Statement of share capital
- Statement of proposed officers

Incorporation

- The formation of an association that has corporate personality, i.e. a legal personality distinct from those of its members
- Such a body can own property and incur debts

Corporation

- Company members have no liability to company creditors
- Incorporated company has its own rights and liabilities and legal proceedings

Corporation

- On incorporation, a registered company becomes a legal entity separate and distinct from its members
- Individual members have to be consulted on various aspects of the operation of the company, but as members they are bound by decisions passed by an appropriate majority even if they did not vote in favour of the decision
- Shareholders have given up their right to run a company's day to day affairs and have bestowed this power on the directors of the company

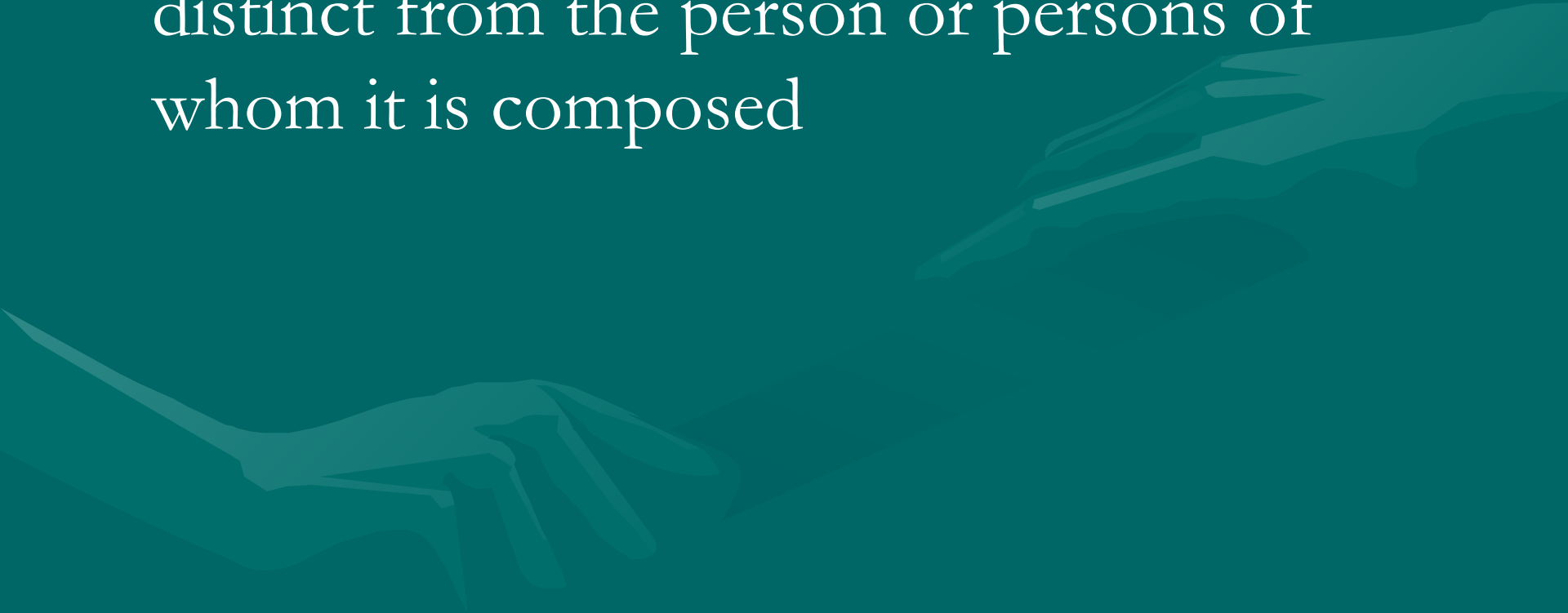
Attributes of corporations

- Perpetual life (“perpetual succession”)
- Limited liability
- Transferability of shares
- Access to capital
- Professional management



Perpetual succession

- Any corporate body has a legal existence distinct from the person or persons of whom it is composed



Perpetual succession

- Its lifespan is not limited by that of its members and it is therefore said to have perpetual succession
- It continues to exist until wound up in the manner prescribed by law

