

**PARTNERSHIPS AND COMPANIES
A COMPARATIVE APPROACH TO UK BUSINESS ORGANISATIONS***

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INTRODUCTION

This paper does not pretend to cover all the different aspects of partnerships and companies as forms of organising business, but to be a guide for the reader in his approach to the two most spread and important types of business associations provided by law for today's businessman. Therefore, the essay is divided in two basic parts: the first one is dedicated to an independent and separate analysis of partnerships and companies within the UK; and the second one, which is a comparison between both business associations.

PARTNERSHIPS & COMPANIES, THE BRITISH TREATMENT.

The first step in order to achieve a logical and complete comparison between partnerships and companies from UK's Law point of view is to understand the main characteristics of both figures and the different subtypes within them. Consequently, this section starts with the essential aspects of every type of partnerships and companies, and finalises with the comparative examination.

A. *Essential Characteristics*

i. *Companies.*

As in many other jurisdictions, UK's Company Law does not define clearly what a company is but describes its formation¹ and the different types of companies that may exist.

The process or mechanism by which companies are created or formed is called incorporation. As a result of incorporation, the company acquires separate personality becoming an independent legal person distinct from its members and/or directors (this is one of the essential characteristics of companies and is discussed further on this paper).

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¹ The Companies Act 1985 provides the way to form a company but not a definition of it [s.1 (1)]. In order to obtain a precise definition it is necessary to integrate different sections of the Act.

According to the mechanisms by which companies are incorporated, we can classified them in three different categories [(this does not mean that they have different characteristics, advantages or disadvantages, the only practical and important difference is the incorporation form) some authors prefer to describe the different categories of companies as different methods of incorporation]:²

- Companies Incorporated by the Crown (By the grant of a Royal Charter):
Historically, royal charters were used as the way to state the powers of self-government, possessed by municipal corporations (communities empowered by the crown to be self-government). Then, the crown started to grant royal charters to trading companies (mainly for the purposes of colonisation, international trade and expansion), and finally, this way of incorporation was extended to domestic trading companies. This companies were private enterprise companies formed by capital contributions of the members and managed by directors appointed by them (and obviously the necessary royal charter).³
 - Companies found to be Incorporated by Prescription:
This subcategory⁴ of the royal chartered companies consists basically in a court recognising the existence of a company incorporated by a royal charter that has been lost if it has been treated as an incorporated company for a certain period of time. In other words, it is the acquisition of the corporate status because (1) of the treatment received for (2) a considerable lapse of time.
- Companies Incorporated by Parliament (By passing an Act):
Parliament can incorporate companies by passing: a public general act to establish corporations for public purposes, e.g., the Post office, the Bank of Scotland and the Historic Building and Monuments Commission for England; a private act for incorporating a company for the petitioners' of the act, having the petitioners a commercial interest in settling the company (this companies are called statutory companies).
 - Companies Incorporated by Delegated Authority:
Parliament may empower Ministers and other authorities to create corporations. This is also a subcategory of companies incorporated by Parliament, because the empowered authority is only exercising parliament's power by delegation. An example of this kind of delegation is the Housing Act 1988, which empowers the Secretary of State to incorporate bodies.
- Companies Incorporated by Registration with a public Official (Registered under the Companies Act 1985):
As a result of the inconveniences⁵ of the above-described incorporation systems, Parliament passed the Joint Stock Companies Act 1844 in which it creates the Office Registrar of Joint Stock Companies and establishing a procedure to register

² All of them are mentioned in this paper, but special emphasis is made on incorporation by registration because nowadays it is the most common way of forming a company.

³ Examples of chartered companies are: the East India Company (1600), the South Sea Company (1710), the Royal Bank of Scotland (1727), the British South Africa Company (1889) and the Institute of Chartered Secretaries and Administrators (1902). Most of the chartered companies incorporated after the mid 19th century have been created by the Crown only for non-profit purposes.

⁴ Some authors consider this as an independent category, but for me it is a subcategory and no explanation is needed, the reasons for it are based in its own definition and/or form of operation.

