



[www.21Academy.education](http://www.21Academy.education)

Law for Directors & Managers

# Lecture 2

---

Commercial Partnerships

Limited Liability Companies

CAMILLERI PREZIOSI  
— ADVOCATES —



[www.21Academy.education](http://www.21Academy.education)

# INTRODUCTION

---

*The Companies Act provides that “a limited liability company is formed by means of a capital divided into shares held by its members. The **members’ liability is limited to the amount, if any, unpaid on the shares respectively held by each of them.**”*



# Limited Liability Companies

---

A limited liability company is the most **common** form of business entity in Malta.

It may be:

***Public***

or

***Private***

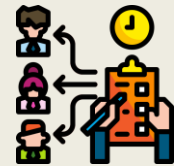
# Key features of a LLC



The LLC is a separate  
legal entity

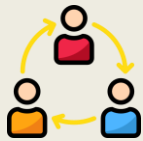


Partners are  
members/  
shareholders of the  
company



Management is vested  
in the board of  
directors, and  
shareholders vote at  
meetings

# Key features of a LLC



Shares may be transferred, which may be considered an asset in the hands of shareholders



Must be registered with the MBR, with formation documents signed by at least 2 members



Members' liability is limited

# Key features of a LLC



The shareholders/  
owners may benefit  
from a distribution  
of dividend



Name of the  
company must end  
in 'p.l.c.' or 'ltd.'



The company  
must file annual  
statutory filings

# Obligation to enter into M&As

---

The memorandum of every company shall state:

1. Whether the company is a public/private company;
2. The name and residence of each of the subscribers;
3. The name of the company;
4. The registered office in Malta;
5. The objects of the company;
6. The amount of share capital;





# Obligation to enter into M&As

---

7. The number of directors and details;
8. The manner in which the representation of the company is to be exercised;
9. The name and details of the first company secretary;
10. The number and a copy of an official identification document of each shareholder, director, legal and judicial representatives and company secretary;
11. The period, if any, fixed for the duration of the company



# The M&As – Objects of the Company

---



The M&As must specify the objects for which the company is set up

The M&As may be accompanied by the articles of association (the internal regulations of the company)



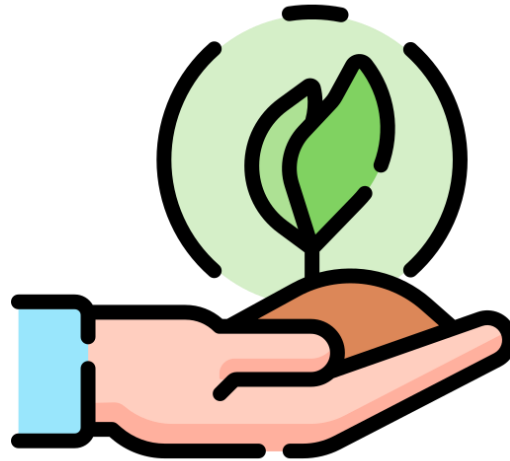
On the registration of the documentation, the Registrar will issue a certificate of registration

# Directors

---

***According to article 136A of the Companies Act***, a director of a company shall be bound to act honestly and in good faith in the best interests of the company.

They shall promote the well-being of the company and shall be responsible for the general governance of the company and its proper administration and management; and the general supervision of its affairs.



# Directors of the company

---

**Private limited companies** –  
run by 1 or more directors

**Public limited companies** – run  
by 2 or more directors

*The managers and directors of the  
company have wide ranging  
responsibilities*



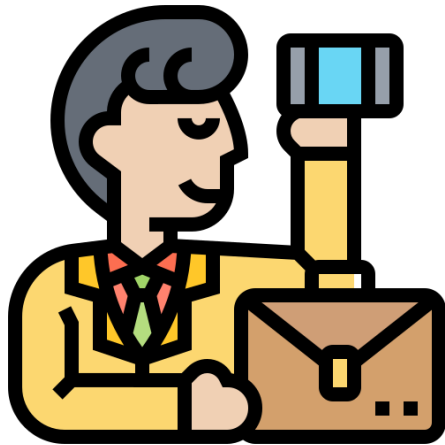
# Directors of the company – *prohibition from appointment*

The law prohibits any person from being appointed or occupying positions of manager/director/company secretary if:

- They are interdicted, incapacitated or bankrupt;
- They have been convicted of a crime;
- They are an unemancipated minor; or
- They are subject to a court disqualification order (time limits apply)



# Company Secretary



The role of the company secretary is **purely administrative**.

Both public and private companies must have a company secretary.

# Private company

---



**Private companies** are companies that limit the liability of their members to the amount unpaid on their share capital.

**A private company:**

- Restricts the right to transfer its shares;
- Limits the liability of its members to 50;
- Prohibits the invitation to the public to subscribe for any of its shares or debentures.

