

# **The Ambiguous Terminology of Business Entities: on the Quest for Equivalence in Corporation and Enterprise Law**

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## **Abstract**

This paper examines the translation of legal terminology between different legal systems with specific emphasis on the equivalence or non-equivalence in the domain of corporation and enterprise law. This is an area in which there is significant semantic difference between seemingly identical concepts, where the same terminology disguises the fact that business entities are widely different in organisation and legal status not only between languages and legal systems, but also between English-language common law jurisdictions. With examples from his English-Norwegian dictionary of law the author will try to show how Anglo-American terminology in this field can be transferred into Norwegian.

## **1 Introduction**

As the author of a dictionary of law incorporating terminology from a various common-law jurisdictions (England, Scotland, USA, Canada, Australia) I am fully aware that equivalence is one of most topical and potentially fraught areas of legal translation, especially as concepts are used differently in different legal systems, not only between English and Norwegian, but also in countries where the language and legal traditions are the same. By using examples from my English-Norwegian Dictionary of Law, in addition to material from the forthcoming second edition, I shall try and exemplify the complexities of transferring Anglo-American terminology in this field into Norwegian. As may be seen from the examples below, I feel that main terms should be defined or explained, and that attention should be drawn to differences between legal concepts operating in different legal cultures.

Frequently, however, there is no equivalent or near-equivalent concept in the target language, and terms will have to be “constructed” (neologisms). A term encased in slashes // thus indicates a constructed term, and I believe dictionary users should be told as much. Some of these terms are “descriptive”, they describe the realities underlying the source-language concept; others are “analogous”, *ie* constructed by analogy with existing terms.

One of the areas in which there is significant semantic difference between seemingly identical concepts is in the terminology relating to the law of business entities, where identi-

cal terminology disguises the fact that entities are widely different in organisation and legal status also in English-language common law jurisdictions. In the USA the law relating to business organisations is state law, and we can witness some competition between states to adopt legislation that will attract incorporation. The small state of Delaware is, for instance, the jurisdiction of choice and home state for most of the largest American corporations.<sup>1</sup>

However, whereas setting up in business is regulated by state law, going out of business due to insolvency – bankruptcy – is regulated by federal law (*the Federal Bankruptcy Code*).

Also in Australia and Canada business organisations are established and regulated under the legislation passed by the individual states or provinces.

## 2 Unincorporated business organisations – sole proprietorships and partnerships

The simplest type of business entity is the “sole trader”, which is the preferred British term, and applies to the business as well as to the owner, or “sole proprietorship”, which is used in the USA, but also elsewhere. This type of unincorporated business entity corresponds well with the similar type of business in Norway, for which different – synonymous – terms are used:

**sole proprietor** eeneier

**sole proprietorship** enkeltmannsfirma, eeneierforetak, personlig firma

*ie* a business owned and controlled by one person who has full financial liability –  
*dvs. foretak eid og kontrollert av én person som har fullt økonomisk ansvar*

**sole trader**

1. eeneier av foretak

*ie* the owner himself/herself – *dvs. eieren selv*

2. enkeltmannsfirma, eeneierforetak, personlig firma [*cf. sole proprietorship*]

*ie* the business itself – *dvs. foretaket selv*

The next step in the business organisation hierarchy is the “partnership”, a cover term for several rather different types of business organisations, the most common type of which is the “general partnership”, in England governed by the *Partnership Act of 1890*, applicable with minor variations also to Scotland. In the USA it is regulated by the *Uniform Partnership Act (UPA) of 1914*, adopted by all but one state, succeeded by the *Revised Uniform Partnership Act (RUPA) of 1992*, with subsequent amendments, and adopted by most states:

**partnership** selskap; ansvarlig selskap; interessentskap [*cf. partnership at will*]

**general partnership** ansvarlig selskap; interessentskap

*ie* a business entity in which the liability of the partners is unlimited, joint and several  
– *dvs. selskapsform der deltakerne har ubegrenset, solidarisk ansvar*

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<sup>1</sup> Delaware benefits financially in a number of ways: filing fees, legal and administrative business, although income tax is generally allocated among the states on the basis of the business done in the individual states.

The Norwegian terms in this field, although not completely equivalent, given the difference in the legal systems, are, I feel, close enough to be acceptable equivalents.

