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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

supervisory control of the affairs of the company. A manager's duties to the company are generally more burdensome than those of the employees, who basically owe a duty of confidentiality to the company. A company's auditors are appointed at general meetings. The auditors do not owe a duty to the company as a legal entity, but, rather, to the shareholders, to whom the auditor's report is addressed.

- 5** The duties owed by directors to a company can be classified into two groups. The first is a **duty of care** and the second is a **fiduciary duty**. The duty of care requires that the directors must exercise the care of an ordinarily prudent and diligent person under the relevant circumstances. The fiduciary duty stems from the position of trust and responsibility entrusted to directors. This duty has many aspects, but, broadly speaking, a director must act in the best interests of the company and not for any collateral purpose. However, the courts are generally reluctant to interfere, provided the relevant act or omission involves no fraud, illegality or **conflict of interest**.
- 6** Finally, a company's state of health is reflected in its accounts¹, including its **balance sheet** and **profit-and-loss account**². Healthy profits might lead to a **bonus** or **capitalisation issue**³ to the shareholders. On the other hand, continuous losses may result in insolvency and the company going into **liquidation**.

¹ (US) financial statements

² (US) profit-and-loss statement or income statement

³ (US) stock dividend

2 Key terms: Roles in company management

- 2.1** Some of the important roles in company management are discussed in Reading A above. Which roles are mentioned?
- 2.2** Here is a more comprehensive list of roles in company management. Match the roles (1–10) with their definitions (a–j).

- | | |
|----------------------------|---|
| 1 auditor | a person appointed by a shareholder to attend and vote at a meeting in his/her place when the shareholder is unable to attend |
| 2 company secretary | b director responsible for the day-to-day operation of the company |
| 3 director | c person elected by the shareholders to manage the company and decide its general policy |
| 4 liquidator | d person engaged in developing or taking the initiative to form a company (arranging capital, obtaining personnel, making arrangements for filing corporate documentation) |
| 5 managing director | e person appointed by the company to examine the company's accounts and to report to the shareholders annually on the accounts |
| 6 official receiver | f 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 |
| 7 promoter | g member of the company by virtue of an acquisition of shares |
| 8 proxy | h officer of the court who commonly acts as a liquidator of a company being wound up by the court |
| 9 receiver | i person appointed by creditors to oversee the repayment of debts |
| 10 shareholder | j person appointed by a court, the company or its creditors to wind up the company's affairs |

3 Listening A: Company formation

Lawyers play important roles in the formation of a company, advising clients which entities are most suited to their needs and ensuring that the proper documents are duly filed.

You are going to hear a conversation between an American lawyer, Ms Norris, and her client, Mr Herzog. The lawyer describes how a specific type of corporation is formed in the state of Delaware.

3.1 ⏮ Listen to the conversation and tick the documents required for formation that the lawyer mentions.

- | | |
|--|--------------------------|
| 1 DBA filing | <input type="checkbox"/> |
| 2 articles of incorporation | <input type="checkbox"/> |
| 3 stock ledger | <input type="checkbox"/> |
| 4 general partnership agreement | <input type="checkbox"/> |
| 5 stock certificates | <input type="checkbox"/> |
| 6 IRS and State S Corporation election | <input type="checkbox"/> |
| 7 bylaws | <input type="checkbox"/> |
| 8 organisational board resolutions | <input type="checkbox"/> |

3.2 ⏮ Listen again and answer these questions.

- 1 According to the lawyer, what is the advantage of incorporating an entity in the state of Delaware?
- 2 What information is included in the articles of incorporation?
- 3 What happens at the first organisational meeting of a corporation?

3.3 Company types (USA) Look at this table, which provides information on the documents required to form and operate the different company types in the United States. Based on what you heard in Exercise 3.1, which type of business association was the lawyer discussing with her client?

