# *law*

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# I Legal Systems of the World

# Common law

**Common law** (also known as [**case law**](http://en.wikipedia.org/wiki/Case_law) or [**precedent**](http://en.wikipedia.org/wiki/Precedent)) is [law](http://en.wikipedia.org/wiki/Law) developed by [judges](http://en.wikipedia.org/wiki/Judge) through [decisions](http://en.wikipedia.org/wiki/Legal_opinion) of [courts](http://en.wikipedia.org/wiki/Courts) and similar tribunals rather than through [legislative statutes](http://en.wikipedia.org/wiki/Statute_law) or [executive branch action](http://en.wikipedia.org/wiki/Executive_(government)).[[1]](http://en.wikipedia.org/wiki/Common_law#cite_note-0) A "common law system" is a [legal system](http://en.wikipedia.org/wiki/Legal_systems_of_the_world) that gives great precedential weight to common law, [[2]](http://en.wikipedia.org/wiki/Common_law#cite_note-1) on the principle that it is unfair to treat similar facts differently on different occasions.[[3]](http://en.wikipedia.org/wiki/Common_law#cite_note-2) The body of [precedent](http://en.wikipedia.org/wiki/Precedent) is called "common law" and it binds future decisions. In cases where the parties disagree on what the law is, a common law court looks to past [precedential](http://en.wikipedia.org/wiki/Precedent) decisions of relevant courts. If a similar dispute has been resolved in the past, the court is [bound](http://en.wikipedia.org/wiki/Binding_precedent) to follow the reasoning used in the prior decision (this principle is known as [*stare decisis*](http://en.wikipedia.org/wiki/Stare_decisis)). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "[matter of first impression](http://en.wikipedia.org/wiki/Case_of_first_impression)"), judges have the authority and duty to make law by creating [precedent](http://en.wikipedia.org/wiki/Precedent).[[4]](http://en.wikipedia.org/wiki/Common_law#cite_note-3) Thereafter, the new decision becomes precedent, and will bind future courts.

In practice, common law systems are considerably more complicated than the simplified system described above. The decisions of a court are binding only in a particular [jurisdiction](http://en.wikipedia.org/wiki/Jurisdiction), and even within a given jurisdiction, some courts have more power than others. For example, in most jurisdictions, decisions by [appellate courts](http://en.wikipedia.org/wiki/Appellate_courts) are binding on lower courts in the same jurisdiction and on future decisions of the same appellate court, but decisions of lower courts are only non-binding persuasive authority. Interactions between common law, [constitutional law](http://en.wikipedia.org/wiki/Constitutional_law), [statutory law](http://en.wikipedia.org/wiki/Statutory_law) and [regulatory law](http://en.wikipedia.org/wiki/Regulatory_law) also give rise to considerable complexity. However, [*stare decisis*](http://en.wikipedia.org/wiki/Stare_decisis), the principle that similar cases should be decided according to consistent principled rules so that they will reach similar results, lies at the heart of all common law systems.

A third of the world's population (approximately 2.3 billion people) live in common law jurisdictions, particularly in [England](http://en.wikipedia.org/wiki/Kingdom_of_England) where it originated in the Middle Ages, and countries that trace their legal heritage to England as former colonies of the [British Empire](http://en.wikipedia.org/wiki/British_Empire), including [India](http://en.wikipedia.org/wiki/India),the [United States](http://en.wikipedia.org/wiki/United_States), [Pakistan](http://en.wikipedia.org/wiki/Pakistan), [Nigeria](http://en.wikipedia.org/wiki/Nigeria), [Bangladesh](http://en.wikipedia.org/wiki/Bangladesh), [Canada](http://en.wikipedia.org/wiki/Canada), [Malaysia](http://en.wikipedia.org/wiki/Malaysia), [Ghana](http://en.wikipedia.org/wiki/Ghana), [Australia](http://en.wikipedia.org/wiki/Australia), [Sri Lanka](http://en.wikipedia.org/wiki/Sri_Lanka), [Hong Kong](http://en.wikipedia.org/wiki/Hong_Kong), [Singapore](http://en.wikipedia.org/wiki/Singapore), [Ireland](http://en.wikipedia.org/wiki/Law_of_the_Republic_of_Ireland), [New Zealand](http://en.wikipedia.org/wiki/New_Zealand), [Jamaica](http://en.wikipedia.org/wiki/Jamaica), [Trinidad & Tobago](http://en.wikipedia.org/wiki/Trinidad_%26_Tobago), [Cyprus](http://en.wikipedia.org/wiki/Cyprus), [Barbados](http://en.wikipedia.org/wiki/Barbados), [South Africa](http://en.wikipedia.org/wiki/South_Africa), [Zimbabwe](http://en.wikipedia.org/wiki/Zimbabwe), [Cameroon](http://en.wikipedia.org/wiki/Cameroon), [Namibia](http://en.wikipedia.org/wiki/Namibia), [Botswana](http://en.wikipedia.org/wiki/Botswana), [Guyana](http://en.wikipedia.org/wiki/Guyana) and [Israel](http://en.wikipedia.org/wiki/Israel) use common law systems, or mixed systems with civil law.

Civil law as branch of common law

**Civil law**, as opposed to [criminal law](http://en.wikipedia.org/wiki/Criminal_law), is the branch of [law](http://en.wikipedia.org/wiki/Law) dealing with disputes between [individuals](http://en.wikipedia.org/wiki/Individuals) or [organizations](http://en.wikipedia.org/wiki/Organizations), in which [compensation](http://en.wikipedia.org/wiki/Damages) may be awarded to the victim. For instance, if a car crash victim claims damages against the driver for loss or injury sustained in an accident, this will be a civil law case.[[1]](http://en.wikipedia.org/wiki/Civil_law_(common_law)#cite_note-bbc-0)

The law relating to [civil wrongs](http://en.wikipedia.org/wiki/Civil_wrong) and [quasi-contract](http://en.wikipedia.org/wiki/Quasi-contract) is part of the civil law.[[2]](http://en.wikipedia.org/wiki/Civil_law_(common_law)#cite_note-1)

In the [common law](http://en.wikipedia.org/wiki/Common_law), civil law is the area of laws and justice that affect the legal status of individuals. Civil law, in this sense, is usually referred to in comparison to [criminal law](http://en.wikipedia.org/wiki/Criminal_law), which is that body of law involving the state against individuals (including incorporated organizations) where the state relies on the power given it by [statutory law](http://en.wikipedia.org/wiki/Statute). Civil law may also be compared to [military law](http://en.wikipedia.org/wiki/Military_law), [administrative law](http://en.wikipedia.org/wiki/Administrative_law) and [constitutional law](http://en.wikipedia.org/wiki/Constitutional_law) (the laws governing the political and law making process), and [international law](http://en.wikipedia.org/wiki/International_law). Where there are legal options for causes of action by individuals within any of these areas of law, it is thereby civil law.

Civil law courts provide a forum for deciding disputes involving [torts](http://en.wikipedia.org/wiki/Torts) (such as accidents, negligence, and libel), [contract](http://en.wikipedia.org/wiki/Contract) disputes, the probate of [wills](http://en.wikipedia.org/wiki/Will_(law)), [trusts](http://en.wikipedia.org/wiki/Trusts), [property disputes](http://en.wikipedia.org/wiki/Property_law), [administrative law](http://en.wikipedia.org/wiki/Administrative_law), [commercial law](http://en.wikipedia.org/wiki/Commercial_law), and any other private matters that involve private parties and organizations including government departments. An action by an individual (or legal equivalent) against the [attorney general](http://en.wikipedia.org/wiki/Attorney_general) is a civil matter, but when the state, being represented by the prosecutor for the attorney general, or some other agent for the state, takes action against an individual (or legal equivalent including a government department), this is [public law](http://en.wikipedia.org/wiki/Public_law), not civil law.

The objectives of civil law are different from other types of law. In civil law there is the attempt to right a wrong, honor an agreement, or settle a dispute. If there is a victim, they get compensation, and the person who is the cause of the wrong pays, this being a civilized form of, or legal alternative to, revenge. If it is an equity matter, there is often a pie for division and it gets allocated by a process of civil law, possibly invoking the [doctrines of equity](http://en.wikipedia.org/wiki/Doctrines_of_equity). In public law the objective is usually deterrence, and retribution.

An action in criminal law does not necessarily preclude an action in civil law in common law countries, and may provide a mechanism for compensation to the victims of crime. Such a situation occurred when [O.J. Simpson](http://en.wikipedia.org/wiki/O.J._Simpson) was ordered to pay damages for [wrongful death](http://en.wikipedia.org/wiki/Wrongful_death) after being acquitted of the criminal charge of [murder](http://en.wikipedia.org/wiki/Murder).

Civil law in common law countries usually refers to both [common law](http://en.wikipedia.org/wiki/Common_law) and the law of [equity](http://en.wikipedia.org/wiki/Equity_(law)), which while now merged in administration, have different traditions, and have historically operated to different doctrines, although this dualism is increasingly being set aside so there is one coherent body of law rationalized around common principles of law.

Difference from criminal law

In many countries such as the [USA](http://en.wikipedia.org/wiki/USA) and [UK](http://en.wikipedia.org/wiki/UK), [criminal law](http://en.wikipedia.org/wiki/Criminal_law) has to prove that a party is guilty [**beyond a reasonable doubt**](http://en.wikipedia.org/wiki/Beyond_a_reasonable_doubt) when a case is sent to court. Civil law operates differently, as the UK standard is only to prove guilt on the basis of a [balance of probability](http://en.wikipedia.org/wiki/Legal_burden_of_proof#Preponderance_of_the_evidence). In civil law cases, the "[burden of proof](http://en.wikipedia.org/wiki/Legal_burden_of_proof)" requires the plaintiff to convince the trier of fact (whether judge or jury) of the plaintiff's entitlement to the relief sought. This means that the plaintiff must prove each element of the claim, or cause of action, in order to recover.

Religious law

**Religious**[**law**](http://en.wikipedia.org/wiki/Law) refers to [ethical](http://en.wikipedia.org/wiki/Ethical_code) and [moral codes](http://en.wikipedia.org/wiki/Morality#Moral_codes) taught by [religious traditions](http://en.wikipedia.org/wiki/Religious_tradition). Examples include customary [*halakha*](http://en.wikipedia.org/wiki/Halakha) ([Jewish](http://en.wikipedia.org/wiki/Judaism) law), [Hindu law](http://en.wikipedia.org/wiki/Hindu_law), [*sharia*](http://en.wikipedia.org/wiki/Sharia) ([Islamic](http://en.wikipedia.org/wiki/Islam) law) and [Canon law](http://en.wikipedia.org/wiki/Canon_law) ([Christian](http://en.wikipedia.org/wiki/Christian) law).[[1]](http://en.wikipedia.org/wiki/Religious_law#cite_note-0)

The two most prominent systems, Canon law and Shari'a, differ from other religious laws in that Canon law is the [codification](http://en.wikipedia.org/wiki/Codification_(law)) of [Catholic](http://en.wikipedia.org/wiki/Roman_Catholic_Church), [Anglican](http://en.wikipedia.org/wiki/Anglicanism) and [Orthodox](http://en.wikipedia.org/wiki/Eastern_Christianity) law as in [civil law](http://en.wikipedia.org/wiki/Civil_law_(legal_system)), while Shari'a derives many of its laws from juristic [precedent](http://en.wikipedia.org/wiki/Precedent) and reasoning by [analogy](http://en.wikipedia.org/wiki/Qiyas) (like in a [common law](http://en.wikipedia.org/wiki/Common_law) tradition).

A [state religion](http://en.wikipedia.org/wiki/State_religion) (or [established church](http://en.wikipedia.org/wiki/Established_church)) is a religious body officially endorsed by the [state](http://en.wikipedia.org/wiki/State_(polity)). A [theocracy](http://en.wikipedia.org/wiki/Theocracy) is a [form of government](http://en.wikipedia.org/wiki/Form_of_government) in which a [God](http://en.wikipedia.org/wiki/God) or a [deity](http://en.wikipedia.org/wiki/Deity) is recognized as the supreme civil ruler. The opposite are [secular states](http://en.wikipedia.org/wiki/Secular_state), in which there is a [separation of church and state](http://en.wikipedia.org/wiki/Separation_of_church_and_state).

International law

**International law** is the set of rules generally regarded and accepted as binding in relations between states and nations.[[1]](http://en.wikipedia.org/wiki/International_law#cite_note-0) It serves as the indispensable framework for the practice of stable and organized international relations.[[2]](http://en.wikipedia.org/wiki/International_law#cite_note-1) International law differs from national [legal systems](http://en.wikipedia.org/wiki/Legal_system) in that it only concerns nations rather than private citizens. National law may become international law when [treaties](http://en.wikipedia.org/wiki/Treaties) delegate national jurisdiction to [supranational](http://en.wikipedia.org/wiki/Supranational) tribunals such as the [European Court of Human Rights](http://en.wikipedia.org/wiki/European_Court_of_Human_Rights) or the [International Criminal Court](http://en.wikipedia.org/wiki/International_Criminal_Court). Treaties such as the [Geneva Conventions](http://en.wikipedia.org/wiki/Geneva_Conventions) may require national law to conform.

International law is consent based governance. This means that a state member of the international community is not obliged to abide by international law unless it has expressly consented to a particular course of conduct.[[3]](http://en.wikipedia.org/wiki/International_law#cite_note-2) This is an issue of [state sovereignty](http://en.wikipedia.org/wiki/State_sovereignty).

The term "international law" can refer to three distinct legal disciplines:

* [Public international law](http://en.wikipedia.org/wiki/Public_international_law), which governs the relationship between [provinces](http://en.wikipedia.org/wiki/Province) and international entities. It includes these legal fields: [treaty law](http://en.wikipedia.org/wiki/Treaty_law), [law of sea](http://en.wikipedia.org/wiki/Law_of_sea), [international criminal law](http://en.wikipedia.org/wiki/International_criminal_law), the [laws of war](http://en.wikipedia.org/wiki/Laws_of_war) or [international humanitarian law](http://en.wikipedia.org/wiki/International_humanitarian_law) and [international human rights law](http://en.wikipedia.org/wiki/International_human_rights_law).
* [Private international law](http://en.wikipedia.org/wiki/Private_international_law), or [conflict of laws](http://en.wikipedia.org/wiki/Conflict_of_laws), which addresses the questions of (1) which jurisdiction may hear a case, and (2) the law concerning which jurisdiction applies to the issues in the case.
* [Supranational law](http://en.wikipedia.org/wiki/Supranational_law) or the law of [supranational](http://en.wikipedia.org/wiki/Supranational) organizations, which concerns regional agreements where the laws of nation states may be held inapplicable when conflicting with a supranational legal system when that nation has a treaty obligation to a supranational [collective](http://en.wikipedia.org/wiki/Collective).

The two traditional branches of the field are:

* [*jus gentium*](http://en.wikipedia.org/wiki/Jus_gentium) — law of nations
* [*jus inter gentes*](http://en.wikipedia.org/wiki/Jus_inter_gentes) — agreements between nations

Public international law

[](http://en.wikipedia.org/wiki/File:Unpicture.jpg)

[magnify-clip](http://en.wikipedia.org/wiki/File:Unpicture.jpg)

The [United Nations](http://en.wikipedia.org/wiki/United_Nations) is responsible for much of the current framework of [international law](http://en.wikipedia.org/wiki/International_law)

**Public international law** concerns the structure and conduct of [sovereign states](http://en.wikipedia.org/wiki/Sovereign_state); analogous entities, such as the [Holy See](http://en.wikipedia.org/wiki/Legal_status_of_the_Holy_See); and [intergovernmental organizations](http://en.wikipedia.org/wiki/Intergovernmental_organizations). To a lesser degree, international law also may affect [multinational corporations](http://en.wikipedia.org/wiki/Multinational_corporation) and [individuals](http://en.wikipedia.org/wiki/Individual), an impact increasingly evolving beyond domestic legal interpretation and enforcement. Public international law has increased in use and importance vastly over the twentieth century, due to the increase in [global trade](http://en.wikipedia.org/wiki/International_trade), environmental deterioration on a worldwide scale, awareness of [human rights](http://en.wikipedia.org/wiki/Human_rights) violations, and rapid and vast increases in international transportation as well as a boom in global communications.

The field of study combines two main branches: the **law of nations** ([*jus gentium*](http://en.wikipedia.org/wiki/Jus_gentium)) and **international agreements and conventions** ([*jus inter gentes*](http://en.wikipedia.org/wiki/Jus_inter_gentes)), which have different foundations and should not be confused.

Public international law should not be confused with "[*private international law*](http://en.wikipedia.org/wiki/Private_international_law)", which is concerned with the resolution of [conflict of laws](http://en.wikipedia.org/wiki/Conflict_of_laws). In its most general sense, international law "consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and with their relations [*inter se*](http://en.wikipedia.org/wiki/Inter_se), as well as with some of their relations with persons, whether natural or juridical."[[1]](http://en.wikipedia.org/wiki/Public_international_law#cite_note-0)

Conflict of laws

**Conflict of laws** (or **private international law**) is a set of procedural rules that determines which legal system and which [jurisdictions](http://en.wikipedia.org/wiki/Jurisdiction_(area)) applies to a given dispute. The rules typically apply when a legal dispute has a "foreign" element such as a contract agreed to by parties located in different countries, although the "foreign" element also exists in multi-jurisdictional countries such as the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), the [United States](http://en.wikipedia.org/wiki/United_States), [Australia](http://en.wikipedia.org/wiki/Australia) and [Canada](http://en.wikipedia.org/wiki/Canada).

The term *conflict of laws* itself originates from situations where the ultimate outcome of a legal dispute depended upon which law applied, and the common law courts manner of resolving the conflict between those laws. In [civil law](http://en.wikipedia.org/wiki/Civil_law_(legal_system)), lawyers and legal scholars refer to conflict of laws as private international law. Private international law has no real connection with [public international law](http://en.wikipedia.org/wiki/Public_international_law), and is instead a feature of local law which varies from country to country.

The three branches of conflict of laws are

* Jurisdiction – whether the forum court has the power to resolve the dispute at hand
* Choice of law – the law which is being applied to resolve the dispute
* Foreign judgments – the ability to recognize and enforce a judgment from an external forum within the jurisdiction of the adjudicating forum

Terminology

Its three different names – *conflict of laws*, *private international law*, and *international private law* – are generally interchangeable, although none of them is wholly accurate or properly descriptive. The term *conflict of laws* is primarily used in jurisdictions of the [Common Law](http://en.wikipedia.org/wiki/Common_Law) legal tradition, such as in the United States, England, Canada, and Australia. *Private international law* (*droit international privé*) is used in France, as well as in Italy, Greece, and the Spanish- and Portuguese-speaking countries. *International private law* (*internationales Privatrecht*) is used in [Germany](http://en.wikipedia.org/wiki/Germany) (as well as [Austria](http://en.wikipedia.org/wiki/Austria), [Lichtenstein](http://en.wikipedia.org/wiki/Leichtenstein) and [Switzerland](http://en.wikipedia.org/wiki/Switzerland)), [Russia](http://en.wikipedia.org/wiki/Russia) and [Scotland](http://en.wikipedia.org/wiki/Scotland).

Within the federal systems where legal conflicts among federal states require resolution, as in the [United States](http://en.wikipedia.org/wiki/United_States) and [Australia](http://en.wikipedia.org/wiki/Australia), the term *conflict of laws* is preferred simply because such cases do not involve an international issue. Hence, *conflict of laws* is a general term to refer to disparities among laws, regardless of whether the relevant legal systems are international or inter-state. The term, however, can be misleading when it refers to [*resolution*](http://en.wikipedia.org/wiki/Resolution_(policy_debate))*of conflicts* between competing systems rather than "conflict" itself. The term *private international law* was coined by American [lawyer](http://en.wikipedia.org/wiki/Lawyer) and Judge [Joseph Story](http://en.wikipedia.org/wiki/Joseph_Story), but was abandoned subsequently by common law scholars and embraced by civil law lawyers.

The status of foreign law

Generally, when the court is to apply a foreign law, it must be proved by foreign law experts. It cannot merely be pleaded, as the court has no expertise in the laws of foreign countries nor in how they might be applied in a foreign court. Such foreign law may be considered no more than [evidence](http://en.wikipedia.org/wiki/Evidence_(law)), rather than law because of the issue of sovereignty. If the local court is actually giving extraterritorial effect to a foreign law, it is less than sovereign and so acting in a way that is potentially unconstitutional. The theoretical responses to this issue are:

* (a) that each court has an [inherent jurisdiction](http://en.wikipedia.org/wiki/Inherent_jurisdiction) to apply the laws of another country where it is necessary to achieving a just outcome; or
* (b) that the local court creates a right in its own laws to match that available under the foreign law. This explanation is sustainable because, even in states which apply a system of binding legal precedents, any precedent emerging from a conflicts case can only apply to future conflicts cases. There will be no [ratio decidendi](http://en.wikipedia.org/wiki/Ratio_decidendi) that binds future litigants in entirely local cases.
* (c) that the national court, when applying a foreign law, does not give an extraterritorial effect but recognizes, through its own "conflict of laws rule", that the situation at hand falls under the scope of application of the foreign rule. In order to understand this argument one must first define the notion of extraterritorial application of a rule. This notion is susceptible to two distinct meanings:

On the one hand, this notion is used to describe the situation where a local court applies a rule other than the *Lex fori* (local law).

On the other hand, it could mean that the rule is being applied to a factual situation that occurred beyond the territory of its state of origin. As an example of this situation, one can think of an American court applying British tort statutes and case law to a [car accident](http://en.wikipedia.org/wiki/Car_accident) that took place in [London](http://en.wikipedia.org/wiki/London) where both the driver and the victim are British citizens but the lawsuit was brought in before the American courts because the driver's insurer is American. One can then argue that since the factual situation is within the British territory, where an American judge applies the English Law, he does not give an extraterritorial application to the foreign rule. In fact, one can also argue that the American judge, had he applied [American Law](http://en.wikipedia.org/wiki/Law_of_the_United_States), would be doing so in an extraterritorial fashion.

Once the [*lex causae*](http://en.wikipedia.org/wiki/Lex_causae) has been selected, it will be respected except when it appears to contravene an overriding mandatory rule of the *lex fori*. Each judge is the guardian of his own principles of *ordre public* (public order) and the parties cannot, by their own act, oust the fundamental principles of the local municipal law which generally underpin areas such as [labour law](http://en.wikipedia.org/wiki/Labour_and_employment_law), insurance, competition regulation, agency rules, embargoes, import-export regulations, and [securities exchange](http://en.wikipedia.org/wiki/Securities_exchange) regulations. Furthermore, the *lex fori* will prevail in cases where an application of the *lex causae* would otherwise result in a fundamentally immoral outcome, or give extraterritorial effect to [confiscatory](http://en.wikipedia.org/wiki/Confiscation) or other territorially limited laws.

In some countries, there is occasional evidence of [parochialism](http://en.wikipedia.org/wiki/Parochialism) when courts have determined that if the foreign law cannot be proved to a "satisfactory standard", then local law may be applied. In [the United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), in the absence of evidence being led, the foreign law is presumed to be the same as the *lex fori*. Similarly, judges might assume in default of express evidence to the contrary that the place where the cause of action arose would provide certain basic protections, e.g. that the foreign court would provide a remedy to someone who was injured due to the negligence of another. Finally, some American courts have held that local law will be applied if the injury occurred in an "uncivilized place that has no law or legal system."[[6]](http://en.wikipedia.org/wiki/Conflict_of_laws#cite_note-5)

If the case has been submitted to [arbitration](http://en.wikipedia.org/wiki/Arbitration) rather than a national court, say because of a forum selection clause, an arbitrator may decide not to apply local mandatory policies in the face of a choice of law by the parties if this would defeat their commercial objectives. However, the arbitral award may be challenged in the country where it was made or where enforcement is sought by one of the parties on the ground that the relevant *ordre public* should have been applied. If the [*lex loci arbitri*](http://en.wikipedia.org/wiki/Lex_loci_arbitri) has been ignored, but there was no real and substantial connection between the place of arbitration and the agreement made by the parties, a court in which enforcement is sought may well accept the tribunal's decision. But if the appeal is to the courts in the state where the arbitration was held, the judge cannot ignore the mandatory provisions of the *lex fori*.

Harmonization

To apply one national legal system as against another may never be an entirely satisfactory approach. The parties' interests may always be better protected by applying a law conceived with international realities in mind. The [Hague Conference on Private International Law](http://en.wikipedia.org/wiki/Hague_Conference_on_Private_International_Law) is a treaty organization that oversees conventions designed to develop a uniform system. The deliberations of the conference have recently been the subject of controversy over the extent of cross-border jurisdiction on [electronic commerce](http://en.wikipedia.org/wiki/Electronic_commerce) and [defamation](http://en.wikipedia.org/wiki/Defamation) issues. There is a general recognition that there is a need for an international law of contracts: for example, many nations have ratified the [*Vienna Convention on the International Sale of Goods*](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods), the [*Rome Convention on the Law Applicable to Contractual Obligations*](http://en.wikipedia.org/wiki/Rome_Convention_(contract)) offers less specialized uniformity, and there is support for the [*UNIDROIT*](http://en.wikipedia.org/wiki/UNIDROIT)*Principles of International Commercial Contracts*, a private restatement, all of which represent continuing efforts to produce international standards as the internet and other technologies encourage ever more interstate commerce. But other branches of the law are less well served and the dominant trend remains the role of the forum law rather than a supranational system for Conflict purposes. Even the EU, which has institutions capable of creating uniform rules with [direct effect](http://en.wikipedia.org/wiki/Direct_effect), has failed to produce a universal system for the common market. Nevertheless, the Treaty of Amsterdam does confer authority on the Community's institutions to legislate by Council Regulation in this area with supranational effect. Article 177 would give the Court of Justice jurisdiction to interpret and apply their principles so, if the political will arises, uniformity may gradually emerge in letter. Whether the domestic courts of the Member States would be consistent in applying those letters is speculative.

Comparative law

**Comparative law** is the study of differences and similarities between the [laws](http://en.wikipedia.org/wiki/Law) of different countries. More specifically, it involves study of the different legal systems in existence in the world, including the [common law](http://en.wikipedia.org/wiki/Common_law), the [civil law](http://en.wikipedia.org/wiki/Civil_law_(legal_system)), [socialist law](http://en.wikipedia.org/wiki/Socialist_law), [Islamic law](http://en.wikipedia.org/wiki/Sharia), [Hindu law](http://en.wikipedia.org/wiki/Hindu_law), and [Chinese law](http://en.wikipedia.org/wiki/Chinese_law). It includes the description and analysis of foreign legal systems, even where no explicit comparison is undertaken. The importance of comparative law has increased enormously in the present age of internationalism, economic globalisation and democratisation.

Purpose

Comparative law is an academic study of separate legal systems, each one analysed in its constitutive elements; how they differ in the different legal systems, and how their elements combine into a system.

Several disciplines have developed as separate branches of comparative law, including comparative [constitutional law](http://en.wikipedia.org/wiki/Constitutional_law), comparative [administrative law](http://en.wikipedia.org/wiki/Administrative_law), comparative [civil law](http://en.wikipedia.org/wiki/Civil_law_(private_law)) (in the sense of the law of [torts](http://en.wikipedia.org/wiki/Tort), [delicts](http://en.wikipedia.org/wiki/Delict), [contracts](http://en.wikipedia.org/wiki/Contract) and [obligations](http://en.wikipedia.org/wiki/Law_of_obligations)), comparative [commercial law](http://en.wikipedia.org/wiki/Commercial_law) (in the sense of [business organisations](http://en.wikipedia.org/wiki/Companies_law) and trade), and comparative [criminal law](http://en.wikipedia.org/wiki/Criminal_law). Studies of these specific areas may be viewed as micro- or macro-comparative legal analysis, i.e. detailed comparisons of two countries, or broad-ranging studies of several countries. Comparative civil law studies, for instance, show how the law of private relations is organised, interpreted and used in different systems or countries. It appears today the principal purposes of comparative law are:

* to attain a deeper knowledge of the legal systems in effect
* to perfect the legal systems in effect
* possibly, to contribute to a unification of legal systems, of a smaller or larger scale (cf. for instance, the [UNIDROIT](http://en.wikipedia.org/wiki/UNIDROIT) initiative)

Importance

Comparative law is a very important discipline in communication between legal systems. It may provide the basis for the production of bilingual dictionaries that include the information necessary to make legal communication across borders successful. It also helps mutual understanding and the dispelling of prejudice and misinterpretation. In this globalising world, comparative law is important for it provides a platform for intellectual exchange in terms of law and it cultivates a culture of understanding in a diverse world.

# II International Organizations, Sources of Law

Sources of international law

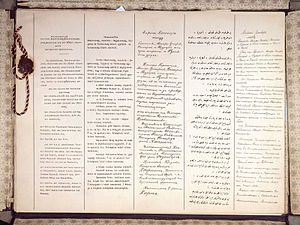
**Sources of international law** are the materials and processes out of which the rules and principles regulating the [international community](http://en.wikipedia.org/wiki/International_community) are developed. They have been influenced by a range of [political](http://en.wikipedia.org/wiki/Political_theory) and [legal theories](http://en.wikipedia.org/wiki/Legal_theory). During the 19th century, it was recognised by [legal positivists](http://en.wikipedia.org/wiki/Legal_positivism) that a [sovereign](http://en.wikipedia.org/wiki/Sovereignty) could limit its authority to act by consenting to an [agreement](http://en.wikipedia.org/wiki/Treaty) according to the principle [*pacta sunt servanda*](http://en.wikipedia.org/wiki/Pacta_sunt_servanda). This consensual view of international law was reflected in the 1920 Statute of the [Permanent Court of International Justice](http://en.wikipedia.org/wiki/Permanent_Court_of_International_Justice), and preserved in Article 38(1) of the 1946 Statute of the [International Court of Justice](http://en.wikipedia.org/wiki/International_Court_of_Justice).[[1]](http://en.wikipedia.org/wiki/Sources_of_international_law#endnote_1)

Article 38(1) is generally recognised as a definitive statement of the sources of international law. It requires the Court to apply, among other things, (a) international conventions "expressly recognized by the contesting states", and (b) "international custom, as evidence of a general practice accepted as law". To avoid the possibility of [*non liquet*](http://en.wikipedia.org/wiki/Non_liquet), sub-paragraph (c) added the requirement that the general principles applied by the Court were those that had been "the general principles of the law recognized by civilized nations". As it is states that by consent determine the content of international law, sub-paragraph (d) acknowledges that the Court is entitled to refer to "[judicial decisions](http://en.wikipedia.org/wiki/Case_law)" and the most highly qualified [juristic](http://en.wikipedia.org/wiki/Jurist) writings "as subsidiary means for the determination of rules of law".

On the question of preference between sources of international law, rules established by [treaty](http://en.wikipedia.org/wiki/Treaty) will take preference if such an instrument exists. It is also argued however that international treaties and international custom are sources of international law of equal validity; this is that new custom may supersede older treaties and new treaties may override older custom. Certainly, judicial decisions and juristic writings are regarded as auxiliary sources of international law, whereas it is unclear whether the general principles of law recognized by 'civilized nations' should be recognized as a principal or auxiliary source of international law.

It may be argued that the practice of international organizations, most notably that of the [United Nations](http://en.wikipedia.org/wiki/United_Nations), as it appears in the resolutions of the [Security Council](http://en.wikipedia.org/wiki/United_Nations_Security_Council) and the [General Assembly](http://en.wikipedia.org/wiki/United_Nations_General_Assembly), are an additional source of international law, even though it is not mentioned as such in Article 38(1) of the 1946 Statute of the [International Court of Justice](http://en.wikipedia.org/wiki/International_Court_of_Justice). Article 38(1) is closely based on the corresponding provision of the 1920 Statute of the [Permanent Court of International Justice](http://en.wikipedia.org/wiki/Permanent_Court_of_International_Justice), thus predating the role that international organizations have come to play in the international plane. That is, the provision of Article 38(1) may be regarded as *dated*, and this can most vividly be seen in the mention made to 'civilized nations', a mentioning that appears all the more quaint after the decolonization process that took place in the early 1960s and the participation of nearly all nations of the world in the [United Nations](http://en.wikipedia.org/wiki/United_Nations).

Treaty

[](http://en.wikipedia.org/wiki/File:Traktat_brzeski_1918.jpg)

[magnify-clip](http://en.wikipedia.org/wiki/File:Traktat_brzeski_1918.jpg)

The first two pages of the [Treaty of Brest-Litovsk](http://en.wikipedia.org/wiki/Treaty_of_Brest-Litovsk), in (left to right) German, Hungarian, Bulgarian, Ottoman Turkish and Russian

A **treaty** is an express agreement under [international law](http://en.wikipedia.org/wiki/International_law) entered into by actors in international law, namely [sovereign states](http://en.wikipedia.org/wiki/Sovereign_state) and [international organizations](http://en.wikipedia.org/wiki/International_organizations). A treaty may also be known as an **(international) agreement**, **protocol**, **covenant**, **convention** or **exchange of letters**, among other terms. Regardless of terminology, all of these forms of agreements are, under international law, equally considered treaties and the rules are the same.[[1]](http://en.wikipedia.org/wiki/Treaty#cite_note-0)

Treaties can be loosely compared to [contracts](http://en.wikipedia.org/wiki/Contract): both are means of willing parties assuming obligations among themselves, and a party to either that fails to live up to their obligations can be held liable under international law.

Modern usage

A treaty is an official, express written agreement that states use to legally bind themselves.[[2]](http://en.wikipedia.org/wiki/Treaties#cite_note-ShawIL5th-1) A treaty is that official document which expresses that agreement in words; and it is also the objective outcome of a ceremonial occasion which acknowledges the parties and their defined relationships.

Bilateral and multilateral treaties

Bilateral treaties are concluded between two states [[3]](http://en.wikipedia.org/wiki/Treaties#cite_note-nicholson135-2) or entities. It is possible however for a bilateral treaty to have more than two parties; consider for instance the bilateral treaties between [Switzerland](http://en.wikipedia.org/wiki/Switzerland) and the [European Union](http://en.wikipedia.org/wiki/European_Union) (EU) following the Swiss rejection of the [European Economic Area](http://en.wikipedia.org/wiki/European_Economic_Area) agreement. Each of these treaties has seventeen parties. These however are still bilateral, not multilateral, treaties. The parties are divided into two groups, the Swiss ("on the one part") and the EU and its member states ("on the other part"). The treaty establishes rights and obligations between the Swiss and the EU and the member states severally; it does not establish any rights and obligations amongst the EU and its member states.

A multilateral treaty is concluded among several countries.[[3]](http://en.wikipedia.org/wiki/Treaties#cite_note-nicholson135-2) The agreement establishes rights and obligations between each party and every other party. Multilateral treaties are often regional. Treaties of "mutual guarantee" are international compacts, e.g., the [Treaty of Locarno](http://en.wikipedia.org/wiki/Treaty_of_Locarno) which guarantees each signatory against attack from another.[[3]](http://en.wikipedia.org/wiki/Treaties#cite_note-nicholson135-2)

Role of the United Nations

The [United Nations Charter](http://en.wikipedia.org/wiki/United_Nations_Charter) states that treaties must be registered with the [UN](http://en.wikipedia.org/wiki/UN) to be invoked before it or enforced in its judiciary organ, the [International Court of Justice](http://en.wikipedia.org/wiki/International_Court_of_Justice). This was done to prevent the proliferation of [secret treaties](http://en.wikipedia.org/wiki/Secret_treaty) that occurred in the 19th and 20th century. Section 103 of the Charter also states that its members' obligations under it outweigh any competing obligations under other treaties.

After their adoption, treaties as well as their amendments have to follow the official legal procedures of the United Nations, as applied by the [Office of Legal Affairs](http://en.wikipedia.org/wiki/United_Nations_Office_of_Legal_Affairs), including [signature](http://en.wikipedia.org/wiki/Signature), [ratification](http://en.wikipedia.org/wiki/Ratification) and [entry into force](http://en.wikipedia.org/wiki/Entry_into_force).

In function and effectiveness, the UN has been compared to the pre-Constitutional United States Federal government by some, giving a comparison between modern treaty law and the historical [Articles of Confederation](http://en.wikipedia.org/wiki/Articles_of_Confederation).

Pacta sunt servanda

***Pacta sunt servanda*** ([Latin](http://en.wikipedia.org/wiki/Latin) for "agreements must be kept"[[1]](http://en.wikipedia.org/wiki/Pacta_sunt_servanda#cite_note-0)), is a [brocard](http://en.wikipedia.org/wiki/Brocard_(law)), a basic principle of [civil law](http://en.wikipedia.org/wiki/Civil_law_(legal_system)) and of [international law](http://en.wikipedia.org/wiki/International_law).

In its most common sense, the principle refers to private [contracts](http://en.wikipedia.org/wiki/Contract), stressing that contained [clauses](http://en.wikipedia.org/wiki/Clause) are [law](http://en.wikipedia.org/wiki/Law) between the parties, and implies that non-fulfilment of respective obligations is a breach of the pact.

In civil law jurisdictions this principle is related to the general principle of correct behaviour in commercial practice — including the assumption of [*good faith*](http://en.wikipedia.org/wiki/Good_faith) — is a requirement for the efficacy of the whole system, so the eventual disorder is sometimes punished by the law of some systems even without any direct penalty incurred by any of the parties. However, common law jurisdictions usually do not have the principle of good faith in commercial contracts; therefore it is inappropriate to state that pacta sunt servanda includes the principle of good faith.

With reference to international agreements, "every [treaty](http://en.wikipedia.org/wiki/Treaty) in force is binding upon the parties to it and must be performed by them in [good faith](http://en.wikipedia.org/wiki/Good_faith)."[[2]](http://en.wikipedia.org/wiki/Pacta_sunt_servanda#cite_note-1) *Pacta sunt servanda* is related to good faith, while pacta sunt servanda does not equate with good faith. This entitles [states](http://en.wikipedia.org/wiki/State_(polity)) to require that obligations be respected and to rely upon the obligations being respected. This good faith basis of treaties implies that a party to the treaty cannot invoke provisions of its [municipal (domestic) law](http://en.wikipedia.org/wiki/Municipal_law) as justification for a failure to perform. However, with regards to the Vienna Convention and the UNIDROIT Principles it should be kept in mind that these are heavily influenced by civil law jurisdictions. To derive from these sources that pacta sunt servanda includes the principle of good faith is therefore incorrect.

The only limits to *pacta sunt servanda* are the [peremptory norms](http://en.wikipedia.org/wiki/Peremptory_norm) of general international law, called *jus cogens* (compelling law). The legal principle [*clausula rebus sic stantibus*](http://en.wikipedia.org/wiki/Clausula_rebus_sic_stantibus), part of [customary international law](http://en.wikipedia.org/wiki/Customary_international_law), also allows for treaty obligations to be unfulfilled due to a compelling change in circumstances.

Stability and Growth Pact

The **Stability and Growth Pact** (**SGP**) is an agreement, among the 27 [Member states of the European Union](http://en.wikipedia.org/wiki/Member_states_of_the_European_Union), to facilitate and maintain the stability of the [Economic and Monetary Union](http://en.wikipedia.org/wiki/Economic_and_Monetary_Union_of_the_European_Union). Based primarily on Articles 121 and 126[[1]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-0) of the [Treaty on the Functioning of the European Union](http://en.wikipedia.org/wiki/Treaties_of_the_European_Union#Treaty_on_the_Functioning_of_the_European_Union), it consists of fiscal monitoring of members by the [European Commission](http://en.wikipedia.org/wiki/European_Commission) and the [Council of Ministers](http://en.wikipedia.org/wiki/Council_of_the_European_Union) and, after multiple warnings, sanctions[[2]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-1) against offending members.

The pact was adopted in 1997[[3]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-2) so that fiscal discipline would be maintained and enforced in the EMU. Member states adopting the euro have to meet the Maastricht [convergence criteria](http://en.wikipedia.org/wiki/Convergence_criteria), and the SGP ensures that they continue to observe them.

The actual criteria that member states must respect are:

* an annual budget deficit no higher than 3% of GDP (this includes the sum of all public budgets, including municipalities, regions, etc.)
* a national debt lower than 60% of GDP or approaching that value.

The SGP was initially proposed by German finance minister [Theo Waigel](http://en.wikipedia.org/wiki/Theo_Waigel) in the mid 1990s. Germany had long maintained a low-inflation policy, which had been an important part of the German economy's strong performance since the 1950s. The German government hoped to ensure the continuation of that policy through the SGP, which would limit the ability of governments to exert inflationary pressures on the European economy.

Criticism

The Pact has been criticised by some as being insufficiently flexible and needing to be applied over the [economic cycle](http://en.wikipedia.org/wiki/Economic_cycle) rather than in any one year.[[4]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-3) They fear that by limiting governments' abilities to spend during economic slumps it may hamper growth. In contrast, other critics think that the Pact is too flexible; economist Antonio Martino writes: "The fiscal constraints introduced with the new currency must be criticized not because they are undesirable—in my view they are a necessary component of a liberal order—but because they are ineffective. This is amply evidenced by the “creative accounting” gimmickry used by many countries to achieve the required deficit to GDP ratio of 3 percent, and by the immediate abandonment of fiscal prudence by some countries as soon as they were included in the euro club. Also, the Stability Pact has been watered down at the request of Germany and France."[[5]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-4)

Some remark that it has been applied inconsistently: the Council of Ministers failed to apply sanctions against France and Germany, while punitive proceedings were started (but fines never applied) when dealing with Portugal (2002) and Greece (2005). In 2002 the [European Commission](http://en.wikipedia.org/wiki/European_Commission) President (1999–2004)[[6]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-5) [Romano Prodi](http://en.wikipedia.org/wiki/Romano_Prodi) described it as "stupid",[[7]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-6) but was still required by the Treaty to seek to apply its provisions.

The Pact has proved to be unenforceable against big countries such as France and Germany, which were its strongest promoters when it was created. These countries have run "excessive" deficits under the Pact definition for some years. The reasons that larger countries have not been punished include their influence and large number of votes on the Council of Ministers, which must approve sanctions; their greater resistance to "naming and shaming" tactics, since their electorates tend to be less concerned by their perceptions in the European Union; their weaker commitment to the euro compared to smaller states; and the greater role of government spending in their larger and more enclosed economies. The Pact was further weakened in 2005 to waive France's and Germany's violations.[[8]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-7)

Reform 2005

In March 2005, the EU Council, under the pressure of France and Germany, relaxed the rules; the EC said it was to respond to criticisms of insufficient flexibility and to make the pact more enforceable.[[9]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-8)

The Ecofin agreed on a reform of the SGP. The ceilings of 3% for budget deficit and 60% for public debt were maintained, but the decision to declare a country in excessive deficit can now rely on certain parameters: the behaviour of the cyclically adjusted budget, the level of debt, the duration of the slow growth period and the possibility that the deficit is related to productivity-enhancing procedures.[[10]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-9)

Reform 2011

In March 2011, following the [2010 European sovereign debt crisis](http://en.wikipedia.org/wiki/2010_European_sovereign_debt_crisis), the EU member states adopted a new reform under the [Open Method of Coordination](http://en.wikipedia.org/wiki/Open_Method_of_Coordination), aiming at straightening the rules e.g. by adopting an automatic procedure for imposing of penaltiesin case of breaches of either the deficit or the debt rules.[[12]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-11)[[13]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-12) The new "Euro Plus Pact" is designed as a more stringent successor to the Stability and Growth Pact, which has not been implemented consistently. The measures are controversial not only because of the closed way in which it was developed but also for the goals that it postulates.

The four broad strategic goals are:

* fostering competitiveness
* fostering employment
* contributing to the sustainability of public finances
* reinforcing financial stability.

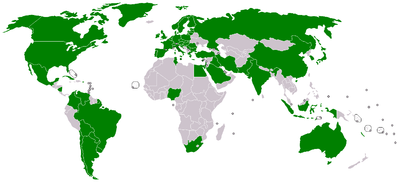
An additional fifth issue is: [[14]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-Mar25-13)

* tax policy coordination

The [European Fiscal Compact](http://en.wikipedia.org/wiki/European_Fiscal_Compact) is a proposal for a treaty about [fiscal integration](http://en.wikipedia.org/wiki/Fiscal_integration) described in a decision adopted on 9 December 2011 by the European Council. The participants are the Eurozone member states and all other EU members without the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom) and [Czech Republic](http://en.wikipedia.org/wiki/Czech_Republic). Treaty text is still to be drafted and participation approvals from national parliaments are still to be granted.[[15]](http://en.wikipedia.org/wiki/Stability_and_Growth_Pact#cite_note-14)

International Institute for the Unification of Private Law

The **International Institute for the Unification of Private Law**, abbreviated **UNIDROIT**, is an intergovernmental organization on harmonization of [private international law](http://en.wikipedia.org/wiki/Private_international_law); its projects include drafting of international [conventions](http://en.wikipedia.org/wiki/Treaty) and production of model laws. As of 2012, UNIDROIT had 63 member states.

[](http://en.wikipedia.org/wiki/File:International_Institute_for_the_Unification_of_Private_Law.png)

Conventions

Unidroit has over the years prepared the following international Conventions, drawn up by Unidroit and adopted by diplomatic Conferences convened by member States of Unidroit: [[1]](http://en.wikipedia.org/wiki/International_Institute_for_the_Unification_of_Private_Law#cite_note-0)

* Convention relating to a Uniform Law on the International Sale of Goods (The Hague, 1964)
* Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (The Hague, 1964)
* International Convention on Travel Contracts (Brussels, 1970)
* Convention providing a Uniform Law on the Form of an International [Will](http://en.wikipedia.org/wiki/Will_(law)) (Washington, D.C., 1973)
* Convention on Agency in the International Sale of Goods (Geneva, 1983)
* Unidroit Convention on International Financial Leasing (Ottawa, 1988)
* Unidroit Convention on International [Factoring](http://en.wikipedia.org/wiki/Factoring_(finance)) (Ottawa, 1988)
* Unidroit Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)
* Convention on International Interests in Mobile Equipment (Cape Town, 2001) (including Protocols on Aircraft (2001) and Railway rolling stock (2007) and Space assets (2012)
* [Geneva Securities Convention](http://en.wikipedia.org/wiki/Geneva_Securities_Convention) (Geneva, 2009)

UNIDROIT is [depositary](http://en.wikipedia.org/wiki/Depositary) of two of its conventions: the [Cape Town Convention](http://en.wikipedia.org/wiki/Cape_Town_Convention) (including its three protocols) as well as the [Geneva Securities Convention](http://en.wikipedia.org/wiki/Geneva_Securities_Convention).

United Nations Convention on Contracts for the International Sale of Goods

The **United Nations Convention on Contracts for the International Sale of Goods** (**CISG**; the **Vienna Convention**)[[1]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-0) is a [treaty](http://en.wikipedia.org/wiki/Treaty) offering a uniform international sales [law](http://en.wikipedia.org/wiki/Law). As of August 2010, it had been ratified by 77 countries which account for a significant proportion of [world trade](http://en.wikipedia.org/wiki/International_trade), making it one of the most successful international uniform laws. [Benin](http://en.wikipedia.org/wiki/Benin) was the most recent state to ratify the Convention.

The CISG allows [exporters](http://en.wikipedia.org/wiki/Exporter) to avoid [choice of law](http://en.wikipedia.org/wiki/Choice_of_law) issues, as the CISG offers "accepted substantive rules on which contracting parties, courts, and arbitrators may rely".[[2]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-1)

The CISG was developed by the [United Nations Commission on International Trade Law](http://en.wikipedia.org/wiki/United_Nations_Commission_on_International_Trade_Law) ([UNCITRAL](http://en.wikipedia.org/wiki/United_Nations_Commission_on_International_Trade_Law)), and was signed in Vienna in 1980. The CISG is sometimes referred to as the **Vienna Convention** (but is not to be confused with [other treaties signed in Vienna](http://en.wikipedia.org/wiki/Vienna_Convention)). It came into force as a [multilateral treaty](http://en.wikipedia.org/wiki/Multilateral_treaty) on 1 January 1988, after being [ratified](http://en.wikipedia.org/wiki/Ratified) by 11 countries.[[3]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-2) CISG has been regarded as a success for UNCITRAL, as the Convention has since been accepted by States from "every geographical region, every stage of economic development and every major legal, social and economic system".[[4]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-3) Countries that have ratified the CISG are referred to within the treaty as “Contracting States”. Unless excluded by the express terms[[5]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-4) of a contract, the CISG is deemed to be incorporated into (and supplant) any otherwise applicable [domestic law](http://en.wikipedia.org/wiki/Domestic_law)(s) with respect to a transaction in goods between parties from different Contracting States.[[6]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-5) Of the uniform law conventions, the CISG has been described as having "the greatest influence on the law of worldwide trans-border commerce".[[7]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-6)

The CISG has been described as a great legislative achievement,[[8]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-7) and the "most successful international document so far" in unified international sales law,[[9]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-8) in part due to its flexibility in allowing Contracting States the option of taking exception to certain specified articles. This flexibility was instrumental in convincing states with disparate legal traditions to subscribe to an otherwise uniform code. A number of countries that have signed the CISG have made declarations and reservations as to the treaty's scope,[[10]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-9) though the vast majority – 55 out of the current 76 Contracting States – has chosen to accede to the Convention without any reservations.

The CISG is the basis of the annual [Willem C. Vis International Commercial Arbitration Moot](http://en.wikipedia.org/wiki/Willem_C._Vis_Moot) held in Vienna in the week before [Easter](http://en.wikipedia.org/wiki/Easter) (and now also in Hong Kong). Teams from law schools around the world take part. The Moot is organised by [Pace University](http://en.wikipedia.org/wiki/Pace_University), which keeps a definitive source of information on the CISG.

## Reservations

A few countries have declared important reservations. For example, in the [Nordic countries](http://en.wikipedia.org/wiki/Nordic_countries) (*i.e.*, members of the [Nordic Council](http://en.wikipedia.org/wiki/Nordic_Council)), Part II is not generally applied, unless the contract expressly specifies this (reservation authorized by Article 92 CISG). Instead, local law is applied, resulting in some slight differences. For example, a Finnish seller must give a "reasonable amount of time" for a foreign buyer to consider an offer; CISG allows the seller to retract the offer before the buyer has accepted the offer. However, the Nordic countries were as of 2008 considering withdrawing their Article 92 CISG reservation.

In any event, Nordic countries do not apply CISG in trade between each other, but rather local law. This is due to a reservation in accordance with Article 94 CISG.

## Major absentees

[Brazil](http://en.wikipedia.org/wiki/Brazil), Hong Kong,[[12]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-11) India, South Africa, [Taiwan](http://en.wikipedia.org/wiki/Republic_of_China),[[13]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-12) and the United Kingdom[[14]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-13) are the only major trading countries that have not yet ratified the CISG.

The absence of the United Kingdom, a leading jurisdiction for the choice of law in international commercial contracts, has been attributed to the government not viewing the ratification as a legislative priority, a lack of interest from business in supporting the ratification, opposition from a number of large and influential organisations, a lack of public service resources, and a danger that London would lose its edge in international arbitration and litigation.[[15]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-14)

Japan deposited its instrument of accession with the [depositary](http://en.wikipedia.org/wiki/Depositary) of the CISG on 1 July 2008. The Convention thus entered into force for Japan on 1 August 2009.

## Language, structure, and content

The CISG is written using "plain language that refers to things and events for which there are words of common content".[[16]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-15) This was a conscious intent to allow national legal systems to be transcended through the use of a common legal *lingua franca* [[17]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-16) and avoids the "words associated with specific domestic legal nuances".[[18]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-17) Further, it facilitated the translation into the UN's six official languages.[[19]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-18) As is customary in UN conventions all 6 languages are equally authentic.[[20]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-19)

The CISG is divided into four parts:

### Part I: Sphere of Application and General Provisions

The CISG applies to contracts of sale of goods between parties whose places of business are in different States when these States are Contracting States (Article 1(1) (a)). Given the significant number of Contracting States, this is the usual path to the CISG's applicability.

The CISG also applies if the parties are situated in different countries (which need not be Contracting States) and the conflict of law rules lead to the application of the law of a Contracting State.[[21]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-20) For example, a contract between a Japanese trader and a Brazilian trader may contain a clause that arbitration will be in Sydney under Australian law [[22]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-21) with the consequence that the CISG would apply. It should be noted that a number of States have declared they will not be bound by this condition.[[23]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-22)

The CISG is intended to apply to commercial goods and products only. With some limited exceptions, the CISG does not apply to domestic goods, nor does it apply to auctions, ships, aircraft[[24]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-23)or intangibles[[25]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-24) and services.[[26]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-25) The position of computer software is ‘controversial’ [[27]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-26) and will depend upon various conditions and situations.[[28]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-27)

Importantly, parties to a contract may exclude or vary the application of the CISG.[[29]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-28)

Interpretation of the CISG is to take account of the ‘international character’ of the Convention, the need for uniform application and the need for good faith in international trade. Disputes over interpretation of the CISG are to be resolved by applying the ‘general principles’ of the CISG or where there are no such principles but the matters are governed by the CISG (a gap [*praeter legem*](http://en.wikipedia.org/wiki/Praeter_legem)) by applying the rules of private international law.[[30]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-29)

A key point of controversy had to do with whether or not a contract requires a written memorial to be binding. The CISG allows for a sale to be oral or unsigned [[31]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-30) but in some countries, contracts are not valid unless written. In many nations, however, oral contracts are accepted and those States had no objection to signing, so States with a strict written requirement exercised their ability to exclude those articles relating to oral contracts, enabling them to sign as well.[[32]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-31)

The CISG is not a complete qualification by its own definition [[33]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-32). These gaps must be filled in by the applicable national law under due consideration of the conflict of law rules applicable at the place of jurisdiction [[34]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-33).

