

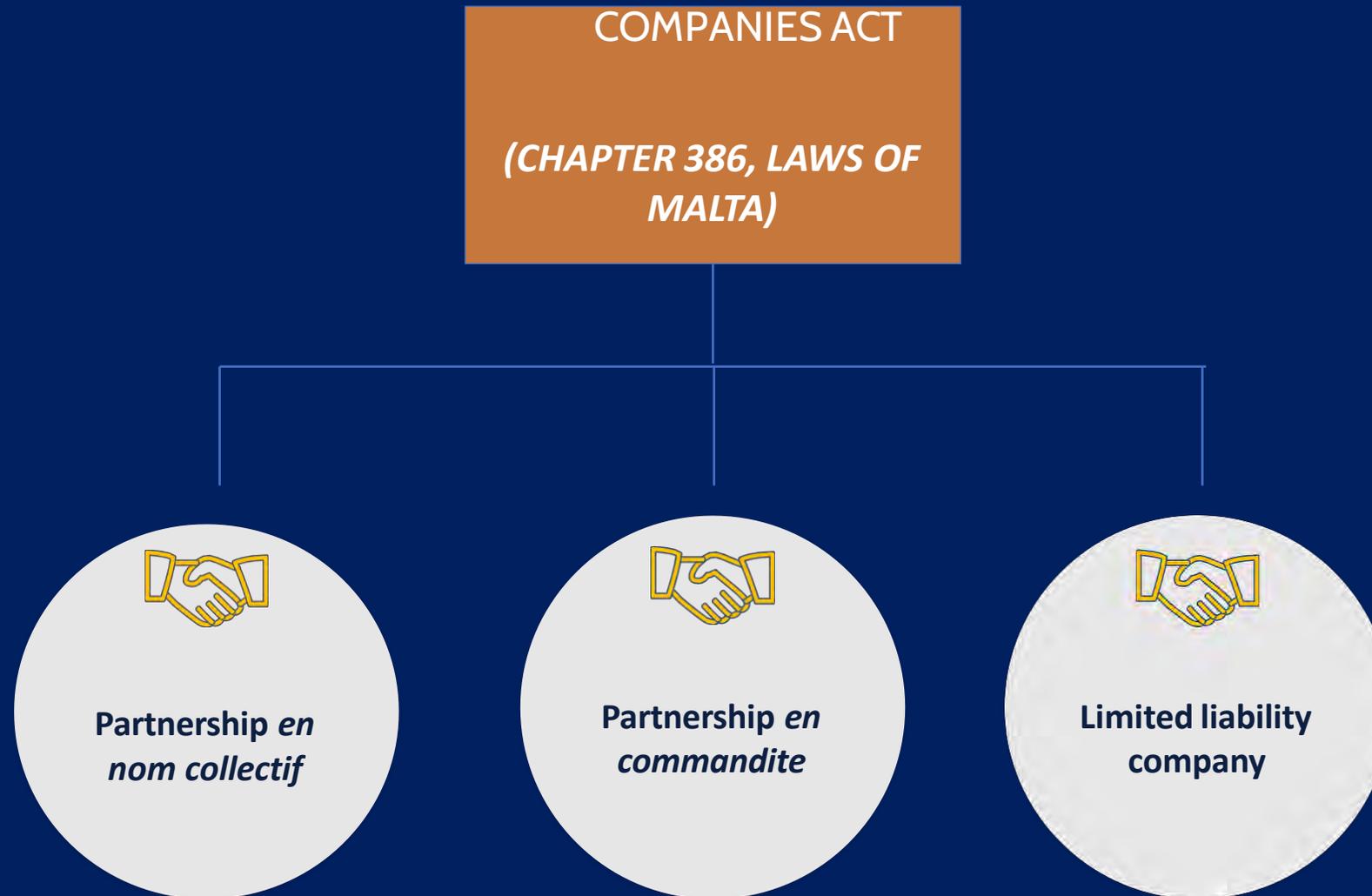
Introduction to Business Law

Lecture Title: Commercial Partnerships

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Date: 24 October 2023





A relationship based on contract

- An agreement between two or more persons
- Creating a legal relationship between the parties
- Regulated by the Memorandum and Articles of Association or by the deed of partnership



Validity of a Commercial Partnership

Form

- Constituted by a deed of partnership; drawn up as a private agreement or public deed
- Based on the contribution of the partners
- Must be registered with the Malta Business Registry, and comes into existence with the issuance of a certificate of registration





Partnership
*en nom
collectif*



“.....may be formed by two or more partners and operates under a partnership name and has its obligations guaranteed by the unlimited and joint and several liability of all the partners”

(Article 7, Companies Act)



Contribution – *en nom collectif*

The contribution may take the form of cash, items in kind and, or services.