US entities	Documents required for formation and operation
sole proprietorship	DBA filing
general partnership	General Partnership Agreement, local filings if partnership holds real estate
limited partnership	Limited Partnership Certificate, Limited Partnership Agreement
C corporation	Articles of Incorporation, Bylaws, Organisational Board Resolutions, Stock Certificates, Stock Ledger
S corporation	Articles of Incorporation, Bylaws, Organisational Board Resolutions, Stock Certificates, Stock Ledger, IRS and State S corporation election

3.4 Company types (UK) The table on the next page contains information about five types of common UK business associations, covering the aspects of liability of owners, capital contributions and management. (In many jurisdictions in the world, there are entities which share some or all of these characteristics.) Look at the table and decide which entity (a–e) is being described in each row (1–5).

- a private limited company (Ltd)
- b general partnership
- c public limited company (PLC)
- d limited partnership
- e sole proprietorship

Entity	Liability of owners	Capital contributions	Management
1)	Unlimited personal liability for the obligations of the business.	Capital needed is contributed by sole proprietor.	Business is managed by the sole proprietor.
2)	Generally no personal liability of the members for obligations of the business.	No minimum share capital requirement. However, capital can be raised through the issuance of shares to members or through a guarantee.	Company is managed through its managing director or the board of directors acting as a whole.
3)	No personal liability; liability is generally limited to shareholder contributions (i.e. consideration for shares).	The minimum share capital of £50,000 is raised through issuance of shares to the public and/or existing members.	Company is managed by the board of directors; shareholders have no power to participate in management.
4)	Unlimited personal liability of the general partners for the obligations of the business.	Partners contribute money or services to the partnership; they share profits and losses.	The partners have equal management rights, unless they agree otherwise.
5)	Unlimited personal liability of the general partners for the obligations of the business; limited partners generally have no personal liability.	General and limited partners contribute money or services to the limited partnership; they share profits and losses.	The general partner manages the business, subject to any limitations of the Limited Partnership Agreement.

4 Reading B: A memorandum of association

An important document in company formation is the memorandum of association (UK) or articles/certificate of incorporation (USA). This document sets forth the objects of the company and its capital structure; as such, it represents a legally binding declaration of intent to which the members of the company must adhere.

4.1 Below is an extract from the articles of incorporation of a US company. Read through the extract quickly and tick the issues it addresses.

- 1 appointing members of the board of directors
- 2 changing corporation bylaws
- 3 procedures for holding a vote of the shareholders
- 4 stipulations for keeping corporation records

The power to alter, amend or repeal the bylaws or to adopt new bylaws shall be vested in the Board of Directors; *provided*, however, that any bylaw or amendment thereto as adopted by the Board of Directors may be altered, amended or *repealed* by a vote of the shareholders *entitled to vote* for the election of directors, or a new bylaw *in lieu thereof* may be adopted by vote of *such* shareholders.

5 No bylaw which has been altered, *amended* or adopted by such a vote of the shareholders may be altered, amended or repealed by vote of the directors until two years shall have *expired* since such action by vote of such shareholders. [...]

The Corporation shall keep as permanent records minutes of all meetings of its shareholders and directors, a record of all action taken by the shareholders or the directors without a meeting, and a record of all actions taken by a committee of the directors in place of the Board of Directors on behalf of the Corporation. The Corporation shall also maintain appropriate accounting records.

10 The Corporation, or its agent, shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order, by class of shares, showing the number and class of shares held by each.

4.2 Read the extract again and decide whether these statements are true or false.

- 1** The board of directors only has the power to change the bylaws if the shareholders in turn have the power to amend any changes made by the board of directors.
- 2** The board of directors is proscribed at all times from changing any bylaw which has been altered by a vote of the shareholders.
- 3** Records must only be kept of decisions reached by shareholders and directors in the course of a meeting.
- 4** Records of the shareholders must list the number of shares they own.

proscribe
= prohibit, ban
prescribe
= stipulate

4.3 For each of these words or phrases, find the *italicised* word(s) in the extract that most closely matches its meaning.

- | | | | |
|--------------------------------|-----------------------|--------------------|-------------------|
| 1 passed | 3 instead | 5 cancelled | 7 given to |
| 2 who have the right to | 4 on condition | 6 revised | 8 these |

5 Language use: *Shall and may*

Read through the extract on page 23 again, noting how *shall* and *may* are used, and answer these questions.