Limited liability

- Members of companies providing the share capital cannot be asked to contribute more than the nominal value of the shares registered in their names



Transfer of shares

- A transaction resulting in a change of share ownership. It traditionally involved:
 - 1. a contract to sell the shares
 - 2. their transfer
 - 3. entry of the transferee's name on the registrar of members of the company

Company management

- Director: appointed to carry out and control the day-to-day affairs of the company
- Manager: supervisory control of the affairs of the company

Company management

- Secretary
- Auditors: do not owe a duty to the company as a legal entity, but to the shareholders, to whom the auditor's report is addressed

Director

- Duty of care, skill and diligence; must exercise the care of an ordinarily prudent and diligent person
- Fiduciary duty: must act in the best interests of the company and not for any collateral purpose
- Duty to promote the success of the company
- Duty to exercise independent judgment
- Duty to avoid conflicts of interest

Secretary

- Preparation and keeping of minutes
- Dealing with share transfers
- Keeping the register of members
- Sending notices of meetings, copies of accounts, etc.

Corporate veil

- In cases when the company is used to perpetrate fraud or acts ultra vires, the court may 'lift' the corporate veil and subject the shareholders to personal liability

Legal terms

- Sole proprietorship
- Isključivo vlasništvo; poduzeće s jednim vlasnikom
- Partnership
- Partnerstvo, ortaštvo
- Corporation
- Trgovačko društvo, dioničko društvo, društvo kapitala

Legal terms

- Retail
- Maloprodaja
- Liability
- Obveza (financijska), odgovornost
- Creditor
- Vjerovnik, zajmodavac
- Debtor
- Dužnik, zajmoprimac

Legal terms

- Artificial person (Br. E.), legal person, legal entity
- Pravna osoba
- Limited liability
- Ograničena odgovornost
- Transferability of shares
- Prenosivost dionica

Introduction to Company Law: Exercise

- Complete the text by using the following words:
agreements, borrow, corporations, court,
debts, dividends, employees, legal,
legislation, liability, limited, objectives,
partnership, profits, property, registered
(x2), shareholders, sole trader, sue

agreements, borrow, corporations, court, debts, dividends, employees, legal, legislation, liability, limited, objectives, partnership, profits, property, registered (x2), shareholders, sole trader, sue

- A company is a ____entity, allowed by ____, which permits a group of people, as____, to create an organization, which can then focus on pursuing set____. It is empowered with legal rights which are usually only reserved for individuals, such as the right to____and be sued, own____, hire____ or loan and ____money.

agreements, borrow, corporations, court, debts, dividends, employees, legal, legislation, liability, limited, objectives, partnership, profits, property, registered (x2), shareholders, sole trader, sue

- The primary advantage of a company structure is that it provides the shareholders with a right to participate in the_____, a proportionate distribution of profits made in the form of a money payment to shareholders, without any personal_____.

agreements, borrow, corporations, court, debts, dividends, employees, legal, legislation, liability, limited, objectives, partnership, profits, property, registered (x2), shareholders, sole trader, sue

- There are various forms of legal business entities ranging from the____, who alone bears the risk and responsibility of running a business, taking the profits, but as such not forming any association in law and thus not regulated by special rules of law, to the____company with ____liability and to multinational ____.

agreements, borrow, corporations, court, debts, dividends, employees, legal, legislation, liability, limited, objectives, partnership, profits, property, registered (x2), shareholders, sole trader, sue

- In a _____, members 'associate', forming collectively an association in which they all participate in management and sharing_____, bearing the liability for the firm's _____and being sued jointly and severally in relation to the firm's contracts or tortious acts.

agreements, borrow, corporations, court, debts, dividends, employees, legal, legislation, liability, limited, objectives, partnership, profits, property, registered (x2), shareholders, sole trader, sue

- Limited-liability companies, or corporations, unlike partnerships, are formed not simply by_____entered into between their first members; they must also be_____at a public office or _____designated by law or otherwise obtain official acknowledgement of their existence.