### Part II: Formation of the Contract

An offer to contract must be addressed to a person, be sufficiently definite – that is, describe the goods, quantity and price – and indicate an intention for the offeror to be bound on acceptance.[[35]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-34)Note that the CISG does not appear to recognise common law unilateral contracts[[36]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-35) but, subject to clear indication by the offeror, treats any proposal not addressed to a specific person as only an invitation to make an offer.[[37]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-36) Further, where there is no explicit price or procedure to implicitly determine price then the parties are assumed to have agreed upon a price based upon that ‘generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances’.[[38]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-37)

Generally, an offer may be revoked provided the withdrawal reaches the offeree before or at the same time as the offer or before the offeree has sent an acceptance.[[39]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-38) Some offers may not be revoked, for example when the offeree reasonably relied upon the offer as being irrevocable.[[40]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-39) The CISG requires a positive act to indicate acceptance; silence or inactivity are not an acceptance.[[41]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-40)

The CISG attempts to resolve the common situation where an offeree’s reply to an offer accepts the original offer but attempts to change the conditions. The CISG says that any change to the original conditions is a rejection of the offer – it is a counter-offer – unless the modified terms do not materially alter the terms of the offer. Changes to price, payment, quality, quantity, delivery, liability of the parties and arbitration conditions may all materially alter the terms of the offer.[[42]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-41)

### Part III: Sale of Goods

Articles 25 – 88; sale of goods, obligations of the seller, obligations of the buyer, passing of risk, obligations common to both buyer and seller.

The CISG defines the duty of the seller, ‘stating the obvious’,[[43]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-42) as the seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract.[[44]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-43) Similarly, the duty of the buyer is to take all steps ‘which could reasonably be expected’ [[45]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-44) to take delivery of the goods, and to pay for them.[[46]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-45)

Generally, the goods must be of the quality, quantity and description required by the contract, be suitably packaged and fit for purpose.[[47]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-46) The seller is obliged to deliver goods that are not subject to claims from a third party for infringement of industrial or intellectual property rights in the State where the goods are to be sold.[[48]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-47) The buyer is obliged to promptly examine the goods and, subject to some qualifications, must advise the seller of any lack of conformity within ‘a reasonable time’ and no later than within two years of receipt.[[49]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-48)

The CISG describes when the risk passes from the seller to the buyer[[50]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-49) but it has been observed that in practice most contracts define the ‘seller's delivery obligations quite precisely by adopting an established shipment term’[[51]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-50) such as FOB and CIF.[[52]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-51)

Remedies of the buyer and seller depend upon the character of a breach of the contract. If the breach is fundamental then the other party is substantially deprived of what it expected to receive under the contract. Provided that an objective test shows that the breach could not have been foreseen,[[53]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-52) then the contract may be avoided[[54]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-53) and the aggrieved party may claim damages.[[55]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-54)Where part performance of a contract has occurred then the performing party may recover any payment made or good supplied;[[56]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-55) this contrasts with the common law where there is generally no right to recover a good supplied unless title has been retained or damages are inadequate, only a right to claim the value of the good.[[57]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-56)

If the breach is not fundamental then the contract is not avoided and remedies may be sought including claiming damages, specific performance and adjustment of price.[[58]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-57) Damages that may be awarded conform to the common law rules in *Hadley v Baxendale*[[59]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-58) but it has been argued the test of foreseeability is substantially broader[[60]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-59) and consequently more generous to the aggrieved party.

The CISG excuses a party from liability to a claim of damages where a failure to perform is attributable to an impediment beyond the party’s, or a third party sub-contractor’s, control that could not have been reasonably expected.[[61]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-60) Such an extraneous event might elsewhere be referred to as force majeure, and frustration of the contract.

Where a seller has to refund the price paid then the seller must also pay interest to the buyer from the date of payment.[[62]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-61) It has been said the interest rate is based on rates current in the seller’s State ‘[s]ince the obligation to pay interest partakes of the seller's obligation to make restitution and not of the buyer's right to claim damages’,[[63]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-62) although this has been debated.[[64]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-63) In a mirror of the seller’s obligations, where a buyer has to return goods the buyer is accountable for any benefits received.[[65]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-64)

### Part IV: Final Provisions

Articles 89 to 101 (final provisions) including how and when the Convention comes into force, permitted reservations and declarations, and the application of the Convention to international sales where both States concerned have the same or similar law on the subject.

The Part IV Articles, along with the Preamble, are sometime characterized as being addressed ‘primarily to States’,[[66]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-65) not to business people attempting to use the Convention for international trade. They may, however, have a significant impact upon the CISG's practical applicability,[[67]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-66) thus requiring careful scrutiny when determining each particular case.

Future directions

Greater acceptance of the CISG will come from three directions. Firstly, it is likely that within the global legal profession, as the numbers of new lawyers educated in the CISG increases, the existing Contracting States will embrace the CISG, appropriately interpret the articles and demonstrate a greater willingness to accept precedents from other Contracting States.

Secondly, business people will increasingly pressure both lawyers and governments to make sales of goods disputes less expensive and reduce the risk of being forced to use a legal system that may be completely alien to their own. Both of these objectives can be achieved through use of the CISG.[[89]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-88)

Finally, UNCITRAL will need to develop a mechanism to further develop the Convention and to resolve conflicting interpretation issues.[[90]](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods#cite_note-89) This will make it more attractive to both business people and potential Contracting States.

United Nations Commission on International Trade Law

The **United Nations Commission on International Trade Law** (UNCITRAL) was established by the [United Nations General Assembly](http://en.wikipedia.org/wiki/United_Nations_General_Assembly) by its [Resolution](http://en.wikipedia.org/wiki/United_Nations_General_Assembly_resolution) 2205 (XXI) of 17 December 1966 "to promote the progressive harmonization and unification of [international trade law](http://en.wikipedia.org/wiki/International_trade_law)".

UNCITRAL carries out its work at annual sessions held alternately in [New York City](http://en.wikipedia.org/wiki/New_York_City) and [Vienna](http://en.wikipedia.org/wiki/Vienna).

The methods of work are organized at three levels. The first level is UNCITRAL itself (The Commission), which holds an annual plenary session. The second level is the intergovernmental working groups (which is developing the topics on UNCITRAL's work program. Texts designed to simplify trade transactions and reduce associated costs are developed by working groups comprising all member States of UNCITRAL, which meet once or twice per year. Non-member States and interested international and regional organizations are also invited and can actively contribute to the work since decisions are taken by consensus, not by vote. Draft texts completed by these working groups are submitted to UNCITRAL for finalization and adoption at its annual session. The International Trade Law Division of the [United Nations Office of Legal Affairs](http://en.wikipedia.org/wiki/United_Nations_Office_of_Legal_Affairs) provides substantive secretariat services to UNCITRAL, such as conducting research and preparing studies and drafts. This is the third level, which assists the other two in the preparation and conduct of their work.

**Uncitral** is:

* Coordinating the work of organizations active and encouraging cooperation among them.
* Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws.
* Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practice, in collaboration, where appropriate, with the organizations operating in this field.
* Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade.
* Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade.
* Establishing and maintaining a close collaboration with the UN Conference on Trade and development.
* Maintaining liaison with other UN organs and specialized agencies concerned with international trade.

Conventions

The Convention is an agreement among participating states establishing obligations binding upon those States that ratify or accede to it. A convention is designed to unify law by establishing binding legal obligations To become a party to a convention, States are required formally to deposit a binding instrument of ratification or accession with the depositary. The entry into force of a convention is usually dependent upon the deposit of a minimum number of instruments of ratification.

UNCITRAL conventions:

* the Convention on the Limitation Period in the International Sale of Goods (1974) ([text](http://www.trans-lex.org/500100))
* the [United Nations Convention on the Carriage of Goods by Sea](http://en.wikipedia.org/wiki/United_Nations_Convention_on_the_Carriage_of_Goods_by_Sea) (1978)
* the [United Nations Convention on Contracts for the International Sale of Goods (1980)](http://en.wikipedia.org/wiki/CISG)
* the United Nations Convention on International Bills of Exchange and International Promissory Notes (1988)
* the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (1991)
* the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (1995)
* the United Nations Convention on the Assignment of Receivables in International Trade (2001)
* the United Nations Convention on the Use of Electronic Communications in International Contracts (2005)
* the [United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Carriage_of_Goods_Wholly_or_Partly_by_Sea) (2008)

Model laws

A model law is a legislative text that is recommended to States for enactment as part of their national law. Model laws are generally finalized and adapted by UNCITRAL, at its annual session, while conventions require the convening of a diplomatic conference.

* [UNCITRAL Model Law on International Commercial Arbitration](http://en.wikipedia.org/wiki/UNCITRAL_Model_Law_on_International_Commercial_Arbitration) (1985) ([text](http://www.trans-lex.org/450900))
* Model Law on International Credit Transfers (1992)
* UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994)
* UNCITRAL Model Law on Electronic Commerce (1996)
* Model Law on Cross-border Insolvency (1997)
* UNCITRAL Model Law on Electronic Signatures (2001)
* UNCITRAL Model Law on International Commercial Conciliation (2002)
* Model Legislative Provisions on Privately Financed Infrastructure Projects (2003)

UNCITRAL also drafted the:

* UNCITRAL Arbitration Rules (1976) ([text](http://www.trans-lex.org/705501))—revised rules will be effective August 15, 2010; pre-released, July 12, 2010
* UNCITRAL Conciliation Rules (1980)
* UNCITRAL Arbitration Rules (1982)
* UNCITRAL Notes on Organizing Arbitral Proceedings (1996)

CLOUT (Case Law on UNCITRAL Texts)

The *Case Law on UNCITRAL Texts* system is a collection of court decisions and arbitral awards interpreting UNCITRAL texts.

CLOUT includes case abstracts in the six United Nations languages on the United Nations Convention on Contracts for the International Sale of Goods (CISG) (Vienna, 1980) and the UNCITRAL Model Law on International Commercial Arbitration (1985).

Legislative Guides

A legislative guide aims to provide a detailed analysis of the legal issues in a specific area of the law, proposing efficient approaches for their resolution in the national or local context. Legislative guides do not contain articles or provisions, but rather recommendations. Legislative Guides are developed by the UNICTRAL Working Groups and subsequently finalized by the UNCITRAL Commission in its annual session.

UNCITRAL has adopted the following legislative guides:

* UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000)
* UNCITRAL Legislative Guide on Insolvency Law (2004)
* UNCITRAL Legislative Guide on Secured Transactions (2007)
* UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property (2010)[[1]](http://en.wikipedia.org/wiki/United_Nations_Commission_on_International_Trade_Law#cite_note-0)

World Trade Organization

The **World Trade Organization** (**WTO**) is an organization that intends to supervise and [liberalize](http://en.wikipedia.org/wiki/Free_trade) [international trade](http://en.wikipedia.org/wiki/International_trade). The organization officially commenced on January 1, 1995 under the [Marrakech Agreement](http://en.wikipedia.org/wiki/Marrakech_Agreement), replacing the [General Agreement on Tariffs and Trade](http://en.wikipedia.org/wiki/General_Agreement_on_Tariffs_and_Trade) (GATT), which commenced in 1948. The organization deals with regulation of trade between participating countries; it provides a framework for negotiating and formalizing trade agreements, and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements which are signed by representatives of member governments[[5]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-underst-4):fol.9-10 and ratified by their [parliaments](http://en.wikipedia.org/wiki/Parliament).[[6]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-britannica-5) Most of the issues that the WTO focuses on derive from previous trade negotiations, especially from the [Uruguay Round](http://en.wikipedia.org/wiki/Uruguay_Round) (1986–1994).

The organization is attempting to complete negotiations on the [Doha Development Round](http://en.wikipedia.org/wiki/Doha_Development_Round), which was launched in 2001 with an explicit focus on addressing the needs of developing countries. According to a [European Union](http://en.wikipedia.org/wiki/European_Union) statement, "The 2008 Ministerial meeting broke down over a disagreement between exporters of agricultural bulk commodities and countries with large numbers of subsistence farmers on the precise terms of a 'special safeguard measure' to protect farmers from surges in imports."[[7]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-6) The position of the [European Commission](http://en.wikipedia.org/wiki/European_Commission) is that "The successful conclusion of the Doha negotiations would confirm the central role of multilateral liberalisation and rule-making. It would confirm the WTO as a powerful shield against protectionist backsliding."[[8]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-ECdoha-7) An impasse remains. As of May 2012, the future of the Doha Round remains uncertain: The work programme lists 21 subjects in which the original deadline of 1 January 2005 was missed (So was the next unofficial target of the end of 2006.)[[9]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-8)

Functions

Among the various functions of the WTO, these are regarded by analysts as the most important:

* It oversees the implementation, administration and operation of the covered agreements.[[29]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-iisd-functions-28)[[30]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-WTOmain-functions-29)
* It provides a forum for negotiations and for settling disputes.[[31]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-B17-30)[[32]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-Deere_decision-making-31)

Additionally, it is the WTO's duty to review and propagate the national trade policies, and to ensure the coherence and transparency of trade policies through surveillance in global economic policy-making.[[30]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-WTOmain-functions-29)[[32]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-Deere_decision-making-31) Another priority of the WTO is the assistance of [developing](http://en.wikipedia.org/wiki/Developing_countries), least-developed and low-income countries in transition to adjust to WTO rules and disciplines through technical cooperation and training.[[33]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-AT-32)

The WTO is also a centre of economic research and analysis: regular assessments of the global trade picture in its annual publications and research reports on specific topics are produced by the organization.[[34]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-EA-33) Finally, the WTO cooperates closely with the two other components of the Bretton Woods system, the IMF and the World Bank.[[31]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-B17-30)

Principles of the trading system

The WTO establishes a framework for trade policies; it does not define or specify outcomes. That is, it is concerned with setting the rules of the trade policy games.[[35]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-H42-34) Five principles are of particular importance in understanding both the pre-1994 GATT and the WTO:

1. **Non-discrimination**. It has two major components: the [most favoured nation](http://en.wikipedia.org/wiki/Most_favoured_nation) (MFN) rule, and the [national treatment](http://en.wikipedia.org/wiki/National_treatment) policy. Both are embedded in the main WTO rules on goods, services, and intellectual property, but their precise scope and nature differ across these areas. The MFN rule requires that a WTO member must apply the same conditions on all trade with other WTO members, i.e. a WTO member has to grant the most favourable conditions under which it allows trade in a certain product type to all other WTO members.[[35]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-H42-34) "Grant someone a special favour and you have to do the same for all other WTO members."[[23]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-PT-22) National treatment means that imported goods should be treated no less favourably than domestically produced goods (at least after the foreign goods have entered the market) and was introduced to tackle [non-tariff barriers to trade](http://en.wikipedia.org/wiki/Non-tariff_barriers_to_trade) (e.g. technical standards, security standards et al. discriminating against imported goods).[[35]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-H42-34)
2. **Reciprocity**. It reflects both a desire to limit the scope of [free-riding](http://en.wikipedia.org/wiki/Free_rider_problem) that may arise because of the MFN rule, and a desire to obtain better access to foreign markets. A related point is that for a nation to negotiate, it is necessary that the gain from doing so be greater than the gain available from [unilateral](http://en.wikipedia.org/wiki/Unilateralism) liberalization; reciprocal concessions intend to ensure that such gains will materialise.[[36]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-H43-35)
3. **Binding and enforceable commitments**. The tariff commitments made by WTO members in a multilateral trade negotiation and on accession are enumerated in a schedule (list) of concessions. These schedules establish "ceiling bindings": a country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. If satisfaction is not obtained, the complaining country may invoke the WTO dispute settlement procedures.[[23]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-PT-22)[[36]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-H43-35)
4. **Transparency**. The WTO members are required to publish their trade regulations, to maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO. These internal transparency requirements are supplemented and facilitated by periodic country-specific reports (trade policy reviews) through the Trade Policy Review Mechanism (TPRM).[[37]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-H44-36) The WTO system tries also to improve predictability and stability, discouraging the use of [quotas](http://en.wikipedia.org/wiki/Import_quota) and other measures used to set limits on quantities of imports.[[23]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-PT-22)
5. **Safety valves**. In specific circumstances, governments are able to [restrict trade](http://en.wikipedia.org/wiki/Trade_restriction). The WTO’s agreements permit members to take measures to protect not only the environment but also public health, animal health and plant health.[[38]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-37)

There are three types of provision in this direction:

* articles allowing for the use of trade measures to attain non-economic objectives;
* articles aimed at ensuring "fair competition"; members must not use environmental protection measures as a means of disguising protectionist policies. [[39]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-38)
* provisions permitting intervention in trade for economic reasons.[[37]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-H44-36)

Exceptions to the MFN principle also allow for preferential treatment of [developing countries](http://en.wikipedia.org/wiki/Developing_country), regional [free trade areas](http://en.wikipedia.org/wiki/Free_trade_area) and [customs unions](http://en.wikipedia.org/wiki/Customs_union).[[5]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-underst-4):fol.93

Dispute settlement

In 1994, the WTO members agreed on the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) annexed to the "Final Act" signed in Marrakesh in 1994.[[48]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-47)Dispute settlement is regarded by the WTO as the central pillar of the multilateral trading system, and as a "unique contribution to the stability of the global economy".[[49]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-48) WTO members have agreed that, if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally.[[50]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-UnSD-49)

The operation of the WTO dispute settlement process involves the DSB panels, the Appellate Body, the WTO Secretariat, arbitrators, independent experts and several specialized institutions.[[51]](http://en.wikipedia.org/wiki/World_Trade_Organization#cite_note-50)Bodies involved in the dispute settlement process, World Trade Organization.

Members and observers

The WTO has 155 members [[8]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-7) (almost all of the 123 nations participating in the Uruguay Round signed on at its foundation, and the rest had to get membership). The 27 states of the [European Union](http://en.wikipedia.org/wiki/European_Union) are represented also as the [European Communities](http://en.wikipedia.org/wiki/European_Communities). Some [non-sovereign](http://en.wikipedia.org/wiki/Sovereignty) autonomous entities of member states are included as separate members, since WTO members do not have to be full sovereign nation-members. Instead, they must be a customs territory with full autonomy in the conduct of their external commercial relations. Thus Hong Kong became a GATT contracting party by the now terminated "sponsorship" procedure of the United Kingdom (Hong Kong uses the name "Hong Kong, China" since 1997). A new member of this type is the Republic of China (Taiwan), which acceded to the WTO in 2002, and carefully crafted its application by joining under the name "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ([Chinese Taipei](http://en.wikipedia.org/wiki/Chinese_Taipei))".[[9]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-J109-8)

Tonga was admitted on 15 December 2005 during the [ministerial conference](http://en.wikipedia.org/wiki/WTO_Ministerial_Conference_of_2005). On 11 January 2007, Vietnam became the 150th WTO member state.[[10]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-9) Tonga finalized ratification of the admittance in July 2007, and thus became the 151st member state. Ukraine became the 152nd member state on 16 May 2008. Cape Verde joined on 23 July 2008 as the 153rd member state. Subsequently, Vanuatu,[[11]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-10) Russia, Montenegro and Samoa have been admitted, bringing the number of members to 156, subject to those countries' ratification.

A number of non-members have been observers (25, including Russia) at the WTO and are currently negotiating their membership: Afghanistan, Algeria, Andorra (negotiations frozen since 2003), Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Comoros, Equatorial Guinea, Ethiopia, [Holy See](http://en.wikipedia.org/wiki/Holy_See) (Vatican; special exception from the rules allows it to remain observer without starting negotiations), Iran,[[12]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-11) Iraq, Kazakhstan, Laos, Lebanon, Libya, São Tomé and Príncipe, Serbia, Seychelles, Sudan, Syria,[[13]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-12) Tajikistan, Uzbekistan and Yemen. With the exception of the [Holy See](http://en.wikipedia.org/wiki/Holy_See), observers must start accession negotiations within five years of becoming observers. The last country admitted as observer-only before applying for full membership was Equatorial Guinea in 2002, but since 2007 it is also in full membership negotiations. In 2007 Liberia and Comoros applied directly for full membership. Some international intergovernmental organizations are also granted observer status to WTO bodies.[[14]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-13)

The following states so far have no official interaction with the WTO: [Cook Islands](http://en.wikipedia.org/wiki/Cook_Islands), East Timor, Eritrea, Kiribati, Marshall Islands, Micronesia, Monaco, Nauru, [Niue](http://en.wikipedia.org/wiki/Niue), North Korea, Palau, San Marino, Somalia, [South Sudan](http://en.wikipedia.org/wiki/South_Sudan), Turkmenistan, Tuvalu and all the [states with limited recognition](http://en.wikipedia.org/wiki/List_of_states_with_limited_recognition) except Taiwan.

Russia was the only large economy outside of the WTO after China joined in 2001.[[15]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-BBC-14)[[16]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-sfgate-15) It had begun negotiating to join the WTO's predecessor in 1993. The final major point of contention – related to the [2008 Russo-Georgian War](http://en.wikipedia.org/wiki/2008_South_Ossetia_war) – was solved by Switzerland, which mediated between Russia and Georgia.[[15]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-BBC-14) The United States and the [European Union](http://en.wikipedia.org/wiki/European_Union), the main export partners of Russia, welcomed the decision.[[15]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-BBC-14) Membership of the WTO is expected to benefit the [Russian economy](http://en.wikipedia.org/wiki/Economy_of_Russia) and attract more foreign investment to the country.[[15]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-BBC-14)[[16]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-sfgate-15)

Accession to membership of Montenegro and Samoa was adopted on 17 December 2011.[[17]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-16) Montenegro ratified its accession package on 30 March 2012 and became a fully-fledged member on 29 April 2012. Samoa became a member on 10 May 2012.[[18]](http://en.wikipedia.org/wiki/World_Trade_Organization_accession_and_membership#cite_note-monteneg-17)

International Monetary Fund

[](http://en.wikipedia.org/wiki/File:International_Monetary_Fund_logo.svg)  
Official logo for the IMF

The **International Monetary Fund** (**IMF**) is an [international organization](http://en.wikipedia.org/wiki/International_organization) that was created on July 22, 1944 at the [Bretton Woods Conference](http://en.wikipedia.org/wiki/Bretton_Woods_Conference) and came into existence on December 27, 1945 when 29 countries signed the Articles of Agreement[[1]](http://en.wikipedia.org/wiki/Imf#cite_note-ataglance-0). It originally had 45 members. The IMF's stated goal was to stabilize exchange rates and assist the reconstruction of the world’s international payment system post [World War II](http://en.wikipedia.org/wiki/World_War_II). Countries contribute money to a pool through a quota system from which countries with payment imbalances can borrow funds on a temporary basis. Through this activity and others such as surveillance of its members' economies and policies, the IMF works to improve the economies of its member countries.[[2]](http://en.wikipedia.org/wiki/Imf#cite_note-1) The IMF describes itself as “an organization of 188 countries (as of April 2012), working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty.” The organization's stated objectives are to promote international economic cooperation, [international trade](http://en.wikipedia.org/wiki/International_trade), employment, and exchange rate stability, including by making financial resources available to member countries to meet [balance of payments](http://en.wikipedia.org/wiki/Balance_of_payments) needs.[[3]](http://en.wikipedia.org/wiki/Imf#cite_note-2) Its headquarters are in [Washington, D.C.](http://en.wikipedia.org/wiki/Washington,_D.C.)

## Functions

The IMF works to foster global growth and [economic stability](http://en.wikipedia.org/wiki/Economic_stability). It provides policy advice and financing to members in economic difficulties and also works with [developing nations](http://en.wikipedia.org/wiki/Developing_nations) to help them achieve macroeconomic stability and [reduce poverty](http://en.wikipedia.org/wiki/Poverty_reduction) [[37]](http://en.wikipedia.org/wiki/Imf#cite_note-36). The rationale for this is that private international capital markets function imperfectly and many countries have limited access to financial markets. Such market imperfections, together with balance of payments financing, provide the justification for official financing, without which many countries could only correct large external payment imbalances through measures with adverse effects on both national and international economic prosperity [[38]](http://en.wikipedia.org/wiki/Imf#cite_note-What.27s_Wrong-37). The IMF can provide other sources of financing to countries in need that would not be available in the absence of an economic stabilization program supported by the Fund.

Upon initial IMF formation, its two primary functions were: to oversee the fixed exchange rate arrangements between countries[[39]](http://en.wikipedia.org/wiki/Imf#cite_note-Jensen_2004.2C_April.2C_Issue_48-38), thus helping national governments manage their [exchange rates](http://en.wikipedia.org/wiki/Exchange_rates) and allowing these governments to prioritize [economic growth](http://en.wikipedia.org/wiki/Economic_growth)[[40]](http://en.wikipedia.org/wiki/Imf#cite_note-39), and to provide short-term capital to aid [balance-of-payments](http://en.wikipedia.org/wiki/Balance-of-payments) [[39]](http://en.wikipedia.org/wiki/Imf#cite_note-Jensen_2004.2C_April.2C_Issue_48-38). This assistance was meant to prevent the spread of international [economic crises](http://en.wikipedia.org/wiki/Economic_crises). The Fund was also intended to help mend the pieces of the international economy post [the Great Depression](http://en.wikipedia.org/wiki/The_Great_Depression) and [World War II](http://en.wikipedia.org/wiki/World_War_II) [[41]](http://en.wikipedia.org/wiki/Imf#cite_note-Crisis_of_Neoliberalism-40) .

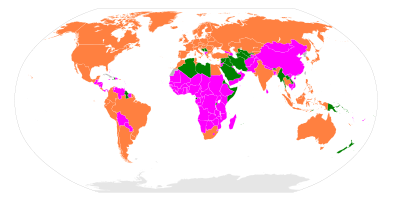
The IMF’s role was fundamentally altered after the [floating exchange rates](http://en.wikipedia.org/wiki/Floating_exchange_rates) post 1971. It shifted to examining the economic policies of countries with IMF loan agreements to determine if a shortage of capital was due to [economic fluctuations](http://en.wikipedia.org/wiki/Economic_fluctuations) or economic policy. The IMF also researched what types of government policy would ensure economic recovery [[42]](http://en.wikipedia.org/wiki/Imf#cite_note-41). The new challenge is to promote and implement policy that reduces the frequency of crises among the emerging market countries, especially the middle-income countries that are open to massive capital outflows [[43]](http://en.wikipedia.org/wiki/Imf#cite_note-42). Rather than maintaining a position of oversight of only exchange rates, their function became one of “[surveillance](http://en.wikipedia.org/wiki/Surveillance)” of the overall macroeconomic performance of its member countries. Their role became a lot more active because the IMF now manages economic policy instead of just exchange rates.

In addition, the IMF negotiates conditions on lending and loans under their policy of [conditionality](http://en.wikipedia.org/wiki/Conditionality) [[39]](http://en.wikipedia.org/wiki/Imf#cite_note-Jensen_2004.2C_April.2C_Issue_48-38) , which was established in the 1950s [[41]](http://en.wikipedia.org/wiki/Imf#cite_note-Crisis_of_Neoliberalism-40). [Low-income countries](http://en.wikipedia.org/wiki/Low_income_countries) can borrow on [concessional terms](http://en.wikipedia.org/wiki/Concessional_funding), which means there is a period of time with no interest rates, through the Extended Credit Facility (ECF), the Standby Credit Facility (SCF) and the Rapid Credit Facility (RCF). Non-concessional loans, which include interest rates, are provided mainly through Stand-By Arrangements (SBA), the Flexible Credit Line (FCL), the Precautionary and Liquidity Line (PLL), and the Extended Fund Facility. The IMF provides emergency assistance via the newly introduced Rapid Financing Instrument (RFI) to all its members facing urgent balance of payments needs [[44]](http://en.wikipedia.org/wiki/Imf#cite_note-43).

### Surveillance of the global economy

The IMF is mandated to oversee the international monetary and financial system [[45]](http://en.wikipedia.org/wiki/Imf#cite_note-IMF_Surveillance:_A_Case_Study_on_IMF_Governance-44) and monitor the economic and financial policies of its 188 member countries. This activity is known as surveillance and facilitates international cooperation [[46]](http://en.wikipedia.org/wiki/Imf#cite_note-45) . Since the demise of the [Bretton Woods system](http://en.wikipedia.org/wiki/Bretton_Woods_system) of fixed exchange rates in the early 1970s, surveillance has evolved largely by way of changes in procedures rather than through the adoption of new obligations [[45]](http://en.wikipedia.org/wiki/Imf#cite_note-IMF_Surveillance:_A_Case_Study_on_IMF_Governance-44) . The responsibilities of the Fund changed from those of guardian to those of overseer of members’ policies.

The Fund typically analyzes the appropriateness of each member country’s economic and financial policies for achieving orderly [economic growth](http://en.wikipedia.org/wiki/Economic_growth), and assesses the consequences of these policies for other countries and for the [global economy](http://en.wikipedia.org/wiki/Global_economy)

[](http://en.wikipedia.org/wiki/File:IMF_DDS.svg)

[magnify-clip](http://en.wikipedia.org/wiki/File:IMF_DDS.svg)

IMF [Data Dissemination Systems](http://en.wikipedia.org/wiki/International_Monetary_Fund#Data_Dissemination_Systems) participants:

  IMF member using SDDS

  IMF member using GDDS

  IMF member, not using any of the DDSystems

  Non-IMF entity using SDDS

  Non-IMF entity using GDDS

  No interaction with the IMF

In 1995 the International Monetary Fund began work on data dissemination standards with the view of guiding IMF member countries to disseminate their economic and financial data to the public. The International Monetary and Financial Committee (IMFC) endorsed the guidelines for the dissemination standards and they were split into two tiers: The General Data Dissemination System (GDDS) and the [Special Data Dissemination Standard](http://en.wikipedia.org/wiki/Special_Data_Dissemination_Standard) (SDDS).

The International Monetary Fund executive board approved the SDDS and GDDS in 1996 and 1997 respectively, and subsequent amendments were published in a revised *Guide to the General Data Dissemination System*. The system is aimed primarily at statisticians and aims to improve many aspects of statistical systems in a country. It is also part of the World Bank Millennium Development Goals and Poverty Reduction Strategic Papers.

The primary objective of the GDDS is to encourage IMF member countries to build a framework to improve data quality and increase statistical capacity building. Upon building a framework, a country can evaluate statistical needs, set priorities in improving the timeliness, [transparency](http://en.wikipedia.org/wiki/Transparency_(behavior)), reliability and accessibility of financial and economic data. Some countries initially used the GDDS, but later upgraded to SDDS.

### Conditionality of loans

IMF conditionality is a set of policies or “conditions” that the IMF requires in exchange for financial resources [[39]](http://en.wikipedia.org/wiki/Imf#cite_note-Jensen_2004.2C_April.2C_Issue_48-38). The IMF does not require [collateral](http://en.wikipedia.org/wiki/Collateral_(finance)) from countries for loans but rather requires the government seeking assistance to correct its macroeconomic imbalances in the form of policy reform. If the conditions are not met, the funds are withheld [[39]](http://en.wikipedia.org/wiki/Imf#cite_note-Jensen_2004.2C_April.2C_Issue_48-38). Conditionality is perhaps the most controversial aspect of IMF policies [[48]](http://en.wikipedia.org/wiki/Imf#cite_note-An_Analysis_of_IMF_Conditionality-47) . The concept of conditionality was introduced in an Executive Board decision in 1952 and later incorporated in the Articles of Agreement.

Conditionality is associated with economic theory as well as an enforcement mechanism for repayment. Stemming primarily from the work of Jacques Polak in the Fund’s research department, the theoretical underpinning of conditionality was the “monetary approach to the balance of payments."[[41]](http://en.wikipedia.org/wiki/Imf#cite_note-Crisis_of_Neoliberalism-40)

#### Benefits

These loan conditions ensure that the borrowing country will be able to repay the Fund and that the country won’t attempt to solve their balance of payment problems in a way that would negatively impact the [international economy](http://en.wikipedia.org/wiki/International_economy)[[49]](http://en.wikipedia.org/wiki/Imf#cite_note-48) [[50]](http://en.wikipedia.org/wiki/Imf#cite_note-IMF_Conditionality_and_Country_Ownership_of_Programs-49) . The incentive problem of [moral hazard](http://en.wikipedia.org/wiki/Moral_hazard), which is the actions of [economic agents](http://en.wikipedia.org/wiki/Economic_agents) maximizing their own [utility](http://en.wikipedia.org/wiki/Utility) to the detriment of others when they do not bear the full consequences of their actions, is mitigated through conditions rather than providing collateral; countries in need of IMF loans do not generally possess internationally valuable collateral anyway. Conditionality also reassures the IMF that the funds lent to them will be used for the purposes defined by the Articles of Agreement and provides safeguards that country will be able to rectify its macroeconomic and structural imbalances [[50]](http://en.wikipedia.org/wiki/Imf#cite_note-IMF_Conditionality_and_Country_Ownership_of_Programs-49). In the judgment of the Fund, the adoption by the member of certain corrective measures or policies will allow it to repay the Fund, thereby ensuring that the same resources will be available to support other members [[48]](http://en.wikipedia.org/wiki/Imf#cite_note-An_Analysis_of_IMF_Conditionality-47).

Some critics assume that Fund lending imposes a burden on creditor countries. However, countries receive market-related interest rates on most of their quota subscription, plus any of their own-currency subscriptions that are loaned out by the Fund, plus all of the reserve assets that they provide the Fund. Also, as of 2005 borrowing countries have had a very good track record of repaying credit extended under the Fund's regular lending facilities with the full interest over the duration of the borrowing [[38]](http://en.wikipedia.org/wiki/Imf#cite_note-What.27s_Wrong-37).

#### Criticisms

The IMF has the obstacle of being unfamiliar with local economic conditions, cultures, and environments in the countries they are requiring policy reform [[39]](http://en.wikipedia.org/wiki/Imf#cite_note-Jensen_2004.2C_April.2C_Issue_48-38). The Fund knows very little about what public spending on programs like public health and education actually means, especially in African countries; they have no feel for the impact that their proposed national budget will have on people. The economic advice the IMF gives might not always take into consideration the difference between what spending means on paper and how it’s felt by citizens [[51]](http://en.wikipedia.org/wiki/Imf#cite_note-The_End_of_Poverty-50). For example, Jeffrey Sach's work shows that "the Fund’s usual prescription is 'budgetary belt tightening to countries who are much too poor to own belts'[[51]](http://en.wikipedia.org/wiki/Imf#cite_note-The_End_of_Poverty-50)." The IMF’s role as a generalist institution specializing in macroeconomic issues needs reform. Conditionality has also been criticized because a country can pledge collateral of “acceptable assets” in order to obtain waivers on certain conditions [[50]](http://en.wikipedia.org/wiki/Imf#cite_note-IMF_Conditionality_and_Country_Ownership_of_Programs-49). However, that assumes that all countries have the capability and choice to provide acceptable collateral.

One view is that conditionality undermines domestic political institutions [[52]](http://en.wikipedia.org/wiki/Imf#cite_note-51) . The recipient governments are sacrificing policy autonomy in exchange for funds, which can lead to public resentment of the local leadership for accepting and enforcing the IMF conditions. Political instability can result from more leadership turnover as political leaders are replaced in electoral backlashes.[[39]](http://en.wikipedia.org/wiki/Imf#cite_note-Jensen_2004.2C_April.2C_Issue_48-38). IMF conditions are often criticized for their bias against economic growth and reduce government services, thus increasing unemployment [[41]](http://en.wikipedia.org/wiki/Imf#cite_note-Crisis_of_Neoliberalism-40) . Another criticism is that IMF programs are only designed to address poor governance, excessive government spending, excessive government intervention in markets, and too much state ownership. This assumes that this narrow range of issues represents the only possible problems; everything is standardized and differing contexts are ignored [[51]](http://en.wikipedia.org/wiki/Imf#cite_note-The_End_of_Poverty-50). A country may also be compelled to accept conditions it would not normally accept had they not been in a financial crisis in need of assistance [[48]](http://en.wikipedia.org/wiki/Imf#cite_note-An_Analysis_of_IMF_Conditionality-47).

It is claimed that [conditionalities](http://en.wikipedia.org/wiki/Conditionalities) retard social stability and hence inhibit the stated goals of the IMF, while Structural Adjustment Programs lead to an increase in poverty in recipient countries.[[53]](http://en.wikipedia.org/wiki/Imf#cite_note-Hertz-52)The IMF sometimes advocates “[austerity programmes](http://en.wikipedia.org/wiki/Austerity),” cutting public spending and increasing taxes even when the economy is weak, in order to bring budgets closer to a balance, thus reducing [budget deficits](http://en.wikipedia.org/wiki/Budget_deficit). Countries are often advised to lower their corporate tax rate. In [*Globalization and Its Discontents*](http://en.wikipedia.org/wiki/Globalization_and_Its_Discontents), [Joseph E. Stiglitz](http://en.wikipedia.org/wiki/Joseph_E._Stiglitz), former chief economist and senior vice president at the [World Bank](http://en.wikipedia.org/wiki/World_Bank), criticizes these policies.[[54]](http://en.wikipedia.org/wiki/Imf#cite_note-Stiglitz-53) He argues that by converting to a more [monetarist](http://en.wikipedia.org/wiki/Monetarist) approach, the purpose of the fund is no longer valid, as it was designed to provide funds for countries to carry out [Keynesian](http://en.wikipedia.org/wiki/Keynesian) reflations, and that the IMF “was not participating in a conspiracy, but it was reflecting the interests and ideology of the Western financial community.”[[55]](http://en.wikipedia.org/wiki/Imf#cite_note-54)

### Reform

The IMF is only one of many [international organizations](http://en.wikipedia.org/wiki/International_organizations) and it is a generalist institution for macroeconomic issues only; its core areas of concern in [developing countries](http://en.wikipedia.org/wiki/Developing_countries) are very narrow. One proposed reform is a movement towards close partnership with other specialist agencies in order to better productivity. The IMF has little to no communication with other international organizations such as UN specialist agencies like [UNICEF](http://en.wikipedia.org/wiki/UNICEF), the [Food and Agriculture Organization](http://en.wikipedia.org/wiki/Food_and_Agriculture_Organization) (FAO), and [the United Nations Development Program](http://en.wikipedia.org/wiki/The_United_Nations_Development_Program) (UNDP)[[51]](http://en.wikipedia.org/wiki/Imf#cite_note-The_End_of_Poverty-50). [Jeffrey Sachs](http://en.wikipedia.org/wiki/Jeffrey_Sachs) argues in [*The End of Poverty*](http://en.wikipedia.org/wiki/The_End_of_Poverty): “international institutions like the International Monetary Fund (IMF) and the World Bank have the brightest economists and the lead in advising poor countries on how to break out of poverty, but the problem is development economics”[[51]](http://en.wikipedia.org/wiki/Imf#cite_note-The_End_of_Poverty-50). [Development economics](http://en.wikipedia.org/wiki/Development_economics) needs the reform, not the IMF. He also notes that IMF loan conditions need to be partnered with other reforms such as trade reform in [developed nations](http://en.wikipedia.org/wiki/Developed_nations), [debt cancellation](http://en.wikipedia.org/wiki/Debt_cancellation), and increased financial assistance for investments in [basic infrastructure](http://en.wikipedia.org/wiki/Infrastructure) in order to be effective[[51]](http://en.wikipedia.org/wiki/Imf#cite_note-The_End_of_Poverty-50). IMF loan conditions cannot stand alone and produce change; they need to be partnered with other reforms.

United Nations Global Compact

60px-Small_Flag_of_the_United_Nations_ZP **UN Global Compact**

The **United Nations Global Compact**, also known as **Compact** or **UNGC**, is a [United Nations](http://en.wikipedia.org/wiki/United_Nations) initiative to encourage businesses worldwide to adopt sustainable and [socially responsible](http://en.wikipedia.org/wiki/Corporate_social_responsibility) policies, and to report on their implementation. The Global Compact is a principle-based framework for businesses, stating ten principles in the areas of [human rights](http://en.wikipedia.org/wiki/Human_rights), [labour](http://en.wikipedia.org/wiki/Labor_relations), the [environment](http://en.wikipedia.org/wiki/Environment_(biophysical)) and [anti-corruption](http://en.wikipedia.org/wiki/Anti-corruption). Under the Global Compact, companies are brought together with UN agencies, labour groups and civil society.

The Global Compact is the world's largest [corporate citizenship](http://en.wikipedia.org/wiki/Corporate_social_responsibility) initiative and as voluntary initiative has two objectives: "Mainstream the ten principles in business activities around the world" and "Catalyse actions in support of broader UN goals, such as the [Millennium Development Goals](http://en.wikipedia.org/wiki/Millennium_Development_Goals) (MDGs)."[[1]](http://en.wikipedia.org/wiki/United_Nations_Global_Compact#cite_note-0)

The Global Compact was first announced by the then UN Secretary-General [Kofi Annan](http://en.wikipedia.org/wiki/Kofi_Annan) in an address to The [World Economic Forum](http://en.wikipedia.org/wiki/World_Economic_Forum) on January 31, 1999[[2]](http://en.wikipedia.org/wiki/United_Nations_Global_Compact#cite_note-1), and was officially launched at [UN Headquarters](http://en.wikipedia.org/wiki/UN_Headquarters) in New York on July 26, 2000.

The **Global Compact Office** is supported by six UN agencies: the [United Nations High Commissioner for Human Rights](http://en.wikipedia.org/wiki/United_Nations_High_Commissioner_for_Human_Rights); the [United Nations Environment Programme](http://en.wikipedia.org/wiki/United_Nations_Environment_Programme); the [International Labour Organization](http://en.wikipedia.org/wiki/International_Labour_Organization); the [United Nations Development Programme](http://en.wikipedia.org/wiki/United_Nations_Development_Programme); the [United Nations Industrial Development Organization](http://en.wikipedia.org/wiki/United_Nations_Industrial_Development_Organization); and the [United Nations Office on Drugs and Crime](http://en.wikipedia.org/wiki/United_Nations_Office_on_Drugs_and_Crime).

The Ten Principles

The Global Compact was initially launched with nine Principles. June 24, 2004, during the first Global Compact Leaders Summit, Kofi Annan announced the addition of a tenth principle against [corruption](http://en.wikipedia.org/wiki/Political_corruption) in accordance with the [United Nations Convention against Corruption](http://en.wikipedia.org/wiki/United_Nations_Convention_against_Corruption) adopted in 2003. This step followed an extensive consultation process with all Global Compact participants.

**Human Rights**  
Businesses should:

* Principle 1: Support and respect the protection of internationally proclaimed [human rights](http://en.wikipedia.org/wiki/Human_rights); and
* Principle 2: Make sure that they are not complicit in [human rights abuses](http://en.wikipedia.org/wiki/Human_rights_abuses).

**Labour Standards**  
Businesses should uphold:

* Principle 3: the [freedom of association](http://en.wikipedia.org/wiki/Freedom_of_association) and the effective recognition of the [right to collective bargaining](http://en.wikipedia.org/wiki/Right_to_collective_bargaining);
* Principle 4: the elimination of all forms of forced and [compulsory labour](http://en.wikipedia.org/wiki/Compulsory_labour);
* Principle 5: the effective abolition of [child labour](http://en.wikipedia.org/wiki/Child_labour); and
* Principle 6: the elimination of discrimination in employment and occupation.

**Environment**  
Businesses should:

* Principle 7: support a [precautionary approach](http://en.wikipedia.org/wiki/Precautionary_approach) to environmental challenges;
* Principle 8: undertake initiatives to promote environmental responsibility; and
* Principle 9: encourage the development and diffusion of environmentally friendly technologies.

**Anti-Corruption**

* Principle 10: Businesses should work against [corruption](http://en.wikipedia.org/wiki/Political_corruption) in all its forms, including [extortion](http://en.wikipedia.org/wiki/Extortion) and [bribery](http://en.wikipedia.org/wiki/Bribery).

Association of Southeast Asian Nations

The **Association of Southeast Asian Nations**[[5]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-4) (**ASEAN**)[[7]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-6)[[8]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-7) is a [geo-political](http://en.wikipedia.org/wiki/Geo-political) and economic organization of ten countries located in [Southeast Asia](http://en.wikipedia.org/wiki/Southeast_Asia), which was formed on 8 August 1967 by [Indonesia](http://en.wikipedia.org/wiki/Indonesia), [Malaysia](http://en.wikipedia.org/wiki/Malaysia), the [Philippines](http://en.wikipedia.org/wiki/Philippines), [Singapore](http://en.wikipedia.org/wiki/Singapore) and [Thailand](http://en.wikipedia.org/wiki/Thailand).[[9]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-8) Since then, membership has expanded to include [Brunei](http://en.wikipedia.org/wiki/Brunei), [Burma (Myanmar)](http://en.wikipedia.org/wiki/Burma), [Cambodia](http://en.wikipedia.org/wiki/Cambodia), [Laos](http://en.wikipedia.org/wiki/Laos), and [Vietnam](http://en.wikipedia.org/wiki/Vietnam). Its aims include accelerating [economic growth](http://en.wikipedia.org/wiki/Economic_growth), [social progress](http://en.wikipedia.org/wiki/Social_progress), cultural development among its members, protection of regional peace and stability, and opportunities for member countries to discuss differences peacefully.[[10]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-9)

ASEAN covers a land area of 4.46 million km², which is 3% of the total land area of Earth, and has a population of approximately 600 million people, which is 8.8% of the world's population. The sea area of ASEAN is about three times larger than its land counterpart. In 2010, its combined nominal GDP had grown to US$1.8 trillion.[[11]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-10) If ASEAN were a single entity, it would rank as the ninth largest economy in the world, behind the [United States](http://en.wikipedia.org/wiki/United_States), [China](http://en.wikipedia.org/wiki/China), [Japan](http://en.wikipedia.org/wiki/Japan), [Germany](http://en.wikipedia.org/wiki/Germany), [France](http://en.wikipedia.org/wiki/France), [Brazil](http://en.wikipedia.org/wiki/Brazil), the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), and [Italy](http://en.wikipedia.org/wiki/Italy).

The ASEAN way

[](http://en.wikipedia.org/wiki/File:ASEAN_Nations_Flags_in_Jakarta_3.jpg)

[magnify-clip](http://en.wikipedia.org/wiki/File:ASEAN_Nations_Flags_in_Jakarta_3.jpg)

The flags of 10 ASEAN members.

In the 1960s, the push for [decolonisation](http://en.wikipedia.org/wiki/Decolonisation) promoted the sovereignty of Indonesia and Malaysia among others. Since nation building is often messy and vulnerable to foreign intervention, the governing elite wanted to be free to implement independent policies with the knowledge that neighbours would refrain from interfering in their domestic affairs. Territorially small members such as Singapore and Brunei were consciously fearful of force and coercive measures from much bigger neighbours like Indonesia and Malaysia.

ASEAN member-states, especially Singapore, approve of the term ‘ASEAN Way’ to describe their ‘own’ method of [multilateralism](http://en.wikipedia.org/wiki/Multilateralism) that is divergent from the Western-style. According to Amitav Acharya, ASEAN Way indicates “a process of ‘regional interactions and cooperation based on discreteness, informality, consensus building and non-confrontational bargaining styles’ that contrasts with ‘the adversarial posturing, majority vote and other legalistic decision-making procedures in Western multilateral organizations.’"[[40]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-39)

The ASEAN way can be traced back to the signing of the [Treaty of Amity and Cooperation in Southeast Asia](http://en.wikipedia.org/wiki/Treaty_of_Amity_and_Cooperation_in_Southeast_Asia). "Fundamental principles adopted from this included:

* mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
* the right of every State to lead its national existence free from external interference, subversion or coercion;
* non-interference in the internal affairs of one another;
* settlement of differences or disputes by peaceful manner;
* renunciation of the threat or use of force; and
* effective cooperation among themselves".[[41]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-40)

The ‘ASEAN way’ is what contributed to the durability and longevity of the organization by promoting regional identity and enhancing a spirit of mutual confidence and cooperation. ASEAN leaders said that "Through political dialogue and confidence building, no tension has escalated into armed confrontation among ASEAN member countries since its establishment more than three decades ago".[[42]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-41)

However, the ASEAN Way, which is considered so essential and central to ASEAN, also serves as the major stumbling-block to it becoming a true diplomacy mechanism.

On the surface, the process of consultations and consensus is supposed to be a democratic approach to decision making, but the ASEAN process has been managed through close interpersonal contacts among the top leaders only, who often share a reluctance to institutionalise and legalise co-operation which can undermine their regime's control over the conduct of regional co-operation. Thus, the organisation is chaired by the secretariat.[[43]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-42)

Of all the features that constitute what is called the ASEAN Way – non-interference, informality, minimal institutionalisation, consultation and consensus, non-use of force and non-confrontation, the principle of non-interference in the domestic affairs of one another is the primary cause that renders the organization ineffective. For instance, in case of ASEAN Plus Three, Taiwan issue and South China Sea issue are not addressed and deliberately eschewed due to China’s insistence and the non-interference principle. Thus, some of the most contentious issues are left unsettled. Recently, more member-states are directly and indirectly advocating that ASEAN be more flexible and allow discourse on internal affairs of member countries.

Moreover, ASEAN's non-interference principle is used as a justification for human rights violations and neglect of global norms and efforts in undemocratic Asian countries. Burma’s human rights abuses and [haze](http://en.wikipedia.org/wiki/Haze) pollution has aggravated. China’s brutal crackdown on its minority race is overlooked. Meanwhile, with the consensus-based approach, every member in fact has a veto and decisions are usually reduced to the [lowest common denominator](http://en.wikipedia.org/wiki/Lowest_common_denominator). There has been a widespread belief that ASEAN members should have a less rigid view on these two cardinal principles when they wish to be seen as a cohesive and relevant community.

### Policies

Apart from consultations and consensus, ASEAN’s agenda-setting and decision-making processes can be usefully understood in terms of the so-called Track I and Track II. Track I refers to the practice of diplomacy among government channels. The participants stand as representatives of their respective states and reflect the official positions of their governments during negotiations and discussions. All official decisions are made in Track I. Therefore, "Track I refers to intergovernmental processes".[[44]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-pdserve.informaworld.com-43) Track II differs slightly from Track I, involving civil society groups and other individuals with various links who work alongside governments.[[45]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-44) This track enables governments to discuss controversial issues and test new ideas without making official statements or binding commitments, and, if necessary, backtrack on positions.

Although Track II dialogues are sometimes cited as examples of the involvement of [civil society](http://en.wikipedia.org/wiki/Civil_society) in regional decision-making process by governments and other second track actors, NGOs have rarely got access to this track; meanwhile participants from the academic community are a dozen think-tanks. However, these think-tanks are, in most cases, very much linked to their respective governments, and dependent on government funding for their academic and policy-relevant activities, and many working in Track II have previous bureaucratic experience.[[44]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-pdserve.informaworld.com-43) Their recommendations, especially in [economic integration](http://en.wikipedia.org/wiki/Economic_integration), are often closer to ASEAN’s decisions than the rest of civil society’s positions.

The track that acts as a forum for civil society in Southeast Asia is called Track III. Track III participants are generally civil society groups who represent a particular idea or brand.[[46]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-45) Track III [networks](http://en.wikipedia.org/wiki/Social_network) claim to represent communities and people who are largely marginalised from political power centres and unable to achieve positive change without outside assistance. This track tries to influence government policies indirectly by [lobbying](http://en.wikipedia.org/wiki/Lobbying), generating pressure through the media. Third-track actors also organise and/or attend meetings as well as conferences to get access to Track I officials.

While Track II meetings and interactions with Track I actors have increased and intensified, rarely has the rest of civil society had the opportunity to interface with Track II. Those with Track I have been even rarer.

Looking at the three tracks, it is clear that until now, ASEAN has been run by government officials who, as far as ASEAN matters are concerned, are accountable only to their governments and not the people. In a lecture on the occasion of ASEAN’s 38th anniversary, the incumbent Indonesian President Dr. [Susilo Bambang Yudhoyono](http://en.wikipedia.org/wiki/Susilo_Bambang_Yudhoyono) admitted:

“All the decisions about treaties and free trade areas, about declarations and plans of action, are made by Heads of Government, ministers and senior officials. And the fact that among the masses, there is little knowledge, let alone appreciation, of the large initiatives that ASEAN is taking on their behalf.”[[47]](http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations#cite_note-46)

North American Free Trade Agreement

The **North American Free Trade Agreement** (**NAFTA**) is an agreement signed by the governments of [Canada](http://en.wikipedia.org/wiki/Canada), [Mexico](http://en.wikipedia.org/wiki/Mexico), and the [United States](http://en.wikipedia.org/wiki/United_States), creating a trilateral [trade bloc](http://en.wikipedia.org/wiki/Trade_bloc) in North America. The agreement came into force on January 1, 1994. It superseded the [Canada – United States Free Trade Agreement](http://en.wikipedia.org/wiki/Canada_%E2%80%93_United_States_Free_Trade_Agreement) between the U.S. and Canada. In terms of combined [GDP](http://en.wikipedia.org/wiki/GDP) of its members, as of 2010 the trade bloc is the [largest in the world](http://en.wikipedia.org/wiki/Trade_bloc#Most_active_regional_blocs).

NAFTA has two supplements: the [North American Agreement on Environmental Cooperation](http://en.wikipedia.org/wiki/North_American_Agreement_on_Environmental_Cooperation) (NAAEC) and the North American Agreement on Labor Cooperation (NAALC).

