LESSON 5: BUSINESS & COMPANY LAW

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When we talk about company and business law in general, the first thing we must concentrate on is the different forms in which one can operate a business and the different implications that there are in terms of the paperwork required as well as **liability**.

The simplest way of running a business is as a **self-employed** person, or as they refer to it in the UK as a **sole trader**. Here you take all the **profits** and also are **personally liable** for any **debts** of your business. You must first **register** as a self-employed with the required Authority in your country and you are responsible for filing your **self-employed tax return** at the required intervals of time. There is relatively little paperwork involved in this type of a business structure, there are normally no minimum financial requirements to **set it up**, but also few benefits in terms of liability or taxes.

Another way of operating a business is as a **partnership** and there are different types of partnerships in different Common Law countries. The first type is a **general partnership**. Here, the partners have **unlimited liability** for the debts of the business. Another type of a partnership is a **limited liability partnership** also known as LLP and many professional service businesses operate as LLP's, for example law firms. They are a **separate legal entity** from their **members** and therefore carry limited liability for them; In other words the **personal assets** of each member are not at risk; they are taxed as a partnership; have the organisational flexibility of a partnership and their accounting and filing requirements are similar to those of a company. When someone registers LLP it becomes what is known as an **incorporated business.** In other words, it has its own name and **legal personality** or as some refer to it, its own **legal entity**. In short then, LLP is a legal person just like any one of us.

The third most common way of operating a business is as a company. In the UK there are two most common types of companies: **public limited company** and **private limited company;** you can usually tell what type of a company it is by simply looking at the name of the company because private limited company's name always ends with **LTD** or **limited** while a public limited company's name must end with **PLC**. The main difference between these two types of companies is that a private limited company cannot offer **shares** in the company to members of the public and a public limited company can do so. Also, most private limited companies have a very limited number of shareholders often just one shareholder, while public limited companies must have and usually have a lot more. Another point of difference is the amount of **share capital** that each company structure must have. Now, different common law countries have different financial requirements in this regard but the common point is that a LTD will have a much lower financial requirement than a PLC.

There are specific requirements in order to set up a company or as we say to **incorporate a company**. The people who **set up** a company are normally called the **founders** of the company. As we have already said, an incorporated company will have its own legal status or its own **legal entity**. In practical terms this means that if someone wants to sue the company for whatever reason, the claimant must name the company as the defendant; however if someone wants to sue a self-employed person they would name him or her personally as the defendant. The owners of a company are called the **members or shareholders** since they own or hold shares in the company (called stockholder in the United States). Each member will hold certain **share capital** meaning the amount and the value of shares that they own. For example, let's say that a company has a share capital of 50,000 euros and this is divided into 50,000 shares. It would mean that each share has a normal value (called face value) of one euro.

When someone buys you shares in a company we say that those shares are **issued** to them. People tend to invest their money in a company and buy shares because they want to receive what we call a **return on an investment.** If the company's **performance** during a fiscal year is good it may decide to pay a part of the profit to the shareholders through what we call **dividends**. A company would first **declare a dividend** and then **distribute** it accordingly among the shareholders.

In order to incorporate a company there is a substantial amount of paperwork involved that varies in different jurisdictions. The founders of the company must prepare a **Memorandum of Association** (called Articles of Incorporation in the US) as well as **Articles of Association** (called By-laws in the US). The Memorandum of Association sets out the essential information about the company such as its name of its **registered office,** its primary object and so on. The Articles or by-laws deal with the internal rules of the company and its shareholders for example the frequency of **board meetings, notice periods**, the amount of **authorized share capital** meaning how many shares can be issued to shareholders; the amount of **issued share capital** meaning how many shares have actually been issued so far to shareholders; procedures for selling company shares and so on. Companies file with the appropriate tax Authority what is known as **corporate income tax return** which normally has a lower **tax rate** than that for self-employed individuals.