

# Corporate Finance and Securities Law

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Supawich Sirikanchana

# Fundamental Idea of Business Organization

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By creating new legal entity as juristic person

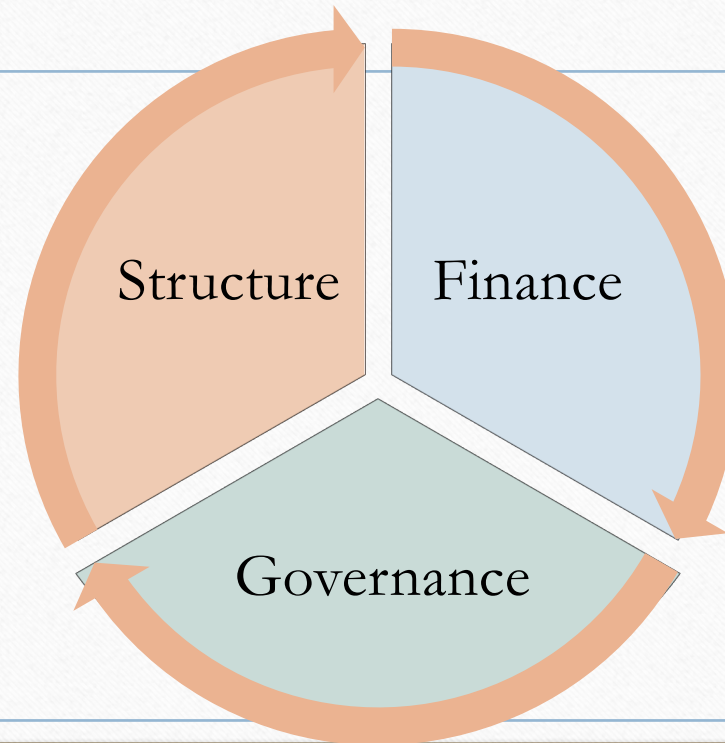
- Mitigation of risk
- Limitation of Loss
- Maximization of profit and benefits
- Responsibility for 3<sup>rd</sup> person