There is no minimum or maximum amount of contribution set out at law.

In return for the contribution, the partners have an interest in the partnership which is regulated by the terms of the deed of partnership.



Administration of the partnership – *en nom collectif*

Insofar as the deed of partnership does not otherwise provide, the administration and representation of the partnership shall vest in each of the partners severally.

A partnership may not be bound in favour of third parties except by a partner acting under the partnership-name and having the representation of the partnership either by virtue of the deed of partnership or by operation of law.



The unlimited liability of the partners for the obligations of the partnership

Each and every partner is liable for the debts and obligations of the partnership with all his property, present and future and **not merely up to the amount contributed by him/her to the partnership.**

As between the partners, however, each partner is liable for the debts and obligations of the partnership in the proportion fixed in the deed of partnership and, in default, by law.

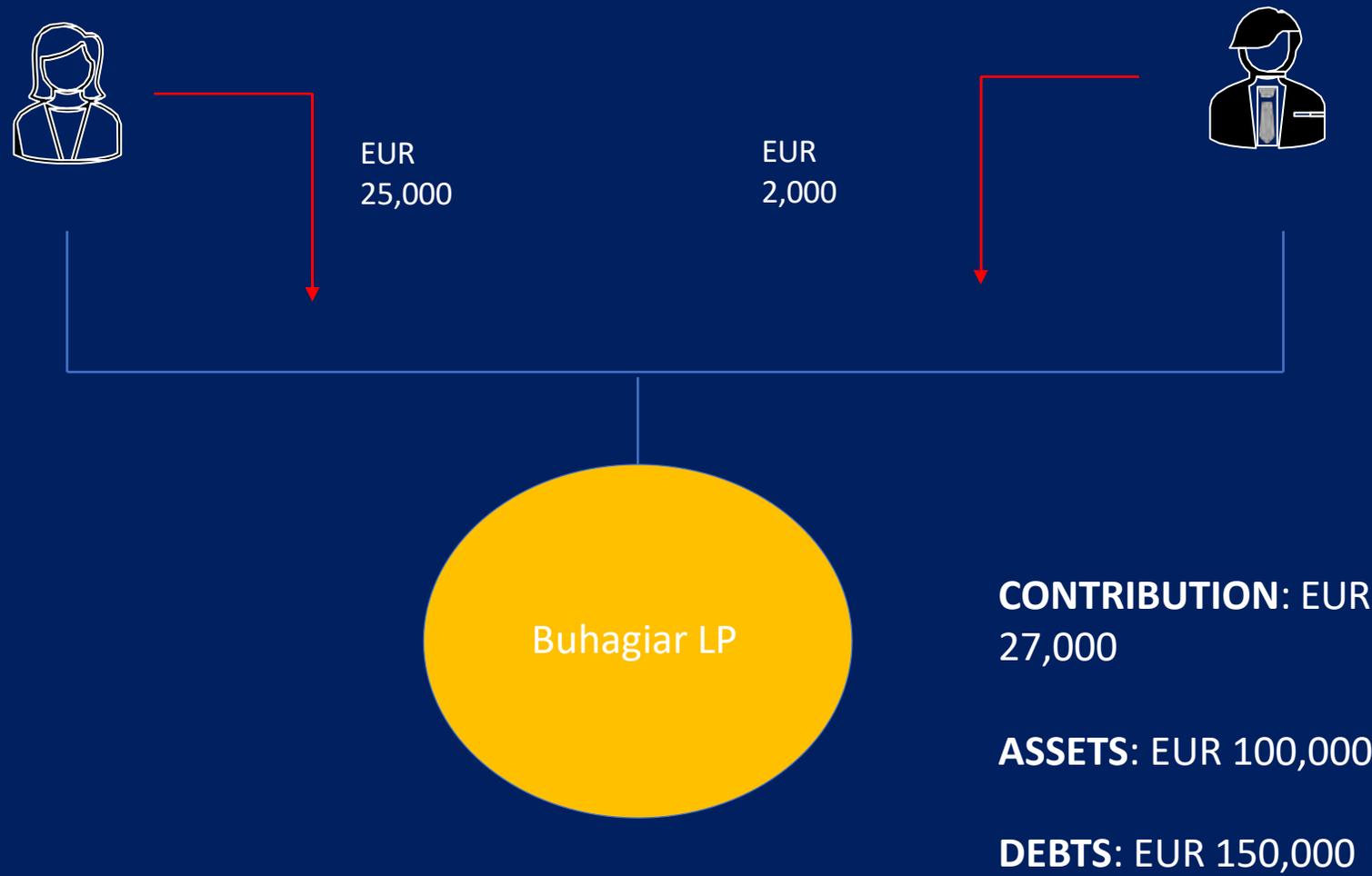


The joint and several liability of the partners for the obligations of the partnership

Joint and several liability connotes the idea of the ability of the creditor to turn to one of the co-debtors and claim the full amount of the debt owed to him.

But, the Companies Act says that *“no action shall lie against the individual partners unless the property of the partnership has first been discussed.”*





Partner is a corporate entity

- In the case of a corporate entity which is a partner, the liabilities of the partnership must be guaranteed by unlimited and joint and several liability of one or more of the corporate entity's members.
- If not, the partnership must notify the Registrar of Commercial Partnerships of this fact and the provisions on the publication of audited accounts in the Companies Act will apply to the partnership.



Principal characteristics – *en nom collectif*

- Two or more partners
- May be established for one or more acts of trade
- Unlimited joint and several liability of the partners for the debts of the partnership
- The partnership has a juridical personality separate from that of the partners
- Except in specific circumstances, audited accounts need not be filed



Partnership
en
commandite



This is defined in the Companies Act as a partnership which operates under a partnership name and has its obligations guaranteed by the unlimited and joint and several liability of one or more partners called general partners, and by the liability, limited to the amount, if any, unpaid on the contribution of one or more partners, called limited partners.

The provisions in the Companies Act applicable to partnerships *en nom collectif* also apply to partnerships *en commandite*, except for the specific variations set out in Companies Act



Contribution – *en commandite*

The contribution of the limited partners cannot include personal services



Administration – *en commandite*