Partnerships may also be distinguished according to the type of activities undertaken:

**commercial partnership** *see* **trading partnership**

**professional partnership** siviltselskap [*cf.* **trading partnership**]

*ie* of lawyers, accountants, etc; under English law no limit to the number of members – *dvs. av advokater, revisorer, osv.; etter engelsk rett ingen begrensning på antall deltakere*

**trading partnership** ansvarlig handelsselskap [*cf.* **non-trading partnership**]

*ie* engaged in ordinary commercial activities, may, under English law, have between two and twenty members – *dvs. engasjert i vanlig forretningsvirksomhet, kan, etter engelsk rett, ha mellom 2 og 20 deltakere*

In this case there are equivalent Norwegian terms.

A different type of partnership is the “limited partnership”, where we see a clear distinction between US and English law, and where US law coincides with Norwegian law in this respect. It is in England governed by the *Limited Partnerships Act of 1907* and in the USA by the *Uniform Limited Partnership Act (ULPA) of 1918*, succeeded by the *Revised Uniform Limited Partnership Act (RULPA) of 1976*, last amended 2001, and adopted by most states in substance, however with variations in wording:

**limited partnership**

1. (UK) (*tilsv.*) kommandittselskap; (*tilsv. delvis*) stille selskap

2. (US) kommandittselskap

*ie* a type of business organisation in which at least one of the members (the general partner) has unlimited liability, whereas the liability of the other partners (the limited partners) is restricted to a fixed amount; under English (but not American or Norwegian) law the general partner must be a natural person, whereas in a Norwegian «kommandittselskap» or an American limited partnership the general partner may (and normally will) be a corporate body (a limited company). For that reason a Norwegian «stille selskap» will also partly correspond to an English limited partnership – *dvs. en forretningsform hvor minst én av deltakerne (komplementaren) har ubegrenset ansvar, mens ansvaret til de andre medlemmene (kommanditistene) er begrenset til et bestemt beløp; etter engelsk (men ikke amerikansk) lov må komplementaren være en fysisk person, mens en juridisk person (et aksjeselskap) kan (og normalt vil) være komplementar i et norsk eller amerikansk kommandittselskap. Derfor vil et «stille selskap» også delvis tilsvare et engelsk «limited partnership»*

This type of partnership is rare in Britain today, especially since the general partner (or partners) in an English limited partnership must be a natural person (human being) with unlimited, personal liability, but also because the partnership is costly and complicated to set up and run, whereas it is more popular in Norway and the USA, since the liability of the corporate general partner is limited to its share capital.<sup>2</sup>

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<sup>2</sup> Incidentally, this type of business organisation is not permitted in all Canadian provinces.

For that reason I have qualified the Norwegian rendering of a UK limited partnership by *tilsv.* (= corresponds to), which urges a little caution, to indicate that the two concepts are only partially – but acceptably – equivalent. On the other hand I feel no such qualification is needed for the US entity.

In order to counter the rising incidence of litigation involving unincorporated business organisations a new type a partnership has emerged, both in Britain and the USA, namely the “limited liability partnership” (LLP). The concept originated in the USA, and is governed by a separate amendment to the *Revised Uniform Partnership Act (RUPA) of 1992*. This form of business organisation operates differently there and in Britain – in the USA it also varies from state to state – but as the name suggests the basic purpose is to limit liability for the partners, esp. joint liability, since the risks involved in today’s litigious climate mean that for many professional partnerships – notably accountancy firms – damages awarded to claimants may vastly exceed any insurance cover the partners may have. Whereas the partners in a general partnership will have “joint and several liability”, *ie* they are liable to the full extent of their personal assets not only for their own mistakes and omissions, but also for those of their colleagues, the partners in an American LLP will basically only be legally and financially liable for their own acts and for those of staff working directly for them.<sup>3</sup>

A British limited liability partnership, on the other hand, is not strictly speaking a partnership at all – according to traditional definitions – but a corporate body, in other words it has a legal personality separate from its owners, just like a limited company. It is governed by the *Limited Liability Partnerships Act of 2000*. The basic difference between a British limited liability partnership and a limited company is that in a limited liability partnership the partners (owners) pay tax on the partnership profits, whereas a company is liable for its own tax.

This distinction means that the Norwegian translation of a hybrid business organisation such as a British LLP must be different from that of an American LLP. Since these types of business entity do not exist in Norway, terms will have to be constructed. Both renderings are descriptive, the first (UK) concept basically paraphrases the name, “partnership with limited liability for its members”, whereas the second, (US), translates as “general partnership without joint liability”.

### limited liability partnership (LLP)

1. (UK) /interessentskap med begrenset deltakeransvar/

*ie* a body corporate (with legal personality separate from that of its members); a member’s liability is limited to the amount contributed. The partnership has unlimited capacity.