- 1** Which of these words most closely matches the meaning of *shall* in each case?
a) will **b)** must
- 2** What do you notice about the use of *shall* in line 6?
- 3** Which of these words most closely matches the meaning of *may* in the text?
a) can **b)** could

In legal documents, the verb *shall* is mainly used to indicate obligation, to express a promise or to make a declaration to which the parties involved are legally bound. This use differs from that in everyday speech, where it is most often used to make offers (*Shall I open the window?*) or to refer to the future (*I shall miss you*), although this latter use is less frequent in modern English.

In legal texts, *shall* usually expresses the meaning of 'must' (obligation):

Every notice of the meeting of the shareholders shall state the place, date and hour.

or 'will' (in the sense of a promise):

The board of directors shall have the power to enact bylaws.

Shall can also be used in legal texts to refer to a future action or state:

... until two years shall have expired since such action by vote of such shareholders.

In everyday speech, this future meaning is commonly expressed using only the present perfect (*... until two years have expired ...*).

Another verb commonly found in legal documents is *may*, which generally expresses permission, in the sense of 'can' (this use is less common in everyday English):

... any bylaw or amendment thereto as adopted by the Board of Directors may be altered, amended or repealed by a vote of the shareholders.

In everyday English, *may* is sometimes used as a substitute for *might*, indicating probability (*He may want to see the document*).

Learners of legal English should be aware that the use of *shall* in legal texts has been criticised in recent years, particularly with regard to what some consider its inconsistent

and excessive use. Language reformers point out that in many instances, *shall* does not express obligation, but rather is used solely to give a text a 'legal feel'. This tendency, which can in part be attributed to the conservative nature of legal writing, can lead to undesirable consequences, ranging from legal disputes arising from the ambiguous use of *shall* in contracts to difficulties in translating English-language legislation into other languages. Furthermore, the fact that *shall* is often used in legal texts in ways which differ from general English usage serves to make these texts harder to understand and less transparent to the average person. For this reason, supporters of the Plain English Movement even recommend replacing *shall* with *must* to express obligation (see Unit 3). At the very least, learners of legal English should know about the issues surrounding the use of *shall* and exercise care when writing.

6 Listening B: Forming a business in the UK

You are going to hear a phone conversation in which a lawyer, Mr Larsen, discusses some of the characteristics of two business entities with Mr García, a client who is interested in forming a company in the UK.

6.1 ◀ Listen to the phone conversation and decide whether these statements are true or false.

- 1 The client has not yet decided what type of company he wants to form.
- 2 The client has never founded a company before.
- 3 The lawyer points out that the two types of company differ with regard to the matter of personal liability.
- 4 The shares of a US C corporation can be freely traded on a stock exchange.
- 5 Both company types mentioned by the lawyer can be formed by a person who is a citizen of another country.
- 6 The UK company type discussed places a restriction on the number of people permitted to buy shares in the company.
- 7 The fastest way to form a company is to submit the documents directly to Companies House.

6.2 In the conversation, the lawyer compares and contrasts two company types. Complete the sentences below (1–4) using the phrases in the box (a–d).

a are like each other **b** are similar to **c** differs **d** in both

- 1 C corporations private limited companies in the UK in many ways, particularly in respect of liability.
- 2 Shareholders are not personally liable for the debts of the corporation a C corporation and a private limited company.
- 3 In this respect, a private limited company Its shares are not available to the general public.
- 4 The two types of company in that both can be founded by persons of any nationality, who need not be a resident of the country.

6.3 Compare and contrast two types of company from the table on page 23 using these phrases.

X differs from Y in that ...

X resembles Y in that ...

EXAMPLE: *A sole proprietorship differs from a private limited company in that it is managed by the sole proprietor rather than by a managing director or a board of directors.*

7 Speaking: An informal presentation: a type of company

When speaking briefly about a topic of professional interest, experienced speakers will organise their thoughts in advance. A simple but effective structure divides information into three parts:

- 1** introductory remarks **2** main points **3** concluding statement

The main points are also best limited to three, as this is easy to remember.