⁵ It was very difficult and it still is for common business people to obtain a royal charter or a parliament act in order to incorporate a company. There were also problems in the case of court procedures against unincorporated joint stock companies.

or incorporate companies before the registrar (basically by registering some documents in this office). This procedure of incorporation had been revised through the years and now is regulated by the Companies Act 1985.⁶

Under the provisions of the Companies Act 1985, there are three elements or characteristics that determine the type of company that business people can register or incorporate (the act provides 5 types that can be incorporated and 2 types that may exist if incorporated or re-registered before 22 December 1980). These elements are: (1) the limited or unlimited liability of the companies' members; (2) the way in which capital is represented, that is to say, does the company have or not a share capital; and (3) if the company is public or private. Therefore, the companies that can be registered under this act would be public or private companies, unlimited or limited, by share or guarantee,⁷ but always in the combinations allowed by the statute itself.

All this companies share one specific and essential characteristic "the separated personality" or legal entity, which means that they are independent and distinct of its members and officers, that is to say, they are a legal person. But what does it mean to be a legal person?

- By making reference to Legal Person or Entity it is necessary to mention the genus the legal person belongs to, as it is the legal subject; such legal subject has been defined as "the unitary centre of rights and duties imputation"⁸ or as the centre of subjective legal situations. Legal subjects fall into Natural Persons and Legal Persons, also known as Physical Persons and Moral Persons, respectively⁹ In bearing with Legal Persons, it has been understood they are entities resulting from a legal fiction, able to exercise rights, acquire obligations, and be judicially and extra-judicially represented or, as stated by legal expert MANUEL ALBADALEJO, "Legal Person is the human organisation organised to obtain a goal, to which the law recognises as a member of the community empowering it with legal capacity".¹⁰

As a consequence of its "legal person" status, an incorporated company: has title to its own property; enter into contracts, acquiring duties and obtaining rights (for itself and without obligating anybody else); can sue and be sued in its own name;¹¹ has

⁶ The Companies Act 1985, is not the only statute that provides incorporation by registering with a public official, but is the relevant one for the purposes of this paper (similar statutes are, inter alia: the Building Societies Act 1986, the Charities Act 1993, etc.).

⁷ Companies Act 1985 [s.1 (2) and (3)].

⁸ KELSEN, Hans. *Dottrina Pura del Diritto*. (Trans. By Torino, 1966, pa. 173.)

⁹ Many legal experts, among which CAPITANT & SAVIGNY, have criticized the expression Moral Person, usually used by French doctrine, because they consider that moral has nothing to do with legal person; for such reason, both the German Code and German Doctrine as well as Italian and Colombian doctrine use the expression *Legal Person*, and even though, such term is criticized (KELSEN, Hans. *Teoria General del Estado*, P. 87), because they are confronted to the expression *Physical Person*, since both of them are legal or juridical; for such reason, it would be more adequate to make reference to *Individual Legal person (Individual or Physical Persons) and Collective Legal Persons (Collective Persons)*.

¹⁰ Around the legal person concept, there has been, throughout the history, a great doctrinarian debate to justify its existence, but that discussion is beyond the scope of this paper.

¹¹ The fact that unincorporated joint stock companies were very difficult to sue (because their lack of legal personality and amount of members) was one of the motives that has enabled the incorporation by registration system. See note 5 above.

the benefits of perpetual succession; and depending on the type of company, its members can have limited liability.

Having mentioned the common characteristic of all companies, it is necessary to establish the differences between them according to their public or private status, the liability of its members and the way in which the capital is organised:

Limited and Unlimited Companies.

The terminology of limited or unlimited companies refers to the liability of the members of a company for its debts and is based on Section 1 (1) of the 1985 Act, which provides the possibility of incorporating a company with or without limited liability of its members. Therefore, at first instance, a company shall always be liable of its own debts and its members would never be liable of those debts unless there is a statute, a court order, or the type of company itself makes them liable.¹²

An unlimited liability company (or unlimited company) is the one in which its members are liable for the whole of the company's debts or obligations until they are paid or complied with (in the event of winding up or liquidation). This means that if the company's assets are not enough to satisfy its creditors, the members of that company shall meet the unpaid debts [Insolvency Act 1996 section 74 (1), (2)(a), (b) and (c) regulates what happens with past members].¹³

On the other hand, the limited liability companies (or limited companies) are characterised because their members' liability is limited to a fixed sum settled when the membership has started. That fixed amount should be paid or covered by shares or guarantee as regulated in section 74 (2)(d) and (3) of the Insolvency Act 1986.