Companies and other LLPs may be members. The LLP does not pay tax but the members are liable for tax on its income and capital profits – *dvs. et eget rettssubjekt (selvstendig juridisk enhet uavhengig av deltakerne). En deltakers ansvar er begrenset til det beløpet som er skutt inn. Selskapet har ubegrenset rettslig handleevne. Aksjeselskaper og andre LLP kan være deltakere. Selskapet er ikke eget skattesubjekt, deltakerne er skattepliktige når det gjelder inntekt og kapitalgevinst*

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<sup>3</sup> Arthur Andersen, the international accountancy firm which collapsed as a result of the Enron debacle, was an LLP in the USA, but a general partnership in Europe.

2. (US) /ansvarlig selskap uten solidaransvar/

*ie a partnership in which a partner is not liable for a negligent act committed by another partner; the scope of financial liability for his/her own negligent acts varies from state to state. In some states LLP status is only available to professional partnerships, ie lawyers, accountants, etc – dvs. selskap der en deltaker ikke er ansvarlig for en skadevoldende handling foretatt av en annen deltaker/partner; omfanget av økonomisk ansvar for egen uaktsomhet varierer fra stat til stat. I noen stater er status som LLP bare tilgjengelig for sivile selskap, dvs. advokater, revisorer, osv.*

The difference in types of partnerships is also transferred to their members, where the term “general partner” will have two different Norwegian translations depending on the type of partnership:

**partner** deltaker, medlem, partner, interessent

**general partner**

1. aktiv deltaker/partner

*ie in a general partnership – dvs. i ansvarlig selskap*

2. komplementar [cf. **limited partnership**]

*ie in a limited partnership; must under English law be a natural person; may under American and Norwegian law be a natural or juristic person – dvs. i kommandittselskap; må etter engelsk lov være en fysisk person; kan etter amerikansk og norsk lov være en fysisk eller juridisk person*

**limited partner** (tilsv.) kommandittist

*ie in a limited partnership – dvs. i kommandittselskap*

The term “sleeping partner” has traditionally been translated into Norwegian as “stille interessent”, literally “silent partner”, which obscures a significant distinction, namely that terms like “sleeping (silent/dormant) partner” has no legal significance under Anglo-American, unlike Norwegian law, so that my constructed rendering translates as “silent partner with full liability”:

**dormant partner** *see sleeping partner*

**silent partner** *see sleeping partner*

**sleeping partner** (*esp UK*) stille interessent med fullt økonomisk ansvar

The term sleeping (silent/dormant) partner has no legal significance under English law, he/she has unlimited financial liability for the debts incurred by the firm together with the active partners – *Begrepet “sleeping (silent/dormant) partner” har ingen juridisk betydning etter engelsk rett, vedkommende har fullt økonomisk ansvar for firmaets gjeld sammen med de aktive medlemmene*

#### 4 Incorporated business organisations

The concept “corporation” is in itself a source of confusion, used differently in Britain and the USA. In the USA, where a number of different types may be distinguished, the term

is normally used to mean a company owned by its stockholders or shareholders, and a public corporation usually means a "corporation whose shares are traded to and among the general public" (Black's), corresponding to a British "public limited company". However, further confusing the issue the term "public corporation" is also used in the USA to denote public-sector (*ie* government-owned) entities, also known as "government corporation", "political corporation" or "municipal corporation".

This can be shown as follows:

#### **corporation**

1. (UK) statlig/kommunal virksomhet [*cf.* **public corporation**]  
*ie* in the public sector – *dvs.* *eid av det offentlige*
2. (US) aksjeselskap  
*ie* in the private sector – *dvs.* *privateid*

#### **public corporation**

1. (UK) statselskap, statsforetak, statseid bedrift  
*ie* in the public sector – *dvs.* *eid av det offentlige*
2. (US) allmennaksjeselskap  
*ie* in the private sector – *dvs.* *privateid*
3. (US) *see* **government corporation; political corporation; municipal corporation**

In the UK today there are four types of private-sector companies that can be formed under the Companies Act 1985: companies limited by shares – of which there are two types: "private limited companies" (Ltd) and "public limited companies" (Plc), "companies limited by guarantee", and "unlimited companies". The last two formats are not used for trading activities, and are predominantly entities with charitable or non-profit making objectives, such as professional bodies. They are comparatively rare today.