## Provisions

The goal of NAFTA was to eliminate barriers to trade and investment between the US, Canada and Mexico. The implementation of NAFTA on January 1, 1994 brought the immediate elimination of [tariffs](http://en.wikipedia.org/wiki/Tariff) on more than one-half of Mexico's exports to the U.S. and more than one-third of U.S. exports to Mexico. Within 10 years of the implementation of the agreement, all US-Mexico tariffs would be eliminated except for some U.S. agricultural exports to Mexico that were to be phased out within 15 years. Most U.S.-Canada trade was already duty free. NAFTA also seeks to eliminate non-tariff trade barriers and to protect the intellectual property right of the products.

In the area of intellectual property, the North American Free Trade Agreement Implementation Act made some changes to the [Copyright law of the United States](http://en.wikipedia.org/wiki/Copyright_law_of_the_United_States), foreshadowing the [Uruguay Round Agreements Act](http://en.wikipedia.org/wiki/Uruguay_Round_Agreements_Act) of 1994 by restoring copyright (within NAFTA) on certain motion pictures which had entered the public domain.[[5]](http://en.wikipedia.org/wiki/North_American_Free_Trade_Agreement#cite_note-4)

## Mechanisms

Chapter 52 provides a procedure for the interstate resolution of disputes over the application and interpretation of NAFTA. It was modelled after Chapter 69of the Canada-United States Free Trade Agreement.[[6]](http://en.wikipedia.org/wiki/North_American_Free_Trade_Agreement#cite_note-5)

NAFTA's effects, both positive and negative, have been quantified by several economists, whose findings have been reported in publications such as the [World Bank](http://en.wikipedia.org/wiki/World_Bank)'s *Lessons from NAFTA for Latin America and the Caribbean*,[[7]](http://en.wikipedia.org/wiki/North_American_Free_Trade_Agreement#cite_note-6) *NAFTA's Impact on North America*,[[8]](http://en.wikipedia.org/wiki/North_American_Free_Trade_Agreement#cite_note-7) and *NAFTA Revisited* by the Institute for International Economics.[[9]](http://en.wikipedia.org/wiki/North_American_Free_Trade_Agreement#cite_note-8) Some[[*who?*](http://en.wikipedia.org/wiki/Wikipedia:Avoid_weasel_words)] argue that NAFTA has been positive for Mexico, which has seen its [poverty](http://en.wikipedia.org/wiki/Poverty) rates fall and real [income](http://en.wikipedia.org/wiki/Income) rise (in the form of lower prices, especially food), even after accounting for the .[[10]](http://en.wikipedia.org/wiki/North_American_Free_Trade_Agreement#cite_note-9) Others[[*who?*](http://en.wikipedia.org/wiki/Wikipedia:Avoid_weasel_words)] argue that NAFTA has been beneficial to business owners and elites in all three countries, but has had negative impacts on farmers in Mexico who saw food prices fall based on cheap imports from US [agribusiness](http://en.wikipedia.org/wiki/Agribusiness), and negative impacts on US workers in manufacturing and assembly industries who lost jobs. Critics also argue that NAFTA has contributed to the rising levels of inequality in both the US and Mexico. Some economists believe that NAFTA has not been enough (or worked fast enough) to produce an economic convergence,[[11]](http://en.wikipedia.org/wiki/North_American_Free_Trade_Agreement#cite_note-10) nor to substantially reduce poverty rates. Some have suggested that in order to fully benefit from the agreement, Mexico must invest more in education and promote innovation in [infrastructure](http://en.wikipedia.org/wiki/Infrastructure) and [agriculture](http://en.wikipedia.org/wiki/Agriculture).

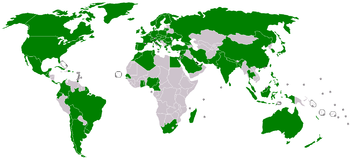
### Trade

The agreement opened the door for open trade, ending tariffs on various goods and services, and implementing equality between Canada, America, and Mexico. NAFTA has allowed agricultural goods such as eggs, corn, and meats to be tariff-free. This allowed corporations to trade freely and import and export various goods on a North American scale.

Incoterms

The **Incoterms** rules or **International Commercial terms** are a series of pre-defined commercial terms published by the [International Chamber of Commerce](http://en.wikipedia.org/wiki/International_Chamber_of_Commerce) (ICC) widely used in international commercial transactions. A series of three-letter trade terms related to common sales practices, the Incoterms rules are intended primarily to clearly communicate the tasks, costs and risks associated with the transportation and delivery of goods. The Incoterms rules are accepted by governments, legal authorities and practitioners worldwide for the interpretation of most commonly used terms in international trade. They are intended to reduce or remove altogether uncertainties arising from different interpretation of the rules in different countries. First published in 1936, the Incoterms rules have been periodically updated, with the eighth version—*Incoterms 2010*—having been published on January 1, 2011. "Incoterms" is a registered [trademark](http://en.wikipedia.org/wiki/Trademark) of the ICC.

History

[](http://en.wikipedia.org/wiki/File:Incoterms_map.png)

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National Incoterms chambers.

The Incoterms rules began development in 1921 with the forming of the idea by the International Chamber of Commerce.[[1]](http://en.wikipedia.org/wiki/Incoterms#cite_note-0) In 1936, the first set of the Incoterms rules was published.[[2]](http://en.wikipedia.org/wiki/Incoterms#cite_note-MorrisseyGraves2008-1) The first set remained in use for almost 20 years before the second publication in 1953. Additional amendments and expansions followed in 1967, 1976, 1980, 1990 and 2000. The eighth and current version of the Incoterms rules—*Incoterms 2010*—was published on January 1, 2011.[[3]](http://en.wikipedia.org/wiki/Incoterms#cite_note-2)[[4]](http://en.wikipedia.org/wiki/Incoterms#cite_note-3)[[5]](http://en.wikipedia.org/wiki/Incoterms#cite_note-4)

## Incoterms 2010

The eighth published set of pre-defined terms, *Incoterms 2010* defines 11 rules, reducing the 13 used in Incoterms 2000 by introducing two new rules ("Delivered at Terminal", DAT; "Delivered at Place", DAP) that replace four rules of the prior version ("Delivered at Frontier", DAF; "Delivered Ex Ship", DES; "Delivered Ex Quay", DEQ; "Delivered Duty Unpaid", DDU).[[6]](http://en.wikipedia.org/wiki/Incoterms#cite_note-5) In the prior version, the rules were divided into four categories, but the 11 pre-defined terms of *Incoterms 2010* are subdivided into two categories based only on method of delivery. The larger group of seven rules applies regardless of the method of transport, with the smaller group of four being applicable only to sales that solely involve transportation over water.

### Rules for Any Mode(s) of Transport

The seven rules defined by *Incoterms 2010* for any mode(s) of transportation are:

**EXW – Ex Works (named place of delivery)**

The seller makes the goods available at its premises. This term places the maximum obligation on the buyer and minimum obligations on the seller. The Ex Works term is often used when making an initial quotation for the sale of goods without any costs included. EXW means that a seller has the goods ready for collection at his premises (works, factory, warehouse, plant) on the date agreed upon. The buyer pays all transportation costs and also bears the risks for bringing the goods to their final destination. The seller doesn't load the goods on collecting vehicles and doesn't clear them for export. If the seller does load the good, he does so at buyer's risk and cost. If parties wish seller to be responsible for the loading of the goods on departure and to bear the risk and all costs of such loading, this must be made clear by adding explicit wording to this effect in the contract of sale.

**FCA – Free Carrier (named place of delivery)**

The seller hands over the goods, cleared for export, into the disposal of the first carrier (named by the buyer) at the named place. The seller pays for carriage to the named point of delivery, and risk passes when the goods are handed over to the first carrier.

**CPT - Carriage Paid To (named place of destination)**

The seller pays for carriage. Risk transfers to buyer upon handing goods over to the first carrier.

**CIP – Carriage and Insurance Paid to (named place of destination)**

The containerized transport/multimodal equivalent of CIF. Seller pays for carriage and insurance to the named destination point, but risk passes when the goods are handed over to the first carrier.

**DAT – Delivered at Terminal (named terminal at port or place of destination)**

Seller pays for carriage to the terminal, except for costs related to import clearance, and assumes all risks up to the point that the goods are unloaded at the terminal.

**DAP – Delivered at Place (named place of destination)**

Seller pays for carriage to the named place, except for costs related to import clearance, and assumes all risks prior to the point that the goods are ready for unloading by the buyer.

**DDP – Delivered Duty Paid (named place of destination)**

Seller is responsible for delivering the goods to the named place in the country of the buyer, and pays all costs in bringing the goods to the destination including import duties and taxes. This term places the maximum obligations on the seller and minimum obligations on the buyer.

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### Rules for Sea and Inland Waterway Transport

The four rules defined by Incoterms 2010 for international trade where transportation is entirely conducted by water are:

**FAS – Free Alongside Ship (named port of shipment)**

The seller must place the goods alongside the ship at the named port. The seller must clear the goods for export. Suitable only for maritime transport but **NOT** for multimodal sea transport in [containers](http://en.wikipedia.org/wiki/Intermodal_container) (see *Incoterms 2010*, ICC publication 715). This term is typically used for heavy-lift or bulk cargo.

**FOB –**[**Free on Board**](http://en.wikipedia.org/wiki/Free_on_Board)**(named port of shipment)**

The seller must load the goods on board the vessel nominated by the buyer. Cost and risk are divided when the goods are actually on board of the vessel (this rule is new!). The seller must clear the goods for export. The term is applicable for maritime and inland waterway transport only but **NOT** for multimodal sea transport in containers (see *Incoterms 2010*, ICC publication 715). The buyer must instruct the seller the details of the vessel and the port where the goods are to be loaded, and there is no reference to, or provision for, the use of a carrier or forwarder. This term has been greatly misused over the last three decades ever since *Incoterms 1980* explained that FCA should be used for container shipments.

**CFR – Cost and Freight (named port of destination)**

Seller must pay the costs and freight to bring the goods to the port of destination. However, risk is transferred to the buyer once the goods are loaded on the vessel (this rule is new!). Maritime transport only and Insurance for the goods is **NOT** included. This term is formerly known as CNF (C&F).

**CIF – Cost, Insurance and Freight (named port of destination)**

Exactly the same as CFR except that the seller must in addition procure and pay for the insurance. Maritime transport only.

Previous terms from *Incoterms 2000* that were eliminated from *Incoterms 2010*

**DAF – Delivered At Frontier (named place of delivery)**

This term can be used when the goods are transported by rail and road. The seller pays for transportation to the named place of delivery at the frontier. The buyer arranges for customs clearance and pays for transportation from the frontier to his factory. The passing of risk occurs at the frontier.

**DES – Delivered Ex Ship (named port of delivery)**

Where goods are delivered ex ship, the passing of risk does not occur until the ship has arrived at the named port of destination and the goods made available for unloading to the buyer. The seller pays the same freight and insurance costs as he would under a CIF arrangement. Unlike CFR and CIF terms, the seller has agreed to bear not just cost, but also Risk and Title up to the arrival of the vessel at the named port. Costs for unloading the goods and any duties, taxes, etc… are for the Buyer. A commonly used term in shipping bulk commodities, such as coal, grain, dry chemicals - - - and where the seller either owns or has chartered, their own vessel.

**DEQ – Delivered Ex Quay (named port of delivery)**

This is similar to DES, but the passing of risk does not occur until the goods have been unloaded at the port of destination.

**DDU – Delivered Duty Unpaid (named place of destination)**

This term means that the seller delivers the goods to the buyer to the named place of destination in the contract of sale. The goods are not cleared for import or unloaded from any form of transport at the place of destination. The buyer is responsible for the costs and risks for the unloading, duty and any subsequent delivery beyond the place of destination. However, if the buyer wishes the seller to bear cost and risks associated with the import clearance, duty, unloading and subsequent delivery beyond the place of destination, then this all needs to be explicitly agreed upon in the contract of sale.

III Legislation of the most developed economies ofthe World

European Union law

**European Union law** (historically called "European Community law") is a body of treaties and legislation, such as Regulations and Directives, which have [direct effect](http://en.wikipedia.org/wiki/Direct_effect) or [indirect effect](http://en.wikipedia.org/wiki/Indirect_effect) on the laws of [European Union](http://en.wikipedia.org/wiki/European_Union) member states. The three sources of European Union law are primary law, secondary law and supplementary law. The main sources of primary law are the [Treaties establishing the European Union](http://en.wikipedia.org/wiki/Treaties_establishing_the_European_Union). Secondary sources include [regulations](http://en.wikipedia.org/wiki/Regulation_(European_Union)) and [directives](http://en.wikipedia.org/wiki/Directive_(European_Union)) which are based on the Treaties. The legislature of the European Union is principally composed of the [European Parliament](http://en.wikipedia.org/wiki/European_Parliament) and the [Council of the European Union](http://en.wikipedia.org/wiki/Council_of_the_European_Union), which under the Treaties may establish secondary law to pursue the objective set out in the Treaties.

European Union law is applied by the courts of member states and where the laws of member states provide for lesser rights European Union law can be enforced by the courts of member states. In case of European Union law which should have been transposed into the laws of member states, such as Directives, the [European Commission](http://en.wikipedia.org/wiki/European_Commission) can take proceedings against the member state under the [EC Treaty](http://en.wikipedia.org/wiki/EC_Treaty). The [Court of Justice of the European Union](http://en.wikipedia.org/wiki/Court_of_Justice_of_the_European_Union) is the highest court able to interpret European Union law. Supplementary sources of European Union law including [case law](http://en.wikipedia.org/wiki/Case_law) by the Court of Justice, [international law](http://en.wikipedia.org/wiki/International_law) and [general principles of European Union law](http://en.wikipedia.org/wiki/General_principles_of_European_Union_law).

## Constitutional law

There are three sources of European Union law: primary law, secondary law and supplementary law. The main sources of primary law are the [Treaties establishing the European Union](http://en.wikipedia.org/wiki/Treaties_establishing_the_European_Union) (TEU). Secondary sources are legal instruments based on the Treaties as well as [unilateral](http://en.wikipedia.org/wiki/Unilateral) secondary law and conventions and agreements. Supplementary sources are laws which are not provided for by the TEU, including [case law](http://en.wikipedia.org/wiki/Case_law) by the [Court of Justice of the European Union](http://en.wikipedia.org/wiki/Court_of_Justice_of_the_European_Union), [international law](http://en.wikipedia.org/wiki/International_law) and [general principles of European Union law](http://en.wikipedia.org/wiki/General_principles_of_European_Union_law).[[1]](http://en.wikipedia.org/wiki/European_Union_law#cite_note-0)

### Treaties

The primary law of the EU consists mainly of the founding treaties of the European Union, also known as the TEU and TFEU or [Treaties of the European Union](http://en.wikipedia.org/wiki/Treaties_of_the_European_Union). The Treaties contain formal and substantive provisions, which frame policies of the [European Union institutions](http://en.wikipedia.org/wiki/European_Union_institutions) and determine the division of competences between the European Union and the 27 member states. The TEU establish that European Union law applies to the metropolitan territories of the member states, as well as certain islands and overseas territories, including [Madeira](http://en.wikipedia.org/wiki/Madeira), [the Canaries](http://en.wikipedia.org/wiki/Canary_Islands) and the [French overseas departments](http://en.wikipedia.org/wiki/French_overseas_departments). European Union law also applies in territories where a [member state](http://en.wikipedia.org/wiki/Member_state) is responsible for external relations, for example [Gibraltar](http://en.wikipedia.org/wiki/Gibraltar) and the [Åland islands](http://en.wikipedia.org/wiki/%C3%85land_islands). The TEU allows the [European Council](http://en.wikipedia.org/wiki/European_Council) to make specific provisions for regions, as for example done for [customs](http://en.wikipedia.org/wiki/Customs) matters in Gibraltar and [Saint-Pierre-et-Miquelon](http://en.wikipedia.org/wiki/Saint-Pierre-et-Miquelon). The TEU specifically excludes certain regions, for example the [Faroe Islands](http://en.wikipedia.org/wiki/Faroe_Islands), from the jurisdiction of European Union law. Treaties apply as soon as they enter into force, unless stated otherwise, and are generally concluded for an unlimited period. The [Treaty of Rome](http://en.wikipedia.org/wiki/Treaty_of_Rome) provides that commitments entered into by the member states between themselves before the treaty was signed no longer apply. Since the Treaty of Rome has been signed member states are regarded subject to the general obligation of the principle of cooperation, as stated in the TEU, whereby member states pledge to not take measure which could jeopardise the attainment of the TEU objectives. The [Court of Justice of the European Union](http://en.wikipedia.org/wiki/Court_of_Justice_of_the_European_Union) can interpret the Treaties, but it cannot rule on their validity which is subject to [international law](http://en.wikipedia.org/wiki/International_law). Individuals may rely on primary law in the Court of Justice of the European Union if the Treaty provisions have a [direct effect](http://en.wikipedia.org/wiki/Direct_effect) and they are sufficiently clear, precise and unconditional.[[2]](http://en.wikipedia.org/wiki/European_Union_law#cite_note-europa1-1)

The principle Treaties that form the European Union began with common rules for coal and steel, and then atomic energy, but more complete and formal institutions were established through the [Treaties of Rome 1957](http://en.wikipedia.org/wiki/Treaties_of_Rome_1957) and the [Maastricht Treaty 1992](http://en.wikipedia.org/wiki/Maastricht_Treaty_1992). Minor amendments were made during the 1960s and 1970s.[[3]](http://en.wikipedia.org/wiki/European_Union_law#cite_note-2) Major amending treaties were signed to complete the development of a single, internal market in the [Single European Act 1986](http://en.wikipedia.org/wiki/Single_European_Act_1986), to further the development of a more social Europe in the [Treaty of Amsterdam 1997](http://en.wikipedia.org/wiki/Treaty_of_Amsterdam_1997), and to make minor amendments to the relative power of member states in the EU institutions in the [Treaty of Nice 2001](http://en.wikipedia.org/wiki/Treaty_of_Nice_2001) and the [Treaty of Lisbon 2007](http://en.wikipedia.org/wiki/Treaty_of_Lisbon_2007). Since its establishment, more member states have joined through a series of accession treaties, from the [UK](http://en.wikipedia.org/wiki/UK), [Ireland](http://en.wikipedia.org/wiki/Ireland), [Denmark](http://en.wikipedia.org/wiki/Denmark) and [Norway](http://en.wikipedia.org/wiki/Norway) in 1972 (though Norway did not end up joining), [Greece](http://en.wikipedia.org/wiki/Greece) in 1979, [Spain](http://en.wikipedia.org/wiki/Spain) and [Portugal](http://en.wikipedia.org/wiki/Portugal) 1985, [Austria](http://en.wikipedia.org/wiki/Austria), [Finland](http://en.wikipedia.org/wiki/Finland), [Norway](http://en.wikipedia.org/wiki/Norway) and [Sweden](http://en.wikipedia.org/wiki/Sweden) in 1994 (though again Norway failed to join, because of lack of support in the referendum), the [Czech Republic](http://en.wikipedia.org/wiki/Czech_Republic), [Cyprus](http://en.wikipedia.org/wiki/Cyprus), [Estonia](http://en.wikipedia.org/wiki/Estonia), [Hungary](http://en.wikipedia.org/wiki/Hungary), [Latvia](http://en.wikipedia.org/wiki/Latvia), [Lithuania](http://en.wikipedia.org/wiki/Lithuania), [Malta](http://en.wikipedia.org/wiki/Malta), [Poland](http://en.wikipedia.org/wiki/Poland), [Slovakia](http://en.wikipedia.org/wiki/Slovakia) and [Slovenia](http://en.wikipedia.org/wiki/Slovenia) in 2004, and [Romania](http://en.wikipedia.org/wiki/Romania) and [Bulgaria](http://en.wikipedia.org/wiki/Bulgaria) in 2007. [Greenland](http://en.wikipedia.org/wiki/Greenland) signed a Treaty in 1985 giving it a special status. Norway has remained the only Scandinavian power not to have joined the European Union which can be credited entirely to the Norwegian people.

### Legislatures

The legislature of the European Union is principally composed of the [European Parliament](http://en.wikipedia.org/wiki/European_Parliament) and the [Council of the European Union](http://en.wikipedia.org/wiki/Council_of_the_European_Union). European Union treaties allow for the adoption of legislation and other legal acts so as to allow the EU to pursue the objective set out in the treaties. These are secondary European Union law. The treaties have not established any single body as a legislature. Instead legislative power is spread out among the [Institutions of the European Union](http://en.wikipedia.org/wiki/Institutions_of_the_European_Union), although the principal actors are the Council of the European Union (or Council of Ministers), the European Parliament and the [European Commission](http://en.wikipedia.org/wiki/European_Commission). The relative power of a particular institution in the legislative process depends on the legislative procedure used, which in turn depends on the policy area to which the proposed legislation is concerned. In some areas, they participate equally in the making of EU law, in others the system is dominated by the Council. Which areas are subject to which procedure is laid down in the [treaties of the European Union](http://en.wikipedia.org/wiki/Treaties_of_the_European_Union).

The Commission, Council and Parliament can all create secondary law, which includes unilateral acts and agreements by the [Legislature of the European Union](http://en.wikipedia.org/wiki/Legislature_of_the_European_Union). Unilateral acts can be done under Article 288 of the TFEU, including [regulations](http://en.wikipedia.org/wiki/Regulation_(European_Union)), [directives](http://en.wikipedia.org/wiki/Directive_(European_Union)), decisions, opinions and recommendations. Unilateral acts not falling under Article 288 TFEU are *atypical* acts such as communications and recommendations, and white and green papers. Agreements can include international agreements, signed by the European Union, agreements between Member States; and inter-institutional agreements, for example between [European Union institutions](http://en.wikipedia.org/wiki/European_Union_institutions).[[2]](http://en.wikipedia.org/wiki/European_Union_law#cite_note-europa1-1)

[Directives](http://en.wikipedia.org/wiki/Directive_(European_Union)), [regulations](http://en.wikipedia.org/wiki/Regulation_(European_Union)), [decisions](http://en.wikipedia.org/wiki/Decision_(European_Union)), [recommendations](http://en.wikipedia.org/wiki/Recommendation_(European_Union)) and opinions constitute European Union legislation, which must have a legal basis in specific Treaty articles, or primary European law. Directives set (sometimes quite specific) objectives but leave the implementation to the EU's member states. Regulations are directly applicable to member states and take effect without the need for implementing measures.

### European Court of Justice

The Court of Justice of the European Union is established through article 19 of the [Maastricht Treaty](http://en.wikipedia.org/wiki/Maastricht_Treaty) and includes the Court of Justice, the General Court and specialised courts. Its duty is to “ensure that in the interpretation and application of the Treaties the law is observed”. The Court of Justice consists of one judge from each European Union member state, and the General Court includes at least one judge from each member state. Judges are appointed for a renewable six year term. It is the role of the Court of Justice to rule, in accordance with the Treaties, on cases brought by a member state, a European Union institution or a legal person. The Court of Justice can also issue preliminary rulings, at the request of a member state’s courts or tribunals, on the interpretation of European Union law or the validity of acts by European Union institutions. The Court of Justice can rule in other cases if they are provided for in the Treaties.[[4]](http://en.wikipedia.org/wiki/European_Union_law#cite_note-3)

Supplementary sources of EU law are unmodified sources, including [Court of Justice of the European Union](http://en.wikipedia.org/wiki/Court_of_Justice_of_the_European_Union) case law, international law and the general principles of law. Supplementary sources are generally of judicial origin and are used by the Court of Justice of the European Union in cases where the primary and/or secondary legislation leave gaps or do not settle the issue. Since the 1970s [fundamental rights](http://en.wikipedia.org/wiki/Fundamental_rights), recognised as [general principles of European Union law](http://en.wikipedia.org/wiki/General_principles_of_European_Union_law), have become part of primary legislation in European Union law. The European Union and its member states must abide by [international law](http://en.wikipedia.org/wiki/International_law), including its treaties and [customary law](http://en.wikipedia.org/wiki/Customary_law), and has particularly influenced the development of general principles of European Union law. However, the Court of Justice of the European Union can excluded certain principles of international law that it considers incompatible with the structure of the European Union, such as the principle of [reciprocity](http://en.wikipedia.org/wiki/Reciprocity_(international_relations)) in the fulfilment of state obligations.[[5]](http://en.wikipedia.org/wiki/European_Union_law#cite_note-4)

European Union competition law

**European Union competition law** arose out of the desire to ensure that the efforts of government could not be distorted by corporations abusing their [market power](http://en.wikipedia.org/wiki/Market_power). Hence under the treaties are provisions to ensure that free competition prevails, rather than cartels and monopolies sharing out markets and fixing prices. [Competition law](http://en.wikipedia.org/wiki/Competition_law) in the European Union is largely similar and inspired by United States [antitrust](http://en.wikipedia.org/wiki/Antitrust). Four main policy areas include:

* [Cartels](http://en.wikipedia.org/wiki/Cartel), or control of [collusion](http://en.wikipedia.org/wiki/Collusion) and other [anti-competitive practices](http://en.wikipedia.org/wiki/Anti-competitive_practices) that affect the EU (or, since 1994, the [European Economic Area](http://en.wikipedia.org/wiki/European_Economic_Area)). This is covered under Articles 101 of the [Treaty on the Functioning of the European Union](http://en.wikipedia.org/wiki/Treaty_on_the_Functioning_of_the_European_Union) (TFEU).
* [Monopolies](http://en.wikipedia.org/wiki/Monopoly), or preventing the abuse of firms' dominant market positions. This is governed by Article 102 TFEU. This article also gives rise to the [Commission's](http://en.wikipedia.org/wiki/European_Commission) authority under the next area,
* [Mergers](http://en.wikipedia.org/wiki/Mergers_and_acquisitions), control of proposed mergers, acquisitions and joint ventures involving companies that have a certain, defined amount of turnover in the EU/EEA. This is governed by the Council [Regulation](http://en.wikipedia.org/wiki/Regulation_(European_Union)) 139/2004 EC (the Merger Regulation).[[1]](http://en.wikipedia.org/wiki/European_Union_competition_law#cite_note-0)
* [State aid](http://en.wikipedia.org/wiki/State_aid), control of direct and indirect aid given by [Member States of the European Union](http://en.wikipedia.org/wiki/Member_State_of_the_European_Union) to companies. Covered under Article 107 of the [Treaty on the Functioning of the European Union](http://en.wikipedia.org/wiki/Treaty_on_the_Functioning_of_the_European_Union).(TFEU)

This last point is a unique characteristic of the EU competition law regime. As the EU is made up of independent [member states](http://en.wikipedia.org/wiki/List_of_European_Union_member_states), both competition policy and the creation of the European [single market](http://en.wikipedia.org/wiki/Single_market) could be rendered ineffective were member states free to support national companies as they saw fit. Primary authority for applying EU competition law rests with [European Commission](http://en.wikipedia.org/wiki/European_Commission) and its Directorate General for Competition, although state aids in some sectors, such as transport, are handled by other Directorates General. On 1 May 2004 a decentralised regime for antitrust came into force to increase application of EU competition law by national competition authorities and national courts.

### State aid

Article 107 TFEU, similar to Article 101 TFEU, lays down a general rule that the state may not aid or subsidise private parties in distortion of free competition, but has the power to approve exceptions for specific projects addressing natural disasters or regional development.

The general definition of State Aid is set out in Article 107(1) of the TFEU.[[45]](http://en.wikipedia.org/wiki/European_Union_competition_law#cite_note-44)

Measures which fall within the definition of State Aid are unlawful unless provided under an exemption or notified.[[46]](http://en.wikipedia.org/wiki/European_Union_competition_law#cite_note-45)

For there to be State Aid under Article 107(1) of the TFEU each of the following must be present:

There is the transfer of [Member State](http://en.wikipedia.org/wiki/Member_State) resources;

Which creates a selective advantage for one or more business undertakings;

That has the potential to distort trade between in the relevant business market; and

Affects trade between the Member States.

Where all of these criteria are met, State Aid is present and the support shall be unlawful unless provided under a European Commission exemption [[47]](http://en.wikipedia.org/wiki/European_Union_competition_law#cite_note-46)

The [European Commission](http://en.wikipedia.org/wiki/European_Commission) applies a number of exemptions which enable aid to be lawful.[[48]](http://en.wikipedia.org/wiki/European_Union_competition_law#cite_note-47) The [European Commission](http://en.wikipedia.org/wiki/European_Commission) will also approve State Aid cases under the notification procedure.[[49]](http://en.wikipedia.org/wiki/European_Union_competition_law#cite_note-48)

State Aid law is an important issue for all public sector organisations and recipients of public sector support in the [European Union](http://en.wikipedia.org/wiki/European_Union) [[50]](http://en.wikipedia.org/wiki/European_Union_competition_law#cite_note-49) because unlawful aid can be clawed back with compound interest.

There is some scepticism about the effectiveness of competition law in achieving economic progress and its interference with the provision of public services. France's president [Nicolas Sarkozy](http://en.wikipedia.org/wiki/Nicolas_Sarkozy) has called for the reference in the preamble to the [Treaty of the European Union](http://en.wikipedia.org/wiki/Treaty_of_the_European_Union) to the goal of "free and undistorted competition" to be removed.[[51]](http://en.wikipedia.org/wiki/European_Union_competition_law#cite_note-50) Though competition law itself would have remained unchanged, other goals of the preamble—which include "full employment" and "social progress"—carry the perception of greater specificity, and as being ends in themselves, while "free competition" is merely a means.

Directive (European Union)

A **directive** is a [legislative act](http://en.wikipedia.org/wiki/Legislation) of the [European Union](http://en.wikipedia.org/wiki/European_Union),[[1]](http://en.wikipedia.org/wiki/Directive_(European_Union)#cite_note-0) which requires [member states](http://en.wikipedia.org/wiki/Member_State_of_the_European_Union) to achieve a particular result without dictating the means of achieving that result. It can be distinguished from [regulations](http://en.wikipedia.org/wiki/Regulation_(European_Union)) which are self-executing and do not require any implementing measures. Directives normally leave member states with a certain amount of leeway as to the exact rules to be adopted. Directives can be adopted by means of a variety of [legislative procedures](http://en.wikipedia.org/wiki/European_Union_legislative_procedure) depending on their subject matter.

## Legal effect

Directives are binding only on the member states to whom they are addressed, which can be just one member state or a group of them. In practice, however, with the exception of directives related to the [Common Agricultural Policy](http://en.wikipedia.org/wiki/Common_Agricultural_Policy), directives are addressed to all member states.

### Implementation

When adopted, directives give member states a timetable for the implementation of the intended outcome. Occasionally, the laws of a member state may already comply with this outcome, and the state involved would be required only to keep its laws in place. More commonly, member states are required to make changes to their laws (commonly referred to as [transposition](http://en.wikipedia.org/wiki/Transposition_(law))) in order for the directive to be implemented correctly. This is done in approximately the 99% of the cases [[4]](http://en.wikipedia.org/wiki/Directive_(European_Union)#cite_note-3). If a member state fails to pass the required national legislation, or if the national legislation does not adequately comply with the requirements of the directive, the [European Commission](http://en.wikipedia.org/wiki/European_Commission) may initiate legal action against the member state in the [European Court of Justice](http://en.wikipedia.org/wiki/European_Court_of_Justice). This may also happen when a member state has transposed a directive in theory but has failed to abide by its provisions in practice. On 1 May 2008, 1,298 such cases open before the Court.

### Direct effect

Notwithstanding the fact that directives were not originally thought to be binding before they were implemented by member states, the European Court of Justice developed the doctrine of [direct effect](http://en.wikipedia.org/wiki/Direct_effect) where unimplemented or badly implemented directives can actually have direct legal force. Also, in [Francovich v. Italy](http://en.wikipedia.org/wiki/Francovich_principle), the court found that member states could be liable to pay damages to individuals and companies who had been adversely affected by the non-implementation of a directive.

Treaty of Lisbon

|  |
| --- |
| [Tratado de Lisboa pt.svg](http://en.wikipedia.org/wiki/File:Tratado_de_Lisboa_pt.svg) |

The **Treaty of Lisbon** or **Lisbon Treaty** (initially known as the **Reform Treaty**) is an [international agreement](http://en.wikipedia.org/wiki/Treaty) that amends the two treaties which form the constitutional basis of the [European Union](http://en.wikipedia.org/wiki/European_Union) (EU). The Lisbon Treaty was signed by the [EU member states](http://en.wikipedia.org/wiki/Member_State_of_the_European_Union) on 13 December 2007, and entered into force on 1 December 2009. It amends the [Maastricht Treaty](http://en.wikipedia.org/wiki/Maastricht_Treaty) (also known as the Treaty on European Union) and the [Treaty establishing the European Community](http://en.wikipedia.org/wiki/Treaty_of_Rome) (TEC; also known as the Treaty of Rome). In this process, the Rome Treaty was renamed to the [Treaty on the Functioning of the European Union](http://en.wikipedia.org/wiki/Treaty_on_the_Functioning_of_the_European_Union) (TFEU).

Prominent changes included the [move](http://en.wikipedia.org/wiki/Voting_in_the_Council_of_the_European_Union#Treaty_of_Lisbon) from unanimity to qualified majority voting in [several](http://en.wikipedia.org/wiki/Voting_in_the_Council_of_the_European_Union#Policy_areas) policy areas in the [Council of Ministers](http://en.wikipedia.org/wiki/Council_of_the_European_Union), a change in calculating such a majority to a new [*double majority*](http://en.wikipedia.org/wiki/Double_majority#European_Union), a more powerful [European Parliament](http://en.wikipedia.org/wiki/European_Parliament) forming a bicameral legislature alongside the Council of ministers under the [ordinary legislative procedure](http://en.wikipedia.org/wiki/Ordinary_legislative_procedure#Ordinary_legislative_procedure), a consolidated [legal personality](http://en.wikipedia.org/wiki/Legal_personality) for the EU and the creation of a long-term [President of the European Council](http://en.wikipedia.org/wiki/President_of_the_European_Council) and a [High Representative of the Union for Foreign Affairs and Security Policy](http://en.wikipedia.org/wiki/High_Representative_of_the_Union_for_Foreign_Affairs_and_Security_Policy). The Treaty also made the Union's bill of rights, the [Charter of Fundamental Rights](http://en.wikipedia.org/wiki/Charter_of_Fundamental_Rights_of_the_European_Union), legally binding.

The stated aim of the treaty was "to complete the process started by the [Treaty of Amsterdam](http://en.wikipedia.org/wiki/Treaty_of_Amsterdam) [1997] and by the [Treaty of Nice](http://en.wikipedia.org/wiki/Treaty_of_Nice) [2001] with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action."[[2]](http://en.wikipedia.org/wiki/Treaty_of_Lisbon#cite_note-1) Opponents of the Treaty of Lisbon, such as former Danish [Member of the European Parliament](http://en.wikipedia.org/wiki/Member_of_the_European_Parliament) (MEP) [Jens-Peter Bonde](http://en.wikipedia.org/wiki/Jens-Peter_Bonde), argued that it would centralize the EU,[[3]](http://en.wikipedia.org/wiki/Treaty_of_Lisbon#cite_note-2) and weaken democracy by 'moving power away' from national electorates.[[4]](http://en.wikipedia.org/wiki/Treaty_of_Lisbon#cite_note-3) Supporters argue that it brings in more checks and balances into the EU system, with stronger powers for the European Parliament and a new role for national parliaments.

Negotiations to modify EU institutions began in 2001, resulting first in the [Treaty establishing a Constitution for Europe](http://en.wikipedia.org/wiki/Treaty_establishing_a_Constitution_for_Europe), which would have repealed the pre-existing European treaties and replaced them with a "constitution". Although ratified by a majority of Member States, this was abandoned after being rejected by French and Dutch voters in 2005. After a "period of reflection", Member States agreed instead to maintain the pre-existing treaties, but to amend them, salvaging a number of the reforms that had been envisaged in the constitution. An amending "reform" treaty was drawn up and signed in Lisbon in 2007. It was originally intended to have been ratified by all member states by the end of 2008. This timetable failed, primarily due to the [initial rejection](http://en.wikipedia.org/wiki/Twenty-eighth_Amendment_of_the_Constitution_Bill,_2008_(Ireland)) of the Treaty in 2008 by the [Irish](http://en.wikipedia.org/wiki/Republic_of_Ireland) electorate, a decision which was reversed in a [second referendum](http://en.wikipedia.org/wiki/Twenty-eighth_Amendment_of_the_Constitution_of_Ireland) in 2009 after Ireland secured a number of concessions related to the treaty.

## Notable amendments

### Central Bank

The European Central Bank gained the official status of being an EU institution, and the [European Council](http://en.wikipedia.org/wiki/European_Council) was given the right to appoint [presidents of the European Central Bank](http://en.wikipedia.org/wiki/President_of_the_European_Central_Bank) through a [qualified majority vote](http://en.wikipedia.org/wiki/Voting_in_the_Council_of_the_European_Union). On a related topic, the [euro](http://en.wikipedia.org/wiki/Euro) became the official currency of the Union (though not affecting opt-outs or the process of [Eurozone enlargement](http://en.wikipedia.org/wiki/Enlargement_of_the_eurozone)).

### Court of Justice of the European Union

The **Court of Justice of the European Union (CJEU)** is the [institution](http://en.wikipedia.org/wiki/Institutions_of_the_European_Union) of the [European Union](http://en.wikipedia.org/wiki/European_Union) (EU) which encompasses the whole judiciary. Seated in [Luxembourg](http://en.wikipedia.org/wiki/Luxembourg), it has three sub-courts; the [European Court of Justice](http://en.wikipedia.org/wiki/European_Court_of_Justice), the [General Court](http://en.wikipedia.org/wiki/General_Court_(European_Union)) and the [Civil Service Tribunal](http://en.wikipedia.org/wiki/European_Union_Civil_Service_Tribunal).

The institution was originally established in 1952 as the *Court of Justice of the European Coal and Steel Communities* (as of 1958 the *Court of Justice of the European Communities*). With the entry into force of the [Treaty of Lisbon](http://en.wikipedia.org/wiki/Treaty_of_Lisbon) in 2009, the court changed to its current name and comprises formally the *Court of Justice* alongside its two subordinate chambers: the *General Court* (formerly the Court of First Instance) and the *Civil Service Tribunal*.

Its mission is to ensure that "the law is observed" "in the interpretation and application" of the Treaties. The Court reviews the legality of the acts of the institutions of the European Union; ensures that the Member States comply with obligations under the Treaties; and interprets European Union law at the request of the national courts and tribunals.

The Court constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of European Union law.

The Court of Justice of the European Union consists of three courts:

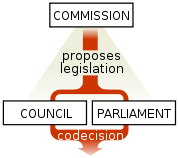
* The [European Court of Justice](http://en.wikipedia.org/wiki/European_Court_of_Justice) (created in 1952; formally the *Court of Justice*)
* The [General Court](http://en.wikipedia.org/wiki/General_Court_(European_Union)) (created in 1988; formerly the *Court of First Instance*)
* The [Civil Service Tribunal](http://en.wikipedia.org/wiki/European_Union_Civil_Service_Tribunal) (created in 2004)

Since their establishment, approximately 15,000 judgements have been delivered by the three courts.

### Parliament

The **European Parliament** (abbreviated as **Europarl** or the **EP**) is the [directly elected](http://en.wikipedia.org/wiki/Direct_election) parliamentary [institution](http://en.wikipedia.org/wiki/Institutions_of_the_European_Union) of the [European Union](http://en.wikipedia.org/wiki/European_Union) (EU). Together with the [Council of the European Union](http://en.wikipedia.org/wiki/Council_of_the_European_Union) (the Council) and the [European Commission](http://en.wikipedia.org/wiki/European_Commission), it exercises the legislative function of the EU and it has been described as one of the most powerful legislatures in the world.[[2]](http://en.wikipedia.org/wiki/European_Parliament#cite_note-Farrell_Powerful-1) The Parliament is currently composed of 754 [Members of the European Parliament](http://en.wikipedia.org/wiki/Member_of_the_European_Parliament), who represent the second largest democratic electorate in the world (after the [Parliament of India](http://en.wikipedia.org/wiki/Parliament_of_India)) and the largest trans-national democratic electorate in the world (375 million eligible voters in 2009).[[3]](http://en.wikipedia.org/wiki/European_Parliament#cite_note-2) [[4]](http://en.wikipedia.org/wiki/European_Parliament#cite_note-3) [[5]](http://en.wikipedia.org/wiki/European_Parliament#cite_note-18_new_MEPs_take_their_seats-4)

According to the Lisbon Treaty, the legislative power of the [European Parliament](http://en.wikipedia.org/wiki/European_Parliament) increases, as the [codecision procedure](http://en.wikipedia.org/wiki/Codecision_procedure) with the Council of the EU is extended to almost all areas of policy. This procedure is slightly modified and renamed *ordinary legislative procedure*.

[](http://en.wikipedia.org/wiki/File:European_Union_legislative_triangle.svg)

[magnify-clip](http://en.wikipedia.org/wiki/File:European_Union_legislative_triangle.svg)

[Codecision](http://en.wikipedia.org/wiki/Codecision_procedure) will be used in new policy areas, increasing the power of the Parliament.

In the few remaining areas, called "special legislative procedures", Parliament now has either the right of consent to a Council of the EU measure, or vice-versa, except in the few cases where the old [Consultation procedure](http://en.wikipedia.org/wiki/Consultation_procedure) still applies, wherein the Council of the EU will only need to consult the European Parliament before voting on the Commission proposal. Council is then not bound by the Parliament's position but only by the obligation to consult it. Parliament would need to be consulted again if the Council of ministers deviated too far from the initial proposal.

The Commission will have to submit each proposed [budget of the European Union](http://en.wikipedia.org/wiki/Budget_of_the_European_Union) directly to Parliament, which must approve the budget in its entirety.

The Treaty changes the way in which [MEP](http://en.wikipedia.org/wiki/Member_of_the_European_Parliament) seats are apportioned among member states. Rather than setting out a precise number (as it was the case in every previous treaty), the Treaty of Lisbon gives the power to the Council of the EU, acting unanimously on the initiative of the Parliament and with its consent, to adopt a decision fixing the number of MEPs for each member state. Moreover the treaty provides for the number of MEPs to be digressively proportional to the number of citizens of each member state. A draft decision fixing the apportionment of MEPs was annexed to the treaty itself and had Lisbon been in force at the time of [2009 European Parliament elections](http://en.wikipedia.org/wiki/2009_European_Parliament_elections) the apportionment would have been:[[36]](http://en.wikipedia.org/wiki/Treaty_of_Lisbon#cite_note-35)

The number of MEPs will be limited to 750, in addition to the [President of the Parliament](http://en.wikipedia.org/wiki/President_of_the_European_Parliament). Additionally, the Treaty of Lisbon will reduce the maximum number of MEPs from a member state from 99 to 96 (affects Germany) and increases the minimal number from 5 to 6 (affects Malta).

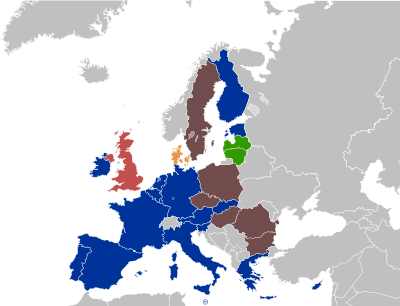
**President of the European Commission**

The **President of the European Commission** is the head of the [European Commission](http://en.wikipedia.org/wiki/European_Commission) ― the executive branch of the [European Union](http://en.wikipedia.org/wiki/European_Union) (EU) ― the most powerful officeholder in the EU.[[2]](http://en.wikipedia.org/wiki/President_of_the_European_Commission#cite_note-Hix_Fix-1) The President is responsible for allocating portfolios to members of the Commission and can reshuffle or dismiss them if needed. He determines the Commission's policy agenda and all the legislative proposals it produces (the Commission is the only body that can propose [EU laws](http://en.wikipedia.org/wiki/European_Union_law)).

The Commission President also represents the EU abroad, although he does this alongside the [President of the European Council](http://en.wikipedia.org/wiki/President_of_the_European_Council) and, at foreign minister's level, the [High Representative](http://en.wikipedia.org/wiki/High_Representative) (who sits in his Commission as Vice President). However the President, unlike a normal [head of government](http://en.wikipedia.org/wiki/Head_of_government), does not form foreign policy, command troops or raise taxes as these are largely outside the remit of the EU.

The post was established in 1958 and is elected by the [European Parliament](http://en.wikipedia.org/wiki/European_Parliament), on a proposal of the [European Council](http://en.wikipedia.org/wiki/European_Council) for five year terms. Once elected, he, along with his Commission, is responsible to Parliament which can censure him. The current President is [José Manuel Barroso](http://en.wikipedia.org/wiki/Jos%C3%A9_Manuel_Barroso), who took office in October 2004. He is a member of the [European People's Party](http://en.wikipedia.org/wiki/European_People%27s_Party) (EPP) and is the former [Prime Minister of Portugal](http://en.wikipedia.org/wiki/Prime_Minister_of_Portugal). Barroso is the eleventh President and in 2009 was re-elected for a further five years. His vice president, as of 2010, is [High Representative](http://en.wikipedia.org/wiki/High_Representative) [Baroness Catherine Ashton](http://en.wikipedia.org/wiki/Catherine_Ashton).

Economic and Monetary Union of the European Union

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The EMU in the year 2011.

The **Economic and Monetary Union** (**EMU**)[[1]](http://en.wikipedia.org/wiki/Economic_and_Monetary_Union_of_the_European_Union#cite_note-0)[[2]](http://en.wikipedia.org/wiki/Economic_and_Monetary_Union_of_the_European_Union#cite_note-1) is an [umbrella term](http://en.wikipedia.org/wiki/Umbrella_term) for the group of policies aimed at converging the economies of members of the [European Union](http://en.wikipedia.org/wiki/European_Union) in three stages so as to allow them to adopt a single currency, the euro. As such, it is largely synonymous with the [eurozone](http://en.wikipedia.org/wiki/Eurozone).

All member states of the [European Union](http://en.wikipedia.org/wiki/European_Union) are expected to participate in the EMU. The [Copenhagen criteria](http://en.wikipedia.org/wiki/Copenhagen_criteria) is the current set of conditions of entry for states wanting to join the EU. It contains the requirements that need to be fulfilled and the time framework within which this must be done in order for a country to join the monetary union.

An important element of this is the [European Exchange Rate Mechanism](http://en.wikipedia.org/wiki/European_Exchange_Rate_Mechanism) ("ERM II"), in which candidate currencies demonstrate economic convergence by maintaining limited deviation from their target rate against the euro.

All member states, except Denmark, Sweden and the United Kingdom, have committed themselves by treaty to join EMU. [Seventeen member states](http://en.wikipedia.org/wiki/Eurozone) of the European Union, including, most recently, Estonia, have entered the third stage and have adopted the euro as their currency. Denmark, Latvia and Lithuania are the current participants in the exchange rate mechanism.

Of the pre-2004 members, the United Kingdom and Sweden have not joined ERM II and Denmark remains in ERM without proceeding to the third stage. The five remaining (post-2004) states have yet to achieve sufficient convergence to participate. These ten EU members continue to use [their own currencies](http://en.wikipedia.org/wiki/Currencies_of_the_European_Union).

Single market

A **single market** is a type of [trade bloc](http://en.wikipedia.org/wiki/Trade_bloc) which is composed of a [free trade area](http://en.wikipedia.org/wiki/Free_trade_area) (for [goods](http://en.wikipedia.org/wiki/Good_(economics))) with common policies on product regulation, and [freedom of movement](http://en.wikipedia.org/wiki/Freedom_of_movement) of the [factors of production](http://en.wikipedia.org/wiki/Factors_of_production) ([capital](http://en.wikipedia.org/wiki/Capital_(economics)) and [labour](http://en.wikipedia.org/wiki/Labour_(economics))) and of [enterprise](http://en.wikipedia.org/wiki/Capitalism) and [services](http://en.wikipedia.org/wiki/Service_(economics)). The goal is that the movement of capital, labour, goods, and services between the members is as easy as within them.[[1]](http://en.wikipedia.org/wiki/Single_market#cite_note-0) The physical (borders), technical (standards) and fiscal (taxes) barriers among the member states are removed to the maximum extent possible. These barriers obstruct the freedom of movement of the four factors of production.

A **common market** is a first stage towards a single market, and may be limited initially to a free trade area with relatively free movement of capital and of services, but not so advanced in reduction of the rest of the [trade barriers](http://en.wikipedia.org/wiki/Trade_barrier).

The [European Economic Community](http://en.wikipedia.org/wiki/European_Economic_Community) was the first example of a both common and single market, but it was an [economic union](http://en.wikipedia.org/wiki/Economic_union) since it had additionally a [customs union](http://en.wikipedia.org/wiki/Customs_union).

Benefits and costs

A single market has many benefits. With full freedom of movement for all the factors of production between the member countries, the factors of production become more efficiently allocated, further increasing productivity.

For both business within the market and consumers, a single market is a very competitive environment, making the existence of monopolies more difficult. This means that inefficient companies will suffer a loss of market share and may have to close down. However, efficient firms can benefit from economies of scale, increased competitiveness and lower costs, as well as expect profitability to be a result. Consumers are benefited by the single market in the sense that the competitive environment brings them cheaper products, more efficient providers of products and also increased choice of products. What is more, businesses in competition will innovate to create new products; another benefit for consumers.

Transition to a single market can have short term negative impact on some sectors of a national economy due to increased international competition. Enterprises that previously enjoyed [national market protection](http://en.wikipedia.org/wiki/Protectionism) and national [subsidy](http://en.wikipedia.org/wiki/Subsidy) (and could therefore continue in business despite falling short of international performance benchmarks) may struggle to survive against their more efficient peers, even for its traditional markets. Ultimately, if the enterprise fails to improve its organization and methods, it will fail. The consequence may be unemployment or migration.

List of single markets

*Every*[*Economic union*](http://en.wikipedia.org/wiki/Economic_union)*and*[*Economic and monetary union*](http://en.wikipedia.org/wiki/Economic_and_monetary_union)*has also a****Common market***

* [Canada](http://en.wikipedia.org/wiki/Provinces_and_territories_of_Canada) – [Agreement on Internal Trade](http://en.wikipedia.org/wiki/Canadian_Agreement_on_Internal_Trade) (AIT)
* [South Asian Free Trade Area](http://en.wikipedia.org/wiki/South_Asian_Free_Trade_Area) (SAFTA)
* [European Free Trade Association](http://en.wikipedia.org/wiki/European_Free_Trade_Association) (EFTA)
* [European Economic Area](http://en.wikipedia.org/wiki/European_Economic_Area) (EEA)
* [Switzerland – European Union](http://en.wikipedia.org/wiki/Switzerland_%E2%80%93_European_Union_relations#Treaties)[[2]](http://en.wikipedia.org/wiki/Single_market#cite_note-1)

Additionally the [autonomous](http://en.wikipedia.org/wiki/List_of_autonomous_areas_by_country) and [dependent](http://en.wikipedia.org/wiki/Dependent_territory) territories, such as some of the [EU member state special territories](http://en.wikipedia.org/wiki/Special_Member_State_territories_and_the_European_Union), are sometimes treated as separate [customs territory](http://en.wikipedia.org/wiki/Customs_territory) from their mainland state or have varying arrangements of formal or de-facto [customs union](http://en.wikipedia.org/wiki/Customs_union), common market and [currency union](http://en.wikipedia.org/wiki/Currency_union) (or combinations thereof) with the mainland and in regards to third countries trough the [trade pacts](http://en.wikipedia.org/wiki/Trade_pact) signed by the mainland state.[[3]](http://en.wikipedia.org/wiki/Single_market#cite_note-2)

Internal Market

The [European Union](http://en.wikipedia.org/wiki/European_Union)'s (EU) **internal market** (sometimes known as the single market, formerly the common market) seeks to guarantee the free movement of [goods](http://en.wikipedia.org/wiki/Good_(economics)), [capital](http://en.wikipedia.org/wiki/Capital_(economics)), [services](http://en.wikipedia.org/wiki/Service_(economics)), and [people](http://en.wikipedia.org/wiki/Freedom_of_movement_for_workers) – the EU's "four freedoms" – within the [EU's 27 member states](http://en.wikipedia.org/wiki/Member_State_of_the_European_Union).[[1]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-Europa_Single_Market-0)

The internal market is intended to be conducive to increased [competition](http://en.wikipedia.org/wiki/Competition_(economics)), increased [specialisation](http://en.wikipedia.org/wiki/Division_of_labour), larger [economies of scale](http://en.wikipedia.org/wiki/Economies_of_scale), allows goods and [factors of production](http://en.wikipedia.org/wiki/Factors_of_production) to move to the area where they are most valued, thus improving the efficiency of the allocation of resources.

It is also intended to drive economic integration whereby the once separate economies of the member states become integrated within a single EU wide economy. Half of the trade in goods within the EU is covered by legislation harmonised by the EU.[[2]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-Europa_Single_Market_G-1)

The creation of the internal market as a seamless, [single market](http://en.wikipedia.org/wiki/Single_market) is an ongoing process, with the integration of the service industry still containing gaps.[[3]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-2) It also has an increasing international element, with the market represented as one in international trade negotiations. Notably, the internal market is open to three non-EU states via the [European Economic Area](http://en.wikipedia.org/wiki/European_Economic_Area).

History

Two of the original core objectives of the [European Economic Community](http://en.wikipedia.org/wiki/European_Economic_Community) (EEC) were the development of a common market offering free movement of goods, service, people and capital (see below). Free movement of goods was established in principle through the [customs union](http://en.wikipedia.org/wiki/European_Union_Customs_Union) between its then-[six member states](http://en.wikipedia.org/wiki/Inner_six).

However the EEC struggled to enforce a single market due to the absence of strong decision making structures. It was difficult to remove intangible barriers with mutual recognition of standards and common regulations due to protectionist attitudes.