Notes for a response to the exercise below might look like this:

Introductory remarks

A *publikt aktiebolag* is the closest Swedish equivalent to a public limited company – most common form for major international businesses in Sweden.

Main points

- 1** liability: no personal liability
- 2** management: board of directors (Swedish equivalent, *styrelsen*) has power to make decisions; shareholders don't participate in management
- 3** needed for formation: memorandum of association (*stiftelseurkund*) and articles of association (*bolagsordning*)

Concluding statement

An *aktiebolag* is similar to a public limited company, with the most significant difference being that its shares do not need to be listed on an exchange or authorised marketplace.

Which types of companies are there in your jurisdiction? Choose one and describe it as you would for a client from another country. In your description, refer to some of the features given in the UK company table on page 23. Tell your client which documents must be filed to complete the formation process. Wherever relevant, compare and contrast your company type with a UK business entity.

8 Reading C: Russian entity formation

Law firms often publish informative articles on their websites which they believe will be of interest to their clients. Typically, these articles deal with areas of the law in which the firm has particular expertise. The text on the next page, which appeared on the website of a US law firm, deals with entity formation in Russia, and contrasts a Wholly Foreign-Owned Entity (WFOE) with a representative office.

- 8.1** Read the first paragraph. Which three types of business enterprise are mentioned?
- 8.2** Read through the entire article and decide whether these statements are true or false.
 - 1** The option of forming a WFOE to do business in Russia has existed for many years.
 - 2** Establishing a representative office is not recommended for merchants unless they are primarily interested in engaging in marketing activities.
 - 3** Since an OOO has the status of a legal person, it is fully liable for its own obligations, and the foreign entity is free from all liability.
 - 4** Regarding employee permits, the same requirements apply for both business types.
 - 5** The tax and reporting requirements connected with a WFOE are disadvantages that should be weighed against the advantage it offers with regard to the freedom to carry out business in Russia.
- 8.3** Is there a comparable WFOE in your jurisdiction? Describe its features with regard to the points listed in the table in the article.

One of the most common requests our law firm gets regarding Russia comes from a non-Russian company seeking assistance in setting up a Russian joint venture or a representative office. When we tell them in response to their queries that only rarely does it make sense to go into Russia with a joint venture or a representative office, they commonly respond either with surprise that there are other alternatives or by telling us that this is how their very well-run competitor entered the Russian market. When we explain that Russia now allows Wholly Foreign-Owned Entities (WFOE), they quickly realise the benefits of not getting enmeshed with a Russian joint-venture partner. However, the benefits of a WFOE over a representative office are more difficult to explain.

The purpose of this article and the accompanying table is to briefly compare the advantages and disadvantages of a representative office and of a limited liability company (known as an *Obščestvo s Ogranitschennoj Otvetstvennostju*, or OOO) wholly owned by a foreign entity in terms of those characteristics that are relevant for companies interested in establishing and running a business in Russia. At the outset, however, it must be made clear that if your intention is to buy or sell goods in Russia, you cannot legally go in as a representative office. A representative office is limited to representing or marketing for a foreign-owned entity. In the past, many foreign companies would go into Russia by way of a representative office and then conduct business within Russia, but only because they had no other real choice. Companies have that choice now.