The administration and representation of the partnership *en commandite* or limited partnership shall vest in the general partners, and unless the deed of partnership otherwise provides, such administration and representation shall vest in each of the general partners severally.



Principal characteristics – *en commandite*

- Two or more partners
- May be established for one or more acts of trade
- The liability of the partners is limited to the amount unpaid on their contribution
- The general partners are unlimitedly liable for the debts of the partnership
- The partnership has a juridical personality separate from that of the partners
- Except in specific circumstances, audited accounts need not be filed
- The capital of the partnership may be divided into shares



Limited Partner



EUR
25,000

Limited Partner



EUR
2,000

General Partners



Buhagiar LP

CONTRIBUTION: EUR
27,000

ASSETS: EUR 100,000

DEBTS: EUR 150,000



General Partner is a corporate entity

In the case of a corporate entity which is a general partner, the liabilities of the partnership must be guaranteed by unlimited and joint and several liability of one or more of the corporate entity's members.

If not, the partnership must notify the Registrar of Commercial Partnerships of this fact and the provisions on the publication of audited accounts in the Companies Act will apply to the partnership.



Why are these structures still relevant?

- In a limited liability company, **personal skills cannot be contributed.**
This is possible in the
 - *en nom collectif* and for all partners except limited partners in an *en commandite*.
- Except in certain cases, the partnerships do not need to file accounts.
- The *en commandite* is also used in the funds industry. may be constituted either as a close-ended or as an open-ended collective investment vehicle.





The limited liability company



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.”



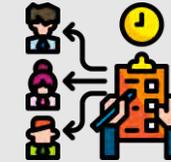
Key features of a LLC



The LLC is a separate legal entity

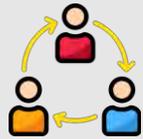


The owners are the shareholders of the company



Management is vested in the board of directors

Key features of a LLC



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



Memorandum and articles of association 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

Shareholders

- A shareholder is a person entered in the register of members of a company
- A person (corporate or individual) becomes a member of the company either on subscription or following the acquisition or transmission of shares in his/her/its favour
- Shareholders contribute capital (in the form of cash or kind) and receive instruments called shares
- The rights attaching to the shares are set out in the constitutional documents of the company which will determine dividend rights, voting rights and the right to participate in the profits of the capital on winding up
- Shareholders are not involved in the management of the company but, at law, they have the right to vote on certain matters e.g. the amendment to the constitutional documents.