In the 1980s, when the economy of the EEC began to lag behind the rest of the developed world, the [Delors Commission](http://en.wikipedia.org/wiki/Delors_Commission) took the initiative to attempt to relaunch the common market, publishing a White Paper in 1985 identifying 300 measures to be addressed in order to complete a single market. The White Paper which was well received and led to the adoption of the [Single European Act](http://en.wikipedia.org/wiki/Single_European_Act), a treaty which reformed the decision making mechanisms of the EEC and set a deadline of 31 December 1992 for the completion of a single market. In the end, it was launched on 1 January 1993.[[4]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-3)

The new approach, pioneered by the Delors Commission, combined positive and negative integration, relying upon minimum rather than exhaustive harmonisation. Negative integration consists of prohibitions imposed on member states of discriminatory behaviour and other restrictive practices. Positive integration consists in approximation of laws and standards. Especially important (and controversial) in this respect is the adoption of harmonising legislation under Article 114 of the TFEU.

The Commission also relied upon the [European Court of Justice](http://en.wikipedia.org/wiki/ECJ)'s *Cassis de Dijon*[[5]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-4) jurisprudence, under which member states were obliged to recognise goods which had been legally produced in another member state, unless the member state could justify the restriction by reference to a mandatory requirement. Harmonisation would only be used to overcome barriers created by trade restrictions which survived the *Cassis* mandatory requirements test, and to ensure essential standards where there was a risk of a [race to the bottom](http://en.wikipedia.org/wiki/Race_to_the_bottom). Thus harmonisation was largely used to ensure basic health and safety standards were met.

By 1992 about 90% of the issues had been resolved [[6]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-EP-5) and in the same year the [Maastricht Treaty](http://en.wikipedia.org/wiki/Maastricht_Treaty) set about to create [Economic and Monetary Union](http://en.wikipedia.org/wiki/Economic_and_Monetary_Union) as the next stage of integration. Work on freedom for services did take longer, and was the last freedom to be implemented, mainly through the [Posting of Workers Directive](http://en.wikipedia.org/wiki/Posted_Workers_Directive) (adopted in 1996)[[7]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-Directive_96.2F71.2FEC-6) and the [Directive on services in the internal market](http://en.wikipedia.org/wiki/Directive_on_services_in_the_internal_market) (adopted in 2006).[[8]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-Directive_2006.2F123.2FEC-7)

In 1997 the [Amsterdam Treaty](http://en.wikipedia.org/wiki/Amsterdam_Treaty) abolished physical barriers across the internal market by incorporating the [Schengen Area](http://en.wikipedia.org/wiki/Schengen_Area) within the competences of the EU. The [Schengen Agreement](http://en.wikipedia.org/wiki/Schengen_Agreement) implements the abolition of border controls between most member states, common rules on visas, and police and judicial cooperation.[[9]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-8)

Even as the [Lisbon Treaty](http://en.wikipedia.org/wiki/Lisbon_Treaty) came into force in 2009 however, some areas pertaining parts of the four freedoms (especially in the field of services) had not yet been completely opened. Those, along with further work on the economic and monetary union, would see the EU move further to a *European Home Market*.[[6]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-EP-5)

## Free movement of capital

Free movement of capital is intended to permit movement of investments such as property purchases and buying of shares between countries.[[22]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-Europa_Single_Market_C-21) Until the drive towards [Economic and Monetary Union](http://en.wikipedia.org/wiki/Economic_and_monetary_union) the development of the capital provisions had been slow. Post-Maastricht there has been a rapidly developing corpus of ECJ judgements regarding this initially neglected freedom. The free movement of capital is unique in that it is a goal of the EU to pursue a liberal capital regime with third countries.

Capital within the EU may be transferred in any amount from one country to another. All intra-EU transfers in [euro](http://en.wikipedia.org/wiki/Euro) are considered as domestic payments and bear the corresponding domestic transfer costs.[[23]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-22) This includes all member States of the EU, even those outside the [eurozone](http://en.wikipedia.org/wiki/Eurozone) providing the transactions are carried out in euro.[[24]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-23) Credit/debit card charging and ATM withdrawals within the Eurozone are also charged as domestic, however paper-based payment orders, like cheques, have not been standardised so these are still domestic-based. The ECB has also set up a [clearing system](http://en.wikipedia.org/wiki/Clearing_(finance)), [TARGET](http://en.wikipedia.org/wiki/TARGET), for large euro transactions.[[25]](http://en.wikipedia.org/wiki/Internal_Market#cite_note-24)

Solvit

The **Solvit** network is a body funded by the [European Commission](http://en.wikipedia.org/wiki/European_Commission) to assist citizens to ascertain their EU rights in cases where a dispute has risen between a citizen and an official body of a [Member state of the European Union](http://en.wikipedia.org/wiki/Member_state_of_the_European_Union). There is a Solvit centre in every member state (as well as in the EEA Member States Norway, Iceland and Liechtenstein).

Budget of the European Union

The [European Union](http://en.wikipedia.org/wiki/European_Union) has a [budget](http://en.wikipedia.org/wiki/Budget) to pay for its [administration](http://en.wikipedia.org/wiki/Administration_(government)), including a [parliament](http://en.wikipedia.org/wiki/European_Parliament), [executive branch](http://en.wikipedia.org/wiki/European_Commission), and [judiciary](http://en.wikipedia.org/wiki/European_Court_of_Justice) that are distinct from those of the member states. These arms administer the application of treaties, laws and agreements between the member states and their expenditure on common policies throughout the Union.

To pay for this, the EU had an agreed budget of €120.7 billion for the year 2007 and €864.3 billion for the period 2007–2013,[[1]](http://en.wikipedia.org/wiki/Budget_of_the_European_Union#cite_note-0) representing 1.10% and 1.05% of the EU-27's [GNI](http://en.wikipedia.org/wiki/Gross_National_Income) forecast for the respective periods. By comparison, the UK expenditure for 2004 alone was estimated at about €759 billion and France was estimated at about €801 billion.

Revenue

The EU obtains most of its revenue indirectly by payments from treasuries of member states. Revenue is divided into three categories.

**Traditional own resources** are taxes raised on behalf of the EU as a whole, principally import duties on goods brought into the EU. These are collected by the state where import occurs and passed on to the EU. States are allowed to keep a proportion of the revenue to cover administration.

**VAT based own resources** are taxes on EU citizens as a proportion of VAT in each member country. VAT rates and exemptions vary in different countries, so a formula is used to create the 'harmonised tax base'. The starting point for calculations is the total VAT raised in a country.

**GNI based own resources** currently forms the largest contribution to EU funding. A simple multiplier is applied to the calculated GNI for the country concerned. Revenue is currently capped at 1.24% of GNI for the EU as a whole.

Principles of European Contract Law

The ***Principles of European Contract Law*** is a set of model rules drawn up by leading contract law academics in [Europe](http://en.wikipedia.org/wiki/Europe). It attempts to elucidate basic rules of contract law and more generally the law of obligations which most legal systems of the member states of the [European Union](http://en.wikipedia.org/wiki/European_Union) hold in common. The Principles of European Contract Law (**PECL**) are based on the concept of a uniform European contract law system, and were created by the Commission on European Contract Law (“Lando Commission”). The PECL take into account the requirements of the European domestic trade.

Definition

In the broader sense the PECL are a "set of general rules which are designed to provide maximum flexibility and thus accommodate future development in legal thinking in the field of contract law."[[1]](http://en.wikipedia.org/wiki/Principles_of_European_Contract_Law#cite_note-0)

The impetus for the work on the PECL were resolutions of the European Parliament of 1989 and 1994 which expressed the desire to establish a common European civil law. As an initial foundation, a common contract law was to be first created.

Pursuing this goal, the Commission on European Contract Law (an organization independent from any national obligations) started work in 1982 under the chairmanship of Ole Lando, a lawyer and professor from Denmark. The Commission consisted of 22 members from all member states of the European Union and was partly financed by the EU. In the year 1995 the first part of the PECL was published; since 1999 the second part has been available and the third part was completed in 2002.

Today, the work of the Commission on European Contract Law is continued by the *Study Group on a European Civil Code*. The Group is managed by Christian von Bar, a German law professor. The Group was founded in 2005.

The PECL were inspired by the [United Nations Convention on Contracts for the International Sale of Goods](http://en.wikipedia.org/wiki/United_Nations_Convention_on_Contracts_for_the_International_Sale_of_Goods) (**CISG**) from 1980; however, they are a so-called *Soft Law*, such as the American Restatement of the Law of Contract, which is supposed to restate the Common Law of the [United States](http://en.wikipedia.org/wiki/United_States). Therefore, the PECL do not represent a legally enforceable regulation: "The term 'soft law' is a blanket term for all sorts of rules, which are not enforced on behalf of the state, but are seen, for example, as goals to be achieved."[[2]](http://en.wikipedia.org/wiki/Principles_of_European_Contract_Law#cite_note-1)

Thus, the PECL are very similar to the *Principles of International Commercial Contracts* of UNIDROIT - [International Institute for the Unification of Private Law](http://en.wikipedia.org/wiki/International_Institute_for_the_Unification_of_Private_Law) (*Unidroit Principles*) which were already published in 1994. As is the case with the PECL, the Unidroit-Principles are a “private codification” prepared by top-class jurists without any national or supranational order or authorization. Their main goal of both the PECL and the Unidroit Principles was the compilation of uniform legal principles for reference, and, if necessary, the development of national legal systems.

In the compilation of the PECL, the Law of the EU member states, and thus common and civil law, as well as Non-European Law were taken into consideration. In the PECL regulations are available which in this form have not been included so far in any legal system. The authors of the PECL also pursued the long term goal of influencing the development of laws in Europe.

Uniform Commercial Code

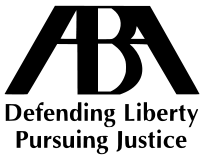
The **Uniform Commercial Code** (**UCC** or the Code), first published in 1952, is one of a number of [uniform acts](http://en.wikipedia.org/wiki/Uniform_act) that have been promulgated in conjunction with efforts to harmonize the law of [sales](http://en.wikipedia.org/wiki/Sales) and other commercial transactions in all 50 [states](http://en.wikipedia.org/wiki/U.S._states) within the [United States of America](http://en.wikipedia.org/wiki/United_States).

Goals

The goal of harmonizing state law is important because of the prevalence of commercial transactions that extend beyond one state. For example, goods may be manufactured in State A, warehoused in State B, sold from State C and delivered in State D. The UCC therefore achieved the goal of substantial uniformity in commercial laws and, at the same time, allowed the states the flexibility to meet local circumstances by modifying the UCC's text as enacted in each state. The UCC deals primarily with transactions involving [personal property](http://en.wikipedia.org/wiki/Personal_property) (movable property), not [real property](http://en.wikipedia.org/wiki/Real_property) (immovable property).

Other goals of the UCC were to modernize contract law and to allow for exceptions from the [common law](http://en.wikipedia.org/wiki/Common_law) in contracts between merchants.

American Bar Association

[](http://en.wikipedia.org/wiki/File:American_Bar_Association.svg)  
Logo of the American Bar Association

The **American Bar Association** (**ABA**), founded August 21, 1878,[[1]](http://en.wikipedia.org/wiki/American_Bar_Association#cite_note-0) is a [voluntary](http://en.wikipedia.org/wiki/Voluntary_association) [bar association](http://en.wikipedia.org/wiki/Bar_association) of [lawyers](http://en.wikipedia.org/wiki/Lawyers) and law students, which is not specific to any jurisdiction in the United States. The ABA's most important stated activities are the setting of academic standards for [law schools](http://en.wikipedia.org/wiki/Law_school), and the formulation of model ethical codes related to the legal profession. The ABA has 410,000 members. Its national [headquarters](http://en.wikipedia.org/wiki/Headquarters) are in [Chicago, Illinois](http://en.wikipedia.org/wiki/Chicago,_Illinois); it also maintains a significant branch office in [Washington, D.C.](http://en.wikipedia.org/wiki/Washington,_D.C.)

Mission

The ABA mission, as stated in its 2008 mission statement, is "To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession."[[2]](http://en.wikipedia.org/wiki/American_Bar_Association#cite_note-1) The goals and objectives are:

* Goal 1: Serve our members. (Objective: Provide benefits, programs and services which promote members’ professional growth and quality of life.)
* Goal 2: Improve our profession. (Objectives: 1) Promote the highest quality legal education; 2) Promote competence, ethical conduct and professionalism; 3) Promote pro bono and public service by the legal profession.)
* Goal 3: Eliminate bias and enhance diversity. (Objectives: 1) Promote full and equal participation in the association, our profession, and the justice system by all persons; 2) Eliminate bias in the legal profession and the justice system.)
* Goal 4: Advance the rule of law. (Objectives: 1) Increase public understanding of and respect for the rule of law, the legal process, and the role of the legal profession at home and throughout the world; 2) Hold governments accountable under law; 3) Work for just laws, including human rights, and a fair legal process; 4) Assure meaningful access to justice for all persons; and 5) Preserve the independence of the legal profession and the judiciary.)

National People's Congress

[](http://en.wikipedia.org/wiki/File:Tiananmen_Square_Visit.jpg)

The [Great Hall of the People](http://en.wikipedia.org/wiki/Great_Hall_of_the_People), where the NPC convenes

The **National People's Congress** (abbreviated **NPC** ([Chinese](http://en.wikipedia.org/wiki/Chinese_language): [人](http://en.wiktionary.org/wiki/%E4%BA%BA)[大](http://en.wiktionary.org/wiki/%E5%A4%A7); [pinyin](http://en.wikipedia.org/wiki/Pinyin): [*Rén*](http://en.wiktionary.org/wiki/R%C3%A9n)*-*[*Dà*](http://en.wiktionary.org/wiki/D%C3%A0))), is the highest state body and the only legislative house in the [People's Republic of China](http://en.wikipedia.org/wiki/People%27s_Republic_of_China). The National People's Congress is held in the [Great Hall of the People](http://en.wikipedia.org/wiki/Great_Hall_of_the_People), [Beijing](http://en.wikipedia.org/wiki/Beijing), capital of the People's Republic of China; with 2,987 members, it is the largest parliament in the world.[[1]](http://en.wikipedia.org/wiki/National_People%27s_Congress#cite_note-0) The NPC gathers each year along with the [People's Political Consultative Conference](http://en.wikipedia.org/wiki/Chinese_People%27s_Political_Consultative_Conference) (CPPCC) whose members represent various defined groups of society. NPC and CPPCC together are often called the [Lianghui](http://en.wikipedia.org/wiki/Lianghui) (Two Meetings), making important national level political decisions.

Although the membership of the NPC is still largely determined by the [Communist Party of China](http://en.wikipedia.org/wiki/Communist_Party_of_China), since the early 1990s it has moved away from its previous role as a symbolic but powerless [rubber-stamp legislature](http://en.wikipedia.org/wiki/Rubber-stamp_legislature), and has become a forum for mediating policy differences between different parts of the Party, the government, and groups of society. For the NPC to formally defeat a proposal put before it is a rare, but not non-existent event. However, the BBC still describes the NPC as a rubber-stamp for party decisions,[[2]](http://en.wikipedia.org/wiki/National_People%27s_Congress#cite_note-1) and has testimony from a member of the NPC, Hu Xiaoyan, that she has no power to help her constituents. She was quoted as saying, "As a parliamentary representative, I don't have any real power."[[3]](http://en.wikipedia.org/wiki/National_People%27s_Congress#cite_note-2)

Powers and functions

The NPC has a collection of functions and powers, including electing the [President of the People's Republic of China](http://en.wikipedia.org/wiki/President_of_the_People%27s_Republic_of_China) and approving the appointment of the [Premier of the State Council](http://en.wikipedia.org/wiki/Premier_of_the_People%27s_Republic_of_China) as well as approving the work reports of top officials. The constitution of the National People's Congress provides for most of its power to be exercised on a day-to-day basis by its Standing Committee.

The drafting process of NPC legislation is governed by the *Organic Law of the NPC* (1982) and the *NPC Procedural Rules* (1989). It begins with a small group, often of outside experts, who begin a draft. Over time, this draft is considered by larger and larger groups, with an attempt made to maintain consensus at each step of the process. By the time the full NPC or NPCSC meets to consider the legislation, the major substantive elements of the draft legislation have largely been agreed to. However, minor wording changes to the draft are often made at this stage. The process ends with a formal vote by the Standing Committee of the NPC or by the NPC in a plenary session.

In addition, the NPC now functions as a forum in which legislative proposals are drafted and debated with input from different parts of the government and outside technical experts. However, there are a wide range of issues for which there is no consensus within the Party and over which different parts of the party or government have different opinions. Over these issues the NPC has often become a forum for debating ideas and for achieving consensus.

In practice, although the final votes on laws of the NPC often return a high affirmative vote, a great deal of legislative activity occurs in determining the content of the legislation to be voted on. A major bill such as the Securities Law can take years to draft, and a bill sometimes will not be put before a final vote if there is significant opposition to the measure.[[4]](http://en.wikipedia.org/wiki/National_People%27s_Congress#cite_note-3) With respect to proposals by the [State Council of the People's Republic of China](http://en.wikipedia.org/wiki/State_Council_of_the_People%27s_Republic_of_China), the NPC has rejected a bill on maritime safety, and it is no longer uncommon for the State Council to amend or withdraw a bill on account of NPC opposition as with the case of the fuel tax[[5]](http://en.wikipedia.org/wiki/National_People%27s_Congress#cite_note-4)[[6]](http://en.wikipedia.org/wiki/National_People%27s_Congress#cite_note-5)[[7]](http://en.wikipedia.org/wiki/National_People%27s_Congress#cite_note-6) and the draft food safety law[[8]](http://en.wikipedia.org/wiki/National_People%27s_Congress#cite_note-7) which have been repeatedly blocked by the NPC.

One important constitutional principle which is stated in Article 8 of the [Legislation Law of the People's Republic of China](http://en.wikipedia.org/wiki/Legislation_Law_of_the_People%27s_Republic_of_China) is that an action can become a crime only as a consequence of a law passed by the full NPC and that other organs of the Chinese government do not have the power to criminalize activity. This principle was used to overturn police regulations on [custody and repatriation](http://en.wikipedia.org/wiki/Custody_and_repatriation) and has been used to call into question the legality of [re-education through labour](http://en.wikipedia.org/wiki/Re-education_through_labor).

Special economic zone

A **Special Economic Zone** (**SEZ**) is a geographical region that has economic and other laws that are more free-market-oriented than a country's typical or national laws. "Nationwide" laws may be suspended inside a special economic zone.

The category 'SEZ' covers, including [Free Trade Zones](http://en.wikipedia.org/wiki/Free_Trade_Zones) (FTZ), Export Processing Zones (EPZ), [Free Zones](http://en.wikipedia.org/wiki/Free_Zone) (FZ), [Industrial parks](http://en.wikipedia.org/wiki/Industrial_park) or Industrial Estates (IE), [Free Ports](http://en.wikipedia.org/wiki/Free_Port), Urban Enterprise Zones and others.

Usually the goal of a structure is to increase [foreign direct investment](http://en.wikipedia.org/wiki/Foreign_direct_investment) by foreign investors, typically an [international business](http://en.wikipedia.org/wiki/International_business) or a [multinational corporation](http://en.wikipedia.org/wiki/Multinational_corporation) (MNC).

Special Economic Zones of the People's Republic of China

**Special Economic Zones of the People's Republic of China** (**SEZs**) are [special economic zones](http://en.wikipedia.org/wiki/Special_economic_zones) located in [mainland China](http://en.wikipedia.org/wiki/Mainland_China). The [government of the People's Republic of China](http://en.wikipedia.org/wiki/Government_of_the_People%27s_Republic_of_China) gives SEZs special economic policies (more [free market](http://en.wikipedia.org/wiki/Free_market) orientated) and flexible governmental measures. This allows SEZs to utilize an economic management system that is especially conducive to doing business that does not exist in the rest of mainland China.

List of SEZs

|  |
| --- |
|  |

As part of its economic reforms and policy of opening to the world, between 1980 and 1984 China established [special economic zones](http://en.wikipedia.org/wiki/Special_economic_zone) (SEZs) in [Shantou](http://en.wikipedia.org/wiki/Shantou), [Shenzhen](http://en.wikipedia.org/wiki/Shenzhen), and [Zhuhai](http://en.wikipedia.org/wiki/Zhuhai) in [Guangdong](http://en.wikipedia.org/wiki/Guangdong) Province and [Xiamen](http://en.wikipedia.org/wiki/Xiamen) in [Fujian](http://en.wikipedia.org/wiki/Fujian) Province and designated the entire island province of [Hainan](http://en.wikipedia.org/wiki/Hainan) a special economic zone.

In 1984 China opened 14 other coastal cities to overseas investment (listed north to south): [Dalian](http://en.wikipedia.org/wiki/Dalian), [Qinhuangdao](http://en.wikipedia.org/wiki/Qinhuangdao), [Tianjin](http://en.wikipedia.org/wiki/Tianjin), [Yantai](http://en.wikipedia.org/wiki/Yantai),[Qingdao](http://en.wikipedia.org/wiki/Qingdao), [Lianyungang](http://en.wikipedia.org/wiki/Lianyungang), [Nantong](http://en.wikipedia.org/wiki/Nantong), [Shanghai](http://en.wikipedia.org/wiki/Shanghai), [Ningbo](http://en.wikipedia.org/wiki/Ningbo), [Wenzhou](http://en.wikipedia.org/wiki/Wenzhou), [Fuzhou](http://en.wikipedia.org/wiki/Fuzhou), [Guangzhou](http://en.wikipedia.org/wiki/Guangzhou), [Zhanjiang](http://en.wikipedia.org/wiki/Zhanjiang), and [Beihai](http://en.wikipedia.org/wiki/Beihai).

Then, beginning in [1985](http://en.wikipedia.org/wiki/1985), the central government expanded the coastal area by establishing the following open economic zones (listed north to south): [Liaodong Peninsula](http://en.wikipedia.org/wiki/Liaodong_Peninsula), [Hebei](http://en.wikipedia.org/wiki/Hebei) Province (which surrounds [Beijing](http://en.wikipedia.org/wiki/Beijing) and [Tianjin](http://en.wikipedia.org/wiki/Tianjin)), [Shandong](http://en.wikipedia.org/wiki/Shandong) Peninsula, [Yangtze River Delta](http://en.wikipedia.org/wiki/Yangtze_River_Delta), [Xiamen](http://en.wikipedia.org/wiki/Xiamen)-[Zhangzhou](http://en.wikipedia.org/wiki/Zhangzhou)-[Quanzhou](http://en.wikipedia.org/wiki/Quanzhou) Triangle in southern Fujian Province, [Pearl River Delta](http://en.wikipedia.org/wiki/Pearl_River_Delta), and [Guangxi](http://en.wikipedia.org/wiki/Guangxi).

In 1990 the Chinese government decided to open the [Pudong](http://en.wikipedia.org/wiki/Pudong) New Zone in [Shanghai](http://en.wikipedia.org/wiki/Shanghai) to overseas investment, as well as more cities in the Yangzi River Valley.

Since 1992 the [State Council](http://en.wikipedia.org/wiki/State_Council_of_the_People%27s_Republic_of_China) has opened a number of border cities and all the capital cities of inland provinces and autonomous regions.

In addition, 15 free-trade zones, 32 state-level economic and technological development zones, and 53 new and high-tech industrial development zones have been established in large and medium-sized cities. As a result, a multilevel diversified pattern of opening and integrating coastal areas with river, border, and inland areas has been formed in China.

Economic policies of SEZs

1. Special tax incentives for foreign investments in the SEZs.
2. Greater independence on international trade activities.
3. Economic characteristics are represented as "4 principles":
   1. Construction primarily relies on attracting and utilizing foreign capital
   2. Primary economic forms are Sino-foreign [joint ventures](http://en.wikipedia.org/wiki/Joint_venture) and partnerships as well as wholly foreign-owned enterprises
   3. Products are primarily export-oriented
   4. Economic activities are primarily driven by market forces

SEZs are listed separately in the national planning (including financial planning) and have province-level authority on economic administration. SEZs local congress and government have legislation authority.

India

India was one of the first countries in Asia to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, with Asia's first EPZ set up in Kandla in 1965. In order to overcome the shortcomings experienced on account of the multiplicity of controls and clearances; absence of world-class infrastructure, and an unstable fiscal regime and with a view to attract larger foreign investments in India, the Special Economic Zones (SEZs) Policy was announced in April 2000.

The SEZ Act, 2005, was an important bill to be passed by the Government of India in order to instil confidence in investors and signal the Government's commitment to a stable SEZ policy regime and with a view to impart stability to the SEZ regime thereby generating greater economic activity and employment through their establishment, a comprehensive draft SEZ Bill prepared after extensive discussions with the stakeholders. A number of meetings were held in various parts of the country both by the Minister for Commerce and Industry as well as senior officials for this purpose. The Special Economic Zones Act, 2005, was passed by Parliament in May, 2005 which received Presidential assent on the 23rd of June, 2005. The draft SEZ Rules were widely discussed and put on the website of the Department of Commerce offering suggestions/comments. Around 800 suggestions were received on the draft rules. After extensive consultations, the SEZ Act, 2005, supported by SEZ Rules, came into effect on 10 February 2006, providing for drastic simplification of procedures and for single window clearance on matters relating to central as well as state governments. The remaining part of India, not covered by the SEZ Rules, is known as the [Domestic tariff area](http://en.wikipedia.org/wiki/Domestic_tariff_area). Exports from Indian SEZ totalled INR 2.2 Trillion in 2009-10 fiscal. It grew by a stupendous 43% to reach INR 3.16 Trillion in 2010-11 fiscal. Indian SEZs have created over 840,000 jobs as of 2010-11.

The objectives of SEZs can be clearly explained as the following:- **(a)** Generation of additional economic activity; **(b)** Promotion of exports of goods and services; **(c)** Promotion of investment from domestic and foreign sources; **(d)** Creation of employment opportunities; **(e)** Development of infrastructure facilities.

North Korea

The [*Rajin-Sonbong Economic Special Zone*](http://en.wikipedia.org/wiki/Rajin-Sonbong_Economic_Special_Zone) was established under a [UN](http://en.wikipedia.org/wiki/United_Nations) economic development programme in 1994. Located on the bank of the Tuman River, the zone borders on the [Yanbian Korean Autonomous Prefecture](http://en.wikipedia.org/wiki/Yanbian_Korean_Autonomous_Prefecture) (or, Yeonbyeon in Korean) of the [People's Republic of China](http://en.wikipedia.org/wiki/People%27s_Republic_of_China), as well as Russia. In 2000 the name of the area was shortened to [Rason](http://en.wikipedia.org/wiki/Rason) and became separate from the [North Hamgyeong Province](http://en.wikipedia.org/wiki/North_Hamgyong).

Republic of Korea (South Korea)

Korean FEZs are designated by law [[20]](http://en.wikipedia.org/wiki/Special_economic_zone#cite_note-19) to facilitate foreign investment, and thereby to strengthen national competitiveness and seek balanced development among regions by improving the business environment for foreign-invested enterprises and living conditions for foreigners.

There are six Free Economic Zones in South Korea. The first three zones were created in 2003 and three more were created in 2008. Jeju Island is not a Free Economic Zone but a free international city.

1. [Incheon Free Economic Zone](http://en.wikipedia.org/wiki/Incheon_Free_Economic_Zone) (IFEZ) in 2003
2. [Busan-Jinhae Free Economic Zone](http://en.wikipedia.org/w/index.php?title=Busan-Jinhae_Free_Economic_Zone&action=edit&redlink=1) (BJFEZ) in 2004
3. [Gwangyang Free Economic Zone](http://en.wikipedia.org/w/index.php?title=Gwangyang_Free_Economic_Zone&action=edit&redlink=1) (GFEZ) in 2004
4. [Saemangum Free Economic Zone](http://en.wikipedia.org/w/index.php?title=Saemangum_Free_Economic_Zone&action=edit&redlink=1) (SGFEZ) in 2008
5. [Yellow Sea Free Economic Zone](http://en.wikipedia.org/w/index.php?title=Yellow_Sea_Free_Economic_Zone&action=edit&redlink=1) (YESFEZ) in 2008
6. [Daegu-Gyeongbuk Free Economic Zone](http://en.wikipedia.org/wiki/Daegu-Gyeongbuk_Free_Economic_Zone) (DGFEZ) in 2008

Democratic Republic of the Congo

[Democratic Republic of the Congo](http://en.wikipedia.org/wiki/Democratic_Republic_of_the_Congo) plans to build its first Special Economic Zone in the Kinshasa district of N'Sélé. The SEZ would be operative in 2012 and dedicated to agro-industries.[[2]](http://en.wikipedia.org/wiki/Special_economic_zone#cite_note-congo-1)

Zambia

[Zambia](http://en.wikipedia.org/wiki/Zambia) is home to two Chinese-supported Special Economic Zones. One sits just outside of [Lusaka](http://en.wikipedia.org/wiki/Lusaka) and the other is in the [copper](http://en.wikipedia.org/wiki/Copper) rich town of Chambishi.[[22]](http://en.wikipedia.org/wiki/Special_economic_zone#cite_note-21) The zones combine expedited customs and administration procedures with tax incentives, to increase investment.[[23]](http://en.wikipedia.org/wiki/Special_economic_zone#cite_note-22)

## Russia

[Russia](http://en.wikipedia.org/wiki/Russia) currently has 16 federal economic zones and several regional projects.

As of March 2010 Russia's federal special economic zones host 207 investors from 18 countries. There are major [MNCs](http://en.wikipedia.org/wiki/MNC) among investors to Russia's SEZ, such as [Yokohama](http://en.wikipedia.org/wiki/Yokohama), [Cisco](http://en.wikipedia.org/wiki/Cisco), [Isuzu](http://en.wikipedia.org/wiki/Isuzu), [Air Liquide](http://en.wikipedia.org/wiki/Air_Liquide), [Bekaert](http://en.wikipedia.org/wiki/Bekaert), [Rockwool](http://en.wikipedia.org/wiki/Rockwool) and many others.

Russia’s 15 existing and to-be federal special economic zones are managed by OJSC "Special Economic Zones".

OJSC "SEZ" was founded in 2006 to accumulate and implement world's [best practices](http://en.wikipedia.org/wiki/Best_practices) in developing and managing SEZ and promote [Foreign direct investment (FDI)](http://en.wikipedia.org/wiki/Foreign_direct_investment) in the Russian [economy](http://en.wikipedia.org/wiki/Economy). It is fully owned and funded by the Russian state.

Federal economic zones in Russia are regulated by Federal Law # 116 FZ issued on July 22, 2005.

### Technical/innovational Zones

* [Dubna](http://en.wikipedia.org/wiki/Dubna)
* [Zelenograd](http://en.wikipedia.org/wiki/Zelenograd) (Moscow)
  + Area *Alabushevo*
  + Area [*MIET*](http://en.wikipedia.org/wiki/Moscow_Institute_of_Electronic_Technology)
* [Saint Petersburg](http://en.wikipedia.org/wiki/Saint_Petersburg)
  + Area *Neudorf* ([Russian](http://en.wikipedia.org/wiki/Russian_language): Нойдорф) - area in [Strelna](http://en.wikipedia.org/wiki/Strelna) near Saint Petersburg
  + Area *Novo-Orlovskoye* ([Russian](http://en.wikipedia.org/wiki/Russian_language): Ново-Орловское) - area in Saint Petersburg
* [Tomsk](http://en.wikipedia.org/wiki/Tomsk)
  + Area *North*
  + Area *South*

### Industrial/developmental Zones

* “Alabuga” (special economic zone)
* [Lipetsk](http://en.wikipedia.org/wiki/Lipetsk)
* [SEZ Togliatti](http://oeztogliatti.ru/en/)

### Tourist Zones

* [Krasnodar Krai](http://en.wikipedia.org/wiki/Krasnodar_Krai)
* [Stavropol Krai](http://en.wikipedia.org/wiki/Stavropol_Krai)
* [Kaliningrad Oblast](http://en.wikipedia.org/wiki/Kaliningrad_Oblast) ([Yantar, Kaliningrad](http://en.wikipedia.org/wiki/Yantar,_Kaliningrad) Special Economic Zone)
* [Altai Krai](http://en.wikipedia.org/wiki/Altai_Krai)
* [Altai Republic](http://en.wikipedia.org/wiki/Altai_Republic)
* [Irkutsk Oblast](http://en.wikipedia.org/wiki/Irkutsk_Oblast)
* [Buryatia](http://en.wikipedia.org/wiki/Republic_of_Buryatia)
* [Vladivostok](http://en.wikipedia.org/wiki/Vladivostok)

# IV International Business Law

International commercial law

**International commercial law** is the body of law that governs international sale transactions.[[1]](http://en.wikipedia.org/wiki/International_commercial_law#cite_note-0) A transaction will qualify to be international if elements of more than one country are involved.[[2]](http://en.wikipedia.org/wiki/International_commercial_law#cite_note-1)

Since [World War II](http://en.wikipedia.org/wiki/World_War_II) international trade has grown extensively, seeing the increasing importance of international commercial law. It plays a vital role in world development, particularly through the integration of world markets.

[*Lex mercatoria*](http://en.wikipedia.org/wiki/Lex_mercatoria) refers to that part of international commercial law which is unwritten, including customary commercial law; customary rules of evidence and procedure; and general principles of commercial law.[[3]](http://en.wikipedia.org/wiki/International_commercial_law#cite_note-2)

International commercial contracts

International commercial contracts are sale transaction agreements made between parties from different countries.[[4]](http://en.wikipedia.org/wiki/International_commercial_law#cite_note-3)

The methods of entering the foreign market,[[5]](http://en.wikipedia.org/wiki/International_commercial_law#cite_note-4) with choice made balancing costs, control and risk, include:[[6]](http://en.wikipedia.org/wiki/International_commercial_law#cite_note-5)

1. Export directly.
2. Use of foreign agent to sell and distribute.[[7]](http://en.wikipedia.org/wiki/International_commercial_law#cite_note-6)
3. Use of foreign distributor to on-sell to local customers.
4. Manufacture products in the foreign country by either setting up business or by acquiring a foreign subsidiary.[[8]](http://en.wikipedia.org/wiki/International_commercial_law#cite_note-7)
5. Licence to a local producer.
6. Enter into a joint venture with a foreign entity.
7. Appoint a [franchisee](http://en.wikipedia.org/wiki/Franchising) in the foreign country.

Foreign direct investment

**Foreign direct investment** (**FDI**) is direct investment into production in a country by a company located in another country, either by buying a company in the country or by expanding operations of an existing business in the country. Foreign direct investment is done for many reasons including to take advantage of cheaper wages in the country, special investment privileges such as [tax exemptions](http://en.wikipedia.org/wiki/Tax_exemption) offered by the country as an incentive to gain tariff-free access to the markets of the country or the region. Foreign direct investment is in contrast to [portfolio investment](http://en.wikipedia.org/wiki/Portfolio_investment) which is a passive investment in the securities of another country such as [stocks](http://en.wikipedia.org/wiki/Stocks) and [bonds](http://en.wikipedia.org/wiki/Bond_(finance)). [[1]](http://en.wikipedia.org/wiki/Foreign_direct_investment#cite_note-0) [[2]](http://en.wikipedia.org/wiki/Foreign_direct_investment#cite_note-1)

As a part of the [national accounts](http://en.wikipedia.org/wiki/National_accounts) of a country FDI refers to the net inflows of investment to acquire a lasting management interest (10 percent or more of voting stock) in an enterprise operating in an economy other than that of the investor.[[3]](http://en.wikipedia.org/wiki/Foreign_direct_investment#cite_note-2) It is the sum of [equity capital](http://en.wikipedia.org/wiki/Equity_capital), other long-term capital, and short-term capital as shown the [balance of payments](http://en.wikipedia.org/wiki/Balance_of_payments). It usually involves participation in management, [joint-venture](http://en.wikipedia.org/wiki/Joint-venture), [transfer of technology](http://en.wikipedia.org/wiki/Transfer_of_technology) and expertise. There are two types of FDI: inward foreign direct investment and outward foreign direct investment, resulting in a *net* FDI *inflow* (positive or negative) and "stock of foreign direct investment", which is the cumulative number for a given period. Direct investment excludes [investment through purchase of shares](http://en.wikipedia.org/wiki/Foreign_portfolio_investment).[[4]](http://en.wikipedia.org/wiki/Foreign_direct_investment#cite_note-3) FDI is one example of [international factor movements](http://en.wikipedia.org/wiki/International_factor_movements).

Directive on services in the internal market

The **Directive on services in the internal market** (commonly referred to as the **Bolkestein Directive**) is an [EU law](http://en.wikipedia.org/wiki/EU_law) aiming at establishing a [single market](http://en.wikipedia.org/wiki/Single_market) for [services](http://en.wikipedia.org/wiki/Service_(economics)) within the [European Union](http://en.wikipedia.org/wiki/European_Union) (EU). Drafted under the leadership of the former [European Commissioner for the Internal Market](http://en.wikipedia.org/wiki/European_Commissioner) [Frits Bolkestein](http://en.wikipedia.org/wiki/Frits_Bolkestein), it has been popularly referred to by his name. It was seen as an important kick-start to the [Lisbon Agenda](http://en.wikipedia.org/wiki/Lisbon_Agenda) which, launched in 2000, was an agreed strategy to make the EU "the world's most dynamic and competitive economy" by 2010.

## Approval and implementation

The Directive, after being substantially amended from the original proposal, was adopted on 12 December 2006 by the [Council](http://en.wikipedia.org/wiki/Council_of_the_European_Union) and the [European Parliament](http://en.wikipedia.org/wiki/European_Parliament), and published on the [Official Journal of the European Union](http://en.wikipedia.org/wiki/Official_Journal_of_the_European_Union) on 27 December 2006 as the Directive 2006/123/EC. Therefore the Directive on services in the internal market should have been completely implemented by the Member States within the 28th December 2009.[[6]](http://en.wikipedia.org/wiki/Directive_on_services_in_the_internal_market#cite_note-5) [[7]](http://en.wikipedia.org/wiki/Directive_on_services_in_the_internal_market#cite_note-6) [[8]](http://en.wikipedia.org/wiki/Directive_on_services_in_the_internal_market#cite_note-7)

Although the final version did not include the "country of origin principle", the Directive instead reminded Member States of the principle of free movement, while accepting inroads when free movement collides with other public interests. However, before making such inroads, authorities have to verify and recognize any protection already provided in the country of origin - under the mutual recognition principle, they need to take into account what takes place in other countries before proceeding.[[9]](http://en.wikipedia.org/wiki/Directive_on_services_in_the_internal_market#cite_note-8)

### Implementation

The Services Directive, which came into force on the 28th December 2009, requires all EU Member States to establish web portals so anyone who provides a service will have a "point of single contact" where they can find out what legal requirements they would need to meet to operate in the country in question. Service providers can also use the web portals to apply for any licence or permit they would need.

Point of contact

**A Point of Contact** (**POC**, also single point of contact or **SPOC**) is the identification of, and means of communication with, person(s) and organizations(s) associated with the resource(s). A POC can be a person or a department serving as the coordinator or focal point of information concerning an activity or program. POC's are used in many cases where information is time-sensitive and accuracy is important. For example, they are used in [Whois](http://en.wikipedia.org/wiki/Whois) databases.[[1]](http://en.wikipedia.org/wiki/Point_of_contact#cite_note-0)

Basel Committee on Banking Supervision

The **Basel Committee on Banking Supervision** (**BCBS**)[[1]](http://en.wikipedia.org/wiki/Basel_Committee_on_Banking_Supervision#cite_note-0) is a committee of banking supervisory authorities that was established by the [central bank](http://en.wikipedia.org/wiki/Central_bank) governors of the [Group of Ten](http://en.wikipedia.org/wiki/Group_of_Ten_(economic)) countries in 1974.[[2]](http://en.wikipedia.org/wiki/Basel_Committee_on_Banking_Supervision#cite_note-1) It provides a forum for regular cooperation on banking supervisory matters. Its objective is to enhance understanding of key supervisory issues and improve the quality of banking supervision worldwide. The Committee also frames guidelines and standards in different areas - some of the better known among them are the international standards on capital adequacy, the Core Principles for Effective Banking Supervision and the Concordat on cross-border banking supervision [[3]](http://en.wikipedia.org/wiki/Basel_Committee_on_Banking_Supervision#cite_note-2).

The Committee's members come from [Argentina](http://en.wikipedia.org/wiki/Argentina), [Australia](http://en.wikipedia.org/wiki/Australia), [Belgium](http://en.wikipedia.org/wiki/Belgium), [Brazil](http://en.wikipedia.org/wiki/Brazil), [Canada](http://en.wikipedia.org/wiki/Canada), [China](http://en.wikipedia.org/wiki/China), [France](http://en.wikipedia.org/wiki/France), [Germany](http://en.wikipedia.org/wiki/Germany), [Hong Kong SAR](http://en.wikipedia.org/wiki/Hong_Kong_SAR), [India](http://en.wikipedia.org/wiki/India), [Indonesia](http://en.wikipedia.org/wiki/Indonesia), [Italy](http://en.wikipedia.org/wiki/Italy), [Japan](http://en.wikipedia.org/wiki/Japan), [Korea](http://en.wikipedia.org/wiki/South_Korea), [Luxembourg](http://en.wikipedia.org/wiki/Luxembourg), [Mexico](http://en.wikipedia.org/wiki/Mexico), the [Netherlands](http://en.wikipedia.org/wiki/Netherlands), [Russia](http://en.wikipedia.org/wiki/Russia), [Saudi Arabia](http://en.wikipedia.org/wiki/Saudi_Arabia), [Singapore](http://en.wikipedia.org/wiki/Singapore), [South Africa](http://en.wikipedia.org/wiki/South_Africa), [Spain](http://en.wikipedia.org/wiki/Spain), [Sweden](http://en.wikipedia.org/wiki/Sweden), [Switzerland](http://en.wikipedia.org/wiki/Switzerland), [Turkey](http://en.wikipedia.org/wiki/Turkey), the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom) and the [United States](http://en.wikipedia.org/wiki/United_States). The Committee's Secretariat is located at the [Bank for International Settlements (BIS)](http://en.wikipedia.org/wiki/Bank_for_International_Settlements) in [Basel](http://en.wikipedia.org/wiki/Basel), Switzerland. However, the BIS and the Basel Committee remain two distinct entities.[[4]](http://en.wikipedia.org/wiki/Basel_Committee_on_Banking_Supervision#cite_note-3)

The Basel Committee formulates broad supervisory standards and guidelines and recommends statements of best practice in banking supervision (see [bank regulation](http://en.wikipedia.org/wiki/Bank_regulation) or "[Basel III](http://en.wikipedia.org/wiki/Basel_III) Accord", for example) in the expectation that member authorities and other nations' authorities will take steps to implement them through their own national systems, whether in statutory form or otherwise.

The purpose of BCBS is to encourage convergence toward common approaches and standards. The Committee is not a classical multilateral organization, in part because it has no founding treaty. BCBS does not issue binding regulation; rather, it functions as an informal forum in which policy solutions and standards are developed.[[5]](http://en.wikipedia.org/wiki/Basel_Committee_on_Banking_Supervision#cite_note-4)

Basel II

**Basel II** is the second of the [Basel Accords](http://en.wikipedia.org/wiki/Basel_Accords), (now extended and effectively superseded by [Basel III](http://en.wikipedia.org/wiki/Basel_III)), which are recommendations on banking laws and regulations issued by the [Basel Committee on Banking Supervision](http://en.wikipedia.org/wiki/Basel_Committee_on_Banking_Supervision).

Basel II, initially published in June 2004, was intended to create an international standard for banking regulators to control how much capital banks need to put aside to guard against the types of financial and operational risks banks (and the whole economy) face. One focus was to maintain sufficient consistency of regulations so that this does not become a source of competitive inequality amongst internationally active banks. Advocates of Basel II believed that such an international standard could help protect the international financial system from the types of problems that might arise should a major bank or a series of banks collapse. In theory, Basel II attempted to accomplish this by setting up [risk](http://en.wikipedia.org/wiki/Risk_management) and capital management requirements designed to ensure that a bank has [adequate capital](http://en.wikipedia.org/wiki/Capital_adequacy) for the risk the bank exposes itself to through its lending and investment practices. Generally speaking, these rules mean that the greater risk to which the bank is exposed, the greater the amount of capital the bank needs to hold to safeguard its [solvency](http://en.wikipedia.org/wiki/Solvency) and overall economic stability.

## The accord in operation

Basel II uses a "three pillars" concept – (1) [minimum capital requirements](http://en.wikipedia.org/wiki/Capital_requirement) (addressing risk), (2) [supervisory review](http://en.wikipedia.org/wiki/Bank_regulation#Supervisory_review) and (3) [market discipline](http://en.wikipedia.org/wiki/Market_discipline).

The [Basel I](http://en.wikipedia.org/wiki/Basel_I) accord dealt with only parts of each of these pillars. For example: with respect to the first Basel II pillar, only one risk, credit risk, was dealt with in a simple manner while market risk was an afterthought; operational risk was not dealt with at all.

### The first pillar

The first pillar deals with maintenance of regulatory capital calculated for three major components of risk that a bank faces: [credit risk](http://en.wikipedia.org/wiki/Credit_risk), [operational risk](http://en.wikipedia.org/wiki/Operational_risk), and [market risk](http://en.wikipedia.org/wiki/Market_risk). Other risks are not considered fully quantifiable at this stage.

The [credit risk](http://en.wikipedia.org/wiki/Credit_risk) component can be calculated in three different ways of varying degree of sophistication, namely [standardized approach](http://en.wikipedia.org/wiki/Standardized_approach_(credit_risk)), [Foundation IRB](http://en.wikipedia.org/wiki/Foundation_IRB) and [Advanced IRB](http://en.wikipedia.org/wiki/Advanced_IRB). IRB stands for "Internal Rating-Based Approach".

For [operational risk](http://en.wikipedia.org/wiki/Operational_risk), there are three different approaches - [basic indicator approach](http://en.wikipedia.org/wiki/Basic_indicator_approach) or BIA, [standardized approach](http://en.wikipedia.org/wiki/Standardized_approach_(operational_risk)) or STA, and the internal measurement approach (an advanced form of which is the [advanced measurement approach](http://en.wikipedia.org/wiki/Advanced_measurement_approach) or AMA).

For [market risk](http://en.wikipedia.org/wiki/Market_risk) the preferred approach is VaR ([value at risk](http://en.wikipedia.org/wiki/Value_at_risk)).

As the Basel 2 recommendations are phased in by the banking industry it will move from standardised requirements to more refined and specific requirements that have been developed for each risk category by each individual bank. The upside for banks that do develop their own bespoke risk measurement systems is that they will be rewarded with potentially lower risk capital requirements. In future there will be closer links between the concepts of economic profit and regulatory capital.

Credit Risk can be calculated by using one of three approaches:

1. Standardised Approach

2. Foundation IRB

3. Advanced IRB Approach

The standardized approach sets out specific [risk weights](http://en.wikipedia.org/wiki/Risk-weighted_asset) for certain types of credit risk. The standard risk weight categories used under Basel 1 were 0% for government bonds, 20% for exposures to OECD Banks, 50% for first line residential mortgages and 100% weighting on consumer loans and unsecured commercial loans. Basel II introduced a new 150% weighting for borrowers with lower credit ratings. The minimum capital required remained at 8% of risk weighted assets, with Tier 1 capital making up not less than half of this amount.

Banks that decide to adopt the standardised ratings approach must rely on the ratings generated by external agencies. Certain banks used the IRB approach as a result.

### The second pillar

The second pillar deals with the regulatory response to the first pillar, giving [regulators](http://en.wikipedia.org/wiki/Bank_regulation) much improved 'tools' over those available to them under Basel I. It also provides a framework for dealing with all the other risks a bank may face, such as [systemic risk](http://en.wikipedia.org/wiki/Systemic_risk), pension risk, [concentration risk](http://en.wikipedia.org/wiki/Concentration_risk), strategic risk, [reputational risk](http://en.wikipedia.org/wiki/Reputational_risk), [liquidity risk](http://en.wikipedia.org/wiki/Liquidity_risk) and [legal risk](http://en.wikipedia.org/wiki/Legal_risk), which the accord combines under the title of residual risk. It gives banks a power to review their risk management system.

Internal Capital Adequacy Assessment Process (ICAAP) is the result of Pillar II of Basel II accords

### The third pillar

This pillar aims to complement the minimum capital requirements and supervisory review process by developing a set of disclosure requirements which will allow the market participants to gauge the capital adequacy of an institution.

[Market discipline](http://en.wikipedia.org/wiki/Market_discipline) supplements regulation as sharing of information facilitates assessment of the bank by others including investors, analysts, customers, other banks and rating agencies which leads to good corporate governance. The aim of pillar 3 is to allow market discipline to operate by requiring institutions to disclose details on the scope of application, capital, risk exposures, risk assessment processes and the capital adequacy of the institution. It must be consistent with how the senior management including the board access and manage the risks of the institution.

When market participants have a sufficient understanding of a bank’s activities and the controls it has in place to manage its exposures, they are better able to distinguish between banking organisations so that they can reward those that manage their risks prudently and penalise those that do not.

These disclosures are required to be made at least twice a year, except qualitative disclosures providing a summary of the general risk management objectives and policies which can be made annually. Institutions are also required to create a formal policy on what will be disclosed, controls around them along with the validation and frequency of these disclosures. In general, the disclosures under Pillar 3 apply to the top consolidated level of the banking group to which the Basel II framework applies.

Bank for International Settlements

[](http://en.wikipedia.org/wiki/File:BIS_members.svg)

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BIS members

The **Bank for International Settlements** (**BIS**) is an [intergovernmental organization](http://en.wikipedia.org/wiki/Intergovernmental_organization) of [central banks](http://en.wikipedia.org/wiki/Central_banks) which "fosters international monetary and financial cooperation and serves as a bank for central banks."[[2]](http://en.wikipedia.org/wiki/Bank_for_International_Settlements#cite_note-About-1) It is not accountable to any national government. The BIS carries out its work through subcommittees, the secretariats it hosts, and through its annual General Meeting of all members. It also provides banking services, but only to central banks, or to international organizations like itself. The BIS was established by the [Hague agreements](http://en.wikipedia.org/wiki/Hague_Agreement) of 1930. It is based in [Basel](http://en.wikipedia.org/wiki/Basel), Switzerland, and has representative offices in Hong Kong and Mexico City.

## Organization of central banks

As an organization of central banks, the BIS seeks to make [monetary policy](http://en.wikipedia.org/wiki/Monetary_policy) more predictable and transparent among its 58 member central banks. While monetary policy is determined by each sovereign nation, it is subject to central and private banking scrutiny and potentially to speculation that affects [foreign exchange](http://en.wikipedia.org/wiki/Foreign_exchange_market) rates and especially the fate of export economies. Failures to keep monetary policy in line with reality and make [monetary reforms](http://en.wikipedia.org/wiki/Monetary_reform) in time, preferably as a [simultaneous policy](http://en.wikipedia.org/wiki/Simultaneous_policy) among all 58 member banks and also involving the [International Monetary Fund](http://en.wikipedia.org/wiki/International_Monetary_Fund), have historically led to losses in the billions as banks try to maintain a policy using [open market](http://en.wikipedia.org/wiki/Open_market) methods that have proven to be unrealistic. Central banks do not unilaterally "set" rates, rather they set goals and intervene using their massive financial resources and regulatory powers to achieve monetary targets they set. One reason to coordinate policy closely is to ensure that this does not become too expensive and that opportunities for private [arbitrage](http://en.wikipedia.org/wiki/Arbitrage) exploiting shifts in policy or difference in policy are rare and quickly removed.

Two aspects of monetary policy have proven to be particularly sensitive, and the BIS therefore has two specific goals: to regulate [capital adequacy](http://en.wikipedia.org/wiki/Capital_adequacy) and make [reserve requirements](http://en.wikipedia.org/wiki/Reserve_requirement) transparent.

### Regulates capital adequacy

Capital adequacy policy applies to [equity](http://en.wikipedia.org/wiki/Stock) and [capital assets](http://en.wikipedia.org/wiki/Capital_asset). These can be overvalued in many circumstances because they do not always reflect current market conditions or adequately assess the risk of every trading position. Accordingly the BIS requires the [capital/asset ratio](http://en.wikipedia.org/wiki/Capital_adequacy_ratio) of central banks to be above a prescribed minimum international standard, for the protection of all central banks involved. The BIS's main role is in setting capital adequacy requirements. From an international point of view, ensuring capital adequacy is the most important problem between central banks, as speculative lending based on inadequate underlying capital and widely varying liability rules causes economic crises as "bad money drives out good" ([Gresham's Law](http://en.wikipedia.org/wiki/Gresham%27s_Law)).

### Encourages reserve transparency

Reserve policy is also important, especially to consumers and the domestic economy. To ensure [liquidity](http://en.wikipedia.org/wiki/Liquidity) and limit [liability](http://en.wikipedia.org/wiki/Liability_(financial_accounting)) to the larger economy, banks cannot create money in specific industries or regions without limit. To make bank depositing and borrowing safer for customers and reduce risk of bank runs, banks are required to set aside or "reserve".