Liability Limited by Shares or by Guarantee.

If the capital of the limited company is divided by shares, it is usually said that the company is limited by shares, which means that the liability of its members would consist in paying the unpaid amount of the shares they hold. That is to say that in the event of a winding up, those members that have paid the total amount of shares they own, will not be liable, meanwhile those that have not paid the total value of the shares (nominal and premium, if any) would be liable to the company and not to the company's creditors.¹⁴

If the company is limited by guarantee, it means that its members will only be liable to pay the fixed amount previously agreed with the company, in the event of the winding up of the company. This kind of company is settled with non-profit purposes.

In both types of limited companies, the members would have to pay a fixed amount, but the difference is the moment in which they have to pay it: as mentioned above, if the company is limited by guarantee its members would pay the fixed amount

¹² An example of a statute can be s. 213 and 214 of the Insolvency Act 1986 or s.24 of the Companies Act 1985; a court can order the lift of the corporate veil; and the type of company is the unlimited company.

¹³ The unlimited companies are meant to be the business association form for those partnerships with more than 20 partners.

¹⁴ At least one quarter of the value of the shares issued has to be paid at the incorporation or issuing of the shares.

at its winding up; and if it is limited by shares, the members would have to pay the fixed amount or at least one quarter of it at the moment they become members.

Private or Public Companies.

The fact that makes a company public or private is that for being public it has to be registered as so and its memorandum of association must state that it is a public company¹⁵. In that sense, every company that is not specifically registered as a public company is considered as a private company.

Being a public or a private company has different consequences, i.e., there are diverse formalities for incorporation and management of the company, and transferability of shares inter alia. Those differences can be summarised as follows:

- Name of the Company: As required by section 25 (1) and 27 (4)(b) of the Companies Act 1985, the name of a public company must end with the words “public limited company” or the abbreviation “p.l.c.” meanwhile, the name of private companies if limited by guarantee or by shares, must end with the expression “limited” or its abbreviation “ltd” [Companies Act 1985 s. 25 (2) and 27(a)].
- Number of members: A public company must have at least two members or shareholders¹⁶ as opposed to private companies that can have only one member [the possibility of creating or becoming a private company with only one member was introduced to British legislation by the amendment of section 1 of the 1985 Act by the Companies (Single Member Private Limited Companies) Regulations 1992, law reform made in order to implement the European Directive 89/667].
- Capital Requirements: There is no minimum capital requirement for incorporating a private company, but for incorporating a public company there must be a minimum issued share capital with a nominal value of £50.000. (This authorised minimum is stated by s. 118, but can be modified by the Secretary of State).
- Transferability and Negotiability of Shares: A public company can offer its shares to the public and consequently, may be listed on a recognised stock exchange or market, e.g., the London Stock Market, the Alternative Investment Market and/or the OFEX. As opposite to that, private companies cannot offer its shares or debentures to the public nor be listed on a stock exchange. In the same sense, shareholders of public companies are absolutely free for transferring their shares (as a rule), as rights of pre-emption usually limit members of private companies.

¹⁵ Section 1 (3) of the Companies Act 1985 states that: “A “public company” is a company limited by shares or limited by guarantee and having a share capital, being a company (a) the memorandum of which states that it is to be a public company, and (b) in relation to which the provisions of this Act or the former Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after 22 December 1980; and a “private company” is a company that is not a public company”.

¹⁶ If a public company carries on business for more than 6 months without having the minimum number of members required by law, the only member would be jointly and severally liable with the company for its debts during the period in which the company has operated with only one member (Companies Act 1985 s.24).