Limited liability of shareholders

The members' liability is limited to the amount, if any, unpaid on the shares respectively held by each of them.

The only exception is the lifting of the corporate veil e.g. in the case of fraudulent trading where a shareholder was knowingly a party to the carrying on of the business of the company in a fraudulent manner with the intent to defraud creditors during the course of the winding-up of the company



Shareholder I



EUR
25,000
(100%)

Shareholder II



EUR
2,000
(20%)

Directors



CONTRIBUTION: EUR
27,000 (of which
EUR1,200 is left
unpaid)

ASSETS: EUR 100,000

DEBTS: EUR 150,000



Directors

The directors are responsible for promoting the well-being of the company for the general governance of the company, its proper administration and management and the general supervision of its affairs.

Directors are bound by fiduciary obligations

Directors are bound by statutory duties as well as duties of loyalty and duties of care and skill



Directors

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



Company Secretary

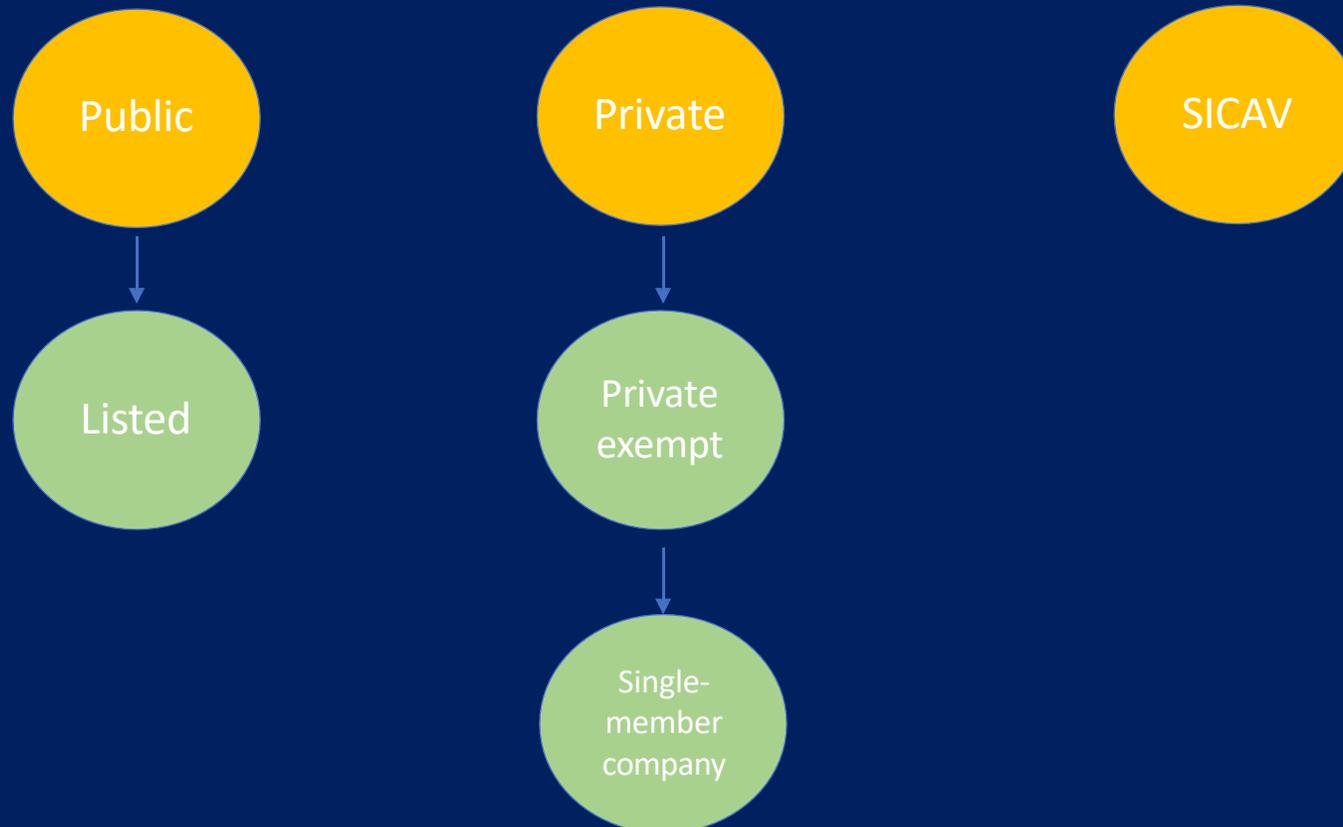
The role of the company secretary is **purely administrative**.