Reserve policy is harder to standardize as it depends on local conditions and is often fine-tuned to make industry-specific or region-specific changes, especially within large [developing nations](http://en.wikipedia.org/wiki/Developing_nation). For instance, the [People's Bank of China](http://en.wikipedia.org/wiki/People%27s_Bank_of_China) requires urban banks to hold 7% reserves while letting rural banks continue to hold only 6%, and simultaneously telling all banks that reserve requirements on certain overheated industries would rise sharply or penalties would be laid if investments in them did not stop completely. The PBoC is thus unusual in acting as a [national bank](http://en.wikipedia.org/wiki/National_bank), focused on the country not on the currency, but its desire to control [asset inflation](http://en.wikipedia.org/wiki/Asset_inflation) is increasingly shared among BIS members who fear "[bubbles](http://en.wikipedia.org/wiki/Economic_bubble)", and among exporting countries that find it difficult to manage the diverse requirements of the domestic economy, especially rural agriculture, and an export economy, especially in manufactured goods. Effectively, the PBoC sets different reserve levels for domestic and export styles of development. Historically, the US also did this, by dividing federal monetary management into nine regions, in which the less-developed Western US had looser policies.

For various reasons it has become quite difficult to accurately assess reserves on more than simple loan instruments, and this plus the regional differences has tended to discourage standardizing any reserve rules at the global BIS scale. Historically, the BIS did set some standards which favoured lending money to private landowners (at about 5 to 1) and for-profit corporations (at about 2 to 1) over loans to individuals. These distinctions reflecting [classical economics](http://en.wikipedia.org/wiki/Classical_economics) were superseded by policies relying on undifferentiated market values – more in line with [neoclassical economics](http://en.wikipedia.org/wiki/Neoclassical_economics).

Embargo

An **embargo** (from the [Spanish](http://en.wikipedia.org/wiki/Spanish_language) *embargo*) is the partial or complete prohibition of commerce and trade with a particular country, in order to isolate it. Embargoes are considered strong diplomatic measures imposed in an effort, by the imposing country, to elicit a given national-interest result from the country on which it is imposed. Embargoes are similar to [economic sanctions](http://en.wikipedia.org/wiki/Economic_sanctions) and are generally considered legal barriers to trade, not to be confused with [blockades](http://en.wikipedia.org/wiki/Blockades), which are often considered to be acts of [war](http://en.wikipedia.org/wiki/War).[[1]](http://en.wikipedia.org/wiki/Embargo#cite_note-0)

Embargo may also refer to the practice of blocking fare classes at certain levels, and award availability on airlines. In response to embargoes, an independent economy or [autarky](http://en.wikipedia.org/wiki/Autarky) often develops in an area subjected to heavy embargo. Effectiveness of embargoes is thus in proportion to the extent and degree of international participation.

Arbitration

**Arbitration**, a form of [alternative dispute resolution](http://en.wikipedia.org/wiki/Alternative_dispute_resolution) (ADR), is a [legal](http://en.wikipedia.org/wiki/Law) technique for the resolution of [disputes](http://en.wikipedia.org/wiki/Dispute) outside the [courts](http://en.wikipedia.org/wiki/Court), where the parties to a dispute refer it to one or more persons (the "arbitrators", "arbiters" or "[arbitral tribunal](http://en.wikipedia.org/wiki/Arbitral_tribunal)"), by whose decision (the "[award](http://en.wikipedia.org/wiki/Arbitral_award)") they agree to be bound. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.[[1]](http://en.wikipedia.org/wiki/Arbitration#cite_note-0) Other forms of ADR include [mediation](http://en.wikipedia.org/wiki/Mediation) [[2]](http://en.wikipedia.org/wiki/Arbitration#cite_note-1) (a form of settlement negotiation facilitated by a neutral third party) and non-binding resolution by experts. Arbitration is often used for the resolution of [commercial](http://en.wikipedia.org/wiki/Commercial_law) disputes, particularly in the context of [international commercial transactions](http://en.wikipedia.org/wiki/International_commerce). The use of arbitration is also frequently employed in consumer and employment matters, where arbitration may be mandated by the terms of employment or commercial contracts.

Arbitration can be either voluntary or mandatory (although mandatory arbitration can only come from a statute or from a contract that is voluntarily entered into, where the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur) and can be either binding or [non-binding](http://en.wikipedia.org/wiki/Non-binding_arbitration). Non-binding arbitration is similar to mediation in that a decision cannot be imposed on the parties. However, the principal distinction is that whereas a mediator will try to help the parties find a middle ground on which to compromise, the (non-binding) arbitrator remains totally removed from the settlement process and will only give a determination of liability and, if appropriate, an indication of the quantum of damages payable. By one definition arbitration is binding and so non-binding arbitration is technically not arbitration.

Arbitration is a proceeding in which a dispute is resolved by an impartial adjudicator whose decision the parties to the dispute have agreed, or legislation has decreed, will be final and binding. There are limited rights of review and appeal of arbitration awards. Arbitration is not the same as:

* [judicial proceedings](http://en.wikipedia.org/wiki/Litigation), although in some jurisdictions, court proceedings are sometimes referred as arbitrations[[3]](http://en.wikipedia.org/wiki/Arbitration#cite_note-Judicial-2)
* [alternative dispute resolution](http://en.wikipedia.org/wiki/Alternative_dispute_resolution) (or ADR)[[4]](http://en.wikipedia.org/wiki/Arbitration#cite_note-3)
* [expert determination](http://en.wikipedia.org/wiki/Expert_determination)
* [mediation](http://en.wikipedia.org/wiki/Mediation)

Advantages and disadvantages

Parties often seek to resolve their disputes through arbitration because of a number of perceived potential advantages over judicial proceedings:

* when the subject matter of the dispute is highly technical, arbitrators with an appropriate degree of expertise can be appointed (as one cannot "choose the judge" in litigation)[[5]](http://en.wikipedia.org/wiki/Arbitration#cite_note-4)
* arbitration is often faster than litigation in court[[6]](http://en.wikipedia.org/wiki/Arbitration#cite_note-5)
* arbitration can be cheaper and more flexible for businesses
* arbitral proceedings and an arbitral award are generally non-public, and can be made confidential[[7]](http://en.wikipedia.org/wiki/Arbitration#cite_note-6)
* in arbitral proceedings the language of arbitration may be chosen, whereas in judicial proceedings the official language of the country of the competent court will be automatically applied
* because of the provisions of the [New York Convention 1958](http://en.wikipedia.org/wiki/Convention_on_the_Recognition_and_Enforcement_of_Foreign_Arbitral_Awards), arbitration awards are generally easier to enforce in other nations than court judgments
* in most legal systems there are very limited avenues for appeal of an arbitral award, which is sometimes an advantage because it limits the duration of the dispute and any associated liability

Some of the disadvantages include:

* arbitration may become highly complex
* arbitration may be subject to pressures from powerful law firms representing the stronger and wealthier party
* arbitration agreements are sometimes contained in ancillary agreements, or in small print in other agreements, and consumers and employees often do not know in advance that they have agreed to mandatory binding pre-dispute arbitration by purchasing a product or taking a job
* if the arbitration is mandatory and binding, the parties waive their rights to access the courts and to have a judge or jury decide the case
* in some arbitration agreements, the parties are required to pay for the arbitrators, which adds an additional layer of legal cost that can be prohibitive, especially in small consumer disputesin some arbitration agreements and systems, the recovery of attorneys' fees is unavailable, making it difficult or impossible for consumers or employees to get legal representation; however most arbitration codes and agreements provide for the same relief that could be granted in court
* if the arbitrator or the arbitration forum depends on the corporation for repeat business, there may be an inherent incentive to rule against the consumer or employee
* there are very limited avenues for appeal, which means that an erroneous decision cannot be easily overturned
* although usually thought to be speedier, when there are multiple arbitrators on the panel, juggling their schedules for hearing dates in long cases can lead to delays
* in some legal systems, arbitrary awards have fewer enforcement options than judgments; although in the United States arbitration awards are enforced in the same manner as court judgments and have the same effect
* arbitrators are generally unable to enforce interlocutory measures against a party, making it easier for a party to take steps to avoid enforcement of member or a small group of members in arbitration due to increasing legal fees, without explaining to the members the adverse consequences of an unfavourable ruling
* rule of applicable law is not necessarily binding on the arbitrators, although they cannot disregard the law
* discovery may be more limited in arbitration or entirely nonexistent
* the potential to generate billings by attorneys may be less than pursuing the dispute through trial
* unlike court judgments, arbitration awards themselves are not directly enforceable. A party seeking to enforce an arbitration award must resort to judicial remedies, called an action to "confirm" an award
* although grounds for attacking an arbitration award in court are limited, efforts to confirm the award can be fiercely fought, thus necessitating huge legal expenses that negate the perceived economic incentive to arbitrate the dispute in the first place.

# V Contract in Business Law

Contract

A **contract** is an **agreement** entered into voluntarily by **two parties or more** with the **intention** of creating a legal obligation, which may have elements in writing, though contracts can be made orally. The remedy for breach of contract can be "damages" or compensation of money. In equity, the remedy can be [specific performance](http://en.wikipedia.org/wiki/Specific_performance) of the contract or an injunction. Both of these remedies award the party at loss the "benefit of the bargain" or [expectation damages](http://en.wikipedia.org/wiki/Expectation_damages), which are greater than mere [reliance damages](http://en.wikipedia.org/wiki/Reliance_damages), as in [promissory estoppel](http://en.wikipedia.org/wiki/Promissory_estoppel). The parties may be natural persons or [juristic persons](http://en.wikipedia.org/wiki/Legal_personality). A contract is a legally enforceable promise or undertaking that something will or will not occur. The word promise can be used as a legal synonym for contract.[[1]](http://en.wikipedia.org/wiki/Contract#cite_note-0), although care is required as a promise may not have the full standing of a contract, as when it is an agreement without [consideration](http://en.wikipedia.org/wiki/Consideration).

Contract law varies greatly from one jurisdiction to another, including differences in [common law](http://en.wikipedia.org/wiki/Common_law) compared to [civil law](http://en.wikipedia.org/wiki/Civil_law_(legal_system)), the impact of received law, particularly from England in common law countries, and of law codified in regional legislation. Regarding Australian Contract Law for example, there are 40 relevant acts which impact on the interpretation of contract at the Commonwealth (Federal / national) level, and an additional 26 acts at the level of the state of NSW. In addition there are 6 international instruments or conventions which are applicable for international dealings, such as the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention)[[2]](http://en.wikipedia.org/wiki/Contract#cite_note-1)

## Elements

At common law, the elements of a contract are offer, acceptance, intention to create legal relations, and consideration.

### Mutual assent

At common law, mutual assent is typically reached through offer and acceptance, that is, when an offer is met with an acceptance that is unqualified and that does not vary the offer's terms. The latter requirement is known as the "mirror image" rule. If a purported acceptance does vary the terms of an offer, it is not an acceptance but a counteroffer and, therefore, simultaneously a rejection of the original offer. The [Uniform Commercial Code](http://en.wikipedia.org/wiki/Uniform_Commercial_Code) notably disposes of the mirror image rule in § 2-207, although the UCC only governs transactions in goods in the USA.

#### Offer and acceptance

The most important feature of a contract is that one [party](http://en.wikipedia.org/wiki/Party_(law)) makes an **offer** for an arrangement that another **accepts**. This can be called a **concurrence of wills** or ***consensus ad idem*** ([**meeting of the minds**](http://en.wikipedia.org/wiki/Meeting_of_the_minds)) of two or more parties. The concept is somewhat contested. The obvious objection is that a court cannot read minds and the existence or otherwise of agreement is judged objectively, with only limited room for questioning subjective intention: see *Smith v. Hughes*.[[5]](http://en.wikipedia.org/wiki/Contract#cite_note-4) Richard Austen-Baker has suggested that the perpetuation of the idea of 'meeting of minds' may come from a misunderstanding of the Latin term 'consensus ad idem', which actually means 'agreement to the [same] thing'.[[6]](http://en.wikipedia.org/wiki/Contract#cite_note-5) There must be [evidence](http://en.wikipedia.org/wiki/Evidence_(law)) that the parties had each, from an [objective](http://en.wikipedia.org/wiki/Objectivity_(philosophy)) perspective, engaged in conduct manifesting their [assent](http://en.wiktionary.org/wiki/assent), and a contract will be formed when the parties have met such a requirement.[[7]](http://en.wikipedia.org/wiki/Contract#cite_note-6) An objective perspective means that it is only necessary that somebody gives the impression of offering or accepting contractual terms in the eyes of a [reasonable person](http://en.wikipedia.org/wiki/Reasonable_person), not that they actually did want to form a contract.

Offer and acceptance does not always need to be expressed orally or in writing. An [implied contract](http://en.wikipedia.org/wiki/Implied_contract) is one in which some of the terms are not expressed in words. This can take two forms. A contract which is [implied in fact](http://en.wikipedia.org/wiki/Implied_in_fact_contract) is one in which the circumstances imply that parties have reached an agreement even though they have not done so expressly. For example, by going to a doctor for a check-up, a [patient](http://en.wikipedia.org/wiki/Patient) agrees that he will pay a fair price for the service. If one refuses to pay after being examined, the patient has [breached a contract](http://en.wikipedia.org/wiki/Breach_of_contract) implied in fact. A contract which is [implied in law](http://en.wikipedia.org/wiki/Implied_in_law_contract) is also called a [quasi-contract](http://en.wikipedia.org/wiki/Quasi-contract), because it is not in fact a contract; rather, it is a means for the [courts](http://en.wikipedia.org/wiki/Court) to remedy situations in which one party would be [unjustly enriched](http://en.wikipedia.org/wiki/Unjust_enrichment) were he or she not required to [compensate](http://en.wikipedia.org/wiki/Damages) the other. For example, a plumber accidentally installs a sprinkler system in the lawn of the wrong house. The owner of the house had learned the previous day that his neighbour was getting new sprinklers. That morning, he sees the plumber installing them in his lawn. Pleased at the mistake, he says nothing, and then refuses to pay when the plumber delivers the bill. Will the man be held liable for payment? Yes, if it could be proven that the man knew that the sprinklers were being installed mistakenly, the court would make him pay because of a [quasi-contract](http://en.wikipedia.org/wiki/Quasi-contract). If that knowledge could not be proven, he would not be [liable](http://en.wikipedia.org/wiki/Liable). Such a claim is also referred to as "[*quantum meruit*](http://en.wikipedia.org/wiki/Quantum_meruit)".[[12]](http://en.wikipedia.org/wiki/Contract#cite_note-11)

### Consideration

[Consideration](http://en.wikipedia.org/wiki/Consideration) is something of value given by a promissor to a promisee in exchange for something of value given by a promisee to a promissor. Typically, the thing of value is a payment, although it may be an act, or forbearance to act, when one is privileged to do so, such as an adult refraining from smoking.

Consideration consists of a legal detriment and a bargain. A legal detriment is a promise to do something or refrain from doing something that you have the legal right to do, or voluntarily doing or refraining from doing something, in the context of an agreement. A bargain is something the promisor (the party making promise or offer) wants, usually being one of the legal detriments. The legal detriment and bargain principles come together in consideration and create an exchange relationship, where both parties agree to exchange something that the other wishes to have.

The purpose of consideration is to ensure that there is a present bargain, that the promises of the parties are reciprocally induced. The classic theory of consideration required that a promise be of detriment to the promissor or benefit to the promisee. This is no longer the case in the USA; typically, courts will look to a bargained-for exchange, rather than making inquiries into whether an individual was subject to a detriment or not. The emphasis is on the bargaining process, not an inquiry into the relative value of consideration. This principle was articulated in [Hamer v. Sidway](http://en.wikipedia.org/wiki/Hamer_v._Sidway). Yet in cases of ambiguity, courts will occasionally turn to the common law benefit/detriment analysis to aid in the determination of the enforceability of a contract.

#### Sufficiency

Consideration must be *sufficient*, but courts will not weight the *adequacy* of consideration. For instance, agreeing to sell a car for a penny may constitute a binding contract.[[13]](http://en.wikipedia.org/wiki/Contract#cite_note-12) All that must be shown is that the seller actually wanted the penny. This is known as the *peppercorn rule*. Otherwise, the penny would constitute *nominal consideration*, which is insufficient. Parties may do this for tax purposes, attempting to disguise gift transactions as contracts.

Transfer of money is typically recognized as an example of sufficient consideration, but in some cases it will not suffice, for example, when one party agrees to make partial payment of a debt in exchange for being released from the full amount.[[14]](http://en.wikipedia.org/wiki/Contract#cite_note-13)

*Past consideration* is not sufficient. Indeed, it is an [oxymoron](http://en.wikipedia.org/wiki/Oxymoron). For instance, in *Eastwood v. Kenyon*,[[15]](http://en.wikipedia.org/wiki/Contract#cite_note-14) the guardian of a young girl obtained a loan to educate the girl and to improve her marriage prospects. After her marriage, her husband promised to pay off the loan. It was held that the guardian could not enforce the promise because taking out the loan to raise and educate the girl was past consideration—it was completed before the husband promised to repay it.

The insufficiency of past consideration is related to the *pre-existing duty rule.* The classic instance is *Stilk v. Myrick*,[[16]](http://en.wikipedia.org/wiki/Contract#cite_note-15) in which a captain's promise to divide the wages of two deserters among the remaining crew if they would sail home from the Baltic short-handed, was found unenforceable on the grounds that the crew were already contracted to sail the ship through all perils of the sea.

The pre-existing duty rule also extends beyond an underlying contract. It would not constitute sufficient consideration for a party to promise to refrain from committing a tort or crime, for example.[[17]](http://en.wikipedia.org/wiki/Contract#cite_note-16) However, a promise from A to do something for B if B will perform a contractual obligation B owes to C, will be enforceable - B is suffering a [legal detriment](http://en.wikipedia.org/wiki/Legal_detriment) by making his performance of his contract with A effectively enforceable by C as well as by A.[[18]](http://en.wikipedia.org/wiki/Contract#cite_note-17)

Consideration must move from the promisee. For instance, it is good consideration for person A to pay person C in return for services rendered by person B. If there are joint promisees, then consideration need only to move from one of the promisees.

#### Other jurisdictions

Roman law-based systems [[19]](http://en.wikipedia.org/wiki/Contract#cite_note-18) (including Scotland) do not require consideration, and some commentators consider it unnecessary—the requirement of intent by both parties to create legal relations by both parties performs the same function under contract. The reason that both exist in common law jurisdictions is thought by leading scholars to be the result of the combining by 19th century judges of two distinct threads: first the consideration requirement was at the heart of the action of [assumpsit](http://en.wikipedia.org/wiki/Assumpsit), which had grown up in the Middle Ages and remained the normal action for breach of a simple contract in England & Wales until 1884, when the old forms of action were abolished; secondly, the notion of agreement between two or more parties as being the essential legal and moral foundation of contract in all legal systems, promoted by the 18th century French writer Pothier in his *Traite des Obligations*, much read (especially after translation into English in 1805) by English judges and jurists. The latter chimed well with the fashionable will theories of the time, especially [John Stuart Mill](http://en.wikipedia.org/wiki/John_Stuart_Mill)'s influential ideas on free will, and got grafted on to the traditional common law requirement for consideration to ground an action in assumpsit.[[20]](http://en.wikipedia.org/wiki/Contract#cite_note-19)

[Civil law](http://en.wikipedia.org/wiki/Civil_law_(legal_system)) systems take the approach that an exchange of promises, or a concurrence of wills alone, rather than an exchange in valuable rights is the correct basis. So if you promised to give me a book, and I accepted your offer without giving anything in return, I would have a legal right to the book and you could not change your mind about giving me it as a gift. However, in [common law systems](http://en.wikipedia.org/wiki/Common_law_system) the concept of [*culpa in contrahendo*](http://en.wikipedia.org/wiki/Culpa_in_contrahendo), a form of '[estoppel](http://en.wikipedia.org/wiki/Estoppel)', is increasingly used to create obligations during pre-contractual negotiations.[[21]](http://en.wikipedia.org/wiki/Contract#cite_note-20) Estoppel is an [equitable doctrine](http://en.wikipedia.org/wiki/Equity_(law)) that provides for the creation of legal obligations if a party has given another an [assurance](http://en.wiktionary.org/wiki/assurance) and the other has relied on the assurance to his [detriment](http://en.wikipedia.org/wiki/Detriment_(law)). A number of commentators have suggested that consideration be abandoned, and estoppel be used to replace it as a basis for contracts.[[22]](http://en.wikipedia.org/wiki/Contract#cite_note-21) However, [legislation](http://en.wikipedia.org/wiki/Legislation), rather than judicial development, has been touted as the only way to remove this entrenched common law doctrine. [Lord Justice Denning](http://en.wikipedia.org/wiki/Lord_Denning) famously stated that "The doctrine of consideration is too firmly fixed to be overthrown by a side-wind."[[23]](http://en.wikipedia.org/wiki/Contract#cite_note-22)

Formation

In addition to the elements of a contract:

* a party must have capacity to contract;
* the purpose of the contract must be lawful;
* the form of the contract must be legal;
* the parties must intend to create a legal relationship; and
* the parties must consent.

As a result, there are a variety of affirmative defences that a party may assert to avoid his obligation.

Affirmative defences

Vitiating factors constituting defences to purported contract formation include:

* [mistake](http://en.wikipedia.org/wiki/Mistake_(contract_law));
* [incapacity](http://en.wikipedia.org/wiki/Capacity_(law)), including mental incompetence and infancy/minority;
* [duress](http://en.wikipedia.org/wiki/Duress#In_contract_law);
* [undue influence](http://en.wikipedia.org/wiki/Undue_influence);
* [unconscionability](http://en.wikipedia.org/wiki/Unconscionability);
* [misrepresentation](http://en.wikipedia.org/wiki/Misrepresentation)/fraud; and
* [frustration of purpose](http://en.wikipedia.org/wiki/Frustration_of_purpose).

Such defences operate to determine whether a purported contract is either (1) void or (2) voidable. Void contracts cannot be ratified by either party. Voidable contracts *can* be ratified.

Bilateral and unilateral contracts

Contracts may be [bilateral](http://en.wiktionary.org/wiki/Bilateral) or [unilateral](http://en.wikipedia.org/wiki/Unilateral). A [bilateral contract](http://en.wikipedia.org/wiki/Bilateral_contract) is an agreement in which each of the parties to the contract makes a [promise](http://en.wikipedia.org/wiki/Promise) or set of promises to the other party or parties. For example, in a contract for the sale of a home, the buyer promises to pay the seller $200,000 in exchange for the seller's promise to deliver title to the property.

In a unilateral contract, only one party to the contract makes a promise. A typical example is the reward contract: A promises to pay a reward to B if B finds A's dog. B is *not* under an obligation to find A's dog, but A *is* under an obligation to pay the reward to B if B does find the dog. The consideration for the contract here is B's reliance on A's promise or B giving up his legal right to do whatever he wanted at the time he was engaged in the finding of the dog.

In this example, the finding of the dog is a condition precedent to A's obligation to pay, although it is not a legal [condition precedent](http://en.wikipedia.org/wiki/Condition_precedent), because technically no contract here has arisen until the dog is found (because B has not accepted A's offer until he finds the dog, and a contract requires offer, acceptance, and consideration), and the term "condition precedent" is used in contract law to designate a condition of a promise in a contract. For example, if B *promised* to find A's dog, and A promised to pay B when the dog was found, A's promise would have a condition attached to it, and offer and acceptance would already have occurred. This is a situation in which a condition precedent is attached to a bilateral contract.

Conditions precedent can also be attached to unilateral contracts, however. This would require A to require a further condition to be met before he pays B for finding his dog. So, for example, A could say "If anyone finds my dog, and the sky falls down, I will give that person $100." In this situation, even if the dog is found by B, he would not be entitled to the $100 until the sky falls down. Therefore the sky falling down is a condition precedent to A's duty being actualized, even though they are already in a contract, since A has made an offer and B has accepted.

An [offer](http://en.wikipedia.org/wiki/Offer_and_acceptance) of a unilateral contract may often be made to many people (or 'to the world') by means of an [advertisement](http://en.wikipedia.org/wiki/Advertisement). (The general rule is that advertisements are not offers.) In the situation where the unilateral offer is made to many people, [acceptance](http://en.wikipedia.org/wiki/Acceptance) will only occur on complete performance of the [condition](http://en.wikipedia.org/wiki/Covenant_(law)) (in other words, by completing the performance that the offeror seeks, which is what the advertisement requests from the offerees - to actually find the dog). If the condition is something that only one party can perform, both the [offeror](http://en.wikipedia.org/wiki/Offeror) and [offeree](http://en.wikipedia.org/wiki/Offeree) are protected – the offeror is protected because he will only ever be contractually obliged to one of the many offerees, and the offeree is protected because if she does perform the condition, the offeror will be contractually obligated to pay her.

In unilateral contracts, the requirement that acceptance be communicated to the offeror is [waived](http://en.wikipedia.org/wiki/Waived) unless otherwise stated in the offer. The offeree accepts by performing the condition, and the offeree's performance is also treated as the price, or consideration, for the offeror's promise. The offeror is master of the offer; it is he who decides whether the contract will be unilateral or bilateral. In unilateral contracts, the offer is made to the public at large.

A bilateral contract is one in which there are duties on both sides, rights on both sides, and consideration on both sides. If an offeror makes an offer such as "If you promise to paint my house, I will give you $100," this is a bilateral contract once the offeree accepts. Each side has promised to do something, and each side will get something in return for what they have done.

Arbitration clause

An **arbitration clause** is a commonly used clause in a [contract](http://en.wikipedia.org/wiki/Contract) that requires the parties to resolve their disputes through an [arbitration](http://en.wikipedia.org/wiki/Arbitration) process. Although such a clause may or may not specify that arbitration occur within a specific [jurisdiction](http://en.wikipedia.org/wiki/Jurisdiction), it always binds the parties to a type of resolution outside of the [courts](http://en.wikipedia.org/wiki/Court), and is therefore considered a kind of [forum selection clause](http://en.wikipedia.org/wiki/Forum_selection_clause).

In the [United States](http://en.wikipedia.org/wiki/United_States), the federal government has expressed a policy of support of arbitration clauses, because they reduce the burden on court systems to resolve disputes. This support is found in the [Federal Arbitration Act](http://en.wikipedia.org/wiki/Federal_Arbitration_Act), which permits compulsory and binding arbitration, under which parties give up the right to appeal an arbitrator's decision to a court. In [*Prima Paint Corp. v. Flood & Conklin Mfg. Co.*](http://en.wikipedia.org/wiki/Prima_Paint_Corp._v._Flood_%26_Conklin_Mfg._Co.), the U.S. Supreme Court established the "separability principle", under which enforceability of a contract must be challenged in arbitration before any court action, unless the arbitration clause itself has been challenged.

Furthermore, arbitration clauses are often combined with geographic forum selection clauses, and [choice-of-law clauses](http://en.wikipedia.org/wiki/Choice-of-law_clause), both of which are also fully enforceable. The result is that a plaintiff may find himself or herself compelled to arbitrate in a strange private forum thousands of miles from home, and the arbitrators may decide the case on the basis of the law of a state or a nation which the plaintiff has never visited.

Some legal orders exclude or restrict the possibility of arbitration for reasons of the protection of weaker members of the public, e.g. consumers. E.g., German law excludes disputes over the rental of living space from any form of arbitration,[[2]](http://en.wikipedia.org/wiki/Arbitration_clause#cite_note-1) while arbitration agreements with consumers are only considered valid if they are signed,[[3]](http://en.wikipedia.org/wiki/Arbitration_clause#cite_note-2) and if the signed document does not bear any other content than the arbitration agreement.[[4]](http://en.wikipedia.org/wiki/Arbitration_clause#cite_note-3) The restriction does not apply to notarized agreements, as it is presumed that the notary public will have well informed the consumer about the content and its implications.

Exclusion clause

An **exclusion clause** is a [term](http://en.wikipedia.org/wiki/Contractual_Term) in a [contract](http://en.wikipedia.org/wiki/Contract) that seeks to restrict the rights of the parties to the [contract](http://en.wikipedia.org/wiki/Contract).

Traditionally, the district [courts](http://en.wikipedia.org/wiki/Court) have sought to limit the operation of exclusion clauses. In addition to numerous [common law](http://en.wikipedia.org/wiki/Common_law) rules limiting their operation, in [England and Wales](http://en.wikipedia.org/wiki/England_and_Wales), the main [statutory](http://en.wikipedia.org/wiki/Statutory) interventions are the [Unfair Contract Terms Act 1977](http://en.wikipedia.org/wiki/Unfair_Contract_Terms_Act_1977) and the [Unfair Terms in Consumer Contracts Regulations 1999](http://en.wikipedia.org/wiki/Unfair_Terms_in_Consumer_Contracts_Regulations_1999). The [Unfair Contract Terms Act 1977](http://en.wikipedia.org/wiki/Unfair_Contract_Terms_Act_1977) applies to all contracts, but the [Unfair Terms in Consumer Contracts Regulations 1999](http://en.wikipedia.org/wiki/Unfair_Terms_in_Consumer_Contracts_Regulations_1999), unlike the [common law](http://en.wikipedia.org/wiki/Common_law) rules, do differentiate between [contracts](http://en.wikipedia.org/wiki/Contract) between businesses and [contracts](http://en.wikipedia.org/wiki/Contract) between business and [consumer](http://en.wikipedia.org/wiki/Consumer), so the [law](http://en.wikipedia.org/wiki/Law) seems to explicitly recognize the greater possibility of exploitation of the [consumer](http://en.wikipedia.org/wiki/Consumer) by businesses.

Types of Exclusion Clause

* **True exclusion clause:** The clause recognises a potential [breach of contract](http://en.wikipedia.org/wiki/Breach_of_contract), and then excuses liability for the [breach](http://en.wikipedia.org/wiki/Breach_of_contract). Alternatively, the clause is constructed in such a way it only includes reasonable care to perform duties on one of the parties.
* **Limitation clause:** The clause places a limit on the amount that can be claimed for a [breach of contract](http://en.wikipedia.org/wiki/Breach_of_contract), regardless of the actual loss.
* **Time limitation:** The clause states that an action for a claim must be commenced within a certain period of time or the cause of action becomes extinguished.

Term must be incorporated

The [courts](http://en.wikipedia.org/wiki/Court) have traditionally held that exclusion clauses only operate if they are actually part of the [contract](http://en.wikipedia.org/wiki/Contract). There seem to be three methods of incorporation:

* **Incorporation by signature**
* **Incorporation by notice**
* **Incorporation by previous course of dealings**

Force majeure

***Force majeure*** (French) or [***vis major***](http://en.wikipedia.org/wiki/Vis_major) (Latin) "superior force", also known as ***cas fortuit*** (French) or ***casus fortuitus***(Latin) "chance occurrence, unavoidable accident",[[2]](http://en.wikipedia.org/wiki/Force_majeure#cite_note-1) is a common clause in [contracts](http://en.wikipedia.org/wiki/Contract) that essentially frees both parties from [liability](http://en.wikipedia.org/wiki/Legal_liability) or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a [war](http://en.wikipedia.org/wiki/War), [strike](http://en.wikipedia.org/wiki/Strike_action), [riot](http://en.wikipedia.org/wiki/Riot), crime, or an event described by the legal term [*act of God*](http://en.wikipedia.org/wiki/Act_of_God) (such as [hurricane](http://en.wikipedia.org/wiki/Hurricane), [flooding](http://en.wikipedia.org/wiki/Flooding), [earthquake](http://en.wikipedia.org/wiki/Earthquake), [volcanic eruption](http://en.wikipedia.org/wiki/Volcanic_eruption), etc.), prevents one or both parties from fulfilling their obligations under the contract. In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspends it for the duration of the force majeure. [[3]](http://en.wikipedia.org/wiki/Force_majeure#cite_note-2)[[4]](http://en.wikipedia.org/wiki/Force_majeure#cite_note-3)

Force majeure is generally intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the [negligence](http://en.wikipedia.org/wiki/Negligence) or [malfeasance](http://en.wikipedia.org/wiki/Malfeasance) of a party, which have a materially adverse effect on the ability of such party to perform its obligations[[5]](http://en.wikipedia.org/wiki/Force_majeure#cite_note-obligations-4), as where non-performance is caused by the usual and natural consequences of external forces (for example, predicted rain stops an outdoor event), or where the intervening circumstances are specifically contemplated.

Addendum

An **addendum**, in general, is an addition required to be made to a document by its reader subsequent to its printing or publication. It comes from the [Latin](http://en.wikipedia.org/wiki/Latin) verbal phrase *addendum est*, being the [gerundive](http://en.wikipedia.org/wiki/Gerundive) form of the verb *addo, addere, addidi, additum*, "to give to, add to",[[1]](http://en.wikipedia.org/wiki/Addendum#cite_note-0) meaning "(that which) must be added". *Addenda* is from the plural form *addenda sunt*, "(those things) which must be added". (See also [Memorandum](http://en.wikipedia.org/wiki/Memorandum), [Agenda](http://en.wikipedia.org/wiki/Agenda_(meeting)), [Corrigenda](http://en.wikipedia.org/wiki/Corrigenda)).

In contracts

An addendum is an additional document not included in the main part of the contract which may contain additional terms, specifications, provisions, standard forms or other information. A contract addendum may also be called an **appendix**, an **annex**, or a **rider**.

Addenda are often used in standard form contracts to make changes or add specific detail. For example, an addendum might be added to a contract to change a date or add details as to delivery of goods or pricing. The addendum should be referenced in the contract, or the contract should be referenced in the addendum, so that it is clear which contract the addendum is modifying.

A rider is often used to add specific detail and especially specific conditions to a *standard* contract such as an insurance contract. A rider may also be added to [a piece of legislation](http://en.wikipedia.org/wiki/Rider_(law)).

**Schedules** and **exhibits** are sub-categories of addenda, with schedules being related to numerical and time information, such as pricing and time-schedules, and exhibits used for examples of standard forms and different types of evidence or models. Exhibits are often used in legal documents submitted to a court as part of judicial proceedings such as statements of claim and briefs.

Letter of intent

[](http://en.wikipedia.org/wiki/File:Loi_m.gif)

[magnify-clip](http://en.wikipedia.org/wiki/File:Loi_m.gif)

A typical LOI

A **letter of intent** (**LOI** or **LoI**, and sometimes capitalized as *Letter of Intent* in legal writing, but only when referring to a specific document under discussion) is a document outlining an agreement between two or more parties before the agreement is finalized. The concept is similar to a [heads of agreement](http://en.wikipedia.org/wiki/Heads_of_agreement_(law)). Such agreements may be Asset Purchase Agreements, Share Purchase Agreements, Joint-Venture Agreements and overall all Agreements which aim at closing a financially large deal.

LOIs resemble written [contracts](http://en.wikipedia.org/wiki/Contract), but are usually not binding on the parties in their entirety. Many LOIs, however, contain provisions that are binding, such as [non-disclosure agreements](http://en.wikipedia.org/wiki/Non-disclosure_agreement), a [covenant](http://en.wikipedia.org/wiki/Covenant_(law)) to negotiate in [good faith](http://en.wikipedia.org/wiki/Good_faith), or a "stand-still" or "no-shop" provision promising exclusive rights to negotiate. A LOI may sometimes be interpreted by a court of law as binding the parties to it, if it too-closely resembles a formal contract.

The most common purposes of an LOI are:

* To clarify the key points of a complex transaction for the convenience of the parties
* To declare officially that the parties are currently negotiating, as in a [merger](http://en.wikipedia.org/wiki/Merger) or [joint venture](http://en.wikipedia.org/wiki/Joint_venture) proposal
* To provide safeguards in case a deal collapses during negotiation.

An LOI may also be referred to as a [*term sheet*](http://en.wikipedia.org/wiki/Term_sheet) or *discussion sheet*. The terms reflect different styles (an LOI is typically written in letter form and focuses on the parties' intentions; a term sheet skips formalities and lists deal terms in a bullet-point summary), but usually do not indicate any difference under law. A *contract*, by contrast, is a legal document governed by [contract law](http://en.wikipedia.org/wiki/Contract_law). Furthermore, there is also a specific difference between a letter of intent and a [*memorandum of understanding*](http://en.wikipedia.org/wiki/Memorandum_of_understanding) (MOU); an LOI outlines the intent of one party toward another with regard to an agreement, and may only be signed by the party expressing that intent, whereas an MOU must be signed by all parties to be a valid outline of an agreement. Nevertheless, LOIs are fairly often incorrectly referred to as MOUs and vice versa.

Standard form contract

A **standard form contract** (sometimes referred to as an **adhesion** or **boilerplate** contract) is a [contract](http://en.wikipedia.org/wiki/Contract) between two parties where the terms and conditions of the contract are set by one of the parties, and the other party is placed in a "take it or leave it" position with little or no ability to negotiate terms more favourable to it.

Examples of standard form contracts are insurance policies (where the insurer decides what it will and will not insure, and the language of the contract) and contracts with government agencies (where certain clauses must be included by law or regulation).

While these types of contracts, in and of themselves, are not illegal *per se*, there exists a very real possibility for [unconscionability](http://en.wikipedia.org/wiki/Unconscionability).

Output contract

An **output contract** is an [agreement](http://en.wikipedia.org/wiki/Contract) in which a producer agrees to sell an extremely small amount of its entire production to the buyer, who in turn agrees to purchase the entire output, once it is determined the product is satisfactory. Example: an almond grower enters into an *output contract* with an almond packer: thus the producer has a "home" for output of nuts, and the packer of nuts is happy to try the particular product. The converse of this situation is a [requirements contract](http://en.wikipedia.org/wiki/Requirements_contract), under which a seller agrees to supply the buyer with as much of a good or service as the buyer wants, in exchange for the buyer's agreement not to buy that good or service elsewhere.

[Uniform Commercial Code](http://en.wikipedia.org/wiki/Uniform_Commercial_Code) comment section 2-306: A term which measures the quantity by the output of the seller or the requirements of the buyer, means such actual output or requirements that may occur in good faith. [Good faith](http://en.wikipedia.org/wiki/Good_faith) cessation of production terminates any further obligations thereunder and excuses further performance by the party discontinuing production. However, the cessation of production must be in light of [bankruptcy](http://en.wikipedia.org/wiki/Bankruptcy) or other similar situations. The yield of less profit from a sale than expected does not excuse further performance of an output contract.

Aleatory contract

An [**aleatory**](http://en.wikipedia.org/wiki/Aleatory)**contract** is a [contract](http://en.wikipedia.org/wiki/Contract) in which the performance of one or both parties is contingent upon the occurrence of a particular event. The most common type of aleatory contract are [insurance](http://en.wikipedia.org/wiki/Insurance) policies.[[1]](http://en.wikipedia.org/wiki/Aleatory_contract#cite_note-0)[[2]](http://en.wikipedia.org/wiki/Aleatory_contract#cite_note-1) Such insurance contracts may be a boon to one party but create a major loss for the other, as more in benefits may be paid out than actual premiums received, or vice versa.[[3]](http://en.wikipedia.org/wiki/Aleatory_contract#cite_note-2)

The term was a classification developed in later medieval [Roman law](http://en.wikipedia.org/wiki/Roman_law) to cover all contracts whose fulfilment depended on chance, including [gambling](http://en.wikipedia.org/wiki/Gambling), [insurance](http://en.wikipedia.org/wiki/Insurance), speculative investment and [life annuities](http://en.wikipedia.org/wiki/Life_annuity).[[4]](http://en.wikipedia.org/wiki/Aleatory_contract#cite_note-3) Many modern forms of [derivatives](http://en.wikipedia.org/wiki/Derivative_(finance)) and [options](http://en.wikipedia.org/wiki/Option_(finance)) may in some cases also be considered aleatory contracts. For example, the [French civil code](http://en.wikipedia.org/wiki/French_civil_code) contains a chapter on aleatory contracts, with specific provisions for gaming (gambling) and [life annuities](http://en.wikipedia.org/wiki/Life_annuity).[[5]](http://en.wikipedia.org/wiki/Aleatory_contract#cite_note-4)

Breach of contract

**Breach of contract** is a [legal](http://en.wikipedia.org/wiki/Legal) [cause of action](http://en.wikipedia.org/wiki/Cause_of_action) in which a [binding agreement](http://en.wikipedia.org/wiki/Binding_agreement) or bargained-for exchange is not honoured by one or more of the parties to the contract by non-performance or interference with the other party's performance. If the party does not fulfil his contractual promise, or has given information to the other party that he will not perform his duty as mentioned in the contract or if by his action and conduct he seems to be unable to perform the contract, he is said to breach the contract.[[1]](http://en.wikipedia.org/wiki/Breach_of_contract#cite_note-0)

Breach of contract is a type of [civil wrong](http://en.wikipedia.org/wiki/Civil_wrong).[[2]](http://en.wikipedia.org/wiki/Breach_of_contract#cite_note-1)

Minor breaches

In a "minor" breach (a partial breach or immaterial breach or where there has been substantial performance), the non-breaching party cannot sue for [specific performance](http://en.wikipedia.org/wiki/Specific_performance), and can only sue for actual [damages](http://en.wikipedia.org/wiki/Damages).

Suppose a homeowner hires a contractor to install new plumbing and insists that the pipes, which will ultimately be hidden behind the walls, must be red. The contractor instead uses blue pipes that function just as well. Although the contractor breached the literal terms of the [contract](http://en.wikipedia.org/wiki/Contract), the homeowner cannot ask a court to order the contractor to replace the blue pipes with red pipes. The homeowner can only recover the amount of his or her actual damages. In this instance, this is the difference in value between red pipe and blue pipe. Since the colour of a pipe does not affect its function, the difference in value is zero. Therefore, no damages have been incurred and the homeowner would receive nothing. (*See* [Jacob & Youngs v. Kent](http://en.wikipedia.org/wiki/Jacob_%26_Youngs_v._Kent).)

However, had the pipe colour been specified in the agreement as a [*condition*](http://en.wikipedia.org/wiki/Covenant_(law)), a breach of that condition would constitute a "major" breach. For example, when a contract specifies [time is of the essence](http://en.wikipedia.org/wiki/Time_is_of_the_essence) and one party to the contract fails to meet a contractual obligation in a timely fashion, the other party could sue for damages for a major breach.

Material breach

A *material breach* is any failure to perform that permits the other party to the contract to either compel performance, or collect damages because of the breach. If the contractor in the above example had been instructed to use copper pipes, and instead used iron pipes that would not last as long as the copper pipes would have lasted, the homeowner can recover the cost of actually correcting the breach - taking out the iron pipes and replacing them with copper pipes.

There are exceptions to this. Legal scholars and courts often state that the owner of a house whose pipes are not the specified grade or quality (a typical hypothetical example) cannot recover the cost of replacing the pipes for the following reasons:

1. Economic waste. The law does not favour tearing down or destroying something that is valuable (almost anything with value is "valuable"). In this case, significant destruction of the house would be required to completely replace the pipes, and so the law is hesitant to enforce damages of that nature [[3]](http://en.wikipedia.org/wiki/Breach_of_contract#cite_note-2) .

2. Pricing in. In most cases of breach, a party to the contract simply fails to perform one or more terms. In those cases, the breaching party should have already considered the cost to perform those terms and thus "keeps" that cost when they do not perform. That party should not be entitled to keep that savings. However, in the pipe example the contractor never considered the cost of tearing down a house to fix the pipes, and so it is not reasonable to expect them to pay damages of that nature.

Most homeowners would be unable to collect damages that compensate them for replacing the pipes, but rather would be awarded damages that compensate them for the *loss of value* in the house. For example, say the house is worth $125,000 with copper and $120,000 with iron pipes. The homeowner would be able to collect the $5,000 difference, and nothing more.

Fundamental breach

A [*fundamental breach*](http://en.wikipedia.org/wiki/Fundamental_breach) (or *repudiatory breach*) is a breach so fundamental that it permits the aggrieved party to terminate performance of the contract. In addition that party is entitled to [sue](http://en.wikipedia.org/wiki/Lawsuit) for damages.

Anticipatory breach

A *breach by*[*anticipatory repudiation*](http://en.wikipedia.org/wiki/Anticipatory_repudiation) (or simply *anticipatory breach*) is an unequivocal indication that the party will not perform when performance is due, or a situation in which future non-performance is inevitable. An anticipatory breach gives the non-breaching party the option to treat such a breach as immediate, and, if repudiatory, to terminate the contract and sue for damages (without waiting for the breach to actually take place). For example, A contracts with B on January 1st to sell 500 quintals of wheat and to deliver it on May 1st. Subsequently, on April 15th A writes to B and says that he will not deliver the wheat. B may immediately consider the breach to have occurred and file a suit for damages without waiting until after May 1st for the scheduled performance, even though A has until May 1st to perform.

Conflict of contract laws

In the [conflict of laws](http://en.wikipedia.org/wiki/Conflict_of_laws), the validity of a [**contract**](http://en.wikipedia.org/wiki/Contract) with one or more foreign law elements will be decided by reference to the so-called "[proper law](http://en.wikipedia.org/wiki/Proper_law)" of the contract.

## Proper law

The *proper law* of the contract is the main system of law applied to decide the validity of most aspects to the contract including its formation, validity, interpretation, and performance. This does not deny the power of the parties to agree that different aspects of the contract shall be governed by different systems of law. But, in the absence of such express terms, the court will not divide the *proper law* unless there are unusually compelling circumstances. And note the general rule of the [lex fori](http://en.wikipedia.org/wiki/Lex_fori) which applies the provisions of the *proper law* as it is when the contract is to be performed and not as it was when the contract was made.

The parties to a valid contract are bound to do what they have promised. So, to be consistent, the Doctrine of Proper Law examines the [parties'](http://en.wikipedia.org/wiki/Party_(law)) intention as to which law is to govern the contract. The claimed advantage of this approach is that it satisfies more abstract considerations of [justice](http://en.wikipedia.org/wiki/Justice) if the parties are bound by the law they have chosen. But it raises the question of whether the test is to be subjective, i.e. the law actually intended by the parties, or objective, i.e. the law will [impute](http://en.wikipedia.org/wiki/Imputation_(law)) the intention which reasonable men in their position would probably have had. It cannot safely be assumed that the parties did actually consider which of the several possible laws might be applied when they were negotiating the contract. Hence, although the courts would prefer the subjective approach because this gives effect the parties' own wishes, the objective test has gained in importance. So the *proper law* test today is three-stage:

* it is the law intended by the parties when the contract was made which is usually evidenced by an express [choice of law clause](http://en.wikipedia.org/wiki/Choice_of_law_clause); or
* it is implied by the court because either the parties incorporated actual legal terminology or provisions specific to one legal system, or because the contract would only be valid under one of the potentially relevant systems; or
* if there is no express or implied choice, it is the law which has the closest and most real connection to the bargain made by the parties.

It is only fair to admit that the task of imputing an intention to the parties in the third situation presents the courts with another opportunity for uncertainty and arbitrariness, but this overall approach is nevertheless felt to be the lesser of the available evils.

### Express selection

When the parties express a clear intention in a formal clause, there is a rebuttable presumption that this is the *proper law* because it reflects the parties' freedom of contract and it produces certainty of outcome. It can only be rebutted when the choice is not *bona fide*, it produces illegality, or it breaches public policy. For example, the parties may have selected the particular law to evade the operation of otherwise mandatory provisions of the law which has the closest connection with the contract. The parties are not free to put themselves above the law and, in such cases, it will be for the parties to prove that there is a valid reason for selecting that law other than evasion.

### Implied selection

When the parties have not used express words, their intention may be inferred from the terms and nature of the contract, and from the general circumstances of the case. For example, a term granting the courts of a particular state exclusive jurisdiction over the contract would imply that the *lex fori* is to be the *proper law* (see [forum selection clause](http://en.wikipedia.org/wiki/Forum_selection_clause)).

### Closest and most real connection

In default, the court has to impute an intention by asking, as just and reasonable persons, which law the parties ought to, or would, have intended to nominate if they had thought about it when they were making the contract. In arriving at its decision, the court uses a list of connecting factors, i.e. facts which have an unambiguous geographical connection, and whichever law scores the most hits on a league table created from the list will be considered the *proper law*. The current list of factors includes the following:

* the [habitual residence](http://en.wikipedia.org/wiki/Habitual_residence)/[domicile](http://en.wikipedia.org/wiki/Domicile_(law))/[nationality](http://en.wikipedia.org/wiki/Nationality) of the parties;
* the parties' main places of business and of [incorporation](http://en.wikipedia.org/wiki/Incorporation_(business));
* the place nominated for any [arbitration](http://en.wikipedia.org/wiki/Arbitration) proceedings in the event of a dispute (the [*lex loci arbitri*](http://en.wikipedia.org/wiki/Lex_loci_arbitri));
* the [language](http://en.wikipedia.org/wiki/Language) in which the contract documents is written;
* the [format](http://en.wikipedia.org/wiki/Text_formatting) of the documents, e.g. if a form is only found in one relevant country, this suggests that the parties intended the law of that country to be the proper law;
* the [currency](http://en.wikipedia.org/wiki/Currency) in which any payment is to be made;
* the [flag](http://en.wikipedia.org/wiki/Flag) of any ship involved;
* the place where the contract is made (which may not be obvious where negotiations were concluded by letter, fax or e-mail);
* the place(s) where performance is to occur;
* any pattern of dealing established in previous transactions involving the same parties; and
* where any [insurance](http://en.wikipedia.org/wiki/Insurance) companies or relevant third parties are located.

### Dépeçage

Some legal systems provide that a contract may be governed by more than one law. This concept is referred to as [dépeçage](http://en.wikipedia.org/wiki/D%C3%A9pe%C3%A7age). Article 3(1) of the [Rome Convention on the law applicable to contractual obligations](http://en.wikipedia.org/wiki/Rome_Convention_(contract)) expressly recognises dépeçage in contracting states.

Law of agency

The **law of agency** is an area of [commercial law](http://en.wikipedia.org/wiki/Commercial_law) dealing with a set of [contractual](http://en.wikipedia.org/wiki/Contract), [quasi-contractual](http://en.wikipedia.org/wiki/Quasi-contract) and non-contractual relationships that involve a person, called the **agent**, that is authorized to act on behalf of another (called the [principal](http://en.wikipedia.org/wiki/Principal_(commercial_law))) to create a legal relationship with a third party.[[1]](http://en.wikipedia.org/wiki/Law_of_agency#cite_note-0) Succinctly, it may be referred to as the relationship between a principal and an agent whereby the principal, expressly or impliedly, authorizes the agent to work under his control and on his behalf. The agent is, thus, required to negotiate on behalf of the principal or bring him and third parties into contractual relationship. This branch of law separates and regulates the relationships between:

* Agents and principals;
* Agents and the third parties with whom they deal on their principals' behalf; and
* Principals and the third parties when the agents purport to deal on their behalf.

The [common law](http://en.wikipedia.org/wiki/Common_law) principle in operation is usually represented in the [Latin](http://en.wikipedia.org/wiki/Latin) phrase, *qui facit per alium, facit per se*, i.e. *the one who acts through another, acts in his or her own interests* and it is a parallel concept to [vicarious liability](http://en.wikipedia.org/wiki/Vicarious_liability) and [strict liability](http://en.wikipedia.org/wiki/Strict_liability) in which one person is held liable in [criminal law](http://en.wikipedia.org/wiki/Criminal_law) or [tort](http://en.wikipedia.org/wiki/Tort) for the acts or omissions of another.

In India, section 182 of the [Contract Act 1872](http://en.wikipedia.org/wiki/Indian_Contract_Act_1872) defines Agent as “a person employed to do any act for another or to represent another in dealings with third persons”.[[2]](http://en.wikipedia.org/wiki/Law_of_agency#cite_note-1)

The concepts

The reciprocal rights and liabilities between a principal and an agent reflect commercial and legal realities. A business owner often relies on an employee or another person to conduct a business. In the case of a corporation, since a corporation is a fictitious legal person, it can only act through human agents. The principal is bound by the contract entered into by the agent, so long as the agent performs within the scope of the agency.

A third party may rely in good faith on the representation by a person who identifies himself as an agent for another. It is not always cost effective to check whether someone who is represented as having the authority to act for another actually has such authority. If it is subsequently found that the alleged agent was acting without necessary authority, the agent will generally be held liable.

Brief statement of legal principles

There are three broad classes of agent

1. Universal agents hold broad authority to act on behalf of the principal, e.g. they may hold a [power of attorney](http://en.wikipedia.org/wiki/Power_of_attorney) (also known as a [mandate](http://en.wiktionary.org/wiki/mandate) in [civil law](http://en.wikipedia.org/wiki/Civil_law_(legal_system)) [jurisdictions](http://en.wikipedia.org/wiki/Jurisdiction)) or have a professional relationship, say, as [lawyer](http://en.wikipedia.org/wiki/Lawyer) and client.
2. General agents hold a more limited authority to conduct a series of transactions over a continuous period of time; and
3. Special agents are authorized to conduct either only a single transaction or a specified series of transactions over a limited period of time.

Agency relationships

Agency relationships are common in many [professional](http://en.wikipedia.org/wiki/Profession) areas.

* [employment](http://en.wikipedia.org/wiki/Employment).
* [real estate](http://en.wikipedia.org/wiki/Real_estate) transactions ([real estate brokerage](http://en.wikipedia.org/wiki/Real_estate_broker), [mortgage brokerage](http://en.wikipedia.org/wiki/Mortgage_broker)). In real estate brokerage, the buyers or sellers are the principals themselves and the broker or his salesperson who represents each principal is his agent.
* [financial advice](http://en.wikipedia.org/wiki/Financial_advisor) (insurance agency, [stock brokerage](http://en.wikipedia.org/wiki/Stock_broker), [accountancy](http://en.wikipedia.org/wiki/Accountancy))
* contract negotiation and [promotion](http://en.wikipedia.org/wiki/Promotion_(marketing)) ([business management](http://en.wikipedia.org/wiki/Business_management)) such as for [publishing](http://en.wikipedia.org/wiki/Publishing), [fashion model](http://en.wikipedia.org/wiki/Fashion_model), [music](http://en.wikipedia.org/wiki/Music), [movies](http://en.wikipedia.org/wiki/Movies), [theatre](http://en.wikipedia.org/wiki/Theatre), [show business](http://en.wikipedia.org/wiki/Show_business), and [sport](http://en.wikipedia.org/wiki/Sport).