The CA also provides that a private company shall not offer to the public, whether for cash or otherwise, any shares in or debentures of the company or allot or agree to allot, whether for cash or otherwise, any shares in or debentures of the company, with a view to all or any of those shares or debentures being offered to the public.

# Private exempt company

---

The **advantage** of a private exempt company is that it is not required to comply with certain legal requirements applicable in the case of all other private companies.

For a company to have a **private exempt status**, besides complying with the three restrictions for a company to be considered a private company, it must also include within its memorandum or articles, certain conditions:

- *The number of persons holding debentures is not more than 50;*
- *No body corporate may be a director*



# Single Member Exempt company

---

A **Single Member Exempt Company** is a private exempt company formed and registered or operating, with one member. The structure of a **single member company** is catered for in the Twelfth EU Directive, the principles of which were adopted under local law.

In the case of private exempt companies which are single member companies, the sole director may also occupy the post of secretary and therefore the same person may exercise the functions of both offices.

# Public company

---

A public company may offer shares or debentures to the public but it may not issue any form of application for its shares or debentures unless the company is registered and the issue is accompanied by a prospectus.

## **Offer to the public:**

Defined with reference to the Prospectus Regulation. Exemptions apply to the obligation to issue a prospectus.



# The main differences between a PLC and a LTD company

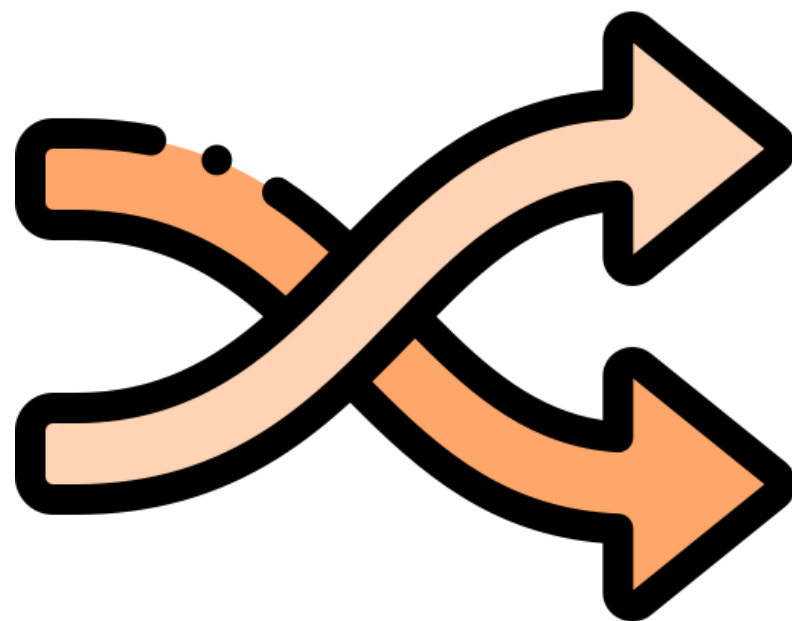
FEATURES	LTD	PLC
Minimum number of directors	1	2
Minimum number of members	2	2
Authorised share capital	euro 1,164.69	euro 46,587.47
Nominal value paid up upon subscription	>20%	>25%
Transferability of shares	Limited	Free
Advertise shares/debentures to public	No	Yes
Time to hold accounting records	10 years	10 years
Annual general meeting	Compulsory	Compulsory

# Change of status (private and public)

---

A change in status from a private company to a public company **only requires a change in the M&As.**

A number of deliverables are expected to be delivered to the MBR when such a change is happening.



# Decision making matters in companies

---



# Resolutions (private companies)

---



## EXTRAORDINARY RESOLUTION

- Taken at a general meeting
- Notice must be given
- Must be passed by a specific number of members (51% of the nominal value or such higher percentage)

## ORDINARY RESOLUTION

- Passed by a certain number of members (more than 50% of voting rights)

# Resolutions (public companies)

---



*Resolutions in writing  
are NOT permitted*

**EXTRAORDINARY REOLUTIONS** of a public company would be taken at a **general meeting**

- of which notice would have been given
- which would have been passed by members having the right to attend and vote, holding in aggregate not less than 75% in nominal value of the shares represented and entitled to vote at the meeting, and at least 51% (or such higher percentage as the M&As may prescribe) of the nominal value of all the shares entitled to vote
- **ORDINARY RESOLUTIONS** – same as private companies

# Accounts and Annual Filings

---





# Accounts (private companies)

---

A **private company** must prepare individual accounts, and these must give a true and fair view of the company's assets, liabilities, financial position and profit and loss.

The accounts are to be presented to the members in the general meeting for approval within **10 months** after the end of the relevant accounting reference period.



# Accounts (public companies)

---

Just like a private company, **public companies** must prepare individual accounts giving a true and fair value of the company's assets, liabilities, financial position and profit and loss.

The accounts are to be presented to the members in the general meeting for approval within **7 months** after the end of the relevant accounting reference period.





[www.21Academy.education](http://www.21Academy.education)