- Directors: Private companies shall have at least one director and public ones shall have two (section 282 of the 1985 Act).¹⁷
- Secretary: Both public and private companies must have at least one secretary different from the sole director [section 283 (1) and (2)], but the secretary of a public company must fulfil the qualifications required by section 286 of the Companies Act 1985; there is no provision requiring specific qualifications for being the secretary of a private company.
- Accounting: As stated in section 244 (1) (a) and (b) of the 1985 Act, the period for laying and delivering accounts is for a private company, 10 months after the end of the relevant accounting reference period, and for a public company, 7 months after the end of that period.

As stated at the beginning of this paper, the Companies Act 1985 provides 5 types of companies that can be incorporated and 2 types that may exist if incorporated or re-registered before 22 December 1980. Those companies are the result of the combination of the above mentioned categories¹⁸ but always in the ways allowed by the statute itself, which are the following: (1) public company limited by shares; (2) private company limited by shares; (3) private company limited by guarantee (nowadays the term guarantee means without share capital)¹⁹; (4) private unlimited company with share capital; and (5) private unlimited company without share capital. These companies will have the essential characteristics of the categories from which they are composed and the general characteristic of the separate legal personality.

The last characteristic of companies in general, relevant for the scope of this paper has to do with the administration of the company, and is related to the separate personality of the incorporated bodies. The administration or managing of the company is reserved to a director or board of directors and not to its members, by extension of the company's legal separate personality different and independent from its members principal.

ii. Partnerships.

According to the Partnership Act 1980 [s.1. (1)] a partnership is "The relation which subsists between persons carrying on a business in common with a view of profit". The legal definition can be completed or précised by affirming that a partnership is a voluntary unincorporated association²⁰ of persons who carry on a business or profession together with the purpose of making a profit.²¹

¹⁷ As an exception to the general rule, public companies registered before 1 November 1929, are allowed to operate with only one director [section 282 (2)].

¹⁸ Public or private, limited or unlimited, by guarantee or by shares.

¹⁹ Companies Act 1985 [s.1 (4)] establishes that "with effect from 22 December 1980, a company cannot be formed as, or become, a company limited by guarantee with a share capital". This also means that the only possibility for the existence of a company with the described characteristics, and a public company limited by guarantee with a share capital (under the statute all public companies have a share capital), is if they were created or transformed prior to the cited date.

²⁰ The characteristic that distinguishes a partnership from other unincorporated associations is that its members carry on a business or profession with a view of profit.

²¹ This definition adds the underlined words to the main concept in order to cover all the possible types of associations that can be included on it an also to exclude those excluded by the Partnership Act 1890 [s.1. (2) and s. 45].

For UK's legislation there are three types of partnerships, the ordinary or general Partnership, the Limited Partnership and the Limited Liability Partnership.²² Therefore, the approach to the topic on this paper is based on a description of the main aspects and characteristics of the general partnership, followed by the respective clarifications in relation to the other two types of partnership.

General or Ordinary Partnership

The general or ordinary partnership is as mentioned above, a voluntary unincorporated association of persons (a partnership must have at list two²³ partners that can be natural or legal persons) who carry on a business or profession together with the purpose of making a profit. Its main characteristic is that there is no need of action by the state (inter alia, recognition or issue of a certificate) in order to create a partnership; partnerships are created by the express or implied agreement between the partners (partners as a group are called a "firm", as stated in Section 4(1) of the 1890 Act) and the fact that they are carrying on a business according to what they have agreed.²⁴

The main characteristic of a partnership is the fact that its partners are jointly and severally liable (severally only in Scotland) for all debts and obligations of the firm incurred while they are partners, and if dead, their estate continues being liable (as stated in section 9 of the 1890 Act). The joint and several liability of the partners is justified, inter alia, by the way in which capital requirements are regulated, and the partner's involvement in the administration of the firm.

To create a partnership there are no capital requirements, as a matter of fact, the partnership can be created without an initial financial investment by the partners, that is to say, the partners are allowed to contribute to the firm by work, know how or skill, inter alia. The reason for the described possibility is strongly linked with the liability of the persons in partnership, system that makes easy to understand why there is no minimum capital requirements, verbi gratia, the partners' estates will always be affected by their joint and several liability for all the debts and obligations of the firm (Partnership Act 1890, s. 9).