Comparison	Representative office	Limited liability company (OOO)
Legal status	Not an independent legal entity. All property would be owned by the foreign (non-Russian) entity. Not allowed to conduct commercial activity, so it doesn't technically generate profits. Limited to negotiating contracts, marketing or conducting other supporting activities for the foreign entity.	Can act only through a manager authorised to act for and on behalf of the foreign entity pursuant to power of attorney. All the rights of a Russian company. Managing director elected by the foreign company can act on behalf of OOO without a power of attorney within the framework provided by Russian legislation, OOO corporate documents and agreements concluded between OOO and the director.
Liability	Foreign entity would be liable for acts of its representative office done pursuant to the power of attorney.	OOO is liable for its own obligations. The foreign entity's liability generally limited to its contribution to charter capital.
Charter capital	None	Approximately \$330 minimum charter capital required
Fees and costs	\$10,000–\$18,000	\$3,500–\$6,500
Foreign employee issue	Foreign employees must obtain personal work permit.	In order to employ foreign employees, a company must obtain an employment permit. Afterwards, every foreign employee must obtain a personal work permit.
Taxation	Subject to payroll, retirement, road and social security taxes.	Subject to same taxes at same rates as representative office, but also subject to income tax, VAT (e.g. equipment shipped for sale to Russia is subject to VAT), property taxes and transportation taxes (if OOO owns vehicles). The foreign entity dividends received from OOO may be subject to either US or Russian taxation according to the Treaty signed between USA and Russia regarding double taxation.

In the course of deciding whether to establish a representative office or a WFOE, the investor must balance the convenience of a representative office with the ability to conduct business in Russia through a WFOE. A representative office in Russia can be opened and closed with relatively little formality. Since the office is not a Russian legal person, it is not subject to many of the burdensome regulations that apply to legally established Russian companies, such as tax and reporting requirements. However, the business activities of a representative office are severely restricted, to the point that it usually can do little more than act as a company's marketing arm in Russia. On the other hand, a WFOE entity in Russia is considered to be a legal person, and as such, it enjoys both the rights and obligations of any other Russian company. Thus the scope of business operations for a WFOE in Russia is nearly always equivalent to that of any other Russian company. But a WFOE in Russia is also subject to the same taxation, reporting and company regulation requirements of any Russian company. The burden of these obligations for a WFOE must be balanced against the freedom to conduct real business in Russia.

9 Reading D: Corporate governance

Lawyers often assist their clients in handling legal disputes involving corporate governance. The letter of advice below addresses one such dispute.

9.1 Read the first three paragraphs of the letter. What does the dispute specifically involve?

Re: Special shareholders' meeting of Longfellow Inc.

I have now had an opportunity to research the law on this point and I can provide you with the following advice.

Firstly, to summarise the facts of the case, a group of shareholders of Longfellow Inc. has filed an action in the district court seeking to set aside the election of
5 the board of directors on the grounds that the shareholders' meeting at which they were elected was held less than a year after the last such meeting.

The bylaws of the company state that the annual shareholders' meeting for the election of directors be held at such time each year as the board of directors determines, but not later than the fourth Wednesday in July. In 2009, the meeting
10 was held on July 17th. At the discretion of the board, in 2010 the meeting was held on March 19th. The issue in this case is whether the bylaws provide that no election of directors for the ensuing year can be held unless a full year has passed since the previous annual election meeting.

The law in this jurisdiction requires an 'annual' election of the directors for
15 the ensuing 'year'. However, we have not found any cases or interpretation of this law which determine the issue of whether the law precludes the holding of an election until a full year has passed. The statutes give wide leeway to the board of directors in conducting the affairs of the company. I believe that it is unlikely that a court will create such a restriction where the legislature has not
20 specifically done so.

However, this matter is complicated somewhat by the fact that there is currently a proxy fight underway in the company. The shareholders who filed suit are also alleging that the early meeting was part of a strategy on the part of the directors to obstruct the anticipated proxy contest and to keep these shareholders from
25 gaining representation on the board of directors. It is possible that the court will take this into consideration and hold that the purpose in calling an early meeting was to improperly keep themselves in office. The court might then hold that, despite the fact that no statute or bylaw was violated, the election is invalid on a general legal theory that the directors have an obligation to act in good faith.
30 Nevertheless, courts are usually reluctant to second-guess the actions of boards of directors or to play the role of an appellate body for shareholders unhappy with the business decisions of the board. Only where there is a clear and serious breach of the directors' duty to act in good faith will a court step in and overturn the decision. The facts in this case simply do not justify such court action and I
35 therefore conclude that it is unlikely that the shareholders will prevail.