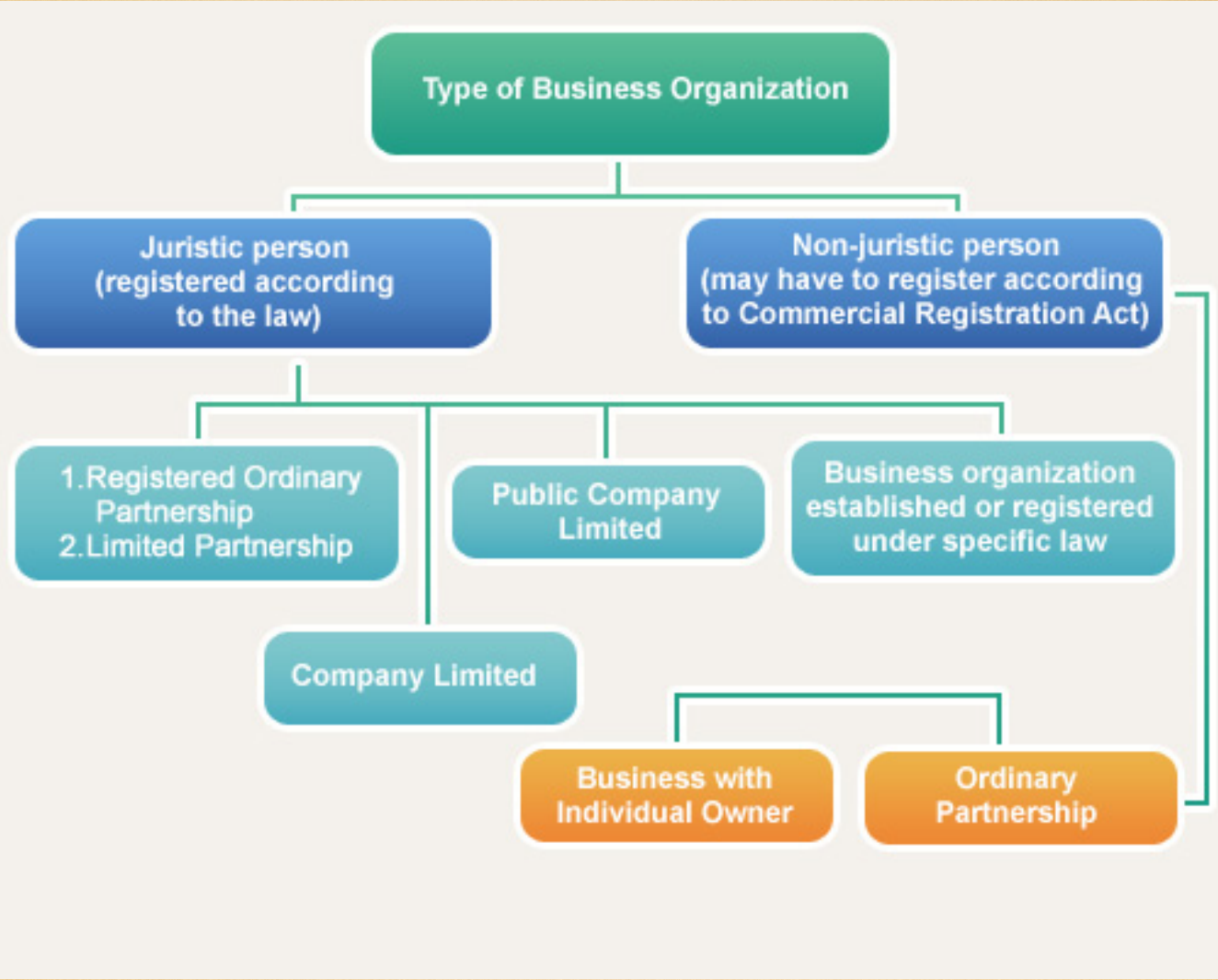
# Type of Business Organization

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- There are two choices
- (1) Individual as the owner (sole proprietorship)
- (2) As a group by investing with other individuals
- In order to decide to choose any type of businesses, the entrepreneurs must realize various components of business operations such as nature of businesses, capital, business capability, etc.

# Choice of the legal form





# Stakeholders in the Capital Market

## Business

Using capital market as channels to mobilize capital efficiently at appropriate cost, and with diversities of tools for financing requirements.

## Intermediaries

Carrying out businesses with greater flexibilities; getting supports for strengthening competitiveness; being assured of stability of the systems monitored and maintained to accommodate fluctuations; and supported for development of professional standards.

## Investors

Accessing to information and making investment decisions with confidence; being treated fairly in securities trading activities.

# Laws governing capital market

Securities and Exchange Commission (SEC) as a regulator

- The law on securities and exchange
- The law governing derivatives
- The law governing digital asset
- The law on trust for transactions in the capital market
- The law on special purpose juristic persons for securitization
- The law on provident fund

## objectives for administration

- Investors have access to information and make confident decisions on investment.
- The capital market is operated with fairness, efficiency and transparency.
- Systematic risks in the markets can be managed and contained within limits.

# Securities

- (1) treasury bills;
- (2) bonds;
- (3) bills;
- (4) shares;
- (5) debentures;
- (6) investment units which are instruments or evidence representing the rights to the property of a mutual fund;

# Securities

- (7) certificates representing the rights to purchase shares;
- (8) certificates representing the rights to purchase debentures;
- (9) certificates representing the rights to purchase investment units;
- (10) any other instruments as specified by the Securities and Exchange Commission.

# Equity securities

- Regulations on equity instruments are aimed at creating a balance between the protection of investors and effective fund mobilization.
- The qualifications of securities issuers and supervises the disclosure of information in order for the investors to have sufficient information in making an investment decision.