All partners are managers of the firm or partnership and are also considered to be its agents, and agents of their other partners for the purpose of the business of the partnership, so, each one of them has the right to participate in the running of the business and his acts bind the firm and therefore, his partners (sections 5 and 24(5) of the 1890 Act). The above-mentioned powers of each partner require them to act with utmost good faith, and to fulfil the fiduciary duties stated in sections 28, 29 and 30 of the 1890 Act.

²² The general Partnership is mainly regulated by the Partnership Act 1890; the Limited Partnership is regulated by the Limited Partnership Act 1907; and the Limited Liability Partnership is regulated by the Limited Liability Partnership Act 2000. The 1890 Act is also applied to the Limited Partnerships where it is not inconsistent with the 1907 Act.

²³ Section 716 (1) of the Companies Act 1986, prohibits the existence of partnerships composed by more than 20 members [section 716 (2) provides some exceptions to this rule].

²⁴ As a consequence of the way in which partnerships are created, the Partnership Act 1890 provides a set of rules for determining the existence of a partnership (section 2 of the Act).

As a general rule, the consequence of being an unincorporated body is that such body would not be regarded as a legal person separated from its members²⁵ or partners. This general rule is also applied to partnerships in the UK as they are considered unincorporated associations, but with an exception that is the one contained in section 4(2) of the 1890 Act, in other words, in Scotland partnerships are considered legal persons distinct from their partners.²⁶

In relation to property, partnerships are allowed to own their own property but not land or heritable estates, having the latter to be entrusted on the partners (section 20 (2) of the 1890 Act).

Finally, it is indispensable to mention that a partnership is an *intuitu personae* (with the specific person) contract, which means that for introducing a new partner to the firm it is necessary to have the consent of all the existing partners, and, that any changes on one of the parties [incapacity, mental disorder, death (or liquidation if the partner is a company), bankruptcy (or insolvency in the case of a company), etc.] can lead to the dissolution of the firm.²⁷

Limited Partnership

This type of partnership is defined in the Limited Partnerships Act 1907; the definition only differs from the one of general partnerships in relation to the existence of two types of partners, but the rest of its elements and characteristics are almost the same. The essential differences consist on:

- There are two types of partners, the general partners and the limited partners (there must be at least one limited and one general partner). The general partners have the same rights and duties that a partner of an ordinary partnership has (*inter alia*, administration, joint and several liability, etc.). The limited partners have the same liability that a member of a private limited company has, that is to say, their liability is limited to the amount contributed by them to the partnership (they always have to contribute capital to the firm, as opposed to the general partners that usually contribute work or skill) and because of that, they cannot participate in administrating the company. If a limited partner participates in the running of the business of the firm, he would be considered as liable as a general partner. A limited partner is not an agent of the firm or of the other partners; therefore, he does not have the power to bind the partnership.²⁸
- The limited partnership must be registered with the Registrar of Companies, and if it is not, the limited partners will be liable as if they were general partners (Sections 5 and 15 of the 1907 Act). The information provided on registration must be at least: name of the firm; a statement of the limited nature of the partnership; nature of the business or profession; name of each partner and status, *verbi gratia*,

²⁵ The expression members is used here in its wide or broad sense and not just related to shareholders or members of a company.

²⁶ This special characteristic under the Scottish jurisdiction does not make a big difference, because the partners' liability remains the same and they can be sued as individuals due to the partnership business.

²⁷ Sections 32 to 35 of the Partnership Act 1890.

²⁸ There are also certain limitations for the limited partners in order to withdraw their contribution to the firm.

limited or general partner; the amount contributed by each limited partner and whether paid in cash or other means; and the date in which the firm is going to start its operations.²⁹

- The limited partnership is not considered as an *intuito personae* contract in relation to the limited partners, therefore, is easier for a limited partner to assign his share to another person than it is to introduce a new partner to an ordinary firm, and, the changes on one of these partners [incapacity, mental disorder, death (or liquidation if the partner is a company), bankruptcy (or insolvency in the case of a company), etc.] usually will not lead to the dissolution of the firm.