9.2 Read the whole letter and choose the best answer to each of these questions.

- 1** On which grounds did the shareholders file the action?
 - a** on the grounds of their rights as shareholders
 - b** on the grounds of a violation of the bylaws
 - c** on the grounds of an ongoing proxy fight
 - d** on the grounds of their lack of faith in the board of directors
- 2** What does the writer identify as the issue in the case?
 - a** whether the annual shareholders' meeting determines the term of the board of directors
 - b** whether the election of the board of directors requires a quorum
 - c** whether the annual shareholders' meeting must be held a full year after the last one
 - d** whether the bylaws define the term 'full year'
- 3** What does the writer say regarding earlier cases related to this one?
 - a** They provide for an analysis in favour of the shareholders.
 - b** They give the board of directors the freedom to run the company as they see fit.
 - c** They have merely provided an interpretation of the legislative intent.
 - d** They do not address the issue involved.
- 4** What does the writer conclude?
 - a** It is dubious that the shareholders will prevail.
 - b** The facts of the case do not support judicial intervention.
 - c** A court of appeal will only look at the facts of the case.
 - d** The board of directors has a duty to act in good faith.

9.3 Choose the best explanation for each of these words or phrases from the letter.

- 1** on the grounds that (line 5)
 - a** in the area of
 - b** on the basis of the fact that
 - c** despite the fact that
- 2** at the discretion of (line 9)
 - a** according to the decision of
 - b** through the tact of
 - c** due to the secrecy of
- 3** the ensuing year (line 11)
 - a** the past year
 - b** the present year
 - c** the next year
- 4** statutes give wide leeway (line 16)
 - a** statutes can easily be avoided
 - b** statutes allow considerable freedom
 - c** statutes restrict extensively
- 5** alleging (line 20)
 - a** stating without proof
 - b** making reference to
 - c** proposing
- 6** to act in good faith (line 26)
 - a** to act from a religious belief
 - b** to do something with honest intention
 - c** to plan for the future carefully

9.4 Answer these questions.

- 1 What do the bylaws of the company stipulate concerning the date of the election of company directors?
- 2 What do the shareholders claim was the reason why the annual shareholders' meeting was held early?
- 3 What role might the concept of 'good faith' play in the court's decision?

9.5 What is your opinion of the case? Do you think the shareholders' claim is justified?**9.6** In the letter, different verbs are used to refer to what the company bylaws and the relevant legislation say. Complete these phrases using the appropriate verbs from the letter.

- 1 The bylaws of the company ...
- 2 The law in this jurisdiction ...
- 3 The law ...

10 Text analysis: A letter of advice**10.1** Look at the letter on page 28 again and discuss these questions.

- 1 What is the purpose of the letter?
- 2 Who do you think might have requested it?
- 3 Looking at the letter carefully, what would you say is the function of each paragraph?

The text in Reading D represents a **letter of advice**, a type of text written by a lawyer for a client.

The function of a letter of advice is to provide an analysis of a legal problem so that the client can make an informed decision concerning a course of action. Another type of text which should be mentioned here because of its similarity to a letter of advice is a **legal opinion**. While the language of this type of text is similar, a legal opinion is generally much longer, as it entails thorough research and covers the issues in greater detail. A legal opinion also carries much more weight and greater potential liability for the lawyer or firm issuing it.

Regarding the contents, we can say that, in general, a letter of advice:

- identifies the legal issue at stake in a given situation and explains how the law applies to the facts presented by the client;
- indicates the rights, obligations and liabilities of the client;
- outlines the options the client has, pointing out advantages and disadvantages of each option;
- considers factors such as risk, delay, expense, etc., as well as case-specific factors;
- makes use of facts, relevant law and reasoning to support the advice.

The structure of the letter can be made clear by using standard signalling phrases. The table on page 31 provides examples of phrases used to structure the information in a text. These phrases serve as signals, pointing to information before it is presented, thus increasing the clarity of a text.

10.2 Read through the letter once again and look for 11 phrases with a signalling function. Add them where appropriate to this table.