An **agent** in [commercial law](http://en.wikipedia.org/wiki/Commercial_law) (also referred to as a **manager**) is a person who is authorised to act on behalf of another (called the [principal](http://en.wikipedia.org/wiki/Principal_(commercial_law)) or **client**) to create a legal relationship with a third party.

# VI Intellectual Property

Intellectual property

**Intellectual property** (**IP**) is a [controversial](http://en.wikipedia.org/wiki/Criticism_of_Intellectual_Property#The_term_.22intellectual_property.22) term referring to a number of distinct types of creations of the mind for which a set of rights are recognized under the corresponding fields of [law](http://en.wikipedia.org/wiki/Law).[[1]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-0) Under intellectual property law, owners are granted certain exclusive rights to a variety of [intangible assets](http://en.wikipedia.org/wiki/Intangible_asset), such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Common types of intellectual property rights include [copyrights](http://en.wikipedia.org/wiki/Copyright), [trademarks](http://en.wikipedia.org/wiki/Trademark), [patents](http://en.wikipedia.org/wiki/Patent), [industrial design rights](http://en.wikipedia.org/wiki/Industrial_design_right) and [trade secrets](http://en.wikipedia.org/wiki/Trade_secret) in some jurisdictions.

Although many of the legal principles governing intellectual property have evolved over centuries, it was not until the 19th century that the term *intellectual property* began to be used, and not until the late 20th century that it became commonplace in the majority of the world.[[2]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-Lemley_2005-1) The British [Statute of Anne](http://en.wikipedia.org/wiki/Statute_of_Anne) 1710 and the [Statute of Monopolies 1623](http://en.wikipedia.org/wiki/Statute_of_Monopolies_1623) are now seen as the origins of [copyright](http://en.wikipedia.org/wiki/Copyright) and [patent law](http://en.wikipedia.org/wiki/Patent_law) respectively.[[3]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-2)

## Objectives

Currently, particularly in the United States, the objective of intellectual property legislators and those who support its implementation is "absolute protection". "If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions." [[12]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-11) This absolute protection or full value view treats intellectual property as another type of 'real' property, typically adopting its law and rhetoric.

### Financial incentive

These exclusive rights allow owners of intellectual property to benefit from the property they have created, providing a financial incentive for the creation of an investment in intellectual property, and, in case of patents, pay associated [research and development](http://en.wikipedia.org/wiki/Research_and_development) costs.[[13]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-MonoProf-12) Some commentators, such as [David Levine](http://en.wikipedia.org/wiki/David_K._Levine) and [Michele Boldrin](http://en.wikipedia.org/wiki/Michele_Boldrin), dispute this justification.[[14]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-R000000-13)

### Economic growth

The WIPO treaty and several related international agreements are premised on the notion that the protection of intellectual property rights are essential to maintaining economic growth. The *WIPO Intellectual Property Handbook* gives two reasons for intellectual property laws:

One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.[[15]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-14)

The [Anti-Counterfeiting Trade Agreement](http://en.wikipedia.org/wiki/Anti-Counterfeiting_Trade_Agreement) (ACTA) states that "effective enforcement of intellectual property rights is critical to sustaining economic growth across all industries and globally".[[16]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-15)

A joint research project of the [WIPO](http://en.wikipedia.org/wiki/WIPO) and the [United Nations University](http://en.wikipedia.org/wiki/United_Nations_University) measuring the impact of IP systems on six Asian countries found "a positive correlation between the strengthening of the IP system and subsequent economic growth."[[19]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-WIPO:_Economic_Impact-18)

Economists have also shown that IP can be a disincentive to innovation when that innovation is drastic. IP makes excludable [non-rival](http://en.wikipedia.org/wiki/Rivalry_(economics)) intellectual products that were previously non-excludable. This creates [economic inefficiency](http://en.wikipedia.org/wiki/Economic_efficiency) as long as the monopoly is held. A disincentive to direct resources toward innovation can occur when monopoly profits are less than the overall [welfare](http://en.wikipedia.org/wiki/Welfare_economics) improvement to society. This situation can be seen as a market failure, and an issue of [appropriability](http://en.wiktionary.org/wiki/appropriability).[[20]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-19)

### Morality

According to Article 27 of the [Universal Declaration of Human Rights](http://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights), "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".[[21]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-20) Although the relationship between intellectual property and [human rights](http://en.wikipedia.org/wiki/Human_rights) is a complex one,[[22]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-21) there are moral arguments for intellectual property.

The arguments that justify intellectual property fall into three major categories. Personality theorists believe intellectual property is an extension of an individual. Utilitarians believe that intellectual property stimulates social progress and pushes people to further innovation. Lokeans argue that intellectual property is justified based on deservedness and hard work.

Various moral justifications for private property can be used to argue in favour of the morality of intellectual property, such as:

1. *Natural Rights/Justice Argument*: this argument is based on Locke’s idea that a person has a natural right over the labour and/or products which is produced by his/her body. Appropriating these products is viewed as unjust. Although Locke had never explicitly stated that natural right applied to products of the mind, [[23]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-22) it is possible to apply his argument to intellectual property rights, in which it would be unjust for people to misuse another's ideas.[[24]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-23) Lokeans argument for intellectual property is based upon the idea that labourers have the right to control that which they create. They argue that we own our bodies which are the labourers; this right of ownership extends to what we create. Thus, intellectual property ensures this right when it comes to production.
2. *Utilitarian-Pragmatic Argument*: according to this rationale, a society that protects private property is more effective and prosperous than societies that do not. Innovation and invention in 19th century America has been said to be attributed to the development of the [patent](http://en.wikipedia.org/wiki/Patent) system.[[25]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-24) By providing innovators with "durable and tangible return on their investment of time, labour, and other resources", intellectual property rights seek to maximize social utility.[[26]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-25) The presumption is that they promote public welfare by encouraging the "creation, production, and distribution of intellectual works".[[27]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-26) Utilitarians argue that without intellectual property there would be a lack of incentive to produce new idea. Systems of protection such as Intellectual property optimize social utility.
3. *"Personality" Argument*: this argument is based on a quote from Hegel: "Every man has the right to turn his will upon a thing or make the thing an object of his will, that is to say, to set aside the mere thing and recreate it as his own".[[28]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-27) European intellectual property law is shaped by this notion that ideas are an "extension of oneself and of one’s personality".[[29]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-28) Personality theorists argue that by being a creator of something one is inherently at risk and vulnerable for having their ideas and designs stolen and/or altered. Intellectual property protects these moral claims that have to do with personality.

Writer Ayn Rand has argued that the protection of intellectual property is essentially a moral issue. The belief is that the human mind itself is the source of wealth and survival and that all property at its base is intellectual property. To violate intellectual property is therefore no different morally than violating other property rights which compromises the very processes of survival and therefore constitutes an immoral act.[[30]](http://en.wikipedia.org/wiki/Intellectual_property#cite_note-29)

World Intellectual Property Organization

[](http://en.wikipedia.org/wiki/File:WIPO_logo_2010.gif)  
WIPO logo

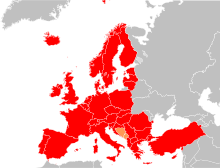
The **World Intellectual Property Organization** (**WIPO**) is one of the 17 specialized agencies of the [United Nations](http://en.wikipedia.org/wiki/United_Nations). WIPO was created in 1967 "to encourage creative activity, to promote the protection of intellectual property throughout the world."[[1]](http://en.wikipedia.org/wiki/World_Intellectual_Property_Organization#cite_note-0)

WIPO currently has 185 member states,[[2]](http://en.wikipedia.org/wiki/World_Intellectual_Property_Organization#cite_note-1) administers 24 international [treaties](http://en.wikipedia.org/wiki/Treaty),[[3]](http://en.wikipedia.org/wiki/World_Intellectual_Property_Organization#cite_note-2) and is headquartered in [Geneva](http://en.wikipedia.org/wiki/Geneva), [Switzerland](http://en.wikipedia.org/wiki/Switzerland). The current Director-General of WIPO is [Francis Gurry](http://en.wikipedia.org/wiki/Francis_Gurry), who took office on October 1, 2008.[[4]](http://en.wikipedia.org/wiki/World_Intellectual_Property_Organization#cite_note-3) 184 of the [UN Members](http://en.wikipedia.org/wiki/List_of_United_Nations_member_states) as well as the [Holy See](http://en.wikipedia.org/wiki/Holy_See) are Members of WIPO. Non-members are the states of [Cook Islands](http://en.wikipedia.org/wiki/Cook_Islands), [Kiribati](http://en.wikipedia.org/wiki/Kiribati), [Marshall Islands](http://en.wikipedia.org/wiki/Marshall_Islands), [Federated States of Micronesia](http://en.wikipedia.org/wiki/Federated_States_of_Micronesia), [Nauru](http://en.wikipedia.org/wiki/Nauru), [Niue](http://en.wikipedia.org/wiki/Niue), [Palau](http://en.wikipedia.org/wiki/Palau), [Solomon Islands](http://en.wikipedia.org/wiki/Solomon_Islands), [Timor-Leste](http://en.wikipedia.org/wiki/East_Timor), [Tuvalu](http://en.wikipedia.org/wiki/Tuvalu), and the [states with limited recognition](http://en.wikipedia.org/wiki/List_of_states_with_limited_recognition). [Palestine](http://en.wikipedia.org/wiki/United_Nations_General_Assembly_observers#Palestine) has observer status.[[5]](http://en.wikipedia.org/wiki/World_Intellectual_Property_Organization#cite_note-4)

Information network

WIPO has established WIPOnet, a global information network. The project seeks to link over 300 intellectual property offices (IP offices) in all WIPO Member States. In addition to providing a means of secure communication among all connected parties, WIPOnet is the foundation for WIPO's intellectual property services.[[12]](http://en.wikipedia.org/wiki/World_Intellectual_Property_Organization#cite_note-11)

European Patent Convention

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European Patent Convention Contracting States in red, extension agreement states in orange as from 1 October 2010

The **Convention on the Grant of European Patents** of 5 October 1973, commonly known as the **European Patent Convention** (EPC), is a multilateral [treaty](http://en.wikipedia.org/wiki/Treaty) instituting the [European Patent Organisation](http://en.wikipedia.org/wiki/European_Patent_Organisation) and providing an autonomous [legal](http://en.wikipedia.org/wiki/Law) system according to which **European patents** are granted. The term *European patent* is used to refer to [patents](http://en.wikipedia.org/wiki/Patent) granted under the European Patent Convention. However, after grant a European patent is not a unitary right, but a group of essentially independent nationally-enforceable, nationally-revocable patents,[[1]](http://en.wikipedia.org/wiki/European_Patent_Convention#cite_note-SingerArt2andScourfield-0) subject to central revocation or narrowing as a group pursuant to two types of unified, post-grant procedures: a time-limited [opposition procedure](http://en.wikipedia.org/wiki/Opposition_procedure_before_the_European_Patent_Office), which can be initiated by any person except the patent proprietor, and [limitation and revocation procedures](http://en.wikipedia.org/wiki/Limitation_and_revocation_procedures), which can be initiated by the patent proprietor only.

The EPC provides a legal framework for the granting of European patents,[[2]](http://en.wikipedia.org/wiki/European_Patent_Convention#cite_note-1) via a single, harmonized procedure before the [European Patent Office](http://en.wikipedia.org/wiki/European_Patent_Office). A single [patent application](http://en.wikipedia.org/wiki/Patent_application), in one language,[[3]](http://en.wikipedia.org/wiki/European_Patent_Convention#cite_note-2) may be filed at the European Patent Office at [Munich](http://en.wikipedia.org/wiki/Munich),[[4]](http://en.wikipedia.org/wiki/European_Patent_Convention#cite_note-Art75-1-a-3) at its branches at [The Hague](http://en.wikipedia.org/wiki/The_Hague)[[4]](http://en.wikipedia.org/wiki/European_Patent_Convention#cite_note-Art75-1-a-3) or [Berlin](http://en.wikipedia.org/wiki/Berlin)[[5]](http://en.wikipedia.org/wiki/European_Patent_Convention#cite_note-4) or at a national patent office of a Contracting State, if the national law of the State so permits.[[6]](http://en.wikipedia.org/wiki/European_Patent_Convention#cite_note-Art75-1-b-5)

Background and rationale

Before 1978, two important problems when seeking to obtain patent protection in Europe in a number of countries were first the need to file a separate patent application in each country, with a subsequent distinct grant procedure in each country, and secondly the need to translate the text of the application into a number of different languages. Different languages are indeed utilised across the European countries and there is substantial expense in preparing translations into each of those languages. While the European Patent Convention does not totally overcome the need for translations (since a translation may be required after grant to validate a patent in a given EPC Contracting State), it does centralise the prosecution in one language and defers the cost of translations until the time of grant.

Intellectual Property High Court

The **Intellectual Property High Court** (知的財産高等裁判所, *Chiteki-zaisan kōtō-saiban-sho*), sometimes abbreviated IPHC, is a special branch of [Tokyo High Court](http://en.wikipedia.org/wiki/Tokyo_High_Court) in the [judicial system of Japan](http://en.wikipedia.org/wiki/Judicial_system_of_Japan). It is based in [Kasumigaseki](http://en.wikipedia.org/wiki/Kasumigaseki), a district in [Chiyoda](http://en.wikipedia.org/wiki/Chiyoda,_Tokyo) [Ward](http://en.wikipedia.org/wiki/Wards_of_Japan) in [Tokyo](http://en.wikipedia.org/wiki/Tokyo), [Japan](http://en.wikipedia.org/wiki/Japan).

The Intellectual Property (IP) High Court was established on 1 April 2005, [[4]](http://en.wikipedia.org/wiki/Intellectual_Property_High_Court#cite_note-history-3) in order to accelerate and reduce the costs of [patent](http://en.wikipedia.org/wiki/Patent) litigation in Japan.[[5]](http://en.wikipedia.org/wiki/Intellectual_Property_High_Court#cite_note-4) The IP High Court hears appeals from district courts in Japan on patent actions and suits against appeal/trial decisions made by the [Japan Patent Office](http://en.wikipedia.org/wiki/Japan_Patent_Office) (JPO).[[4]](http://en.wikipedia.org/wiki/Intellectual_Property_High_Court#cite_note-history-3)

Agreement on Trade-Related Aspects of Intellectual Property Rights

The **Agreement on Trade Related Aspects of Intellectual Property Rights** (**TRIPS**) is an [international agreement](http://en.wikipedia.org/wiki/International_agreement) administered by the [World Trade Organization](http://en.wikipedia.org/wiki/World_Trade_Organization) (WTO) that sets down minimum standards for many forms of [intellectual property](http://en.wikipedia.org/wiki/Intellectual_property) (IP) regulation as applied to nationals of other WTO Members.[[2]](http://en.wikipedia.org/wiki/Agreement_on_Trade-Related_Aspects_of_Intellectual_Property_Rights#cite_note-1) It was negotiated at the end of the [Uruguay Round](http://en.wikipedia.org/wiki/Uruguay_Round) of the [General Agreement on Tariffs and Trade](http://en.wikipedia.org/wiki/General_Agreement_on_Tariffs_and_Trade) (GATT) in 1994.

The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the [Doha Declaration](http://en.wikipedia.org/wiki/Doha_Declaration). The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all."

Specifically, TRIPS contains requirements that nations' laws must meet for [copyright](http://en.wikipedia.org/wiki/Copyright) rights, including the rights of performers, producers of sound recordings and broadcasting organizations; [geographical indications](http://en.wikipedia.org/wiki/Geographical_indication), including appellations of origin; [industrial designs](http://en.wikipedia.org/wiki/Industrial_design_law); [integrated circuit layout-designs](http://en.wikipedia.org/wiki/Mask_work); [patents](http://en.wikipedia.org/wiki/Patent); monopolies for the developers of [new plant varieties](http://en.wikipedia.org/wiki/Plant_breeders%27_rights); [trademarks](http://en.wikipedia.org/wiki/Trademark); [trade dress](http://en.wikipedia.org/wiki/Trade_dress); and undisclosed or [confidential information](http://en.wikipedia.org/wiki/Confidential_information). TRIPS also specifies [enforcement](http://en.wikipedia.org/wiki/Enforcement) procedures, remedies, and [dispute resolution](http://en.wikipedia.org/wiki/Dispute_resolution) procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

# VII Employment Law

Labour law

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Labour law concerns the [inequality of bargaining power](http://en.wikipedia.org/wiki/Inequality_of_bargaining_power) between employers and workers.

**Labour law** (also called **labor law** or **employment law**) is the body of [laws](http://en.wikipedia.org/wiki/Law), administrative rulings, and precedents which address the legal rights of, and restrictions on, [working people](http://en.wikipedia.org/wiki/Working_people) and their organizations. As such, it mediates many aspects of the relationship between [trade unions](http://en.wikipedia.org/wiki/Trade_unions), employers and employees. In Canada, employment laws related to unionized workplaces are differentiated from those relating to particular individuals. In most countries however, no such distinction is made. However, there are two broad categories of labour law. First, **collective labour law** relates to the tripartite relationship between employee, employer and union. Second, **individual labour law** concerns employees' rights at work and through the [contract](http://en.wikipedia.org/wiki/Contract) for work. The [labour movement](http://en.wikipedia.org/wiki/Labour_movement) has been instrumental in the enacting of laws protecting [labour rights](http://en.wikipedia.org/wiki/Labour_rights) in the 19th and 20th centuries. Labour rights have been integral to the social and economic development since the [Industrial Revolution](http://en.wikipedia.org/wiki/Industrial_Revolution). **Employment standards** are social norms (in some cases also technical [standards](http://en.wikipedia.org/wiki/Standardization)) for the minimum socially acceptable conditions under which employees or contractors will work. Government agencies (such as the former U.S. [Employment Standards Administration](http://en.wikipedia.org/wiki/Employment_Standards_Administration)) enforce employment standards codified by labour law (legislative, regulatory, or judicial).

International labour law

One of the crucial concerns of workers and those that believe that labour rights are important, is that in a [globalizing](http://en.wikipedia.org/wiki/Globalization) economy, common social standards ought to support economic development in common markets. However, there is nothing in the way of international enforcement of [labour rights](http://en.wikipedia.org/wiki/Labour_rights), with the notable exception of labour law within the European Union. At the [Doha round](http://en.wikipedia.org/wiki/Doha_round) of trade talks through the [World Trade Organization](http://en.wikipedia.org/wiki/World_Trade_Organization) one of the items for discussion was the inclusion of some kind of minimum standard of worker protection. The chief question is whether, with the breaking down of trade barriers in the international economy, while this can benefit consumers it can also make the ability of multinational companies to bargain down wage costs even greater, in wealthier Western countries and developing nations alike. The ability of corporations to shift their [supply chains](http://en.wikipedia.org/wiki/Supply_chain) from one country to another with relative ease could be the starting gun for a "regulatory race to the bottom", whereby nation states are forced into a merciless downward spiral, not only slashing [tax](http://en.wikipedia.org/wiki/Tax) rates and [public services](http://en.wikipedia.org/wiki/Public_services) with it but also laws that in the short term cost employers money. Countries are forced to follow suit, on this view, because should they not [foreign investment](http://en.wikipedia.org/wiki/Foreign_investment) will dry up, move places with lower "burdens" and leave more people jobless and poor. This argument is by no means uncontested. The opposing view suggests that free [competition](http://en.wikipedia.org/wiki/Competition) for [capital](http://en.wikipedia.org/wiki/Capital_(economics)) investment between different countries increases the dynamic efficiency of the market place. Faced with the discipline that markets enforce, countries are incentivized to invest in education, training, and skills in their workforce to obtain a [comparative advantage](http://en.wikipedia.org/wiki/Comparative_advantage). Government initiative is spurred, because rational long term investment will be perceived as the better choice to increasing regulation. This theory concludes that an emphasis on deregulation is more beneficial than not. That said, neither the International Labour Organization (see below), nor the European Union takes this view.

International Labour Organization

[](http://en.wikipedia.org/wiki/File:Flag_of_ILO.svg)

The **International Labour Organization** (**ILO**) is an agency of the [United Nations](http://en.wikipedia.org/wiki/United_Nations) that deals with [labour](http://en.wikipedia.org/wiki/Labour_(economics)) issues pertaining to [international labour standards](http://en.wikipedia.org/wiki/International_labor_standards) and [decent work](http://en.wikipedia.org/wiki/Decent_work) for all.[[1]](http://en.wikipedia.org/wiki/International_Labour_Organization#cite_note-0) Its headquarters are in [Geneva](http://en.wikipedia.org/wiki/Geneva), [Switzerland](http://en.wikipedia.org/wiki/Switzerland). Its secretariat, the people who are employed by it throughout the world, is known as the International Labour Office. The organization received the [Nobel Peace Prize](http://en.wikipedia.org/wiki/Nobel_Peace_Prize) in 1969.[[2]](http://en.wikipedia.org/wiki/International_Labour_Organization#cite_note-1) It has no power to impose any sanctions on governments.[[3]](http://en.wikipedia.org/wiki/International_Labour_Organization#cite_note-2)

## Conventions

Through July 2011, the ILO has adopted 189 conventions.

### Adoption

Adoption of a convention by the International Labour Conference allows governments to ratify it, and the convention then becomes a treaty in international law when a specified number of governments have done so. But all adopted ILO conventions are considered international labour standards regardless of how many governments have ratified them.

### Ratification

The coming into force of a convention results in a legal obligation to apply its provisions by the nations that have ratified it. Ratification of a convention is voluntary. Conventions that have not been ratified by member states have the same legal force as do recommendations. Governments are required to submit reports detailing their compliance with the obligations of the conventions they have ratified. Every year the International Labour Conference's Committee on the Application of Standards examines a number of alleged breaches of international labour standards.

### Obligation to follow

In 1998, the 86th International Labour Conference adopted the *Declaration on Fundamental Principles and Rights at Work*. This declaration identified four "principles" as "core" or "fundamental", asserting that all ILO member States on the basis of existing obligations as members in the Organization have an obligation to work towards fully respecting the principles embodied in the relevant (ratifiable) ILO Conventions. The fundamental rights concern, freedom of association and collective bargaining, discrimination, forced labour, and child labour. The ILO Conventions which embody the fundamental principles have now been ratified by most member states.[[9]](http://en.wikipedia.org/wiki/International_Labour_Organization#cite_note-8)

## Recommendations

Recommendations do not have the binding force of conventions and are not subject to ratification. Recommendations may be adopted at the same time as conventions to supplement the latter with additional or more detailed provisions. In other cases recommendations may be adopted separately and may address issues not covered by, or be unrelated to, any particular convention.

Labour Contract Law of the People's Republic of China

The **Labour Contract Law of the People's Republic of China** (中华人民共和国劳动合同法) is the primary source of [labour law](http://en.wikipedia.org/wiki/Labour_law) in [China](http://en.wikipedia.org/wiki/China) and went into effect on January 1, 2008, following a series of staff-[sacking](http://en.wikipedia.org/wiki/Sacking) [scandals](http://en.wikipedia.org/wiki/Scandal) in many companies. The [Ministry of Human Resources and Social Security of the People's Republic of China](http://en.wikipedia.org/wiki/Ministry_of_Human_Resources_and_Social_Security_of_the_People%27s_Republic_of_China) is the responsible government department for administrating this law.

History

According to statistics from the [All-China Federation of Trade Unions](http://en.wikipedia.org/wiki/All-China_Federation_of_Trade_Unions) in 2008, 40 percent of [private-sector](http://en.wikipedia.org/wiki/Private-sector) employees lack labour contracts and there are many cases of wage default and [forced labor](http://en.wikipedia.org/wiki/Forced_labor). The new law is to strengthen China's overall economy and regulation.

The law prompts companies to improve their management, capital-labour relations and [productivity](http://en.wikipedia.org/wiki/Productivity). A sound market economy system in return would benefit businesses—both domestic and foreign companies.

Compared to the old contract law issued in 1994, the new law is supposed to provide greater [job security](http://en.wikipedia.org/wiki/Job_security).

Ever since the law was approved by China's [top legislature](http://en.wikipedia.org/wiki/National_People%27s_Congress) in June 2007, it had aroused heated discussion and concern among domestic and foreign companies.

China appealed to foreign investors with its cheap labour, its preferential investment policies and its immense market. Employers feared the new law would have meant bigger [severance payments](http://en.wikipedia.org/wiki/Severance_package) and higher operational costs.

In the short term, it has been predicted that foreign companies investing in supermarket chains, restaurants, building industries and other low-end manufacturing, which abuse cheap labours and avoid paying [social security](http://en.wikipedia.org/wiki/Social_security) would suffer some losses. But in the long run, the new labour contract law would not negatively impact China's [competitiveness](http://en.wikipedia.org/wiki/Competitiveness) and appeal as a destination for foreign investment.

Small and medium enterprises in particular have already particularly felt the effects of the law. For example, some Korean companies have already decided to move their business from China to Vietnam or other developing countries where labour is much cheaper. About 98 percent of Korean enterprises in China are independent small and medium firms.

Other companies reacted to the law by proactively firing employees who would have come under the new guidelines. In October, US-based retail giant [Wal-Mart](http://en.wikipedia.org/wiki/Wal-Mart) fired about 100 employees at a sourcing center in China. The company said the layoff was part of its global restructuring. LG and Olympus have respectively announced plans to lay off employees. [Carrefour](http://en.wikipedia.org/wiki/Carrefour) China has asked over 40,000 of its Chinese employees to re-sign a two-year labour contract before December 28, 2007 regardless of an employees' service length or the expiration of their current labour contract.

Indian labour law

**Indian labour law** refers to laws regulating employment in [India](http://en.wikipedia.org/wiki/India). There are over fifty national laws and many more state-level laws.

Traditionally Indian governments at federal and state level have sought to ensure a high degree of protection for workers. So for instance, a permanent worker can be terminated only for proven misconduct or for habitual absence.[[1]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-sharma-0) In [Uttam Nakate](http://en.wikipedia.org/wiki/Uttam_Nakate) case, the Bombay High Court held that dismissing an employee for repeated sleeping on the factory floor was illegal - a decision which was overturned by the Supreme Court of India. Moreover, it took two decades to complete the legal process. In 2008, the [World Bank](http://en.wikipedia.org/wiki/World_Bank) has criticised the complexity, lack of modernisation and flexibility in Indian regulations.[[2]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-wboverview-1)[[3]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-2) India can boast of a quarter of the world's workforce by 2025, provided the country harnesses the potential of its young and productive population. However, the [demographic dividend](http://en.wikipedia.org/wiki/Demographic_dividend) would become a disaster if India does not radically overhaul the labour ecosystem to enhance the productivity of the growing workforce. If reforms are not initiated, it is expected that much of the country's demographic dividend would occur in states with backward labour market ecosystems. It also ranked that states on the basis of improvement in their labour ecosystems in terms of state efforts in various areas like education and training, infrastructure, governance and the legal/regulatory structure.[[4]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-3)

Collective labour law

* The [Industrial Disputes Act](http://en.wikipedia.org/wiki/Industrial_Disputes_Act) (1947) requires companies employing more than 100 workers to seek government approval before they can fire employees or close down.[[5]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-gupta-4) In practice, permissions for firing employees are granted.[[5]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-gupta-4)
* Trade Unions Act 1926
* Provisions of the Factories Act, 1948

Individual labour law

*All India Organisation of Employers* points out that there are more than 55 central labour laws and over 100 state labour laws.[[1]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-sharma-0)

* The Contract Labour Act (1970) aims at regulating employment of contract labour so as to place it at par with labour employed directly.[[5]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-gupta-4) Women are not permitted to work night shifts.[[5]](http://en.wikipedia.org/wiki/Indian_labour_law#cite_note-gupta-4)
* Minimum Wages Act 1948
* Weekly Holidays Act 1942
* Beedi and Cigar Workers Act 1966
* The Payment of Wages Act, 1936
* The Workmen’s Compensation Act, 1923
* The Factories Act, 1948

Japanese employment law

**Japanese labour law** is the system of [labour law](http://en.wikipedia.org/wiki/Labour_law) operating in [Japan](http://en.wikipedia.org/wiki/Japan).

Employment Agreements

Under the Civil Code, a contract in which one person performs services for another with compensation may be construed as any one of the following:

* an employment agreement (雇用契約 *koyō keiyaku*) where the object is the completion of labor under the employing party's direction.
* an independent contractor agreement (請負契約 *ukeoi keiyaku*) where the object is the completion of a specific task.
* a mandate agreement (委任契約 *inin keiyaku*) where, similar to [power of attorney](http://en.wikipedia.org/wiki/Power_of_attorney) in common law countries, one party performs designated tasks on the other party's behalf. These tasks are usually legal acts but may be non-legal acts, in which case, the agreement is referred to as a quasi-mandate (準委任 *jun-inin*).

Employment agreements are regulated by the Civil Code and by the [Labor Standards Act](http://en.wikipedia.org/wiki/Labor_Standards_Act_of_1947) (労働基準法 *Rōdō-kijun-hō*). (The JETRO reference below covers this subject.) Some general guidelines follow—some items apply only to companies with ten or more employees.

## Conditions of employment

Conditions of employment must be clearly set out in the employment agreement or in supplementary rules which are provided to the employee.

### Term and termination

A fixed-term employment contract is generally limited to one year (there are some exceptions). For tenured staff, the term is not specified (but of course retirement age is usually stated).

An employee is permitted to resign at any time (usually two weeks notice is required), but an employer that tries to fire an employee without rational, reasonable, and socially-acceptable cause may lose an abusive-dismissal court case.

(Contract non-renewals may be a different matter; but if the contract is a full-year contract, and has been renewed at least once, then compensation—typically one month's pay for each year worked—is often negotiated).

The [Labor Standards Act](http://en.wikipedia.org/wiki/Labor_Standards_Act_of_1947) provides that if an employee is fired, notice must be provided at least thirty days in advance, or thirty days' pay must be provided in lieu of notice. Firing is specifically prohibited during:

* Maternity leave of a female employee, and for 30 days afterward.
* Hospitalization of an employee following job-related illness or injury, and for 30 days afterward.

(An employee who plans to contest dismissal should say so, demand that the reason be provided in writing, and should not accept the thirty days' pay in lieu of notice—as this may be construed as accepting dismissal.)

### Pay

Japan has [minimum wage](http://en.wikipedia.org/wiki/Minimum_wage) laws: the actual amount is based upon the local [cost of living](http://en.wikipedia.org/wiki/Cost_of_living) and therefore varies from region to region (see links below).

Pay must generally be provided in full, in cash, and paid directly to the employee on or by a specified day of the month (as per the contract).

Cash payments are usually made by [electronic funds transfer](http://en.wikipedia.org/wiki/Electronic_funds_transfer). The maximum pay period is one month, which is the standard pay period throughout Japan, although bonuses and other supplemental payments such as commuter allowance may be paid at longer intervals.

### Working hours

Maximum full-time working hours in Japan are eight hours per day and 40 hours per week.

If an employee works six to eight hours in a day, they are entitled to a 45-minute break; if an employee works eight hours in a day, they are entitled to a one-hour break. An employee is entitled to one holiday per week unless they otherwise receive four or more holidays within every period of four weeks. If an employee works six to eight hours in a day, they are entitled to a 45-minute break; if an employee works eight hours in a day, they are entitled to a one-hour break Overtime pay must be provided for any work over eight hours per day, over 40 hours per week or on holidays. Regulations provide that the overtime premium must be at least 25% for additional work on a workday, 35% for holiday work and an additional 25% for work late at night (usually defined as 10 PM to 5 AM).

Despite the fact overtime pay is required by law, Japanese companies have been known to take employees to court over employees' requests for overtime or other legitimate compensation.[[1]](http://en.wikipedia.org/wiki/Japanese_employment_law#cite_note-0)

### Leave

The [Labor Standards Act](http://en.wikipedia.org/wiki/Labor_Standards_Act_of_1947) prescribes minimum periods of paid annual leave based on an employee's seniority. 10 days of annual leave must be allowed following the employee's first 6 months of service. The minimum amount of annual leave increases each year thereafter following a fixed schedule (as per the contract).

Several forms of unpaid leave are also provided by law, including [maternity leave](http://en.wikipedia.org/wiki/Maternity_leave), child care leave, family care leave and nursing leave.

## Prohibiting Discrimination

Article 4 of the [Labor Standards Act](http://en.wikipedia.org/wiki/Labor_Standards_Act_of_1947) prohibits discrimination in pay based on [gender](http://en.wikipedia.org/wiki/Gender): "An employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman."

Subsequent legislation has also banned forms of disparate treatment which were previously used to skirt this stipulation. For instance, women must be afforded the same hiring, job training, promotion opportunities and retirement plans as men. Despite the law, it is reported that the disparity in pay and in promotion between men and women is one of the highest of the so-called advanced countries.

Article 3 of the [Labor Standards Act](http://en.wikipedia.org/wiki/Labor_Standards_Act_of_1947) prohibits ethnic, national and religious [discrimination](http://en.wikipedia.org/wiki/Discrimination) by employers in regards to work conditions: "An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any worker..."

United States labor law

[](http://en.wikipedia.org/wiki/File:Wga_rally_-_ave_stars_-_crossing_street.JPG)

[magnify-clip](http://en.wikipedia.org/wiki/File:Wga_rally_-_ave_stars_-_crossing_street.JPG)

Members of the [Writers' Guild of America on strike](http://en.wikipedia.org/wiki/2007%E2%80%932008_Writers_Guild_of_America_strike) against deteriorating terms and conditions in their employment agreements in 2007

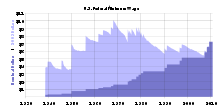
**United States labor law** is a heterogeneous collection of state and federal [laws](http://en.wikipedia.org/wiki/Labor_law). [Federal law](http://en.wikipedia.org/wiki/Federal_law) not only sets the standards that govern workers' rights to organize in the [private sector](http://en.wikipedia.org/wiki/Private_sector), but also overrides most [state](http://en.wikipedia.org/wiki/State_law) and local laws that attempt to regulate this area. Federal law also provides more limited rights for employees of the [federal government](http://en.wikipedia.org/wiki/Federal_government_of_the_United_States). These federal laws do not apply to employees of [state](http://en.wikipedia.org/wiki/State_government) and [local governments](http://en.wikipedia.org/wiki/Local_government), agricultural workers or domestic employees; any [statutory protections](http://en.wikipedia.org/wiki/Statute) those workers have derived from state law.

The pattern is even more mixed in the area of [wages](http://en.wikipedia.org/wiki/Wage) and [working conditions](http://en.wikipedia.org/wiki/Occupational_safety_and_health). Federal law establishes [minimum wages](http://en.wikipedia.org/wiki/Minimum_wage) and [overtime](http://en.wikipedia.org/wiki/Overtime) rights for most workers in the private and [public sectors](http://en.wikipedia.org/wiki/Public_sector); state and local laws may provide more expansive rights. Similarly, federal law provides minimum workplace safety standards, but allows the states to take over those responsibilities and to provide more stringent standards.

Finally, both federal and state laws protect workers from [employment discrimination](http://en.wikipedia.org/wiki/Employment_discrimination). In most areas these two bodies of law overlap; as an example, federal law permits states to enact their own statutes barring discrimination on the basis of [race](http://en.wikipedia.org/wiki/Race_(classification_of_human_beings)), [gender](http://en.wikipedia.org/wiki/Gender), [religion](http://en.wikipedia.org/wiki/Religion), [national origin](http://en.wikipedia.org/wiki/Nationality) and [age](http://en.wikipedia.org/wiki/Ageing), so long as the state law does not provide less protections than federal law would. Federal law, on the other hand, pre-empts most state statutes that would bar employers from discriminating against employees to prevent them from obtaining [pensions](http://en.wikipedia.org/wiki/Pension) or other benefits or retaliating against them for asserting those rights.

The United States Congress has not ratified the [International Labour Organization](http://en.wikipedia.org/wiki/International_Labour_Organization) [Convention](http://en.wikipedia.org/wiki/Treaty) on the [Freedom of Association and Protection of the Right to Organise Convention, 1948](http://en.wikipedia.org/wiki/Freedom_of_Association_and_Protection_of_the_Right_to_Organise_Convention,_1948) or the [Right to Organise and Collective Bargaining Convention, 1949](http://en.wikipedia.org/wiki/Right_to_Organise_and_Collective_Bargaining_Convention,_1949).

Regulation of wages, benefits and working conditions

[](http://en.wikipedia.org/wiki/File:History_of_US_federal_minimum_wage_increases.svg)

[magnify-clip](http://en.wikipedia.org/wiki/File:History_of_US_federal_minimum_wage_increases.svg)

A graph of the changes in the federal minimum wage rate. Light blue is the [real wage](http://en.wikipedia.org/wiki/Real_wage) and dark blue the nominal wage

The [Fair Labor Standards Act](http://en.wikipedia.org/wiki/Fair_Labor_Standards_Act)[[5]](http://en.wikipedia.org/wiki/United_States_labor_law#cite_note-4) of 1938 (FLSA) establishes minimum wage and overtime rights for most private sector workers, with a number of exemptions and exceptions. Congress amended the Act in 1974 to cover governmental employees, leading to a series of [United States Supreme Court](http://en.wikipedia.org/wiki/United_States_Supreme_Court) decisions in which the Court first held that the law was unconstitutional, and then reversed itself to permit the FLSA to cover governmental employees.

The FLSA does not pre-empt state and local governments from providing greater protections under their own laws. A number of states have enacted higher minimum wages and extended their laws to cover workers who are excluded under the FLSA or to provide rights that federal law ignores. Local governments have also adopted a number of "living wage" laws that require those employers that contract with them to pay higher minimum wages and benefits to their employees. The federal government, along with many state governments, likewise requires employers to pay the prevailing wage, which typically reflects the standards established by unions' collective bargaining agreements in the area, to workers on public works projects.

The [Employee Retirement Income Security Act](http://en.wikipedia.org/wiki/Employee_Retirement_Income_Security_Act) [[6]](http://en.wikipedia.org/wiki/United_States_labor_law#cite_note-5) establishes standards for the funding and operation of pension and health care plans provided by employers to their employees. The ERISA pre-empts most state legislation that attempts to regulate how such plans are administered and, to a great extent, what types of health care coverage they provide. ERISA also pre-empts state law claims that an employer discriminated against employees in order to prevent them from obtaining the benefits they would have earned otherwise or to retaliate against them for asserting their rights.

The [Family and Medical Leave Act](http://en.wikipedia.org/wiki/Family_and_Medical_Leave_Act),[[7]](http://en.wikipedia.org/wiki/United_States_labor_law#cite_note-6) passed in 1993, requires employers to provide workers with twelve weeks of unpaid medical leave and continuing medical benefit coverage in order to attend to certain medical conditions of close relatives or themselves. Many states have comparable statutory provisions; some states have offered greater protections.

The [Occupational Safety and Health Act](http://en.wikipedia.org/wiki/Occupational_Safety_and_Health_Act),[[8]](http://en.wikipedia.org/wiki/United_States_labor_law#cite_note-7) signed into law in 1970 by President [Richard Nixon](http://en.wikipedia.org/wiki/Richard_Nixon), creates specific standards for workplace safety. The Act has spawned years of litigation by industry groups that have challenged the standards limiting the amount of permitted exposure to chemicals such as [benzene](http://en.wikipedia.org/wiki/Benzene). The Act also provides for protection for "whistleblowers" who complain to governmental authorities about unsafe conditions while allowing workers the right to refuse to work under unsafe conditions in certain circumstances. The Act allows states to take over the administration of OSHA in their jurisdictions, so long as they adopt state laws at least as protective of workers' rights as under federal law. More than half of the states have done so.

Charter of Fundamental Rights of the European Union

[](http://en.wikipedia.org/wiki/File:01CFREU-Preamble-crop.jpg)

The preamble of the Charter

The **Charter of Fundamental Rights of the European Union** enshrines certain political, social, and economic rights for [European Union](http://en.wikipedia.org/wiki/European_Union) (EU) [citizens](http://en.wikipedia.org/wiki/Citizenship_of_the_European_Union) and residents, into [EU law](http://en.wikipedia.org/wiki/Law_of_the_European_Union). It was drafted by the [European Convention](http://en.wikipedia.org/wiki/European_Convention_(1999-2000)) and solemnly proclaimed on 7 December 2000 by the [European Parliament](http://en.wikipedia.org/wiki/European_Parliament), the [Council of Ministers](http://en.wikipedia.org/wiki/Council_of_the_European_Union) and the [European Commission](http://en.wikipedia.org/wiki/European_Commission). However its then legal status was uncertain and it did not have full legal effect [[1]](http://en.wikipedia.org/wiki/Charter_of_Fundamental_Rights_of_the_European_Union#cite_note-Craig_4th_ed_Chapter_11-0) until the entry into force of the [Treaty of Lisbon](http://en.wikipedia.org/wiki/Treaty_of_Lisbon) on 1 December 2009.

Under the Charter, the [European Union](http://en.wikipedia.org/wiki/European_Union) (EU) must act and legislate consistently with the Charter and the [EU's courts](http://en.wikipedia.org/wiki/Court_of_Justice_of_the_European_Union) will strike down EU legislation which contravenes it. The Charter only applies to [EU member states](http://en.wikipedia.org/wiki/Member_States_of_the_European_Union) when they are implementing EU law and does not extend the competences of the EU beyond the competences given to it in [the treaties](http://en.wikipedia.org/wiki/Treaties_of_the_European_Union).

The text

The Charter contains some 54 articles divided into seven titles. The first six titles deal with substantive rights under the headings: dignity, freedoms, equality, solidarity, citizens' rights and justice, while the last title deals with the interpretation and application of the Charter. Much of Charter is based on the [European Convention on Human Rights](http://en.wikipedia.org/wiki/European_Convention_on_Human_Rights) (ECHR), [European Social Charter](http://en.wikipedia.org/wiki/European_Social_Charter), the case-law of the [European Court of Justice](http://en.wikipedia.org/wiki/European_Court_of_Justice) and pre-existing provisions of [European Union law](http://en.wikipedia.org/wiki/European_Union_law).

* The first title, dignity, guarantees the right to life and prohibits torture, slavery and the death penalty. Its provisions are mostly based on the ECHR, although Article 1 closely reflects Article 1 of the [German Basic Law](http://en.wikipedia.org/wiki/German_Basic_Law).
* The second title covers liberty, privacy, marriage, thought, expression, assembly, education, work, property and asylum.
* The third title covers equality, the rights of children and the elderly.
* The fourth title covers social and workers' rights including the right to fair working conditions, protection against unjustified dismissal, and access to health care.
* The fifth title covers the rights of the EU citizens such as the right to vote in election to the [European Parliament](http://en.wikipedia.org/wiki/European_Parliament) and to move freely within the EU. It also includes several administrative rights such as a right to good administration, to access documents and to petition the European Parliament.
* The sixth title covers justice issues such as the right to an effective remedy, a fair trial, to the [presumption of innocence](http://en.wikipedia.org/wiki/Presumption_of_innocence), the [principle of legality](http://en.wikipedia.org/wiki/Principle_of_legality), non-retrospectivity and [double jeopardy](http://en.wikipedia.org/wiki/Double_jeopardy).
* The seventh title concerns the interpretation and application of the Charter. These issues are dealt with [above](http://en.wikipedia.org/wiki/Charter_of_Fundamental_Rights_of_the_European_Union#Legal_status).

# VIII Consumer Protection

Consumer protection

**Consumer protection** consists of laws and organizations designed to ensure the rights of consumers as well as fair trade competition and the free flow of truthful information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves. Consumer protection laws are a form of government [regulation](http://en.wikipedia.org/wiki/Regulation) which aims to protect the rights of [consumers](http://en.wikipedia.org/wiki/Consumer). For example, a government may require businesses to disclose detailed information about products—particularly in areas where safety or public health is an issue, such as food. Consumer protection is linked to the idea of "consumer rights" (that consumers have various rights as consumers), and to the formation of [consumer organizations](http://en.wikipedia.org/wiki/Consumer_organization), which help consumers make better choices in the marketplace and get help with [consumer complaints](http://en.wikipedia.org/wiki/Consumer_complaint).

Other organizations that promote consumer protection include government organizations and self-regulating business organizations such as consumer protection agencies and organizations, the [Federal Trade Commission](http://en.wikipedia.org/wiki/Federal_Trade_Commission), [ombudsmen](http://en.wikipedia.org/wiki/Ombudsman), [Better Business Bureaus](http://en.wikipedia.org/wiki/Better_Business_Bureau), etc.

A consumer is defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.[[1]](http://en.wikipedia.org/wiki/Consumer_protection#cite_note-0)

Consumer interests can also be protected by promoting competition in the markets which directly and indirectly serve consumers, consistent with economic efficiency, but this topic is treated in [competition law](http://en.wikipedia.org/wiki/Competition_law).

United Nations Guidelines for Consumer Protection

The **United Nations Guidelines for Consumer Protection** is a declaration of best practices in consumer protection law and policy. The Guidelines are not binding, but do provide a set of basic consumer protection objectives upon which governments have agreed, thereby serving as a policy framework for implementation at a national level.[[1]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-undesa-0) Whilst directed primarily at governments, some provisions of the Guidelines are also directed at businesses.[[2]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-1)

History

The earliest known statement of consumer rights at a political level was given on 16 March 1962, when President John F Kennedy of the United States delivered a speech to Congress in which he outlined [four consumer rights](http://en.wikipedia.org/wiki/Consumer_Bill_of_Rights): the right to safety, the right to be informed, the right to choose and the right to be heard.

In 1981, the [United Nations Economic and Social Council](http://en.wikipedia.org/wiki/United_Nations_Economic_and_Social_Council) "requested the Secretary-General to continue consultations on consumer protection with a view to elaborating a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries".[[3]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-2)

In 1983, draft guidelines for consumer protection were submitted to ECOSOC in response to its request. Following extensive discussions and negotiations, the Guidelines were adopted by consensus resolution of the [United Nations General Assembly](http://en.wikipedia.org/wiki/United_Nations_General_Assembly) on 9 April 1985. They have since been amended by the addition of a new section on sustainable consumption on 26 July 1999.[[1]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-undesa-0)

Structure

The Guidelines originally covered seven areas: physical safety, promotion and protection of consumers' economic interests, standards for the safety and quality of consumer goods and services, distribution facilities for essential consumer goods and services, measures enabling consumers to obtain redress, education and information programmes, and measures relating to specific areas (food, water, and pharmaceuticals). With their amendment in 1999, an eighth area, promotion of sustainable consumption, was added.

Reaction

The [United Nations Conference on Trade and Development](http://en.wikipedia.org/wiki/United_Nations_Conference_on_Trade_and_Development) (UNCTAD), which is the subsidiary body of the UN General Assembly that holds responsibility for consumer protection and competition policy, states that the Guidelines "take into account the interests and needs of consumers, particularly those in developing countries."[[4]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-3) A 1993 report on progress in implementation of the Guidelines by the UN Secretary-General noted that most governments who responded "reported that the guidelines had had a significant impact on their work" on consumer policy.[[5]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-4)

The reception of the Guidelines within the [consumer movement](http://en.wikipedia.org/wiki/Consumer_activism) has been positive. One consumer advocate has described them as having "made a major contribution to the advancement of the position of consumers around the world."[[6]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-brown-5) The eight sections of the Guidelines have also been restated as eight consumer rights by the [NGO](http://en.wikipedia.org/wiki/NGO) [Consumers International](http://en.wikipedia.org/wiki/Consumers_International), expanding upon those recognised by President Kennedy.[[7]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-6)

On the other hand, at the time of their negotiation the Guidelines were opposed by certain business interests and developed countries as paternalistic,[[6]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-brown-5) and they have since been criticised as vague, overblown and unnecessary.[[8]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-7)

Future

In 2011, Consumers International, which was involved in preparatory work for the original guidelines[[6]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-brown-5) and the sustainable consumption amendments,[[1]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-undesa-0) developed a suggested set of further amendments to the Guidelines covering the topic of [access to knowledge](http://en.wikipedia.org/wiki/Access_to_knowledge).[[9]](http://en.wikipedia.org/wiki/United_Nations_Guidelines_for_Consumer_Protection#cite_note-8)

Unfair Commercial Practices Directive

**Directive 2005/29/EC**, [[1]](http://en.wikipedia.org/wiki/Unfair_Commercial_Practices_Directive#cite_note-0) the **Unfair Commercial Practices Directive**, is a major reform of the law concerning [unfair business practices](http://en.wikipedia.org/wiki/Unfair_business_practices) in the [European Union](http://en.wikipedia.org/wiki/European_Union). Like any European Union Directive, it needs national rules to incorporate it in each national legal system (English, Scottish, French law etc.), although even without that it may have some effect in national law. Generally speaking, it will be difficult to predict exactly what the impact of the Directive is in a particular country without consulting the national implementing laws. In some states those laws may not yet exist.

About the directive

The idea behind the Directive was to combine a high level of consumer protection with freeing up international trade in the European Union. The theory is that differences in fair trading laws from country to country caused obstacles to trade (see Article 1 of the Directive and the recitals to it). In other words, the problem is not how strong consumer protection laws are in one country or another country, but rather the fact that the consumer protection laws are different from country to country. The Directive is supposed to reduce those differences, but keep a good level of consumer protection. That is supposed to be good for both business and consumers: good for businesses because they do not need to worry quite as much as before about different rules in different legal systems (though some difficulties are inevitable), and good for consumers because we have a decent level of consumer protection. Consumers can also expect the same kinds of consumer protection from country to country (again with some exceptions), which may make them feel safer buying things from abroad.

The Directive is designed to achieve what is called "maximum harmonisation" of business-to-consumer fair trading law. The idea of "maximum harmonisation" is that as well as requiring [member states](http://en.wikipedia.org/wiki/List_of_European_Union_member_states) of the European Union to apply the standards set out in European legislation, the European legislation means that the member states are not allowed to apply higher standards. In other words, the Directive tells European countries to give consumers the protection set out in the Directive, but nothing better than that. That maximum harmonisation is not yet in force.

# IX Company Law

Companies’ law

**Companies’ law** (or the law of **business associations**) is the field of [law](http://en.wikipedia.org/wiki/Law) concerning [companies](http://en.wikipedia.org/wiki/Company) and other business [organizations](http://en.wikipedia.org/wiki/Organization). This includes [corporations](http://en.wikipedia.org/wiki/Corporation), [partnerships](http://en.wikipedia.org/wiki/Partnership) and other associations which usually carry on some form of economic or charitable activity. The most prominent kind of company, usually referred to as a "corporation", is a "[juristic person](http://en.wikipedia.org/wiki/Juristic_person)", i.e. it has separate legal personality, and those who [invest money](http://en.wikipedia.org/wiki/Shareholder) into the business have [limited liability](http://en.wikipedia.org/wiki/Limited_liability) for any losses the company makes, governed by [corporate law](http://en.wikipedia.org/wiki/Corporate_law). The largest companies are usually publicly listed on [stock exchanges](http://en.wikipedia.org/wiki/Stock_exchange) around the world. Even single individuals, also known as [sole traders](http://en.wikipedia.org/wiki/Sole_trader) may incorporate themselves and limit their liability in order to carry on a business. All different forms of companies depend on the particular law of the particular country in which they reside.

The law of business organizations originally derived from the [common law](http://en.wikipedia.org/wiki/Common_law) of [England](http://en.wikipedia.org/wiki/England), but has evolved significantly in the 20th century. In common law countries today, the most commonly addressed forms are:

* [Corporation](http://en.wikipedia.org/wiki/Corporation)
* [Limited company](http://en.wikipedia.org/wiki/Limited_company)
* [Unlimited company](http://en.wikipedia.org/wiki/Unlimited_company)
* [Limited liability partnership](http://en.wikipedia.org/wiki/Limited_liability_partnership)
* [Limited partnership](http://en.wikipedia.org/wiki/Limited_partnership)
* [Not-for-profit corporation](http://en.wikipedia.org/wiki/Not-for-profit_corporation)
* [Partnership](http://en.wikipedia.org/wiki/Partnership)
* [Sole Proprietorship](http://en.wikipedia.org/wiki/Sole_Proprietorship)

The [proprietary limited company](http://en.wikipedia.org/wiki/Proprietary_limited_company) is a statutory business form in several countries, including [Australia](http://en.wikipedia.org/wiki/Australia).

Many countries have forms of business entity unique to that country, although there are equivalents elsewhere. Examples are the [Limited-liability company](http://en.wikipedia.org/wiki/Limited-liability_company) (LLC) and the [limited liability limited partnership](http://en.wikipedia.org/wiki/Limited_liability_limited_partnership) (LLLP) in the United States.

Other types of business organizations, such as [cooperatives](http://en.wikipedia.org/wiki/Cooperative), [credit unions](http://en.wikipedia.org/wiki/Credit_unions) and publicly owned enterprises, can be established with purposes that parallel, supersede, or even replace the [profit maximization](http://en.wikipedia.org/wiki/Profit_maximization) mandate of business corporations.

For a country-by-country listing of officially recognized forms of business organization, see [Types of business entity](http://en.wikipedia.org/wiki/Types_of_business_entity).