Both public and private companies must have a company secretary.



Limited Liability Companies

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



Private Company

Features of a private limited liability company

The M&As:

- restrict the right of shareholders to transfer their shares;
- limit the number of its members to 50; and
- prohibit the invitation to the public to subscribe for any of its shares or debentures.



Private Exempt Company

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, the following conditions:

- that the number of persons holding debentures of the company is not more than 50; and
- that no body corporate is a director of the company, and neither the company nor any of the directors is party to an arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members or debenture holders thereof.



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, such as:

- The company may grant loans to its directors or to directors of its parent company.
- Private exempt companies which qualify as “small companies” need not deliver to the Registrar the directors’ report and the profit and loss account. In certain instances, they do not need to submit the auditors’ report.

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



Single Member Exempt Company

A **Single Member Company** is a private exempt company formed and registered with one member.



Public Company

A public company is a company which is not a private 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:

The Companies Act implements the provisions of the EU Prospectus Regulation



Main Differences between a PLC and a LTD

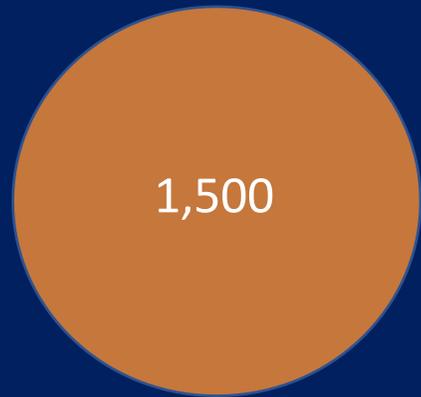
FEATURES	LTD	PLC
Minimum number of directors	1	2
Minimum number of members	2	2
Authorised share capital	euro 1,164.69	euro 46,587.47
Nominal value paid up upon subscription	>20%	>25%
Transferability of shares	Limited	Free
Advertise shares/debentures to public	No	Yes
Time to hold accounting records	10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

Corporate Transactions

- Issue of shares
- Transfer of shares
- Distribution of dividends
- Mergers and acquisitions
- Financings

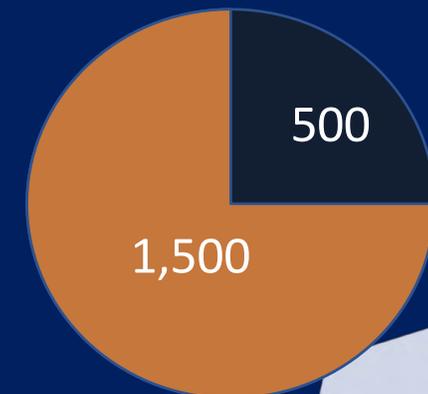


Issue of Shares

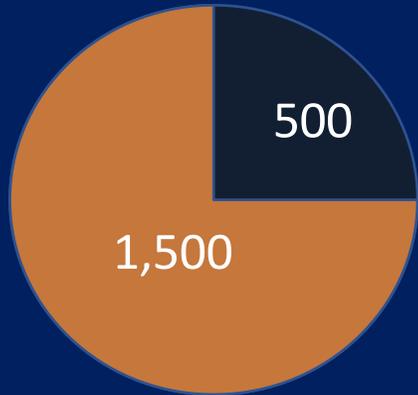


- **A** is the sole shareholder in Orange Company Limited, holding 1500 shares.
- Orange Company Limited is in need of financing for a project and is not keen on bank financing.
- Orange Company Limited proceeds to issue 500 shares to **B**.

- **B** now holds 25% of Orange Company Limited.
- **A**'s holding in Orange Company Limited has been reduced to 75%.



