

2 Company law: company formation and management

1 Reading A: Introduction to company law

This text provides an introduction to the key terms used when talking about companies as legal entities, how they are formed and how they are managed. It also covers the legal duties of company directors and the courts' role in policing them.

Read the text below quickly, then match these phrases (a–f) with the paragraphs (1–6).

- | | | |
|---------------------|----------------------|--------------------------|
| a directors' duties | c company definition | e partnership definition |
| b management roles | d company health | f company formation |

- 1 A company¹ is a business association which has the character of a **legal person**, distinct from its officers and shareholders. This is significant, as it allows the company to own property in its own name, continue perpetually despite changes in ownership, and insulate the owners against **personal liability**. However, in some instances, for example when the company is used to perpetrate **fraud** or acts **ultra vires**, the court may 'lift² the **corporate veil**' and subject the shareholders to personal liability.
- 2 By contrast, a partnership is a business association which, strictly speaking, is not considered to be a **legal entity** but, rather, merely an association of owners. However, in order to avoid impractical results, such as the partnership being precluded from owning property in its own name, certain rules of partnership law treat a partnership as if it were a legal entity. Nonetheless, partners are not insulated against personal liability, and the partnership may cease to exist if a change in ownership occurs, for example when one of the partners dies.
- 3 A company is formed when a **certificate of incorporation**³ is issued by the appropriate governmental authority. A certificate of incorporation is issued when the constitutional documents of the company, together with **statutory forms**, have been filed and a filing fee has been paid. The 'constitution' of a company consists of two documents. One, the **memorandum of association**⁴, states the objects of the company and the details of its authorised capital, otherwise known as the **nominal capital**. The second document, the **articles of association**⁵, contains provisions for the internal management of the company, for example shareholders' **annual general meetings**⁶, or AGMs, and **extraordinary general meetings**⁷, the **board of directors**, corporate contracts and loans.
- 4 The management of a company is carried out by its officers, who include a director, manager and/or company secretary. A director is appointed to carry out and control the day-to-day affairs of the company. The structure, procedures and work of the board of directors, which as a body govern the company, are determined by the company's articles of association. A manager is delegated

¹ (US) corporation

² (US) pierce

³ (US) Generally no official certificate is issued; companies are formed when the articles/certificate of incorporation are filed (see footnote 4).

⁴ (US) articles of incorporation or certificate of incorporation

⁵ (US) bylaws

⁶ (US) annual meetings of the shareholders

⁷ (US) special meetings of the shareholders