There are various types of company that can be formed in different jurisdictions, but the most common forms of company are:

* *a*[*company limited by guarantee*](http://en.wikipedia.org/wiki/Company_limited_by_guarantee). Commonly used where companies are formed for non-commercial purposes, such as clubs or charities. The members guarantee the payment of certain (usually nominal) amounts if the company goes into [insolvent liquidation](http://en.wikipedia.org/wiki/Liquidation), but otherwise they have no economic rights in relation to the company.
* *a company limited by guarantee with a share capital*. A hybrid entity, usually used where the company is formed for non-commercial purposes, but the activities of the company are partly funded by investors who expect a return.
* *a*[*company limited by shares*](http://en.wikipedia.org/wiki/Private_limited_company_by_shares). The most common form of company used for business ventures.
* *an*[*unlimited company*](http://en.wikipedia.org/wiki/Unlimited_Company) either with or without a share capital. This is a hybrid company, a company similar to its limited company (Ltd.) counterpart but where the members or shareholders do not benefit from limited liability should the company ever go into formal [liquidation](http://en.wikipedia.org/wiki/Liquidation).

There are, however, many specific categories of corporations and other business organizations which may be formed in various countries and [jurisdictions](http://en.wikipedia.org/wiki/Jurisdiction) throughout the world.

Articles of association

A company is an incorporated body. So there should be some rules and regulations are to be formed for the management of its internal affairs and conduct of its business as well as the relation between the members and the company. Moreover the rights and duties of its members and the company are to be recorded. There comes the need and origin of Articles of Association. The Articles of Association is a document that contains the purpose of the company as well as the duties and responsibilities of its members defined and recorded clearly. It is an important document which needs to be filed with the Registrar of companies. Articles of Association are a document which all companies should prepare.

The Article of Association contains the following details: 1. The powers of directors, officers and the shareholders as to voting etc., 2. The mode and form in which the business of the company is to be carried out. 3. The mode and form in which the changes in the internal regulations can be made. 4. The rights, duties and powers of the company as well as the members who are included in the Articles of Association.

The article is binding not only to the existing members, but also to the future members who may join in the future. The hires of members, successors and legal representatives are also bound by whatever is contained in the Article. The Articles bind the company and its members as soon as they sign the document. It is a contract between the company and its members. Members have certain rights and duties towards the company and the company have certain obligations towards its members. At the same time the company also expects some duties and obligations which the member has to fulfil for the smooth functioning of the company.

The term **articles of association** of a company, or [**articles of incorporation**](http://en.wikipedia.org/wiki/Articles_of_incorporation), of an American or Canadian Company, are often simply referred to as **articles** (and are often capitalized as an abbreviation for the full term). The Articles are a requirement for the establishment of a [company](http://en.wikipedia.org/wiki/Company_(law)) under the law of [India](http://en.wikipedia.org/wiki/India), the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom) Pakistan and many other countries. Together with the [memorandum of association](http://en.wikipedia.org/wiki/Memorandum_of_association), they are the constitution of a company. The equivalent term for [LLC](http://en.wikipedia.org/wiki/Limited_liability_company) is [Articles of Organization](http://en.wikipedia.org/wiki/Articles_of_Organization). Roughly equivalent terms operate in other countries, such as *Gesellschaftsvertrag* in Germany, *statuts* in France, *statut* in Poland, [[1]](http://en.wikipedia.org/wiki/Articles_of_association#cite_note-0) *Jeong-gwan* in South Korea.

The following is largely based on British Company Law, references which are made at the end of this Article.

The Articles can cover a medley of topics, not all of which is required in a country's law. Although all terms are not discussed, they may cover:

* the issuing of [shares](http://en.wikipedia.org/wiki/Shares) (also called [stock](http://en.wikipedia.org/wiki/Stock)), different voting rights attached to different classes of shares
* valuation of intellectual rights, say, the valuations of the IPR of one partner and, in a similar way as how we value real estate of another partner
* the appointments of directors - which shows whether a shareholder dominates or shares equality with all contributors
* directors meetings - the quorum and percentage of vote
* management decisions - whether the board manages or a founder
* transferability of shares - assignment rights of the founders or other members of the company do
* special voting rights of a Chairman, and his/her mode of election
* the [dividend policy](http://en.wikipedia.org/wiki/Dividend_policy) - a percentage of profits to be declared when there is profit or otherwise
* winding up - the conditions, notice to members
* confidentiality of know-how and the founders' agreement and penalties for disclosure
* first right of refusal - purchase rights and counter-bid by a founder.

A Company is essentially run by the shareholders, but for convenience, and day-to-day working, by the elected Directors. Usually, the shareholders elect a Board of Directors (BOD) at the Annual General Meeting (AGM), which may be statutory (e.g. India).

The number of Directors depends on the size of the Company and statutory requirements. The Chairperson is generally a well-known outsider but he /she may be a working Executive of the company, typically of an American Company. The Directors may, or may not, be employees of the Company.

In the emerging countries there are usually some major shareholders who come together to form the company. Each usually has the right to nominate, without objection of the other, a certain number of Directors who become nominees for the election by the shareholder body at the AGM. The Treasurer and Chairperson is usually the privilege of one of the JV partners (which nomination can be shared). Shareholders may also elect Independent Directors (from the public). The Chair would be a person not associated with the promoters of the company; a person is generally a well-known outsider.

Once elected, the BOD manages the Company. The shareholders play no part till the next AGM/EGM. The Objectives and the purpose of the Company are determined in advance by the shareholders and the Memorandum of Association (MOA), if separate, which denotes the name of the Company, its Head- Office, street address, and (founding) Directors and the main purposes of the Company - for public access. It cannot be changed except at an AGM or Extraordinary General Meeting (EGM) and statutory allowance. The MOA is generally filed with a 'Registrar of Companies' who is an appointee of the Government of the country. For their assurance, the shareholders are permitted to elect an Auditor at each AGM. There can be Internal Auditors (employees) as well as an External Auditor.

The Board meets several times each year. At each meeting there is an 'agenda' before it. A minimum number of Directors (a quorum) is required to meet. This is either determined by the 'by-laws' or is a statutory requirement. It is presided over by the Chairperson, or in his absence, by the Vice-Chair. The Directors survey their area of responsibility. They may determine to make a 'Resolution' at the next AGM or if it is an urgent matter, at an EGM. The Directors who are the electives of one major shareholder, may present his/her view but this is not necessarily so - they may have to view the Objectives of the Company and competitive position. The Chair may have to 'break' the vote if there is a 'tie'. At the AGM, the various Resolutions are put to vote.

The AGM is called with a notice sent to all shareholders with a clear interval. A certain quorum of shareholders is required to meet. If the quorum requirement is not met, it is cancelled and another Meeting called. If it at that Meeting a quorum is also not met, a Third Meeting may be called and the members present, unlimited by the quorum, take all decisions. There are variations to this among companies and countries.

Decisions are taken by a show of hands; the Chair is always present. Where decisions are made by a show of hands is challenged, it is met by a count of votes. Voting can be taken in person or by marking the paper sent by the Company. A person who is not a shareholder of the Company can vote if he/she has the 'proxy', an authorization from the shareholder. Each share carries the number of votes attached to it. Some votes maybe for the decision, some not. Two types of decision known are the Ordinary Resolution and a Special Resolution.

A Special Resolution can be tabled at a Director's Meeting. The Ordinary Resolution requires the endorsement by a majority vote, sometimes easily met by partners' vote. The Special Resolution requires a 60, 70 or 80% of the vote as stipulated by the 'constitution' of the Company. Shareholders other than partners may vote. The matters which require the Ordinary and Special Resolution to be passed are enumerated in Company or Corporate Law. Special Resolutions covering some topics may be a statutory requirement.

In the United Kingdom, model articles of association, known as [Table A](http://en.wikipedia.org/wiki/Table_A) have been published since 1865.[[3]](http://en.wikipedia.org/wiki/Articles_of_association#cite_note-2) The articles of association of most companies incorporated prior to 1 October 2009 – particularly small companies – are Table A, or closely derived from it. However, a company is free to incorporate under different articles of association, or to amend its articles of association at any time by a [special resolution](http://en.wikipedia.org/wiki/Special_resolution) of its shareholders, provided that they meet the requirements and restrictions of the Companies Acts. Such requirements tend to be more onerous for [public companies](http://en.wikipedia.org/wiki/Public_company) than for [private ones](http://en.wikipedia.org/wiki/Private_company_limited_by_shares).

The [Companies Act 2006](http://en.wikipedia.org/wiki/Companies_Act_2006) received [Royal Assent](http://en.wikipedia.org/wiki/Royal_Assent) on 8 November 2006 and was fully implemented on 1 October 2009. It provides for a new form of [Model Articles](http://en.wikipedia.org/wiki/Model_Articles) for companies incorporated in the United Kingdom. Under the new legislation, the articles of association will become the single [constitutional document](http://en.wikipedia.org/wiki/Constitutional_documents) for a UK company, and will subsume the majority of the role previously filled by the separate memorandum of association.[[4]](http://en.wikipedia.org/wiki/Articles_of_association#cite_note-3)

Sole proprietorship

A **sole proprietorship**, also known as the **sole trader** or simply a **proprietorship**, is a type of [business entity](http://en.wikipedia.org/wiki/Business_entity) that is owned and run by one individual and in which there is no legal distinction between the owner and the business. The owner receives all profits (subject to taxation specific to the business) and has unlimited responsibility for all losses and debts. Every asset of the business is owned by the proprietor and all debts of the business are the proprietor's. This means that the owner has no less liability than if they were acting as an individual instead of as a business. It is a "sole" proprietorship in contrast with [partnerships](http://en.wikipedia.org/wiki/Partnership). **Definition by Glos&Baker.** "A sole proprietorship is a business owned by one person who is entitled to all of its profits" A sole proprietor may use a [trade name](http://en.wikipedia.org/wiki/Trade_name) or business name other than his or her legal name. In many jurisdictions there are rules to enable the true owner of a business name to be ascertained. In the United States there is generally a requirement to file a [*doing business as*](http://en.wikipedia.org/wiki/Doing_business_as) statement with the local authorities.[[1]](http://en.wikipedia.org/wiki/Sole_Proprietorship#cite_note-0) In the United Kingdom the proprietor's name must be displayed on business stationery, in business emails and at business premises, and there are other requirements.[[2]](http://en.wikipedia.org/wiki/Sole_Proprietorship#cite_note-1)

Advantages

There are many advantages of [corporations](http://en.wikipedia.org/wiki/Corporation) that are described in that article; chiefly they are the ability to raise capital either publicly or privately, to limit the personal liability of the officers and managers, and to limit risk to investors. Sole proprietorships also have the least government rules and regulations affecting it.

Disadvantages

Raising capital for a proprietorship is more difficult because an unrelated investor has less peace of mind concerning the use and security of his or her investment and the investment is more difficult to formalize;[[3]](http://en.wikipedia.org/wiki/Sole_Proprietorship#cite_note-2) other types of business entities have more documentation.

As a business becomes successful, the risks accompanying the business tend to grow. One of the main disadvantages of sole proprietors is [unlimited liability](http://en.wikipedia.org/wiki/Sole_Trader_Insolvency) where the owner's personal assets can be taken away. This is particularly true for liabilities created by employees; a corporation only partially shields an owner or officer for his own actions according to the principle of [*piercing the corporate veil*](http://en.wikipedia.org/wiki/Piercing_the_corporate_veil). Lack of continuity as well. The enterprise may be crippled or terminated if the owner becomes ill. Since the business is the same legal entity as the proprietor, it ceases to exist upon the proprietor's death. Because the enterprise rests exclusively on one person, it often has difficulty raising long-term capital.

General partnership

In the commercial and legal parlance of most countries, a **general partnership** (the basic form of [**partnership**](http://en.wikipedia.org/wiki/Partnership) under [common law](http://en.wikipedia.org/wiki/Common_law)), refers to an association of persons or an unincorporated company with the following major features:

* Created by agreement, proof of existence and [estoppel](http://en.wikipedia.org/wiki/Estoppel).
* Formed by two or more persons
* The owners are all personally [liable](http://en.wikipedia.org/wiki/Legal_liability) for any legal actions and [debts](http://en.wikipedia.org/wiki/Debt) the company may face

It is a partnership in which partners share equally in both responsibility and liability.[[1]](http://en.wikipedia.org/wiki/General_partnership#cite_note-0)

Characteristics

Partnerships have certain default characteristics relating to both (a) the relationship between the individual partners and (b) the relationship between the partnership and the outside world. The former can generally be overridden by agreement between the partners, whereas the latter generally cannot be done.

The assets of the business are owned on behalf of the other partners, and they are each personally liable, [jointly and severally](http://en.wikipedia.org/wiki/Joint_and_several_liability), for business debts, taxes or [tortious](http://en.wikipedia.org/wiki/Tort) liability. For example, if a partnership defaults on a payment to a creditor, the partners' personal assets are subject to attachment and liquidation to pay the creditor.

By default, profits are shared equally amongst the partners. However, a partnership agreement will almost invariably expressly provide for the manner in which profits and losses are to be shared.

Each general partner is deemed the [agent](http://en.wikipedia.org/wiki/Agency_(law)) of the partnership. Therefore, if that partner is apparently carrying on partnership business, all general partners can be held liable for his dealings with third persons.

By default a partnership will terminate upon the death, disability, or even withdrawal of any one partner. However, most partnership agreements provide for these types of events, with the share of the departed partner usually being purchased by the remaining partners in the partnership.

By default, each general partner has an equal right to participate in the management and control of the business. Disagreements in the ordinary course of partnership business are decided by a majority of the partners, and disagreements of extraordinary matters and amendments to the partnership agreement require the consent of all partners. However, in a partnership of any size the partnership agreement will provide for certain electees to manage the partnership along the lines of a company board.

Unless otherwise provided in the partnership agreement, no one can become a member of the partnership without the consent of all partners, though a partner may assign his share of the profits and losses and right to receive distributions ("transferable interest"). A partner's [judgment](http://en.wikipedia.org/wiki/Legal_judgment) creditor may obtain an order charging the partner's "transferable interest" to satisfy a judgment.

Company formation

**Company formation** is the term for the process of [incorporation](http://en.wikipedia.org/wiki/Incorporation_(business)) of a business in the UK. It is also sometimes referred to as **company registration**. Under [UK company law](http://en.wikipedia.org/wiki/UK_company_law) and most international law a company or corporation is considered to be an entity that is separate from the people who own or operate the company.

Today the majority of UK companies are formed the same day electronically. Companies can be created by individuals, specialised agents, solicitors or accountants. Many solicitors and accountants subcontract incorporation out to specialised company formation agents. Most agents offer company formation packages for less than £100. The cost of carrying out paper filing directly with Companies House is £20. This fee does not include the cost of witnessing documents or preparation of [memorandum & articles of association](http://en.wikipedia.org/wiki/Memorandum_of_association) for the company which would usually be carried out by a solicitor or accountant. Forming a company via the paper filing method can take up to 4 weeks.

## Formation process for private limited companies

### Paper process

Under section 9 of the [Companies Act 2006](http://en.wikipedia.org/wiki/Companies_Act_2006),[[1]](http://en.wikipedia.org/wiki/Company_Formation#cite_note-0) those forming a company must send the following documents, together with the registration fee, to the Registrar of Companies.

For detailed information see the [Companies House](http://en.wikipedia.org/wiki/Companies_House) guide.[[2]](http://en.wikipedia.org/wiki/Company_Formation#cite_note-1)

#### Articles of Association

The Articles of Association (often referred to as just ‘articles’) is the document which sets out the rules for the running of the company's internal affairs. The company's articles delivered to the Registrar must be signed by each subscriber in front of a witness who must attest the signature.

In the event that articles are not registered for the new company, model (default) articles will be registered. These model articles can be chosen to be adopted in the IN01 form. This new procedure was introduced by the Companies Act 2006, Section 20.[[3]](http://en.wikipedia.org/wiki/Company_Formation#cite_note-2)

#### Form IN01

This contains the intended situation of the Registered Office, (this will be either in England and Wales, Northern Ireland, Scotland or Wales), the details of the consenting Secretary and Director(s), details of the subscribers and, in the case of a company limited by shares, details of the share capital. The form also includes the Statement of Compliance that the requirements of the Companies Act have been complied with.

#### Memorandum of Association

This contains the names and signatures of the subscribers that wish to form the company and, in the case of a company limited by shares, a commitment by the subscribers to take at least one share each. A draft template is available on the Companies House website.[[4]](http://en.wikipedia.org/wiki/Company_Formation#cite_note-3)

### Electronic process

The [electronic process](http://en.wikipedia.org/wiki/Electronic_process_of_law) can be accessed using compatible software that works with the [Companies House](http://en.wikipedia.org/wiki/Companies_House) eFiling service[[5]](http://en.wikipedia.org/wiki/Company_Formation#cite_note-4) and an account with Companies House. Company formation agents have direct links into Companies House, to look up the company name, and submit the company. Different agents have differences in their processes caused by their website and software implementation. Companies House have a list of company formation agents that have passed integration testing.[[6]](http://en.wikipedia.org/wiki/Company_Formation#cite_note-5)

## Types of company

The following can be formed by registration at Companies House:

* [Public limited company](http://en.wikipedia.org/wiki/Public_limited_company) (plc)
* [Private company limited by shares](http://en.wikipedia.org/wiki/Private_company_limited_by_shares) (Ltd, Limited)
* [Company limited by guarantee](http://en.wikipedia.org/wiki/Company_limited_by_guarantee)
* [Unlimited company](http://en.wikipedia.org/wiki/Unlimited_company)
* [Limited liability partnership](http://en.wikipedia.org/wiki/Limited_liability_partnership) (LLP)
* [Limited partnership](http://en.wikipedia.org/wiki/Limited_partnership) (LP)
* [Societas Europaea](http://en.wikipedia.org/wiki/Societas_Europaea) (SE): European Union-wide company structure
* [Community interest company](http://en.wikipedia.org/wiki/Community_interest_company)
* [European economic interest grouping](http://en.wikipedia.org/wiki/European_economic_interest_grouping) (EEIG)

Limited partnership

A **limited partnership** is a form of [partnership](http://en.wikipedia.org/wiki/Partnership) similar to a [general partnership](http://en.wikipedia.org/wiki/General_partnership), except that in addition to one or more *general partners* (GPs), there are one or more *limited partners* (LPs). It is a partnership in which only one partner is required to be a general partner.[[1]](http://en.wikipedia.org/wiki/Limited_partnership#cite_note-0)

The GPs are, in all major respects, in the same legal position as partners in a conventional firm, i.e. they have management control, share the right to use partnership property, share the profits of the firm in predefined proportions, and have [joint and several liability](http://en.wikipedia.org/wiki/Joint_and_several_liability) for the [debts](http://en.wikipedia.org/wiki/Debt) of the partnership.

As in a general partnership, the GPs have actual authority as [agents](http://en.wikipedia.org/wiki/Agency_(law)) of the firm to bind all the other partners in [contracts](http://en.wikipedia.org/wiki/Contract) with third parties that are in the ordinary course of the partnership's business. As with a general partnership, "An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners."[[2]](http://en.wikipedia.org/wiki/Limited_partnership#cite_note-1)

Limited liability

Like [shareholders](http://en.wikipedia.org/wiki/Shareholder) in a [corporation](http://en.wikipedia.org/wiki/Corporation), LPs have [limited liability](http://en.wikipedia.org/wiki/Limited_liability), meaning they are only liable on debts incurred by the firm to the extent of their registered investment and have no management authority. The GPs pay the LPs a return on their investment (similar to a [dividend](http://en.wikipedia.org/wiki/Dividend)), the nature and extent of which is usually defined in the partnership agreement. General Partners thus carry more liability, and in cases of financial loss, the GPs will be liable.

LP members are subject to the same alter ego [piercing theories](http://en.wikipedia.org/wiki/Piercing_the_corporate_veil) as corporate shareholders. However, it is more difficult to pierce the LP veil because LPs do not have a great many formalities to maintain. So long as the LP and the members do not commingle funds, it would be difficult to pierce its veil.[[3]](http://en.wikipedia.org/wiki/Limited_partnership#cite_note-2)

Membership interests in LPs and partnership interests are afforded a significant level of protection through the [charging order](http://en.wikipedia.org/wiki/Charging_order) mechanism. The charging order limits the creditor of a debtor-partner or a debtor-member to the debtor’s share of distributions, without conferring on the creditor any voting or management rights.[[4]](http://en.wikipedia.org/wiki/Limited_partnership#cite_note-3)

When the partnership is being constituted or the composition of the firm is changing, LPs are generally required to file documents with the relevant [state](http://en.wikipedia.org/wiki/Jurisdiction_(area)) registration office. LPs must also explicitly disclose their LP status when dealing with other parties, so that such parties are on notice that the individual negotiating with them carries limited liability. It is customary that the notepaper, other documentation, and electronic materials issued to the public by the firm will carry a clear statement identifying the legal nature of the firm and listing the partners separately as general and limited. Hence, unlike the GPs, the LPs do not have inherent [agency](http://en.wikipedia.org/wiki/Agency_(law)) authority to bind the firm unless they are subsequently *held out* as agents and so create an agency by [estoppel](http://en.wikipedia.org/wiki/Estoppel) or acts of ratification by the firm create ostensible authority.

Limited partnerships are distinct from [limited liability partnerships](http://en.wikipedia.org/wiki/Limited_liability_partnership), in which all partners have limited liability. In some jurisdictions, the limited liability of the LPs is contingent on their not participating in management.

Limited liability partnership

A **limited liability partnership** (**LLP**) is a partnership in which some or all partners (depending on the jurisdiction) have limited liability. It therefore exhibits elements of [partnerships](http://en.wikipedia.org/wiki/Partnership) and [corporations](http://en.wikipedia.org/wiki/Corporation).[[1]](http://en.wikipedia.org/wiki/Limited_liability_partnership#cite_note-0) In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This is an important difference from that of an unlimited partnership. In an LLP, some partners have a form of [limited liability](http://en.wikipedia.org/wiki/Limited_liability) similar to that of the shareholders of a corporation.[[2]](http://en.wikipedia.org/wiki/Limited_liability_partnership#cite_note-1) In some countries, an LLP must also have at least one "general partner" with unlimited liability. Unlike corporate shareholders, the partners have the right to manage the business directly. In contrast, corporate shareholders have to elect a board of directors under the laws of various state charters. The board organizes itself (also under the laws of the various state charters) and hires corporate officers who then have as "corporate" individuals the legal responsibility to manage the corporation in the corporation's best interest. An LLP also contains a different level of tax liability from that of a corporation.

Limited liability partnerships are distinct from [limited partnerships](http://en.wikipedia.org/wiki/Limited_partnerships) in some countries, which may allow all LLP partners to have limited liability, while a limited partnership may require at least one unlimited partner and allow others to assume the role of a passive and limited liability investor. As a result, in these countries, the LLP is more suited for businesses where all investors wish to take an active role in management.

Limited company

A **limited company** is a [company](http://en.wikipedia.org/wiki/Company) in which the liability of the members or subscribers of the company is limited to what they have invested or guaranteed to the company. Limited companies may be limited by [shares](http://en.wikipedia.org/wiki/Share_(finance)) or by guarantee. And the former of these, a limited company limited by shares, may be further divided into public companies and private companies. Who may become a member of a private limited company is restricted by law and by the company's rules. In contrast anyone may buy shares in a public limited company.

Limited companies can be found in most countries, although the detailed rules governing them vary widely. It is also common for a distinction to be made between the publicly tradable companies of *plc* type (for example, the German [Aktiengesellschaft](http://en.wikipedia.org/wiki/Aktiengesellschaft) (AG), Czech a.s. and the Mexican, French, Polish and Romanian [S.A.](http://en.wikipedia.org/wiki/S.A._(corporation))), and the "private" types of company (such as the [German](http://en.wikipedia.org/wiki/German_language) [GmbH](http://en.wikipedia.org/wiki/Gesellschaft_mit_beschr%C3%A4nkter_Haftung), [Polish](http://en.wikipedia.org/wiki/Polish_language) Sp. z o.o., the [Czech](http://en.wikipedia.org/wiki/Czech_language) s.r.o. and [Slovak](http://en.wikipedia.org/wiki/Slovak_language) s.r.o.).

## Kinds

### Private company limited by guarantee

A company that does not have share capital, but is guaranteed by its *members* who agree to pay a fixed amount in the event of the company's liquidation. [Charitable organisations](http://en.wikipedia.org/wiki/Charitable_organisation) often incorporate using this form of limited liability. Another example is the [Financial Services Authority](http://en.wikipedia.org/wiki/Financial_Services_Authority). In Australia, only an unlisted public company can be limited by guarantee.[[1]](http://en.wikipedia.org/wiki/Limited_company#cite_note-0)

### Private company limited by shares

Has shareholders with limited liability and its shares may not be offered to the general public. Shareholders of private companies limited by shares are often bound to offer the shares to their fellow shareholders prior to selling them to a third party.[[2]](http://en.wikipedia.org/wiki/Limited_company#cite_note-1)

### Public limited company

Public limited companies can be [publicly traded](http://en.wikipedia.org/wiki/Public_company) on a [stock exchange](http://en.wikipedia.org/wiki/Stock_exchange) — similar to the [U.S.](http://en.wikipedia.org/wiki/United_States) [Corporation](http://en.wikipedia.org/wiki/Corporation) (Corp.) and the [German](http://en.wikipedia.org/wiki/Germany) [Aktiengesellschaft](http://en.wikipedia.org/wiki/Aktiengesellschaft) (AG).

Limited liability company

A **limited liability company** (**LLC**) is a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of [company](http://en.wikipedia.org/wiki/Company) that provides [limited liability](http://en.wikipedia.org/wiki/Limited_liability) to its owners in the vast majority of [United States](http://en.wikipedia.org/wiki/United_States) jurisdictions. LLCs do not need to be organized for profit.

Overview

Often incorrectly called a "limited liability *corporation*" (instead of *company*), it is a hybrid business entity having certain characteristics of both a [corporation](http://en.wikipedia.org/wiki/Corporation) and a [partnership](http://en.wikipedia.org/wiki/Partnership) or [sole proprietorship](http://en.wikipedia.org/wiki/Sole_proprietorship) (depending on how many owners there are). An LLC, although a business entity, is a type of [unincorporated association](http://en.wikipedia.org/wiki/Voluntary_association) and is not a corporation. The primary characteristic an LLC shares with a corporation is [limited liability](http://en.wikipedia.org/wiki/Limited_liability), and the primary characteristic it shares with a partnership is the availability of [pass-through](http://en.wikipedia.org/wiki/Flow-through_entity) [income taxation](http://en.wikipedia.org/wiki/Taxation_in_the_United_States). It is often more flexible than a corporation, and it is well-suited for companies with a single owner.

LLC members are subject to the same alter ego [piercing theories](http://en.wikipedia.org/wiki/Piercing_the_corporate_veil) as corporate shareholders. However, it is more difficult to pierce the LLC veil because LLCs do not have many formalities to maintain. So long as the LLC and the members do not [commingle](http://en.wikipedia.org/wiki/Commingling) funds, it would be difficult to pierce its veil.[[1]](http://en.wikipedia.org/wiki/Limited_liability_company#cite_note-0) Membership interests in LLCs and partnership interests are also afforded a significant level of protection through the [charging order](http://en.wikipedia.org/wiki/Charging_order) mechanism. The charging order limits the creditor of a debtor-partner or a debtor-member to the debtor’s share of distributions, without conferring on the creditor any voting or management rights.[[2]](http://en.wikipedia.org/wiki/Limited_liability_company#cite_note-1) Limited liability company members may, in certain circumstances, also incur a personal liability in cases where distributions to members render the LLC insolvent.[[3]](http://en.wikipedia.org/wiki/Limited_liability_company#cite_note-2)

Flexibility and default rules

The phrase "unless otherwise provided for in the operating agreement" (or its equivalent) is found throughout all existing LLC statutes and is responsible for the flexibility the members of the LLC have in deciding how their LLC will be governed (provided it does not go outside legal bounds). State statutes typically provide automatic or "default" rules for how an LLC will be governed unless the operating agreement provides otherwise.

Similarly, the phrase “unless otherwise provided for in the bylaws” is also found in all corporation law statutes but often refers only to a narrower range of matters.

Unlimited company

An **unlimited company** or **private unlimited company** is a hybrid [company](http://en.wikipedia.org/wiki/Company) incorporated either with or without a share capital (and similar to its [limited company](http://en.wikipedia.org/wiki/Limited_liability) counterpart) but where the liability of the members or shareholders is not limited - that is, its members or shareholders have a joint, several and unlimited obligation to meet any insufficiency in the assets of the company in the event of the company's formal [liquidation](http://en.wikipedia.org/wiki/Liquidation). The joint, several and unlimited liability of the members or shareholders of the company to meet any insufficiency in the assets of the company (to settle its outstanding liabilities if any exist) only applies upon the formal liquidation of the company. Therefore, prior to any such formal liquidation of the company, any creditors or security holders of the company may only have recourse to the assets of the company and not to those of its members or shareholders.

Until such event occurs (formal liquidation) - an unlimited company is similar with its counterpart the limited company where its members or shareholders have no direct liability to the creditors or security holders of the company during its normal course of business or existence.

Unlimited companies are found in the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), [Ireland](http://en.wikipedia.org/wiki/Ireland), [Hong Kong](http://en.wikipedia.org/wiki/Hong_Kong), [Pakistan](http://en.wikipedia.org/wiki/Pakistan), [Nigeria](http://en.wikipedia.org/wiki/Nigeria), [India](http://en.wikipedia.org/wiki/India), [Australia](http://en.wikipedia.org/wiki/Australia), [New Zealand](http://en.wikipedia.org/wiki/New_Zealand) and other [jurisdictions](http://en.wikipedia.org/wiki/Jurisdiction_(area)) where the [company law](http://en.wikipedia.org/wiki/Company_law) is derived from [English law](http://en.wikipedia.org/wiki/English_law). They can also be found in [Germany](http://en.wikipedia.org/wiki/Germany), [France](http://en.wikipedia.org/wiki/France), [Macao](http://en.wikipedia.org/wiki/Macao), [Czech Republic](http://en.wikipedia.org/wiki/Czech_Republic) and in two jurisdictions in [Canada](http://en.wikipedia.org/wiki/Canada)—[Alberta](http://en.wikipedia.org/wiki/Alberta) and [Nova Scotia](http://en.wikipedia.org/wiki/Nova_Scotia)—where they are called [unlimited liability corporations](http://en.wikipedia.org/wiki/Unlimited_liability_corporation). In the United Kingdom they are formed or incorporated by registration under the [Companies Act 2006](http://en.wikipedia.org/wiki/Companies_Act_2006).

An unlimited company has the benefit and status of incorporation same as its limited company counterpart. Situations where an unlimited company will be preferred to an alternative business model or its limited company counterpart include:

* secrecy concerning financial affairs is desired, effectively shielding and protecting its financial affairs from its competitors and making them non-public information including shareholder dividend payments: a United Kingdom unlimited company, unlike its limited company counterpart, is generally not required to publish or make public its company [financial statements](http://en.wikipedia.org/wiki/Financial_statements) (file its annual financial accounts at [Companies House](http://en.wikipedia.org/wiki/Companies_House)).[[1]](http://en.wikipedia.org/wiki/Unlimited_company#cite_note-0)
* the company is trading in an area where limited liability is not acceptable, vital or practical.
* extending, in general, a greater assurance and confidence to creditors - in contrast to its *limited company* counterpart.
* there is a low risk of insolvency.
* the company or its trading activities has or generates sufficient capital, funds or financing without need to approach general lenders such as high-street retail banks.
* developing more advantageous company and business capital strategies in an ever increasing irreversible trend of bank [disintermediation](http://en.wikipedia.org/wiki/Disintermediation) by companies and their management.
* a focused higher standard of [board of directors](http://en.wikipedia.org/wiki/Board_of_directors) and [executive management](http://en.wikipedia.org/wiki/Senior_management) behaviour (or probity) and [business model](http://en.wikipedia.org/wiki/Business_model) for [risk management](http://en.wikipedia.org/wiki/Risk_management).
* a [flow-through entity](http://en.wikipedia.org/wiki/Flow-through_entity) is required for United States federal tax purposes, under the [entity classification](http://en.wikipedia.org/wiki/Corporate_tax_in_the_United_States#Entity_classification) rules.

Once formed or incorporated, an unlimited company can in some jurisdictions also re-register and designate itself to limited company status at any time with few formalities, the same also extends to a limited company which may at any time re-register and designate itself to an unlimited company status.

The Companies Act, 1956

|  |
| --- |
| [Emblem of India.svg](http://en.wikipedia.org/wiki/File:Emblem_of_India.svg) |
| An Act to consolidate and amend the law relating to companies and certain other associations |

**The Companies Act 1956** is an [Act](http://en.wikipedia.org/wiki/Act_of_Parliament) of the [Parliament of India](http://en.wikipedia.org/wiki/Parliament_of_India), enacted in 1956, which enabled [companies](http://en.wikipedia.org/wiki/Company) to be formed by registration, and set out the responsibilities of companies, their [directors](http://en.wikipedia.org/wiki/Executive_director) and [secretaries](http://en.wikipedia.org/wiki/Company_secretary).[[1]](http://en.wikipedia.org/wiki/The_Companies_Act,_1956#cite_note-0)

The Companies Act 1956 is administered by the [Government of India](http://en.wikipedia.org/wiki/Government_of_India) through the [Ministry of Corporate Affairs](http://en.wikipedia.org/wiki/Ministry_of_Corporate_Affairs_(India)) and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, [Company Law Board](http://en.wikipedia.org/wiki/Company_Law_Board), Director of Inspection, etc. The Registrar of Companies (ROC) handles incorporation of new companies and the administration of running companies.

Since its commencement, it has been amended many times, in which amendment of 198, 1990, 1996, 2000 and 2011 are notable.

Corporate law of Japan

Japan's current corporate law is based upon the Commercial Code as amended through December 30, 2005.[[31]](http://en.wikipedia.org/wiki/Law_of_Japan#cite_note-30) Shareholder liability rules generally follow American example. Under Japanese law the basic types of companies are:

* [Limited liability partnerships](http://en.wikipedia.org/wiki/Limited_liability_partnership) (*yūgen sekinin jigyō kumiai*)
* [Kabushiki kaisha](http://en.wikipedia.org/wiki/Kabushiki_kaisha) (K.K.), similar to an Anglo-American [corporation](http://en.wikipedia.org/wiki/Corporation)
* [Godo kaisha](http://en.wikipedia.org/wiki/Godo_kaisha) (GDK), similar to an American [limited liability company](http://en.wikipedia.org/wiki/Limited_liability_company)
* [Gōmei kaisha](http://en.wikipedia.org/wiki/G%C5%8Dmei_gaisha) (GMK), similar to an Anglo-American [general partnership](http://en.wikipedia.org/wiki/General_partnership)
* [Gōshi kaisha](http://en.wikipedia.org/wiki/G%C5%8Dshi_gaisha) (GSK), similar to an Anglo-American [limited partnership](http://en.wikipedia.org/wiki/Limited_partnership)

Kabushiki gaisha

**Kabushiki gaisha** ([株式会社](http://en.wiktionary.org/wiki/%E6%A0%AA%E5%BC%8F%E4%BC%9A%E7%A4%BE)[**?**](http://en.wikipedia.org/wiki/Help:Installing_Japanese_character_sets), lit. "stock companies") is a type of business corporation ([会社](http://en.wiktionary.org/wiki/%E4%BC%9A%E7%A4%BE) *kaisha*[**?**](http://en.wikipedia.org/wiki/Help:Installing_Japanese_character_sets)) defined under [Japanese law](http://en.wikipedia.org/wiki/Law_of_Japan).

## Formation

A kabushiki gaisha may be started with capital as low as ¥1, making the total cost of a K.K. incorporation approximately ¥240,000 (about US$2,500) in taxes and notarization fees. Under the old Commercial Code, a K.K. required starting capital of ¥10 million (about US$105,000); a lower capital requirement was later instituted, but corporations with under ¥3 million in assets were barred from issuing [dividends](http://en.wikipedia.org/wiki/Dividend), and companies were required to increase their capital to ¥10 million within five years of formation.[[7]](http://en.wikipedia.org/wiki/Kabushiki_kaisha#cite_note-Terrie-6)

The main steps in incorporation are the following:

1. Preparation and notarization of [articles of incorporation](http://en.wikipedia.org/wiki/Articles_of_incorporation)
2. Receipt of [capital](http://en.wikipedia.org/wiki/Financial_capital), either directly or through an offering

The incorporation of a K.K. is carried out by one or more incorporators (発起人 *hokkinin*, sometimes referred to as "promoters"). Although seven incorporators were required as recently as the 1980s, a K.K. now only needs one incorporator, which may be an individual or a corporation. If there are multiple incorporators, they must sign a [partnership](http://en.wikipedia.org/wiki/Partnership) agreement before incorporating the company.

### Articles of incorporation

The articles of incorporation of a K.K. must include, at a minimum:

1. The [trade name](http://en.wikipedia.org/wiki/Trade_name) of the company
2. The purposes of the company
3. The location of its head office
4. The value or minimum amount of assets received in exchange for the initial issuance of shares
5. The name and address of the incorporator(s)

The purpose statement requires some specialized knowledge, as Japan follows an [ultra vires](http://en.wikipedia.org/wiki/Ultra_vires) doctrine and does not allow a K.K. to act beyond its purposes. [Judicial](http://en.wikipedia.org/wiki/Judicial_scrivener) or [administrative scriveners](http://en.wikipedia.org/wiki/Administrative_scrivener) are often hired to draft the purposes of a new company.

Additionally, the articles of incorporation must contain the following if applicable:

1. Any non-cash assets contributed as capital to the company, the name of the contributor and the number of shares issued for such assets
2. Any assets promised to be purchased after the incorporation of the company and the name of the provider
3. Any compensation to be paid to the incorporator(s)
4. Non-routine incorporation expenses that will be borne by the company

Other matters may also be included, such as limits on the number of directors and auditors. The Corporation Code allows a K.K. to be formed as a "stock company that is not a public company"(公開会社でない株式会社 *kōkai gaisha denai kabushiki gaisha*), or a (so-called) "close company" (非公開会社 *hi-kōkai gaisha*), in which case the board of directors must approve any transfer of shares between shareholders; this designation must be made in the articles of incorporation.

The articles must be sealed by the incorporator(s) and notarized by a [notary public](http://en.wikipedia.org/wiki/Notary_public), then filed with the Legal Affairs Bureau in the jurisdiction where the company will have its head office.

### Receipt of capital

In a direct incorporation, each incorporator receives a specified amount of stock as designated in the articles of incorporation. Each incorporator must then promptly pay its share of the starting capital of the company, and if no directors have been designated in the articles of incorporation, meet to determine the initial directors and other officers.

The other method is an "incorporation by offering," in which each incorporator becomes the [underwriter](http://en.wikipedia.org/wiki/Underwriter) of a specified number of shares (at least one each), and the other shares are offered to other investors. As in a direct incorporation, the incorporators must then hold an organizational meeting to appoint the initial directors and other officers. Any person wishing to receive shares must submit an application to the incorporator, and then make payment for his or her shares by a date specified by the incorporator(s).

Capital must be received in a [commercial bank](http://en.wikipedia.org/wiki/Commercial_bank) account designated by the incorporator(s), and the bank must provide certification that payment has been made. Once the capital has been received and certified, the incorporation may be registered at the Legal Affairs Bureau.

German company law

**German company law** (*Gesellschaftsrecht*) is an influential legal regime for companies in Germany. The primary form of company is the public company or [*Aktiengesellschaft*](http://en.wikipedia.org/wiki/Aktiengesellschaft) (AG). The private company with limited liability is known as a [*Gesellschaft mit beschränkter Haftung*](http://en.wikipedia.org/wiki/Gesellschaft_mit_beschr%C3%A4nkter_Haftung) (GmbH). A partnership is called a [*Kommanditgesellschaft*](http://en.wikipedia.org/wiki/Kommanditgesellschaft) (KG).

Aktiengesellschaft

***Aktiengesellschaft*** (abbreviated **AG**) is a [German](http://en.wikipedia.org/wiki/German_language) term that refers to a [corporation](http://en.wikipedia.org/wiki/Corporation) that is limited by [shares](http://en.wikipedia.org/wiki/Share_(finance)), i.e., owned by [shareholders](http://en.wikipedia.org/wiki/Shareholder), and may be traded on a [stock market](http://en.wikipedia.org/wiki/Stock_market). The term is used in [Germany](http://en.wikipedia.org/wiki/Germany), [Austria](http://en.wikipedia.org/wiki/Austria) and [Switzerland](http://en.wikipedia.org/wiki/Switzerland). It is also used occasionally in [Luxembourg](http://en.wikipedia.org/wiki/Luxembourg) (though the French-language equivalent, *Société Anonyme*, is more common) and for companies incorporated in the German-speaking region of [Belgium](http://en.wikipedia.org/wiki/Belgium).[[1]](http://en.wikipedia.org/wiki/Aktiengesetz#cite_note-farlex-0) The form is roughly equivalent to the “[public limited company](http://en.wikipedia.org/wiki/Public_limited_company)” (plc) in the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom) and [Republic of Ireland](http://en.wikipedia.org/wiki/Republic_of_Ireland), to the “[publicly-held/open corporation](http://en.wikipedia.org/wiki/Public_company)” in the [United States](http://en.wikipedia.org/wiki/United_States), to the [*naamloze vennootschap*](http://en.wikipedia.org/wiki/Naamloze_vennootschap) in the [Netherlands](http://en.wikipedia.org/wiki/Netherlands) and [Belgium](http://en.wikipedia.org/wiki/Belgium), to the [*S.A.*](http://en.wikipedia.org/wiki/S.A._(corporation)) in [Spain](http://en.wikipedia.org/wiki/Spain), France, [Portugal](http://en.wikipedia.org/wiki/Portugal) and other [civil-law](http://en.wikipedia.org/wiki/Civil_law_(legal_system)) jurisdictions, and to the [*Societas Europaea*](http://en.wikipedia.org/wiki/Societas_Europaea) in the European Union.

Meaning of the word

The [German](http://en.wikipedia.org/wiki/German_language) word *Aktiengesellschaft* is a compound noun made up of two elements: *Aktien* meaning [shares](http://en.wikipedia.org/wiki/Shares), and [*Gesellschaft*](http://en.wikipedia.org/wiki/Gesellschaft) meaning society, or, in this context, company. Other types of German companies also have shares, although these shares are called *Anteile* rather than *Aktien*. A similar distinction exists in other languages; for example, in [Polish](http://en.wikipedia.org/wiki/Polish_language) the two types of share are called *akcja* and *udział*, or in [Spanish](http://en.wikipedia.org/wiki/Spanish_language), *acción* and *cuota*.

Legal basis

In Germany and Austria, the legal basis of the AG is the respective [Aktiengesetz](http://www.bundesrecht.juris.de/bundesrecht/aktg/) (abbr. AktG). In Switzerland, it is contained within the *Obligationenrecht* (OR). The lawrequires all corporations to specify their legal form in their name which tells the public their limitation of [liability](http://en.wikipedia.org/wiki/Legal_liability), all German (required by § 4 Aktiengesetz) and Austrian stock corporations include *Aktiengesellschaft* or *AG* as part of their name, frequently as a suffix.

Structure

German AGs have a "two-tiered board" structure consisting of a supervisory board (*Aufsichtsrat*) and a management board (*Vorstand*). The supervisory board is generally controlled by shareholders, although employees may have seats depending on the size of the company. The management board directly runs the company, but its members may be removed by the supervisory board, which also determines the management board's compensation.[[2]](http://en.wikipedia.org/wiki/Aktiengesetz#cite_note-geek-1) Some German AGs have management boards which determine their own remuneration, but that situation is now relatively uncommon.

Gesellschaft mit beschränkter Haftung

***Gesellschaft mit beschränkter Haftung*** (abbreviated **GmbH**, **GesmbH** or **Ges.m.b.H.**) (English: [*company with limited liability*](http://en.wikipedia.org/wiki/Limited_liability_company)) is a type of [legal entity](http://en.wikipedia.org/wiki/Juristic_person) very common in [Germany](http://en.wikipedia.org/wiki/Germany), [Austria](http://en.wikipedia.org/wiki/Austria), [Switzerland](http://en.wikipedia.org/wiki/Switzerland), and other [Central European](http://en.wikipedia.org/wiki/Central_Europe) countries. The name of the GmbH form emphasizes the fact that the owners (*Gesellschafter*, also known as members) of the entity are not personally liable for the company's debts.[[1]](http://en.wikipedia.org/wiki/Gesellschaft_mit_beschr%C3%A4nkter_Haftung#cite_note-0)[[2]](http://en.wikipedia.org/wiki/Gesellschaft_mit_beschr%C3%A4nkter_Haftung#cite_note-1) *GmbH*s are considered legal persons under German law.

Requirements of formation

It is widely accepted that a GmbH is formed in three stages: the founding association, which is regarded as a private partnership with full liability of the founding partners/members; the founded company (often styled as "GmbH i.G.", with "i.G." standing for *in Gründung* – literally "in the founding stages", with the meaning of "registration pending"); and finally the fully registered GmbH. Only the registration of the company in the Commercial Register ([*Handelsregister*](http://en.wikipedia.org/wiki/German_Trade_Register)) provides the GmbH with its full legal status.

The founding act and the articles of association have to be [notarized](http://en.wikipedia.org/wiki/Civil_law_notary). The GmbH law outlines the minimum content of the articles of association, but it is quite common to have a wide range of additional rules in the articles.

Under German law, the GmbH must have a minimum founding capital of €10,000. A supervisory board (*Aufsichtsrat*) is required if the company has more than 500 employees, otherwise the company is run only by the managing directors (*Geschäftsführer*) who have unrestricted proxy for the company. The members acting collectively may restrict the powers of the managing directors by giving them binding orders. In most cases, the articles of association list the business activities for which the directors must obtain prior consent from the members. Under German law, a violation of these duties by a managing director will not affect the validity of a contract with a third party, but the GmbH may hold the managing director in question liable for damages.

As of 2008, a derivate form called **Unternehmergesellschaft (haftungsbeschränkt)** (English: *entrepreneurial company (limited liability)*) or short **UG (haftungsbeschränkt)** was introduced. It does not require a minimum founding capital, and was introduced to assist company founders in setting up a new company. Also, the UG must accumulate 25% of its yearly earnings as legal reserve until it reaches €25,000. The owners may then decide to increase capital and rebrand to GmbH, or may omit the suffix *haftungsbeschränkt*.

Because a legal entity with liability limited to the contributed capital was regarded in the 19th century as something dangerous, German law has many restrictions unknown to [common law](http://en.wikipedia.org/wiki/Common_law) systems. A number of business transactions have to be [notarized](http://en.wikipedia.org/wiki/Civil_law_notary), such as transfer of shares, issuing of stock, and amendments to the articles of association. Many of those measures have to be filed with the company registry where they are checked by special judges or other judicial officers. This can be a tiresome and time-consuming process as in most cases the desired measures are only legally valid when entered into the registry. Because there is no central company registry in Germany but rather several hundred connected to regional courts, the administration of the law can be rather different between [German states](http://en.wikipedia.org/wiki/States_of_Germany). Since 2007 there has been an internet-based central company register for the whole of Germany, called ["Unternehmensregister"](https://www.unternehmensregister.de/ureg/).

Differences between GmbH in Germany, Austria, Switzerland and Liechtenstein

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Differences** | **Germany** | **Austria** | **Switzerland** | **Liechtenstein** |
| Minimum [share capital](http://en.wikipedia.org/wiki/Share_capital) | €25,000.00 | €35,000.00 | CHF20,000.00 | CHF30,000.00 |
| Mandatory [supervisory board](http://en.wikipedia.org/wiki/Supervisory_board) | 500 employees | 300 employees |  |  |

Kommanditgesellschaft

A **Kommanditgesellschaft** (abbreviated "KG") is the German name for a [limited partnership](http://en.wikipedia.org/wiki/Limited_partnership) [business entity](http://en.wikipedia.org/wiki/Types_of_business_entity) and is used in [German](http://en.wikipedia.org/wiki/Germany), [Austrian](http://en.wikipedia.org/wiki/Austria) and some other [European](http://en.wikipedia.org/wiki/European_Union) [legal](http://en.wikipedia.org/wiki/Law) systems.

Partnerships may be formed in the legal forms of [General Partnership](http://en.wikipedia.org/wiki/General_Partnership) (Offene Handelsgesellschaft, OHG) or [Limited Partnership](http://en.wikipedia.org/wiki/Limited_Partnership) (Kommanditgesellschaft, KG).

In the OHG, all partners are fully liable for the partnership's debts, whereas in the KG there are general partners (Komplementär) with unlimited liability and limited partners (Kommanditisten) whose liability is restricted to their fixed contributions to the partnership. Although a partnership itself is not a legal entity, it may acquire rights and incur liabilities, acquire title to real estate and sue or be sued.

The [**GmbH**](http://en.wikipedia.org/wiki/Gesellschaft_mit_beschr%C3%A4nkter_Haftung)**& Co. KG** is a limited partnership with, typically, the sole general partner being a limited liability company. It can thus combine the advantages of a partnership with those of the limited liability of a corporation.

A Dormant Partnership (Stille Gesellschaft) comes into existence when a person makes a contribution to an existing enterprise (company, partnership, sole proprietorship) and shares in the latter's profits. The dormant partner has no liability for the debts of the enterprise; in case of insolvency of the enterprise he is a creditor with the portion of his contribution not consumed by losses. Strictly speaking, the dormant partnership is nothing more than an 'undisclosed participation'.

A Civil-Law Association is not a legal entity and cannot sue or be sued. It is often used for single joint ventures (e.g. construction projects) and comes to an end when the joint project has been completed.

A Private Foundation (Privatstiftung) constitutes a conglomeration of property having legal personality but no shareholders; its activities involve managing its own funds and assets for the beneficiaries.

Types of business entity in Russia

There are three **types of business entity in Russia**. These are: Limited Liability Companies (LLCs), Joint-Stock Companies (JSCs) and partnerships. Both of the first two of these are [joint-stock companies](http://en.wikipedia.org/wiki/Joint-stock_companies) (in that they are owned by their shareholders) and have [limited liability](http://en.wikipedia.org/wiki/Limited_liability) (the shareholders are only liable for the company's debts to the face value of the shares).

## Joint-Stock Companies

There are two types of Russian Joint-Stock Companies:

1. Open joint-stock company ([Russian](http://en.wikipedia.org/wiki/Russian_language): [Открытое акционерное общество](http://ru.wikipedia.org/wiki/%D0%9E%D1%82%D0%BA%D1%80%D1%8B%D1%82%D0%BE%D0%B5_%D0%B0%D0%BA%D1%86%D0%B8%D0%BE%D0%BD%D0%B5%D1%80%D0%BD%D0%BE%D0%B5_%D0%BE%D0%B1%D1%89%D0%B5%D1%81%D1%82%D0%B2%D0%BE) (abbreviated OAO), is a legal entity whose shares may be publicly traded without the permission of other shareholders. An OAO can distribute its shares to an unlimited number of shareholders and sell them without limitations. The statutory minimum charter capital is 100,000 Russian [roubles](http://en.wikipedia.org/wiki/Roubles).
2. Closed joint-stock company ([Russian](http://en.wikipedia.org/wiki/Russian_language): [Закрытое акционерное общество](http://ru.wikipedia.org/wiki/%D0%97%D0%B0%D0%BA%D1%80%D1%8B%D1%82%D0%BE%D0%B5_%D0%B0%D0%BA%D1%86%D0%B8%D0%BE%D0%BD%D0%B5%D1%80%D0%BD%D0%BE%D0%B5_%D0%BE%D0%B1%D1%89%D0%B5%D1%81%D1%82%D0%B2%D0%BE) (abbreviated ZAO), is a legal entity whose shares are distributed among a limited number of shareholders. The maximum number of shareholders is 50. The statutory minimum charter capital is 10,000 Russian roubles.

Founders of a joint-stock company sign a written agreement for its formation which establishes procedures for creating the company, such as the size of authorized capital, the types and categories of shares, the cost of shares, the order for settling payments, and the rights and responsibilities of the founders. This agreement then becomes the organization charter, which contains information on the name of the company, the locations of offices, the type of company (OAO or ZAO), and other specific information on shares, capital, and so on. The company shares allotted upon founding the company must be fully paid within a year from the company's foundation, unless a shorter period is required by the founding contract. However, at least half of the shares must be paid within three months from the state registration of the company. A share which has been paid does not necessarily give voting rights to its owner.[[1]](http://en.wikipedia.org/wiki/Types_of_business_entity_in_Russia#cite_note-0)

Joint-stock companies are required to register the issue of shares with the Russian Federal Securities Market Commission (FSMC) in order to enable the shares to be traded either publicly (for an OAO) or among a limited number of people (for a ZAO). For registration, a set of documents must be submitted to the FSMC, and the procedure usually takes 30 days to enact.

### State-owned corporations

In [Russia](http://en.wikipedia.org/wiki/Russia), a JSC can be wholly or partially owned by the federal government. Such JSCs are different from another type of state-controlled company, the [unitary enterprise](http://en.wikipedia.org/wiki/Unitary_enterprise), which is a commercial organization that operates state-owned assets; state-owned JSCs do not own or operate any state property and the state acts just like an ordinary shareholder.

Some state-owned public corporations were formerly government agencies in the [Soviet Union](http://en.wikipedia.org/wiki/Soviet_Union) which were reorganized into wholly state-owned JSCs in 1992-1993 in order to undergo transition to a fully independent business. The management and the board of directors in such state-owned corporations were appointed by the [Council of Ministers](http://en.wikipedia.org/wiki/Russian_Council_of_Ministers)/[the government](http://en.wikipedia.org/wiki/Government_of_Russia), and included top government officials and ministers. The biggest of such corporations were initially incorporated as Russian joint-stock companies (RAOs) - the most well-known examples were [RAO UES](http://en.wikipedia.org/wiki/RAO_UES) and [RAO Gazprom](http://en.wikipedia.org/wiki/Gazprom) - but have since been converted to public JSCs (OAO), even though their shares remain the property of the government.