Limited Liability Partnership

This is a special type of partnership that can be also called an “incorporated partnership”, that is to say, it has the same characteristics of the general partnership (all the partners are agents of the firm,³⁰ they can decide how to regulate the inside relationships, etc.) and the advantages of the separate legal personality and limited liability of its members³¹ that incorporated associations have. In this sense, the limited liability partnership as a legal person is liable for its own debts; and is vicariously liable for the acts of its agents done in the course of business (nevertheless all its members are considered agents on first instance, at the incorporation procedure they must specify who will act as manager or designated member of the firm).

The limited liability partnership is incorporated by registration with the Registrar of Companies as regulated by sections 2 and 3 of the 2000 Act; in accounting matters, is subject to the same regulations applicable to companies; and is not subject to the 1890 or 1907 Acts (section 1 (5) of the 2000 Act).

B. Advantages and Disadvantages, the Comparative Approach.

In a theoretical view is very difficult to state which one of the studied figures is the best or which one is the worst, because it all depends in what does the party starting or running a business want, nevertheless, until now, the most popular one was the company due to its separate legal personality (and among the different types of companies, the limited liability companies).

In that order of ideas, this section deals with the advantages and disadvantages of partnerships and companies independently one from another, and after it, there is a special mention to the status of the limited liability partnership.

i. Partnerships.

²⁹ The changes on any of these aspects, if any, must be updated and registered.

³⁰ Section 6 of the Limited Liability Partnerships Act 2000.

³¹ Section 1 (4) of the Limited Liability Partnerships Act 2000.

For stating the advantages and disadvantages of partnerships, the starting point is the general or ordinary partnership without including those related to the limited liability partnerships, which are analysed as a separate type of business association.

Advantages.

- The businessman does not have to assume the risk of the business activity by itself. Partnerships allow them to share that risk with other people developing the same activity.
- Setting up a partnership is very easy and there are no formalities. As it was mentioned before, partnerships are created by agreement of the parties without any activity from the state. Someone can say that the limited partnership does not have this advantage because of the requirement of registration, but that registration is also very easy and informal.
- Partners are directly involved in the administration and managing of the firm, so they can have a strict vigilance and close look on the business all the time. Every partner has the right to administrate the firm and is an agent of it. This advantage is not applicable to limited partners in limited partnerships.
- The way in which partners run the business of the firm is absolutely private, there is no need to disclose any kind of information (except where the Business Names Act 1985 s. 4 may apply). The accounts of the firm are private and there is no obligation to publish or audit them.
- As far as partnerships are created by agreement of the parties, it is very easy to incorporate a new business to the partnership or start trading in a different activity (always by agreement).
- The profits obtained in partnership are taxed under income tax rules and not corporation tax rules, which helps to avoid the double taxation phenomenon.

Disadvantages

- The most important and dangerous disadvantage of this figure is the unlimited liability of the partners for all debts and obligations of the partnership.
- The danger involved in entering into partnership with someone that you do not know in depth, because he or she is going to be your agent.
- The difficulty of obtaining financial support or loans from third parties, due to the way in which property of the partnerships is regulated by section 20 of the 1890 Act.
- The extended liability of the limited partners if they want to withdraw their contribution, and the danger of being considered liable as general partners if they participate in the managing of the firm.
- The impossibility of having a partnership with more than 20 members.
- The difficulty for a partner in order to sell his position in the partnership.

ii. Companies.

The most spread form of business association around the world is the company, and among its different types, those in which the liability of its members is limited to the amount of their contribution to the company's capital seem to be the most popular. Therefore, this analysis is mainly focused in the advantages and disadvantages of the limited company.

Advantages

- Companies have legal personality different from its members and/or directors, which means that they are capable of acquiring rights and assuming obligations. They can sue or be sued on its own as a legal subject.
- Liability of a company's member is limited to the amount he has contributed to the company, that is to say, if the company is limited by shares and the member has paid the value (nominal and premium) of the shares he holds, he will not be liable for any other amount. In the same sense, if the company is limited by guarantee, only in the event of its liquidation the member might pay the amount he has agreed to pay.
- There is no limitation on the maximum amount of members a company can have.
- Members of the company are not responsible for its managing and administration, or for running the business, which is very attractive to people that use companies as financial investment instruments.
- Companies can raise their funds by increasing their capital offering their shares to the public, and some of them (public limited companies) can be listed in stock exchanges.
- Within the financial market, is easy for companies to obtain loans or financial aids by granting securities over their assets (e.g., floating charges, mortgages, etc.), without compromising its members or directors personal liability (sometimes financial institutions may ask the directors or members to guarantee with their own assets the company's debts).
- The member of a public company is always free to sell his shares; the member of a private company is also free but sometimes can be limited in the form of selling them by pre-emption rights.
- Companies enjoy the perpetual succession, that is to say that they are unaffected by the changes that affect their members or directors [incapacity, mental disorder, death (or liquidation if the partner is a company), bankruptcy (or insolvency in the case of a company), etc.].