# Approaches for equity securities

- New investors purchasing securities – the company is required to have appropriate qualifications and disclose sufficient information for investors to make an informed investment decision.
- Existing shareholders affected by dilution – the company must disclose clear and sufficient information in the notice calling shareholders' meeting and the shareholders are granted the right to vote or to veto.
- Securities holders in subsequent orders – the company must clearly disclose terms and conditions of the securities and must disclose sufficient information for making an investment decision.

# Debt Securities

- Debt securities provide a financing alternative which can reduce cost of funds paid to financial institutions.
- Issuers may determine the term of debt securities to be in line with their term of financial needs.
- On the investors' side, debt securities provide an investment alternative during the period of fluctuations in the capital market.

## approaches for debt securities

- Approval – issuers are required to apply for the approval to offer debt securities for sale. This will allow the SEC to carry out a preliminary scrutiny of qualifications of issuers for investors.
- Disclosure – issuers are required to make complete and accurate disclosure of information relating to the debt securities which are in line with international standards to allow investors to have sufficient information to support their investment decision making.
- Sales reports – issuers are required to report the sales of debt securities to the SEC within the required timeframe.
- Post-offering obligations – issuers are required to make complete, timely and accurate disclosure of information on their financial reports and other material post-offering information.

# Credit Rating Agency

- Investors who purchase debt securities will become creditors of the issuers. Therefore, relevant regulations on the approval for the offer for sale of debt securities in a public offering (PO) or the offer for sale of certain types of debt securities would require credit rating to be arranged by an approved credit rating agency.
- This is to allow the investors to have information on the financial position and repayment capability of the issuers when they make an investment decision.
- Credit rating agencies are considered to have the responsibility of preparing information to assist investors with an investment decision making.

# Securities Business

- 1. Securities brokerage
- 2. Securities dealing
- 3. Investment advisory service
- 4. Securities underwriting
- 5. Mutual fund management
- 6. Private fund management
- 7. Exchange

# UNFAIR SECURITIES TRADING PRACTICES

- Misrepresentation
- insider trading
- Market Manipulation
- Front Running

## Misrepresentation

- This usually occurs when an Issuer or broker, in trying to sell a client on a stock or other security, makes a false statement about some aspect of the transaction. A related charge is omission, which is the failure to provide important information.

## insider trading

- Illegal insider trading refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, on the basis of material, nonpublic information about the security. Insider trading violations may also include "tipping" such information, securities trading by the person "tipped," and securities trading by those who misappropriate such information.

# Examples of insider trading

- Corporate officers, directors, and employees who traded the corporation's securities after learning of significant, confidential corporate developments;
- Friends, business associates, family members, and other "tippees" of such officers, directors, and employees, who traded the securities after receiving such information;
- Employees of law, banking, brokerage and printing firms who traded based on information they obtained in connection with providing services to the corporation whose securities they traded;
- Government employees who traded based on confidential information they learned because of their employment with the government;
- Political intelligence consultants who may tip or trade based on material, nonpublic information they obtain from government employees; and
- Other persons who misappropriated, and took advantage of, confidential information from their employers, family, friends, and others.

# MARKET MANIPULATION

Market manipulation is when someone artificially affects the supply or demand for a security (for example, causing stock prices to rise or to fall dramatically).

Market manipulation may involve techniques including:

- Spreading false or misleading information about a company;
- Engaging in a series of transactions to make a security appear more actively traded; and
- Rigging quotes, prices, or trades to make it look like there is more or less demand for a security than is the case.

# Front Running

- Entering into an equity trade with advance knowledge of a block transaction that will influence the price of the underlying security to capitalize on the trade. This practice is expressly forbidden. Traders are not allowed to act on nonpublic information to trade ahead of customers lacking that knowledge.

# Enforcement

If the gathered evidence presents a sufficient ground for enforcement, the SEC is empowered to take any of the following actions:

- (1) Administrative Action
- (2) Criminal Action
- (3) Civil Action

# Q&A