**limited company** (UK) selskap med begrenset ansvar; (*tilsv.*) aksjeselskap [*cf.* **chartered company; community interest company; company limited by guarantee; company limited by shares; joint-stock company; private limited company; public limited company; statutory company; unlimited company**]

*ie* company in which the liability of the members is limited, normally by shares, occasionally by guarantee – *dvs.* *selskap der medlemmenes ansvar er begrenset, vanligvis gjennom aksjer, av og til gjennom garanti*

**unlimited company** (UK) /aksjeselskap med ubegrenset ansvar/ [*cf.* **joint-stock company; private limited company; public limited company; unlimited company**]

*ie* company where the members are liable for the full debts beyond their share investment in the event of liquidation – *dvs.* *selskap der medlemmene er ansvarlig for den samlede gjelden utover deres aksjeinnskudd i tilfelle konkurs*

The terms "limited company" or "limited liability company" are frequently used in British English to denote a company limited by shares. With regard to "limited liability company", this is again an area in which terms are used differently in Britain and the USA.

**limited liability company**

1. (UK) *see* **limited company**

2. (US) (LLC) *interessentskap* med begrenset deltakeransvar

*ie* an entity which has corporate personality and limited liability for all its members, but which in all other respects behaves like a partnership. The LLC does not issue shares and does not pay tax, but the members are liable for tax on its income and capital profits. The company structure, which varies somewhat from state to state, closely resembles that of an English “limited liability partnership” (LLP) – *dvs. et eget rettssubjekt (selvstendig juridisk enhet uavhengig av deltakerne) med begrenset ansvar for deltakerne, men på alle andre områder oppfører det seg som et interessentskap. Selskapet utstede ikke aksjer og er ikke eget skatte-subjekt, deltakerne er skattepliktige når det gjelder inntekt og kapitalgevinst. Selskapsformen, som varierer noe fra stat til stat, er svært lik et engelsk “limited liability partnership” (LLP)*

Since the company closely resembles an English “limited liability partnership” (LLP) I have chosen to use the same translation in both cases.<sup>4</sup>

Most British companies start out as “private limited companies” (Ltd), with no statutory capital requirement, for registration purposes £1 is enough, and one shareholder may be sufficient (“single-member company”). They can then later progress to “public limited company” (Plc) status if they, for instance, want to be listed and can raise the minimum authorised share capital of £50,000, and otherwise meet the registration requirements.

Recent legislation has brought Norwegian company law broadly into line with EU legislation in this area; it has also created a distinction similar to the one found in the UK between “private limited companies” and “public limited companies”, in Norway governed by two separate acts (*Aksjeloven* and *Allmennaksjeloven*, both of 1997). Whereas the Norwegian drafters chose “allmennaksjeselskap” (*ie* “public limited company”) for the latter type of company, “aksjeselskap” (*ie* “limited company”) was chosen for the former. This was unfortunate, because “aksjeselskap” is also used as a general term covering both types. In other words this has created system in which the concept “aksjeselskap” consists of two types, namely “aksjeselskap” and “allmennaksjeselskap”. Perhaps a substitution of “language” for “law” in the old adage, “law is too important to be left to lawyers” is appropriate in this case.

**private limited company (Ltd)** (UK) /privat aksjeselskap/, (tilsv.) aksjeselskap [*cf.* **limited company**; **public limited company**]

*ie* company in which the number of shareholders must be at least one; it cannot be listed or raise money by a public issue – *dvs. selskap der antall aksjonærer må være minst 1; det kan ikke børsnoteres eller skaffe kapital gjennom offentlig tegning*

The term “privat aksjeselskap” is listed as constructed, since it is not an official term, although it is frequently used, also by legal professionals, to distinguish between the two types of limited company.

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<sup>4</sup> An American LLC with one member is treated as a sole proprietorship and with two or more members as a partnership under the *Federal Tax Code*.

**public limited company (Plc) (UK)** allmennaksjeselskap [cf. **joint-stock company; limited company; private limited company**]

*ie* company in which the number of shareholders must be at least two; it may be listed and may raise money by a public issue – *dvs. selskap der antall aksjonærer må være minst 2; det kan børsnoteres og reise kapital gjennom offentlig tegning*

**single-member company** enmannsaksjeselskap, enpersonaksjeselskap

*ie* consisting of only one shareholder. Under Norwegian and English law private limited companies (but not public limited companies) can have only one member – *dvs. med bare én aksjonær. Etter norsk og engelsk rett kan aksjeselskaper (men ikke allmennaksjeselskaper) ha bare ett medlem*

**limited liability corporation (US)** *see* **limited liability company, 2**

### References

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