Disadvantages

- There are to strong formalities in the process of creating or registering a company, which leads also to certain expenses (inter alia, delivery of documentation, publications etc.)
- There is an obligation of disclosing the company's accounts to the public, even to competitors.
- Almost all companies have to audit their accounts, which means less privacy and higher expenses.
- It is always difficult to withdraw your capital from a company if its performance is not the expected by the market.
- It is difficult for small companies to obtain financial aids or loans without compromising the personal liability of its members and/or directors.

iii. The Limited Liability Partnership.

A special section is dedicated on this paper to this type of business association, not because it has different advantages or disadvantages from the ones described for

ordinary partnerships and limited companies,³² but because it joins almost all of the most important and attractive characteristics of every existing business association as follows:

- All members of the limited liability partnership are considered as agents of the partnership, having the right to participate on its administration (this characteristic comes from the ordinary partnership), but if there is a member not interested on this right because he is only an investor, the administration of the partnership can be or is meant to be delegated in certain partners (those interested in running the business) (the latter is a characteristic of the company's administration).
- The limited liability partnership enjoys the advantages of having separate legal personality (characteristic of companies in general and partnerships in Scotland), which not only means that it is liable for its own debts and for the acts of its agents, but that it can be sued or sue and is capable of acquiring rights and obligations.
- The members' liability of a limited liability partnership is limited to the amount that they have contributed to the firm (like limited partners of limited partnerships and members of limited companies).
- The limited liability company can raise money by securing its debts with any of its assets, even by means of floating charges (like a company and as opposite to the restrictions that partnerships have in this field).
- Like in ordinary partnerships, members of a limited liability partnership are able to regulate the affairs between them in the way they want, that is to say, there is an absolute internal informality.
- Like in partnerships, taxation of the profits is under the income rules and not under corporate rules, which means that the partnership is not taxed, but the members are for their gains. There is no double taxation.

Finally, the limited liability partnerships have the disadvantages of: registration, creation of a constitutional document (this two coming from company law) and the difficult to withdraw the financial contribution made to the partnership or assigning an interest on it.

CONCLUSIONS

To finalise this paper, there are two issues to emphasise in: the first one, is the fact that advantages or disadvantages of partnerships and companies will always depend on the point of view of the one making the comparison, or wanting to choose between this legal figures to start or continue a business; and the second one, as a conclusion of the paper, is that the comparative analysis or approach to these business associations shows that is better to run business as a company than as a partnership for the following reasons:

There is always a limitation to member's liability; it is easier to get financial loans and secure them with any asset of the company; there is an almost absolute freedom for transferring shares; there is no maximum or upper limit on the number of members; the changes that may affect the members will not affect the company

³² It is essential to remember that this figure is a hybrid between this two business associations.

(perpetual succession); and members does not have to take care of the administration of the business.

On the other hand, the only advantages of the partnership form (that can lead someone to a different conclusion, e.g., partnership superiority over companies) are: there is no possibility for double taxation because taxes are paid and calculated on the partner's profit, not on the partnership; informality and low cost on formation of the partnership and its management; and almost absolute privacy of the business.

Finally and as a personal thought, the introduction of a new business form like the Limited Liability Partnership to UK's legislation, will have a great impact in the way business are conducted. That is to say, in the next years there will be a huge development of this figures and day after day we will find more and more of them. And if there is no other legislative change related to business associations in the future, the only ones that will keep on forming and of course incorporating will be the Limited Liability Partnerships and the Public Limited Companies.

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