Referring to the subject matter	<i>Thank you for instructing us in relation to the above matter. You have requested advice concerning ...</i> 1)
Summarising facts	<i>Our opinions and advice set forth below are based upon your account of the circumstances giving rise to this dispute, a summary of which is as follows. Based on information provided to us, we understand that ...</i> 2)
Identifying legal issue	<i>The legal issue seems to be ...</i> 3)
Referring to relevant legislation/regulations	<i>The section which is relevant for present purposes provides that ...</i> <i>The section makes express reference to ...</i> <i>As the law stands at present, ...</i> 4) 5) 6)
Referring to previous court decisions	<i>The court has held that ...</i> <i>We have (not) found cases or interpretation of this law which argue that ...</i>
Drawing conclusions	<i>We therefore believe that ...</i> 7) 8) 9) 10) 11)
Indicating options	<i>In light of the aforesaid, you have several courses of action / alternatives / options open to you.</i>
Closing	<i>I await further instructions at your earliest convenience.</i> <i>Please contact us if you have any questions about the matters here discussed, or any other issues.</i>

11 Writing: A letter of advice

A client who is the managing partner of a Mexican energy-drink firm has asked you for information about establishing a business in Russia, with a view to launching a chocolate-flavoured energy drink called Xocoatl.

Write a letter of advice in which you should:

- say what a WFOE is;
- list advantages and disadvantages connected with it;
- recommend the best course of action for his firm.

Before you write, consider the purpose, the expected contents and the standard structure of a letter of advice. Refer back to Reading C for information about WFOEs in Russia and make use of signalling phrases from the table above to help structure the information in your letter.



Unit 2

To improve your web-based research skills, visit www.cambridge.org/elt/ile2, click on Research Tasks and choose Task 2.

Language focus

1 Vocabulary: distinguishing meaning

You may need to consult a dictionary to distinguish the differences in meaning.

- 1 stipulate specify proscribe prescribe
- 2 succeeding elapsing ensuing subsequent
- 3 responsibility duty discretion obligation
- 4 prior previous prerequisite preceding
- 5 margin leeway latitude interpretation
- 6 preclude permit forestall prevent

2 Vocabulary: word choice

These sentences deal with company formation and management. In each case, choose the correct word or phrase to complete them.

- 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.
- 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.
- 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.

3 Word formation

Complete this table by filling in the correct noun or verb form.

Underline the stressed syllable in each word with more than one syllable.

Verb	Abstract noun	Personal noun
administrate ¹	<u>administration</u>	<u>administrator</u>
	audit	
	liquidation	
perpetrate		
	appointment	
assume		
authorise		
	formation	
issue		
omit		
provide		
	redemption	
require		
	resolution	
transmit		

¹ (US) administer

4 Vocabulary: prepositional phrases These prepositional phrases, which are common in legal texts, can all be found in Reading C. Match the prepositional phrases (1–4) with their definitions (a–d).

- | | |
|---------------------------|---|
| 1 in terms of | a 1) for the purpose of; 2) by the route through |
| 2 in the course of | b as an answer to; in reply to |
| 3 by way of | c 1) with respect or relation to; 2) as indicated by |
| 4 in response to | d while, during |

5 Vocabulary: prepositional phrases Complete these sentences using the prepositional phrase from Exercise 4 that best fits in each one. For one of the sentences, there is more than one correct answer.

- 1** *In the course of* 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.
- 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.
- 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.
- 7** Shareholders and other investors in corporations tend to view corporate governance the corporation's increasing value overtime.
- 8** Regular and extraordinary board meetings may be held by telephone, video-conference and written resolutions.

6 Verb–noun collocations Match each verb (1–5) with the noun it collocates with (a–e) in Reading D. If you have difficulty matching them, look back at the letter.

- | | |
|-------------------|-------------------------|
| 1 violate | a affairs |
| 2 call | b representation |
| 3 overturn | c a meeting |
| 4 gain | d a decision |
| 5 conduct | e a law |

7 Collocations with file Decide which of these words and phrases can go with the verb *to file*. You may need to consult a dictionary.

an action an AGM an amendment an appeal 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