

## CHAPTER 16 COMPANY LAW I: THE STRUCTURE AND MANAGEMENT OF BUSINESS

*After studying this chapter students should be able to:*

### EXPLAIN THE ROLE OF PROMOTERS IN SETTING UP A COMPANY

- Promoters take procedural steps to set up a company and make business preparations for the company.
- They have a general duty to exercise reasonable care and skill and a fiduciary duty towards the company.

### EXPLAIN WHAT IS MEANT BY A COMPANY 'OFF THE SHELF'

- A company off the shelf is one that has already been registered at Companies House and left dormant.

### IDENTIFY THE STEPS FOR REGISTERING A COMPANY

- To form a new company a memorandum of association, an application for registration, a statement of compliance, and the appropriate fee must be lodged with the Registrar of Companies.
- The application of a company limited by shares must include a statement of capital and initial shareholdings and a copy of the company's articles where they differ from the model default articles.
- A public company must have at least two subscribers and the nominal share capital must be the minimum of £50,000, of which 25 per cent must be paid up.

### OUTLINE THE RULES RELATING TO A COMPANY'S NAME

- A company must not have the same name as one that is already on the register.
- Private companies (unless exempted) must end their names with 'Limited' or 'Ltd' and public limited companies with 'public limited company' or 'plc'.
- A person may apply to the Company Names Adjudicator objecting to a company's name if it is the same as a name in which he has goodwill or if it is so similar to an existing name that it is likely to mislead the public. The tort of passing off may also be available.
- A company can change a company's name by special resolution or by any other means provided for in its articles.
- The company's registered name must be displayed outside the registered office and at all places of business and on company documents, etc.

### DESCRIBE THE CONSTITUTION OF A COMPANY

- The constitutional document is the Articles of Association which state all the rules necessary for the conduct of the company's business.
- The constitution of a company binds the company and its shareholders.
- Articles can usually be amended by special resolution.

### DESCRIBE THE DIFFERENT TYPES OF SHARES

- A share is a form of property which carries rights and obligations. Subject to any restrictions in the articles, it is transferable. A company may create different types of shares.

- Ordinary shares are issued without any special rights being attached to them.
- Preference shares have the right to receive an annual dividend of a fixed amount before a dividend is paid on ordinary shares.
- Redeemable shares carry a right by the company to redeem or buy back the shares at some future date.

SHOW AN UNDERSTANDING OF HOW A COMPANY IS FINANCED THROUGH THE ISSUE OF SHARES AND DEBENTURES

- A company can raise capital by selling shares in the company, or by taking out loans.
- The price for shares may be money or money's worth.
- A trading company has an implied power to borrow money for purposes incidental to its business and charge their assets as security for a loan.
- A debenture is the written document issued by a company setting out the terms of a loan. They may be single debentures, debentures issued as a series, or debenture stock.
- A debenture can be secured by a fixed or a floating charge. All charges must be registered at Companies House.