Transfer of Shares



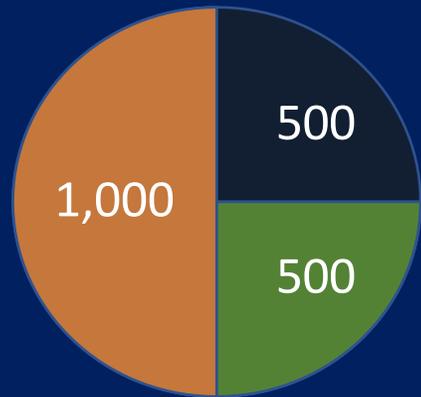
➤ **A** transfers 500 shares to **C**.

- **A** has reduced their ownership to 50%.
- **C** has acquired a 25% ownership.
- **B**'s ownership remains unchanged.



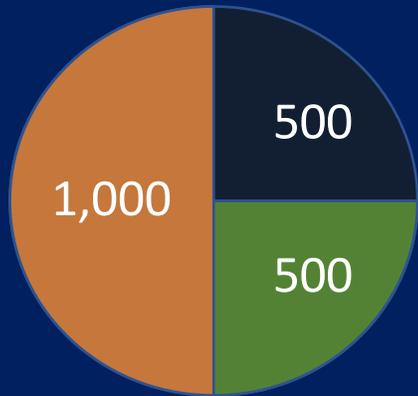


Distribution of Dividends

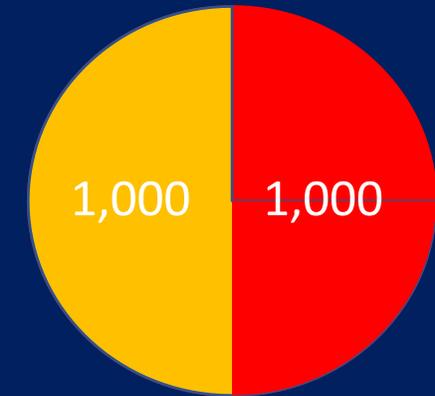


- Orange Company Limited wishes to distribute a dividend of €10,000.
- Dividends are distributed to the shareholders in proportion to the amount of shares entitling them to dividends held.
- A will receive a dividend of €5,000.
- C will receive a dividend of €2,500.
- B will receive a dividend of €2,500.

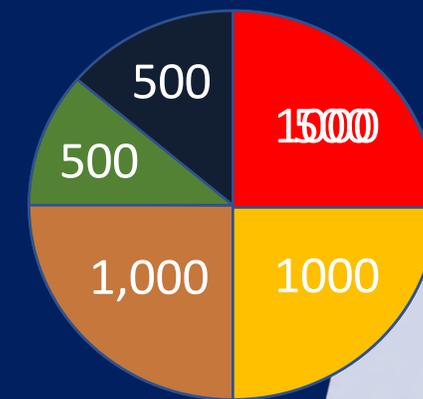
Mergers & Acquisitions



- Orange Company Limited believes that a merger with Lemon Company Limited would synergise both companies workstreams.
- Lemon Company Limited is owned by **D** and **E** in equal portion between them.
- An expert valuation of both companies noted that they are worth the same.



- Following the merger into Citrus Company Limited, the shareholding structure is as follows:
 - **A** owns 25%
 - **C** owns 12.5%
 - **B** owns 12.5%
 - **D** owns 25%
 - **E** owns 25%



The Principle of 'Reserved Powers'

- Unless otherwise provided in the memorandum or articles of a company, a director of a company other than the first directors shall be appointed by ordinary resolution of the company in general meeting.
- The directors owe their duties to the company, and not the individual shareholders.
- The directors may exercise all powers of the company which are not required to be exercised by the shareholders in general meeting, by the Companies Act or the Memorandum and Articles of Association.



Decision making matters in Companies



Board meetings

- The powers of directors are exercised through the meetings of the board of directors.
- Meetings of directors are lightly regulated.



General meetings

- Decisions at general meetings are binding on the members and on the company itself
- Annual general meetings and extraordinary general meetings
- Resolutions in writing



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 all the shares having voting rights or such higher percentage set out in M&As)

ORDINARY RESOLUTION

- Passed by more than 50% of the members having the voting rights



Resolutions (public companies)

EXTRAORDINARY RESOLUTION

- 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 RESOLUTION

- 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.