Key

- A company is a **legal** entity, allowed by **legislation**, which permits a group of people, as **shareholders**, to create an organization, which can then focus on pursuing set **objectives**. It is empowered with legal rights which are usually only reserved for individuals, such as the right to **sue** and be sued, own **property**, hire **employees** or loan and **borrow** money.

Key

- The primary advantage of a company structure is that it provides the shareholders with a right to participate in the **dividends**, a proportionate distribution of profits made in the form of a money payment to shareholders, without any personal **liability**.

Key

- There are various forms of legal business entities ranging from the **sole trader**, who alone bears the risk and responsibility of running a business, taking the profits, but as such not forming any association in law and thus not regulated by special rules of law, to the **registered** company with **limited** liability and to multinational **corporations**.

Key

- In a **partnership**, members ‘associate’, forming collectively an association in which they all participate in management and sharing **profits**, bearing the liability for the firm’s **debts** and being sued jointly and severally in relation to the firm’s contracts or tortious acts.

Key

- Limited-liability companies, or corporations, unlike partnerships, are formed not simply by **agreements** entered into between their first members; they must also be **registered** at a public office or **court** designated by law or otherwise obtain official acknowledgement of their existence.

Roles in company management

Match the roles with definitions: *auditor, company secretary, director, managing director, shareholder*

- Company director responsible for the day-to-day operation of the company
- Person elected by the shareholders to manage the company and decide its general policy
- Person appointed by the company to examine the company's accounts and to report to the shareholders annually on the accounts

Match the roles with definitions: *auditor, company secretary, director, managing director, shareholder*

- Member of the company by virtue of an acquisition of shares in a company
- Company's chief administrative officer, whose responsibilities include accounting and finance duties, personnel administration and compliance with employment legislation security of documentation, insurance and intellectual property rights

Choose the correct word or phrase:

- 1. The constitution of a company *comprises/ consists/ contains* of two documents.
- 2. The memorandum of association *states / provides for / sets up* the objects of the company and details its authorised capital.
- 3. The articles of association contain *arguments / provisions / directives* for the internal management of a company

Choose the correct word or phrase

- 4. The company is governed by the board of directors, whilst the day-to-day management is delegated *upon* / *to* / *for* the managing director.
- 5. In some companies, the articles of association *make* / *give* / *allow* provision for rotation of directors, whereby only a certain portion of the board must retire and present itself for re-election before the AGM.

Choose the correct word or phrase

- 6. Many small shareholders do not bother to attend shareholders' meetings and will often receive proxy circulars from the board, seeking authorisation to vote *on the basis of* / *in respect of* / *on behalf of* the shareholder.

Complete the following using: *in terms of, in the course of, by way of, in response to*

- 1. _____choosing the name of the company, a number of matters must be considered.
- 2. Confidential information acquired_____one's directorship shall not be used for personal advantage.
- 3. I would advise that members of your project group formalise your relationship _____a partnership agreement, incorporation or limited liability company.

Complete the following using: in terms of, in the course of, by way of, in response to

- 4. This form of corporation is often considered to be the most flexible body _____corporate structure.
- 5. Our company formations expert is unable to provide advice_____your query, as there are a number of factors which need to be taken into account which do not relate directly to his area of expertise.

Complete the following using: in terms of, in the course of, by way of, in response to

- 6. The relationship between management and boards of directors at US multinational companies has been changed dramatically through a series of corporate governance initiatives begun_____corporate scandals, the Sarbanes-Oxley Act and other requirements.

Complete the following using: in terms of, in the course of, by way of, in response to

- 7. Shareholders and other investors in corporations tend to view corporate governance_____the corporation's increasing value over time.
- 8. Regular and extraordinary board meetings may be held by telephone, video-telephone and_____written resolutions.

Which of the following can go the verb *to file*?

- An action, an appeal, an amendment, a breach, a brief, charges, a claim, a complaint, a debt, a defence, a dispute, a document, a fee, an injunction, a motion, provisions, a suit

To file

- To send a document to court
- To register something officially
- Podnijeti (prijavu, tužbu, zahtjev), podići (optužnicu), dostaviti, evidentirati, pokrenuti postupak, urudžbirati, arhivirati

Key

- An action, an appeal, an amendment, a brief, charges, an injunction, a motion, a suit