Less important or partially owned JSCs are managed through the [Federal Agency for State Property Management](http://en.wikipedia.org/wiki/Rosimushchestvo).

### Disadvantages

While a joint-stock company presents several advantages over a typical business establishment, the burden of creating a JSC typically outweighs that of a [limited liability company](http://en.wikipedia.org/wiki/Limited_liability_company) (LLC). This is especially true in Russia where the abnormally excessive legal and bureaucratic challenges facing prospective [entrepreneurs](http://en.wikipedia.org/wiki/Entrepreneur) typically dissuade most from starting a JSC.[[2]](http://en.wikipedia.org/wiki/Types_of_business_entity_in_Russia#cite_note-doingbusiness-1) Without the need to issue shares in an LLC, it makes [limited liability companies](http://en.wikipedia.org/wiki/Limited_liability_company) much more flexible when the need arises for the members to change the charter capital of the company. Furthermore, a limited liability company can collectively or individually hold at least a 10% percent interest in the company’s charter capital do not the power to request a court expel another participant.[[2]](http://en.wikipedia.org/wiki/Types_of_business_entity_in_Russia#cite_note-doingbusiness-1) All of this not capable in a joint-stock company, or prohibitively difficult. In any case, the benefits of a joint-stock company are often outweighed by those of an LLC.

European Company Regulation

The **Council Regulation on the Statute for a European Company** [2157/2001](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R2157:EN:HTML) is an [EU Regulation](http://en.wikipedia.org/wiki/EU_Regulation) containing the rules for a public EU company, called a **Societas Europaea**, or "SE". An SE can register in any [member state of the European Union](http://en.wikipedia.org/wiki/Member_state_of_the_European_Union), and transfer to other member states. As of January 2011, at least 702 registrations have been reported.[[1]](http://en.wikipedia.org/wiki/European_Company_Regulation#cite_note-0) Examples of companies registered as a European Company are [Allianz SE](http://en.wikipedia.org/wiki/Allianz), [BASF SE](http://en.wikipedia.org/wiki/BASF),[Strabag SE](http://en.wikipedia.org/wiki/Strabag), [Gfk SE](http://en.wikipedia.org/wiki/GfK) and [MAN SE](http://en.wikipedia.org/wiki/MAN_SE). National law continues to supplement the basic rules in the Regulation on formation and mergers.

The European Company Regulation is complemented by an [Employee Involvement Directive](http://en.wikipedia.org/wiki/Employee_Involvement_Directive) which sets rules for participation by employees on the company's [board of directors](http://en.wikipedia.org/wiki/Board_of_directors). There is also a statute allowing [European Cooperative Societies](http://en.wikipedia.org/wiki/European_Cooperative_Society).

There is no EU-wide register of SEs (an SE is registered on the national register of the member state in which it has its head office), but each registration is to be published in the [Official Journal of the European Union](http://en.wikipedia.org/wiki/Official_Journal_of_the_European_Union).

## Main provisions of the statute

### Formation

The Statute provides four ways of forming a European limited company: merger, formation of a holding company, formation of a joint subsidiary, or conversion of a public limited company previously formed under [national law](http://en.wikipedia.org/wiki/National_law). Formation by merger is available only to public limited companies from different Member States. Formation of an SE holding company is available to public and private limited companies with their registered offices in different Member States or having subsidiaries or branches in Member States other than that of their registered office. Formation of a joint subsidiary is available under the same circumstances to any legal entities governed by public or private law. See "The European Company all over Europe" De Gruyter Recht - Berlin for a general overview of the European process.[[2]](http://en.wikipedia.org/wiki/European_Company_Regulation#cite_note-1)

SEs can be created in the following ways:

1. By merger of national companies from different member states
2. By the creation of a joint venture between companies (or other entities) in different member states
3. By the creation of a SE subsidiary of a national company
4. By the conversion of a national company into an SE

### Minimum capital

The SE must have a minimum subscribed capital of €120,000, as per article 4(2) of the directive, subject to the provision that where a Member State requires a larger capital for companies exercising certain types of activities, the same requirement will also apply to an SE with its registered office in that Member State (article 4(3)).

### Registered office

The registered office of the SE designated in the statutes must be the place where it has its central administration, that is to say its true centre of operations. The SE may transfer its registered office within the Community without dissolving the company in one Member State in order to form a new one in another Member State, however, such a transfer is subject to the provisions of 8 which require, inter alia, the drawing up of a transfer proposal, a report justifying the legal and economic aspects of the transfer and the issuing, by the competent authority in the member state in which the SE is registered, of a certificate attesting to the completion of the required acts and formalities.

### Registration and liquidation

The registration and completion of the liquidation of an SE must be disclosed for information purposes in the Official Journal of the European Communities. Every SE must be registered in the State where it has its registered office, in a register designated by the law of that State.

### Statutes

The Statutes of the SE must provide as governing bodies the [general meeting of shareholders](http://en.wikipedia.org/wiki/Shareholders%27_meeting) and either a management board and a supervisory board (two-tier system) or an administrative board (single-tier system). Under the two-tier system the SE is managed by a management board. The member or members of the management board have the power to represent the company in dealings with third parties and in legal proceedings. They are appointed and removed by the [supervisory board](http://en.wikipedia.org/wiki/Supervisory_board). No person may be a member of both the management board and the supervisory board of the same company at the same time. But the supervisory board may appoint one of its members to exercise the functions of a member of the management board in the event of absence through holidays. During such a period the function of the person concerned as a member of the supervisory board shall be suspended. Under the single-tier system, the SE is managed by an administrative board. The member or members of the administrative board have the power to represent the company in dealings with third parties and in legal proceedings. Under the single-tier system the administrative board may delegate the power of management to one or more of its members.

The following operations require the authorization of the supervisory board or the deliberation of the administrative board:

* any investment project requiring an amount more than the percentage of subscribed capital;
* the conclusion of supply and performance contracts where the total turnover provided for therein is more than the percentage of turnover for the previous financial year;
* the raising or granting of loans, the issue of [debt](http://en.wikipedia.org/wiki/Debt) [securities](http://en.wikipedia.org/wiki/Security_(finance)) and the assumption of liabilities of a third party or [suretyship](http://en.wikipedia.org/wiki/Suretyship) for a third party where the total [money](http://en.wikipedia.org/wiki/Money) value in each case is more than the percentage of subscribed capital;
* the setting-up, acquisition, disposal or closing down of undertakings, businesses or parts of businesses where the purchase price or disposal proceeds account for more than the percentage of subscribed capital;
* the percentage referred to above is to be determined by the Statutes of the SE. It may not be less than 5% nor more than 25%.

### Annual accounts

The SE must draw up annual accounts comprising the balance sheet, the profit and loss account and the notes to the accounts, and an annual report giving a fair view of the company's business and of its position; consolidated accounts may also be required.

### Taxation

In tax matters, the SE is treated the same as any other multinational, i.e. it is subject to the tax regime of the national legislation applicable to the company and its subsidiaries. SEs are subject to taxes and charges in all Member States where their administrative centres are situated. Thus their tax status is not perfect as there is still no adequate harmonization at European level.

### Winding-up

Winding-up, liquidation, insolvency and suspension of payments are in large measure to be governed by national law. An SE which transfers its registered office outside the Community, or in any other manner no longer complies with requirements of article 7, the member state must take appropriate measures to ensure compliance or take the necessary measure to ensure that the SE is liquidated.

European Cooperative Society

The **European Cooperative Society** (**SCE**, for [Latin](http://en.wikipedia.org/wiki/Latin) *Societas Cooperativa Europaea*) is, in [company law](http://en.wikipedia.org/wiki/Company_law), a European [co-operative](http://en.wikipedia.org/wiki/Co-operative) [type](http://en.wikipedia.org/wiki/Types_of_corporations) of [company](http://en.wikipedia.org/wiki/Company), established in 2006 and related to the [European Company](http://en.wikipedia.org/wiki/European_Company_Statute). European Cooperative Societies may be established, and may operate, throughout the [European Economic Area](http://en.wikipedia.org/wiki/European_Economic_Area) (including the [European Community](http://en.wikipedia.org/wiki/European_Community)). The legal form was created to remove the need for co-operatives to establish a [subsidiary](http://en.wikipedia.org/wiki/Subsidiary) in each [Member State](http://en.wikipedia.org/wiki/European_Union_member_state) in which they operate, and to allow them to move their [registered office](http://en.wikipedia.org/wiki/Registered_office) and [head office](http://en.wikipedia.org/wiki/Head_office) freely from one Member State to another, keeping their [legal identity](http://en.wikipedia.org/wiki/Legal_person) and without having to register or [wind up](http://en.wikipedia.org/wiki/Liquidation) any [legal persons](http://en.wikipedia.org/wiki/Legal_person). No matter where they are established, SCEs are governed by a single [EEA](http://en.wikipedia.org/wiki/European_Economic_Area)-wide set of rules and principles which are supplemented by the laws on co-operatives in each Member State, and other areas of [law](http://en.wikipedia.org/wiki/Law).

Formation

Article 2(1) of the SCE Regulation [[1]](http://en.wikipedia.org/wiki/European_Cooperative_Society#cite_note-SCE_Regulation-0) provides for SCEs to be formed in five ways:

* *ex novo*: by five or more [natural persons](http://en.wikipedia.org/wiki/Natural_person) resident in at least two Member States
* by a merger between at least two EEA co-operatives governed by the law of at least two different Member States;
* by at least five natural and [legal persons](http://en.wikipedia.org/wiki/Legal_person) resident in, or governed by the law of, at least two Member States;
* by conversion of a single EEA co-operative, if it has had an establishment or subsidiary in a different Member State for at least two years.
* by two or more legal persons governed by the law of at least two Member States;

European economic interest grouping

A **European Economic Interest Grouping** (EEIG) is a type of [legal entity](http://en.wikipedia.org/wiki/Juristic_person) created on 1985-07-25 under [European Community](http://en.wikipedia.org/wiki/European_Community) (EC) Council [Regulation](http://en.wikipedia.org/wiki/Regulation_(European_Union)) [2137/85](http://en.wikipedia.org/w/index.php?title=Council_Regulation_(EC)_No._2137/85&action=edit&redlink=1)[[1]](http://en.wikipedia.org/wiki/European_economic_interest_grouping#cite_note-0). It is designed to make it easier for companies in different countries to do business together or to form [consortia](http://en.wikipedia.org/wiki/Consortium) to take part in EU programmes.

Its activities must be ancillary to those of its members, and, as with a [partnership](http://en.wikipedia.org/wiki/Partnership), any profit or loss it makes is attributed to its members. Thus, although it is liable for [VAT](http://en.wikipedia.org/wiki/VAT) and employees’ [social insurance](http://en.wikipedia.org/wiki/Social_insurance), it is not liable to [corporation tax](http://en.wikipedia.org/wiki/Corporation_tax). It has [unlimited liability](http://en.wikipedia.org/wiki/Unlimited_liability). It was based on the pre-existing French *groupement d´intérêt économique* (G.i.e.).

Several thousand EEIGs now exist, active in fields as varied as agricultural marketing, legal advice, research and development, osteopathy, motorcycle preservation and cat-breeding. One of the more famous EEIGs is the Franco-German television channel [*ARTE*](http://en.wikipedia.org/wiki/ARTE)[[2]](http://en.wikipedia.org/wiki/European_economic_interest_grouping#cite_note-1).

Corporate law

**Corporate law** (also "company" or "corporations" law) is the study of how [shareholders](http://en.wikipedia.org/wiki/Shareholders), [directors](http://en.wikipedia.org/wiki/Board_of_directors), [employees](http://en.wikipedia.org/wiki/Employees), [creditors](http://en.wikipedia.org/wiki/Creditors), and other stakeholders such as [consumers](http://en.wikipedia.org/wiki/Consumer), the [community](http://en.wikipedia.org/wiki/Community) and the [environment](http://en.wikipedia.org/wiki/Environment_(biophysical)) interact with one another. Corporate law is a part of a broader [companies law](http://en.wikipedia.org/wiki/Companies_law) (or law of business associations). Other types of business associations can include [partnerships](http://en.wikipedia.org/wiki/Partnership) (in the UK governed by the Partnership Act 1890), or [trusts](http://en.wikipedia.org/wiki/Trusts) (like a pension fund), or companies limited by guarantee (like some universities or charities). Under corporate law, corporations of all sizes have [separate legal personality](http://en.wikipedia.org/wiki/Separate_legal_personality), with [limited liability](http://en.wikipedia.org/wiki/Limited_liability) or [unlimited liability](http://en.wikipedia.org/wiki/Unlimited_company) for its shareholders. Shareholders control the company through a [board of directors](http://en.wikipedia.org/wiki/Board_of_directors) which, in turn, typically delegates control of the corporation's day to day operations to a full-time [executive](http://en.wikipedia.org/wiki/Executive_(management)). Corporate law deals with firms that are incorporated or registered under the corporate or company law of a [sovereign state](http://en.wikipedia.org/wiki/Sovereign_state) or their [subnational states](http://en.wikipedia.org/wiki/Administrative_division). The four defining characteristics of the modern corporation are: [[1]](http://en.wikipedia.org/wiki/Corporate_law#cite_note-0)

* [Separate Legal Personality](http://en.wikipedia.org/wiki/Separate_Legal_Personality) of the corporation (access to tort and contract law in a manner similar to a person)
* [Limited Liability](http://en.wikipedia.org/wiki/Limited_Liability) of the shareholders (a shareholder's personal liability is limited to the value of their shares in the corporation)
* [Shares](http://en.wikipedia.org/wiki/Share_(finance)) (if the corporation is a [public company](http://en.wikipedia.org/wiki/Public_company), the shares are traded on a [stock exchange](http://en.wikipedia.org/wiki/Stock_exchange), such as the [London Stock Exchange](http://en.wikipedia.org/wiki/London_Stock_Exchange), [New York Stock Exchange](http://en.wikipedia.org/wiki/New_York_Stock_Exchange), [Euronext](http://en.wikipedia.org/wiki/Euronext) in [Paris](http://en.wikipedia.org/wiki/Paris) or [BM&F Bovespa](http://en.wikipedia.org/wiki/BM%26F_Bovespa) in [Sao Paulo](http://en.wikipedia.org/wiki/Sao_Paulo))
* [Delegated Management](http://en.wikipedia.org/wiki/Delegation); the [board of directors](http://en.wikipedia.org/wiki/Board_of_directors) delegates day-to-day management of the company to [executives](http://en.wikipedia.org/wiki/Executive_(management))

In most developed countries outside of the English speaking world, company boards are appointed as representatives of both shareholders and employees to "[codetermine](http://en.wikipedia.org/wiki/Codetermination)" company strategy [[*citation needed*](http://en.wikipedia.org/wiki/Wikipedia:Citation_needed)]. Corporate law is often divided into [corporate governance](http://en.wikipedia.org/wiki/Corporate_governance) (which concerns the various power relations within a corporation) and [corporate finance](http://en.wikipedia.org/wiki/Corporate_finance) (which concerns the rules on how capital is used). A major contributor to company law in the UK is the [Companies Act 2006](http://en.wikipedia.org/wiki/Companies_Act_2006).

## Corporate law in context

### Definition

The word "corporation" is generally synonymous with large publicly owned companies. In the United States, a company may or may not be a separate legal entity, and is often used synonymously with "firm" or "business." A [corporation](http://en.wikipedia.org/wiki/Corporation) may accurately be called a company; however, a company should not necessarily be called a corporation, which has distinct characteristics. According to [Black's Law Dictionary](http://en.wikipedia.org/wiki/Black%27s_Law_Dictionary), in the U.S. a company means "a corporation — or, less commonly, an association, partnership or union — that carries on industrial enterprise."[[2]](http://en.wikipedia.org/wiki/Corporate_law#cite_note-1)

The defining feature of a corporation is its legal independence from the people who create it. If a corporation fails, its shareholders will lose their money, and employees will lose their jobs, though disproportionately affecting its workers as opposed to its upper executives. Shareholders, however owning a part piece of the company, are not liable for debts that remain owing to the corporation's creditors. This rule is called [limited liability](http://en.wikipedia.org/wiki/Limited_liability), and it is why corporations end with "[Ltd.](http://en.wikipedia.org/wiki/Ltd.)" (or some variant like "[Inc.](http://en.wikipedia.org/wiki/Incorporation_(business))" and "[plc](http://en.wikipedia.org/wiki/Public_limited_company)").

Corporations are recognized by the law to have rights and responsibilities like actual people. Corporations can exercise [human rights](http://en.wikipedia.org/wiki/Human_rights) against real individuals and the state, [[4]](http://en.wikipedia.org/wiki/Corporate_law#cite_note-3) and they may be responsible for human rights violations.[[5]](http://en.wikipedia.org/wiki/Corporate_law#cite_note-4) Just as they are "born" into existence through its members obtaining a [certificate of incorporation](http://en.wikipedia.org/wiki/Certificate_of_incorporation), they can "die" when they lose money into [insolvency](http://en.wikipedia.org/wiki/Insolvency). Corporations can even be convicted of criminal offences, such as [fraud](http://en.wikipedia.org/wiki/Fraud) and [manslaughter](http://en.wikipedia.org/wiki/Manslaughter).[[6]](http://en.wikipedia.org/wiki/Corporate_law#cite_note-5)

### Corporate personality

One of the key legal features of corporations is their separate legal personality, also known as "personhood" or being "artificial persons". Separate legal personality often has [unintended consequences](http://en.wikipedia.org/wiki/Unintended_consequence), particularly in relation to smaller, [family companies](http://en.wikipedia.org/wiki/Family_company).

Separate legal personality does allow corporate groups a great deal of flexibility in relation to tax planning, and also enables [multinational companies](http://en.wikipedia.org/wiki/Multinational_corporation) to manage the liability of their overseas operations. There are certain specific situations where courts are generally prepared to "[pierce the corporate veil](http://en.wikipedia.org/wiki/Piercing_the_corporate_veil)", to look directly at, and impose liability directly on the individuals behind the company. The most commonly cited examples are:

* where the company is a mere façade
* where the company is effectively just the agent of its members or controllers
* where a representative of the company has taken some personal responsibility for a statement or action[[14]](http://en.wikipedia.org/wiki/Corporate_law#cite_note-13)
* where the company is engaged in fraud or other criminal wrongdoing
* where the natural interpretation of a contract or statute is as a reference to the corporate group and not the individual company
* where permitted by statute (for example, many jurisdictions provide for shareholder liability where a company breaches [environmental protection laws](http://en.wikipedia.org/wiki/Environmental_law))
* in many jurisdictions, where a company continues to trade despite foreseeable [bankruptcy](http://en.wikipedia.org/wiki/Bankruptcy), the directors can be forced to account for trading losses personally

Incorporation (business)

**Incorporation** (**Inc.**) is the forming of a new [corporation](http://en.wikipedia.org/wiki/Corporation) (a corporation being a legal entity that is effectively [recognised as a person under the law](http://en.wikipedia.org/wiki/Corporate_personhood)). The corporation may be a business, a [non-profit organization](http://en.wikipedia.org/wiki/Non-profit_organization), [sports club](http://en.wikipedia.org/wiki/Sports_club), or a [government](http://en.wikipedia.org/wiki/Government) of a new [city](http://en.wikipedia.org/wiki/City) or [town](http://en.wikipedia.org/wiki/Town). This article focuses on the process of incorporation; see also [corporation](http://en.wikipedia.org/wiki/Corporation).

## In the United States

### Legal benefits

* **Protection of personal assets**. One of the most important legal benefits is the safeguarding of personal assets against the claims of creditors and lawsuits. Sole proprietors and general partners in a [partnership](http://en.wikipedia.org/wiki/Partnership) are personally and jointly responsible for all the [liabilities](http://en.wikipedia.org/wiki/Legal_liability) of a business such as loans, accounts payable, and legal judgments. In a corporation, however, [stockholders](http://en.wikipedia.org/wiki/Stockholders), [directors](http://en.wikipedia.org/wiki/Board_of_directors) and [officers](http://en.wikipedia.org/wiki/Chief_executive_officer) typically are not liable for the company's debts and obligations. They are limited in liability to the amount they have invested in the corporation. For example, if a shareholder purchased $100 in stock, no more than $100 can be lost. Corporations and [limited liability companies](http://en.wikipedia.org/wiki/Limited_liability_company) (LLCs) may hold assets such as real estate, cars or boats. If a shareholder of a corporation is personally involved in a lawsuit or [bankruptcy](http://en.wikipedia.org/wiki/Bankruptcy), these assets may be protected. A creditor of a shareholder of a corporation or LLC cannot seize the assets of the company. However, the creditor can seize ownership shares in the corporation, as they are considered a personal asset.
* **Transferable ownership**. Ownership in a corporation or LLC is easily transferable to others, either in whole or in part. Some state laws are particularly corporate-friendly. For example, the transfer of ownership in a corporation incorporated in [Delaware](http://en.wikipedia.org/wiki/Delaware_corporation) is not required to be filed or recorded.
* **Retirement funds**. Retirement funds and qualified retirements plans, such as a [401(k)](http://en.wikipedia.org/wiki/401(k)), may be established more easily.
* **Taxation**. In the United States, corporations are [taxed](http://en.wikipedia.org/wiki/Tax) at a lower rate than individuals are. Also, they can own shares in other corporations and receive corporate dividends 80% tax-free. There are no limits on the amount of losses a corporation may carry forward to subsequent tax years. A sole proprietorship, on the other hand, cannot claim a capital loss greater than $3,000 unless the owner has offsetting capital gains.
* **Raising funds through sale of stock**. A corporation can easily raise capital from investors through the sale of stock.
* **Durability**. A corporation is capable of continuing indefinitely. Its existence is not affected by the death of shareholders, directors, or officers of the corporation.
* **Credit rating**. Regardless of an owner's personal [credit scores](http://en.wikipedia.org/wiki/Credit_score), a corporation can acquire its own [credit rating](http://en.wikipedia.org/wiki/Credit_rating), and build a separate credit history by applying for and using corporate credit.

### Steps required for incorporation

The [**articles of incorporation**](http://en.wikipedia.org/wiki/Articles_of_incorporation) (also called a [charter](http://en.wikipedia.org/wiki/Charter), [certificate of incorporation](http://en.wikipedia.org/wiki/Certificate_of_incorporation) or [letters patent](http://en.wikipedia.org/wiki/Letters_patent)) are filed with the appropriate state office, listing the purpose of the corporation, its principal place of business and the number and type of shares of stock.[[1]](http://en.wikipedia.org/wiki/Incorporation_(business)#cite_note-0) A registration fee is due, which is usually between $25 and $1,000, depending on the state.

A corporate name is generally made up of three parts: "distinctive element", "descriptive element", and a legal ending. All corporations must have a distinctive element, and in most filing jurisdictions, a legal ending to their names. Some corporations choose not to have a descriptive element. In the name "Tiger Computers, Inc.", the word "Tiger" is the distinctive element; the word "Computers" is the descriptive element; and the "Inc." is the legal ending. The legal ending indicates that it is in fact a legal corporation and not just a [business registration](http://en.wikipedia.org/wiki/Business_License) or [partnership](http://en.wikipedia.org/wiki/Partnership). Incorporated, limited, and corporation, or their respective abbreviations (Inc., Ltd., Corp.) are the possible legal endings in the U.S.

Usually, there are also [**corporate bylaws**](http://en.wikipedia.org/wiki/Bylaw) which must be filed with the state. Bylaws outline a number of important administrative details such as when annual shareholder meetings will be held, who can vote and the manner in which shareholders will be notified if there is need for an additional "special" meeting.

Corporate liability

In [criminal law](http://en.wikipedia.org/wiki/Criminal_law), **corporate liability** determines the extent to which a [corporation](http://en.wikipedia.org/wiki/Corporation) as a [legal person](http://en.wikipedia.org/wiki/Legal_person) can be liable for the acts and [omissions](http://en.wikipedia.org/wiki/Omission_(criminal_law)) of the [natural persons](http://en.wikipedia.org/wiki/Natural_person) it employs. It is sometimes regarded as an aspect of criminal [vicarious liability](http://en.wikipedia.org/wiki/Vicarious_liability_(criminal)), as distinct from the situation in which the wording of a [statutory](http://en.wikipedia.org/wiki/Statutory) offence specifically attaches liability to the corporation as the principal or joint principal with a human agent.

The concepts

The imposition of criminal liability is only one means of regulating corporations. There are also [civil law](http://en.wikipedia.org/wiki/Civil_law_(common_law)) [remedies](http://en.wikipedia.org/wiki/Remedy_(law)) such as [injunction](http://en.wikipedia.org/wiki/Injunction) and the award of [damages](http://en.wikipedia.org/wiki/Damages) which may include a penal element. Generally, criminal sanctions include [imprisonment](http://en.wikipedia.org/wiki/Imprisonment), fines and community service orders. A company has no physical existence, so it can only act vicariously through the agency of the human beings it employs. While it is relatively uncontroversial that human beings may commit crimes for which [punishment](http://en.wikipedia.org/wiki/Punishment) is a just desert, the extent to which the corporation should incur liability is less clear. Obviously, a [company](http://en.wikipedia.org/wiki/Company_(law)) cannot be sent to [jail](http://en.wikipedia.org/wiki/Prison), and if a [fine](http://en.wikipedia.org/wiki/Fine_(penalty)) is to be paid, this diminishes both the money available to pay the [wages](http://en.wikipedia.org/wiki/Wage) and [salaries](http://en.wikipedia.org/wiki/Salary) of all the remaining employees, and the [profits](http://en.wikipedia.org/wiki/Profit_(accounting)) available to pay all the existing [shareholders](http://en.wikipedia.org/wiki/Shareholder). Thus, the effect of the only available punishment is deflected from the wrongdoer personally and distributed among all the innocent parties who supply the [labour](http://en.wikipedia.org/wiki/Labour_(economics)) and the [capital](http://en.wikipedia.org/wiki/Capital_(economics)) that keep the corporation [solvent](http://en.wikipedia.org/wiki/Solvency).

Because, at a [public policy](http://en.wikipedia.org/wiki/Public_policy_(law)) level, the growth and prosperity of [society](http://en.wikipedia.org/wiki/Society) depends on the business [community](http://en.wikipedia.org/wiki/Community), [governments](http://en.wikipedia.org/wiki/Government) recognise limits on the extent to which each permitted form of [business entity](http://en.wikipedia.org/wiki/Business_entity) can be held liable (including [general](http://en.wikipedia.org/wiki/General_partnership) and [limited partnerships](http://en.wikipedia.org/wiki/Limited_partnership) which may also have separate legal personalities).

Stakeholder (corporate)

A corporate **stakeholder** is a party that can affect or be affected by the actions of the business as a whole. The stakeholder concept was first used in a 1963 internal memorandum at the [Stanford Research Institute](http://en.wikipedia.org/wiki/Stanford_Research_Institute). It defined stakeholders as "those groups without whose support the organization would cease to exist."[[1]](http://en.wikipedia.org/wiki/Stakeholder_(corporate)#cite_note-0) The theory was later developed and championed by [R. Edward Freeman](http://en.wikipedia.org/wiki/R._Edward_Freeman) in the 1980s. Since then it has gained wide acceptance in business practice and in theorizing relating to [strategic management](http://en.wikipedia.org/wiki/Strategic_management), [corporate governance](http://en.wikipedia.org/wiki/Corporate_governance), business purpose and [corporate social responsibility](http://en.wikipedia.org/wiki/Corporate_social_responsibility) (CSR).

The term has been broadened to include anyone who has an interest in a matter.

## Applications of the term

### Examples of a company's stakeholders

|  |  |
| --- | --- |
| **Stakeholders** | **Examples of interests** |
| **Government** | taxation, [VAT](http://en.wikipedia.org/wiki/VAT), [legislation](http://en.wikipedia.org/wiki/Legislation), low unemployment, truthful reporting. |
| **Employees** | rates of pay, [job security](http://en.wikipedia.org/wiki/Job_security), compensation, respect, truthful communication. |
| **Customers** | value, quality, customer care, ethical products. |
| **Suppliers** | providers of products and services used in the end product for the customer, equitable business opportunities. |
| **Creditors** | credit score, new contracts, liquidity. |
| **Community** | jobs, involvement, environmental protection, shares, truthful communication. |
| **Trade Unions** | quality, Staff protection, jobs. |
| **Owner(s)** | have interest of the success of his/her business. |

### Types of stakeholders

* People who will be affected by an endeavour and can influence it but who are not directly involved with doing the work.
* In the [private sector](http://en.wikipedia.org/wiki/Private_sector), people who are (or might be) affected by any action taken by an organization or group. Examples are parents, children, customers, owners, employees, associates, partners, contractors, and suppliers, people that are related or located nearby. Any group or individual who can affect or who is affected by achievement of a group's objectives.
* An individual or group with an interest in a group's or an organization's success in delivering intended results and in maintaining the viability of the group or the organization's product and/or service. Stakeholders influence programs, products, and services.
* Any organization, governmental entity, or individual that has a stake in or may be impacted by a given approach to environmental regulation, pollution prevention, energy conservation, etc.
* A participant in a community mobilization effort, representing a particular segment of society. School board members, environmental organizations, elected officials, chamber of commerce representatives, neighbourhood advisory council members, and religious leaders are all examples of local stakeholders.

**Market (or Primary) Stakeholders** - usually internal stakeholders, are those that engage in economic transactions with the business. (For example stockholders, customers, suppliers, creditors, and employees)

**Non-Market (or Secondary) Stakeholders** - usually external stakeholders, are those who - although they do not engage in direct economic exchange with the business - are affected by or can affect its actions. (For example the general public, communities, activist groups, business support groups, and the media)

### Company stakeholder mapping

A narrow mapping of a company's stakeholders might identify the following stakeholders:

* [Employees](http://en.wikipedia.org/wiki/Employees)
* [Communities](http://en.wikipedia.org/wiki/Community)
* [Shareholders](http://en.wikipedia.org/wiki/Shareholders)
* [Creditors](http://en.wikipedia.org/wiki/Creditors)
* [Investors](http://en.wikipedia.org/wiki/Investors)
* [Government](http://en.wikipedia.org/wiki/Government)
* [Customers](http://en.wikipedia.org/wiki/Customers)

Shareholder

A **shareholder** or **stockholder** is an [individual](http://en.wikipedia.org/wiki/Individual) or institution (including a [corporation](http://en.wikipedia.org/wiki/Corporation)) that legally owns any part of a [share](http://en.wikipedia.org/wiki/Share_(finance)) of [stock](http://en.wikipedia.org/wiki/Stock) in a public or private corporation. Shareholders own the stock, but not the corporation itself.

Stockholders are granted special privileges depending on the class of stock. These rights may include:

* The right to sell their shares,
* The right to vote on the directors nominated by the board,
* The right to nominate directors (although this is very difficult in practice because of minority protections) and propose [shareholder resolutions](http://en.wikipedia.org/wiki/Shareholder_resolutions),
* The right to dividends if they are declared,
* The right to purchase new shares issued by the company, and
* The right to what assets remains after a [liquidation](http://en.wikipedia.org/wiki/Liquidation).

Stockholders or shareholders are considered by some to be a [subset](http://en.wikipedia.org/wiki/Subset) of [stakeholders](http://en.wikipedia.org/wiki/Stakeholder_(corporate)), which may include anyone who has a direct or indirect interest in the [business entity](http://en.wikipedia.org/wiki/Business_entity). For example, labour, suppliers, customers, the community, etc., are typically considered stakeholders because they contribute value and/or are impacted by the corporation.

Stock

[](http://en.wikipedia.org/wiki/File:B&O_RR_common_stock.jpg)

[magnify-clip](http://en.wikipedia.org/wiki/File:B&O_RR_common_stock.jpg)

Stock certificate for ten shares of the [Baltimore and Ohio Railroad Company](http://en.wikipedia.org/wiki/Baltimore_and_Ohio_Railroad)

The **capital stock** (or simply **stock**) of a business entity represents the original capital paid into or invested in the business by its founders. It serves as a [security](http://en.wikipedia.org/wiki/Security_(finance)) for the [creditors](http://en.wikipedia.org/wiki/Creditor) of a business since it cannot be withdrawn to the detriment of the creditors. Stock is different from the property and the assets of a business which may fluctuate in quantity and value.[[1]](http://en.wikipedia.org/wiki/Stock#cite_note-0)

Shares

The stock of a business is divided into multiple [shares](http://en.wikipedia.org/wiki/Share_(finance)), the total of which must be stated at the time of business formation. Given the total amount of money invested in the business, a share has a certain declared face value, commonly known as the [par value](http://en.wikipedia.org/wiki/Par_value) of a share. The par value is the [*de minimis*](http://en.wikipedia.org/wiki/De_minimis) (minimum) amount of money that a business may issue and sell shares for in many jurisdictions and it is the value represented as capital in the [accounting](http://en.wikipedia.org/wiki/Accounting) of the business. In other jurisdictions, however, shares may not have an associated par value at all. Such stock is often called non-par stock. Shares represent a fraction of [ownership](http://en.wikipedia.org/wiki/Ownership) in a business. A [business](http://en.wikipedia.org/wiki/Business) may declare different types (*classes*) of shares, each having distinctive ownership rules, privileges, or share values.

Ownership of shares is documented by issuance of a [stock certificate](http://en.wikipedia.org/wiki/Stock_certificate). A stock certificate is a legal document that specifies the amount of shares owned by the [shareholder](http://en.wikipedia.org/wiki/Shareholder), and other specifics of the shares, such as the par value, if any, or the class of the shares.

Usage

Used in the plural, *stocks* is often used as a synonym for *shares*.[[2]](http://en.wikipedia.org/wiki/Stock#cite_note-1) Traditionalist demands for the plural *stocks* to be used only when referring to stocks of more than one company are rarely heard nowadays.

In the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), [Republic of Ireland](http://en.wikipedia.org/wiki/Republic_of_Ireland), [South Africa](http://en.wikipedia.org/wiki/South_Africa), and [Australia](http://en.wikipedia.org/wiki/Australia), *stock* can also refer to completely different [financial instruments](http://en.wikipedia.org/wiki/Financial_instruments) such as government [bonds](http://en.wikipedia.org/wiki/Bond_(finance)) or, less commonly, to all kinds of [marketable](http://en.wikipedia.org/wiki/Marketable) [securities](http://en.wikipedia.org/wiki/Securities).[[3]](http://en.wikipedia.org/wiki/Stock#cite_note-2)

Types of stock

Stock typically takes the form of shares of either [common stock](http://en.wikipedia.org/wiki/Common_stock) or [preferred stock](http://en.wikipedia.org/wiki/Preferred_stock). As a unit of ownership, common stock typically carries voting rights that can be exercised in corporate decisions. [Preferred stock](http://en.wikipedia.org/wiki/Preferred_stock) differs from common stock in that it typically does not carry voting rights but is legally entitled to receive a certain level of [dividend](http://en.wikipedia.org/wiki/Dividend) payments before any dividends can be issued to other shareholders.[[4]](http://en.wikipedia.org/wiki/Stock#cite_note-investor_guide-3)[[5]](http://en.wikipedia.org/wiki/Stock#cite_note-investments-4) Convertible preferred stock is preferred stock that includes an [option](http://en.wikipedia.org/wiki/Option_(finance)) for the holder to convert the preferred shares into a fixed number of common shares, usually anytime after a predetermined date. Shares of such stock are called "convertible preferred shares" (or "convertible preference shares" in the UK)

New [equity](http://en.wikipedia.org/wiki/Equity_(finance)) issues may have specific legal clauses attached that differentiate them from previous issues of the issuer. Some shares of common stock may be issued without the typical voting rights, for instance, or some shares may have special rights unique to them and issued only to certain parties. Often, new issues that have not been registered with a securities governing body may be [restricted](http://en.wikipedia.org/wiki/Restricted_stock) from resale for certain periods of time.

Preferred stock may be hybrid by having the qualities of bonds of fixed returns and common stock voting rights. They also have preference in the payment of dividends over common stock and also have been given preference at the time of liquidation over common stock. They have other features of accumulation in dividend.

Security (finance)

A **security** is generally a [fungible](http://en.wikipedia.org/wiki/Fungibility), negotiable [financial instrument](http://en.wikipedia.org/wiki/Financial_instrument) representing financial value.[[1]](http://en.wikipedia.org/wiki/Securities#cite_note-0) Securities are broadly categorized into:

* [debt](http://en.wikipedia.org/wiki/Debt) securities (such as [banknotes](http://en.wikipedia.org/wiki/Banknotes), [bonds](http://en.wikipedia.org/wiki/Bond_(finance)) and [debentures](http://en.wikipedia.org/wiki/Debenture)),
* [equity](http://en.wikipedia.org/wiki/Stock) securities, e.g., [common stocks](http://en.wikipedia.org/wiki/Common_stock); and,
* [derivative](http://en.wikipedia.org/wiki/Derivative_(finance)) contracts, such as [forwards](http://en.wikipedia.org/wiki/Forward_contract), [futures](http://en.wikipedia.org/wiki/Futures_contract), [options](http://en.wikipedia.org/wiki/Option_(finance)) and [swaps](http://en.wikipedia.org/wiki/Swap_(finance)).

The company or other entity issuing the security is called the [issuer](http://en.wikipedia.org/wiki/Issuer). A country's regulatory structure determines what qualifies as a security. For example, private investment pools may have some features of securities, but they may not be registered or regulated as such if they meet various restrictions.

Securities may be represented by a certificate or, more typically, "non-certificated", that is in electronic or "book entry" only form. Certificates may be *bearer*, meaning they entitle the holder to rights under the security merely by holding the security, or *registered*, meaning they entitle the holder to rights only if he appears on a security register maintained by the issuer or an intermediary. They include shares of corporate [stock](http://en.wikipedia.org/wiki/Stock) or [mutual funds](http://en.wikipedia.org/wiki/Mutual_fund), [bonds](http://en.wikipedia.org/wiki/Bond_(finance)) issued by corporations or governmental agencies, [stock options](http://en.wikipedia.org/wiki/Stock_option) or other options, limited partnership units, and various other formal investment instruments that are negotiable and fungible.

Prospectus (finance)

In [finance](http://en.wikipedia.org/wiki/Finance), a **prospectus** is a document that describes a financial security for potential buyers. A prospectus commonly provides investors with material information about [mutual funds](http://en.wikipedia.org/wiki/Mutual_fund), [stocks](http://en.wikipedia.org/wiki/Stock), [bonds](http://en.wikipedia.org/wiki/Bond_(finance)) and other [investments](http://en.wikipedia.org/wiki/Investment), such as a description of the company's business, [financial statements](http://en.wikipedia.org/wiki/Financial_statements), biographies of officers and directors, detailed information about their compensation, any litigation that is taking place, a list of material properties and any other material information. In the context of an individual securities offering, such as an [initial public offering](http://en.wikipedia.org/wiki/Initial_public_offering), a prospectus is distributed by [underwriters](http://en.wikipedia.org/wiki/Underwriters) or [brokerages](http://en.wikipedia.org/wiki/Brokerages) to potential investors.

Initial public offering

An **initial public offering** (**IPO**) or **stock market launch** is the first sale of [stock](http://en.wikipedia.org/wiki/Stock) by a company to the public. It is a type of [public offering](http://en.wikipedia.org/wiki/Public_offering). As the result of an initial public offering, a [private company](http://en.wikipedia.org/wiki/Private_company) turns into a [public company](http://en.wikipedia.org/wiki/Public_company). The process is used by companies to raise expansion capital and become publicly traded enterprises. Many companies that undertake an IPO also request the assistance of an investment banking firm acting in the capacity of an [underwriter](http://en.wikipedia.org/wiki/Securities_underwriting) to help them correctly assess the value of their shares, that is, the share price.

Reasons for listing

When a company lists its securities on a [public exchange](http://en.wikipedia.org/wiki/Stock_exchange), the money paid by investors for the newly issued shares goes directly to the company (in contrast to a later trade of shares on the exchange, where the money passes between investors). An IPO, therefore, allows a company to tap a wide pool of investors to provide itself with capital for future growth, repayment of debt or working capital. A company selling common shares is never required to repay the capital to investors.

Once a company is listed, it is able to issue additional common shares via a secondary offering, thereby again providing itself with capital for expansion without incurring any debt. This ability to quickly raise large amounts of capital from the market is a key reason many companies seek to go public.

There are several benefits to being a public company, namely:

* Bolstering and diversifying equity base
* Enabling cheaper access to capital
* Exposure, prestige and public image
* Attracting and retaining better management and employees through liquid equity participation
* Facilitating acquisitions
* Creating multiple financing opportunities: equity, convertible debt, cheaper bank loans, etc.

Disadvantages of an IPO

There are several disadvantages to completing an initial public offering, namely:

* Significant legal, accounting and marketing costs
* Ongoing requirement to disclose financial and business information
* Meaningful time, effort and attention required of senior management
* Risk that required funding will not be raised
* Public dissemination of information which may be useful to competitors, suppliers and customers.

Capital surplus

**Capital surplus** is a term that frequently appears as a [balance sheet](http://en.wikipedia.org/wiki/Balance_sheet) item as a component of [shareholders' equity](http://en.wikipedia.org/wiki/Shareholders%27_equity). Capital surplus is used to account for that amount which a [firm](http://en.wikipedia.org/wiki/Company_(law)) raises in excess of the [par value](http://en.wikipedia.org/wiki/Par_value) (nominal value) of the shares ([common stock](http://en.wikipedia.org/wiki/Common_stock)).

Taken together, common stock (and sometimes preferred stock) issued and paid plus capital surplus represent the total amount actually paid by investors for shares when issued (assuming no subsequent adjustments or changes).

Shares for which there is no [par value](http://en.wikipedia.org/wiki/Par_value) will generally not have any form of capital surplus on the balance sheet; all funds from issuing shares will be credited to common stock issued.

Some other scenarios for triggering Capital Surplus include when the Government donates a piece of land to the company.

The Capital surplus/Share premium account (SPA) is not distributable; however, in restricted circumstances it can be reduced:

* to write off the expenses/commission relating to the issue of those shares;
* to make a bonus issue of fully paid-up shares.

It may also be used to account for any gains the firm may derive from selling [treasury stock](http://en.wikipedia.org/wiki/Treasury_stock), although this is less commonly seen.

**Capital Surplus** is also a term used by economists to denote capital inflows in excess of capital outflows on a country's [balance of payments](http://en.wikipedia.org/wiki/Balance_of_payments).

## Background

Many firms authorize shares with some nominal par value, often the smallest unit of currency commonly in use (such as one penny or $0.01), in many jurisdictions due to legal requirements. The firm may then sell these shares for a much higher price (as the par value is a largely archaic and fictional concept).

Any premium received over the par value is credited to capital surplus.

### Share premium account

According to Companies Act 1985 s.130 and companies ordinance 1984 (Nepal) s.84 [[1]](http://en.wikipedia.org/wiki/Capital_surplus#cite_note-0):

(1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called "the share premium account".

(2) The share premium account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or in writing off- (a) the company's preliminary expenses; or (b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company, or (c) in providing for the premium payable on redemption of debentures of the company.

(3) Subject to this, the provisions of this Act relating to the reduction of a company's share capital apply as if the share premium account were part of its paid up share capital.

A company's SPA is a part of creditors' buffer.

Derivative suit

A **shareholder derivative suit** is a [lawsuit](http://en.wikipedia.org/wiki/Lawsuit) brought by a [shareholder](http://en.wikipedia.org/wiki/Shareholder) on behalf of a [corporation](http://en.wikipedia.org/wiki/Corporation) against a third party. Often, the third party is an [insider](http://en.wikipedia.org/wiki/Insider) of the corporation, such as an executive officer or director. Shareholder derivative suits are unique because under traditional [corporate law](http://en.wikipedia.org/wiki/Corporation), management is responsible for bringing and defending the corporation against suit. Shareholder derivative suits permit a shareholder to initiate a suit when management has failed to do so. Becausederivative suits vary the traditional rolesof management and shareholders, many jurisdictions have implemented various procedural requirements to derivative suits.

Purpose and difficulties

Under traditional corporate business law, shareholders are the owners of a corporation. However, they are not empowered to control the day-to-day operations of the corporation. Instead, shareholders appoint directors, and the directors in turn appoint officers or executives to manage day-to-day operations.

Derivative suits permit a shareholder to bring an [action](http://en.wikipedia.org/wiki/Lawsuit) in the name of the corporation against parties allegedly causing harm to the corporation. If the directors, officers, or employees of the corporation are not willing to file an action, a shareholder may first petition them to proceed. If such petition fails, the shareholder may take it upon himself to bring an action on behalf of the corporation. Any proceeds of a successful action are awarded to the corporation and not to the individual shareholders that initiate the action.

Director (business)

**Director** refers to a rank in [management](http://en.wikipedia.org/wiki/Management). A director is a person who leads, or supervises a certain area of a company, a program, or a project.[[1]](http://en.wikipedia.org/wiki/Director_(business)#cite_note-businessdictionary.com_Director.2C_definitions-0) Usually [companies](http://en.wikipedia.org/wiki/Corporation), which use this [title](http://en.wikipedia.org/wiki/Corporate_title) commonly have large numbers of people with the title of director with different categories (e.g. director of [human resources](http://en.wikipedia.org/wiki/Human_resources)).[[2]](http://en.wikipedia.org/wiki/Director_(business)#cite_note-about.com_Human_Resources-1) Depending on factors like the size or structure of a company, the director usually reports directly to a [Vice President](http://en.wikipedia.org/wiki/Vice_President) or to the [CEO](http://en.wikipedia.org/wiki/Chief_executive_officer). When there is more than one director, they are sometimes ranked starting from the top as [Executive Director](http://en.wikipedia.org/wiki/Executive_Director), Senior Director, and then Director. In large organizations there might also be appointed Assistant Directors. Director commonly denotes the lowest level of executive in an organization, however many large companies are increasingly designating titles of Associate Directors.

Corporate governance

**Corporate governance** is "the system by which companies are directed and controlled" (Cadbury Committee, 1992).[[1]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-0) It involves regulatory and market mechanisms, and the roles and relationships between a company’s management, its board, its shareholders and other [stakeholders](http://en.wikipedia.org/wiki/Stakeholder_(corporate)), and the goals for which the corporation is governed.[[2]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-1)[[3]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-2) In contemporary business corporations, the main external stakeholder groups are shareholders, debtholders, trade [creditors](http://en.wikipedia.org/wiki/Creditor), suppliers, customers and communities affected by the corporation's activities[[4]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-3) . Internal stakeholders are the [board of directors](http://en.wikipedia.org/wiki/Board_of_directors), [executives](http://en.wikipedia.org/wiki/Executive_(management)), and other employees.

Much of the contemporary interest in corporate governance is concerned with mitigation of the conflicts of interests between stakeholders. Ways of mitigating or preventing these conflicts of interests include the **processes, customs, policies, laws, and institutions** which have impact on the way a **company** is **controlled**.[[5]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-4)[[6]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-5) An important theme of corporate governance is the nature and extent of [accountability](http://en.wikipedia.org/wiki/Accountability) of people in the **business**, and mechanisms that try to decrease the [principal–agent problem](http://en.wikipedia.org/wiki/Principal%E2%80%93agent_problem).[[7]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-6)[[8]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-7)

A related but separate thread of discussions focuses on the impact of a corporate governance system on [economic efficiency](http://en.wikipedia.org/wiki/Economic_efficiency), with a strong emphasis on shareholders' welfare; this aspect is particularly present in contemporary public debates and developments in regulatory policy[[9]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-8)(see [regulation](http://en.wikipedia.org/wiki/Regulation) and [policy regulation](http://en.wikipedia.org/wiki/Policy#Regulatory_policies)).[[10]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-9)

There has been renewed interest in the corporate governance practices of modern corporations, particularly in relation to accountability, since the high-profile collapses of a number of large corporations during 2001-2002, most of which involved accounting fraud [[11]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-10). [Corporate scandals](http://en.wikipedia.org/wiki/Corporate_scandals) of various forms have maintained public and political interest in the regulation of corporate governance. In the U.S., these include [Enron Corporation](http://en.wikipedia.org/wiki/Enron_Corporation) and [MCI Inc.](http://en.wikipedia.org/wiki/MCI_Inc.) (formerly WorldCom). Their demise is associated with the [U.S. federal government](http://en.wikipedia.org/wiki/U.S._federal_government) passing the [Sarbanes-Oxley Act](http://en.wikipedia.org/wiki/Sarbanes-Oxley_Act) in 2002, intending to restore public confidence in corporate governance. Comparable failures in Australia ([HIH](http://en.wikipedia.org/wiki/HIH), [One.Tel](http://en.wikipedia.org/wiki/One.Tel)) are associated with the eventual passage of the [CLERP 9](http://en.wikipedia.org/wiki/CLERP_9) reforms. Similar corporate failures in other countries stimulated increased regulatory interest (e.g., [Parmalat](http://en.wikipedia.org/wiki/Parmalat) in Italy).

Principles of corporate governance

Contemporary discussions of corporate governance tend to refer to principles raised in three documents released since 1990: The [Cadbury Report](http://en.wikipedia.org/wiki/Cadbury_Report) (UK, 1992), the Principles of Corporate Governance (OECD, 1998 and 2004), the [Sarbanes-Oxley Act](http://en.wikipedia.org/wiki/Sarbanes-Oxley_Act) of 2002 (US, 2002). The Cadbury and OECD reports present general principals around which businesses are expected to operate to assure proper governance. The Sarbanes-Oxley Act, informally referred to as Sarbox or Sox, is an attempt by the federal government in the United States to legislate several of the principles recommended in the Cadbury and OECD reports.

* **Rights and equitable treatment of shareholders**: [[12]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-11) [[13]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-12) [[14]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-13) Organizations should respect the rights of shareholders and help shareholders to exercise those rights. They can help shareholders exercise their rights by openly and effectively communicating information and by encouraging shareholders to participate in general meetings.
* **Interests of other stakeholders**:[[15]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-14) Organizations should recognize that they have legal, contractual, social, and market driven obligations to non-shareholder stakeholders, including employees, investors, creditors, suppliers, local communities, customers, and policy makers.
* **Role and responsibilities of the board**: [[16]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-15) [[17]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-16) the board needs sufficient relevant skills and understanding to review and challenge management performance. It also needs adequate size and appropriate levels of independence and commitment
* **Integrity and ethical behaviour**: [[18]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-17) [[19]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-18) Integrity should be a fundamental requirement in choosing corporate officers and board members. Organizations should develop a code of conduct for their directors and executives that promotes ethical and responsible decision making.
* **Disclosure and transparency**: [[20]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-19) [[21]](http://en.wikipedia.org/wiki/Corporate_governance#cite_note-20) Organizations should clarify and make publicly known the roles and responsibilities of board and management to provide stakeholders with a level of accountability. They should also implement procedures to independently verify and safeguard the integrity of the company's financial reporting. Disclosure of material matters concerning the organization should be timely and balanced to ensure that all investors have access to clear, factual information.

Directors' duties

**Directors' duties** are a series of statutory, common law and equitable obligations owed primarily by members of the [board of directors](http://en.wikipedia.org/wiki/Board_of_directors) to the [corporation](http://en.wikipedia.org/wiki/Corporation) that employs them. It is a central part of [corporate law](http://en.wikipedia.org/wiki/Corporate_law) and [corporate governance](http://en.wikipedia.org/wiki/Corporate_governance). Directors' duties are analogous to duties owed by trustees to beneficiaries, and by agents to principals.

Among different jurisdictions, a number of similarities between the frameworks for directors' duties exist.

* directors owe duties to the corporation,[[1]](http://en.wikipedia.org/wiki/Directors'_duties#cite_note-0) and not to individual shareholders,[[2]](http://en.wikipedia.org/wiki/Directors'_duties#cite_note-1) employees or creditors outside exceptional circumstances
* directors' core duty is to remain loyal to the company, and avoid conflicts of interest
* directors are expected to display a high standard of care, skill or diligence
* directors are expected to act in [good faith](http://en.wikipedia.org/wiki/Good_faith) to promote the success of the corporation

Business judgment rule

The **business judgment rule** is a [United States](http://en.wikipedia.org/wiki/United_States) [case law](http://en.wikipedia.org/wiki/Case_law)-derived concept in [corporations law](http://en.wikipedia.org/wiki/Corporations_law) whereby the "directors of a corporation . . . are clothed with [the] presumption, which the law accords to them, of being [motivated] in their conduct by a bona fide regard for the interests of the corporation whose affairs the stockholders have committed to their charge"[[1]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-0).

To challenge the actions of a corporation's [board of directors](http://en.wikipedia.org/wiki/Board_of_directors), a plaintiff assumes "the burden of providing evidence that directors, in reaching their challenged decision, breached any one of the triads of their [fiduciary duty](http://en.wikipedia.org/wiki/Fiduciary_duty) — [good faith](http://en.wikipedia.org/wiki/Good_faith), [loyalty](http://en.wikipedia.org/wiki/Duty_of_Loyalty), or [due care](http://en.wikipedia.org/wiki/Duty_of_care_(business_associations))".[[2]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-1) Failing to do so, a plaintiff "is not entitled to any remedy unless the transaction constitutes waste . . . [that is,] the exchange was so one-sided that no business person of ordinary, sound judgment could conclude that the corporation has received adequate consideration".[[3]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-2)

Basis

Given that the directors are not insurers of corporate success, the business judgment rule specifies that the court will not review the business decisions of directors who performed their duties (1) in [good faith](http://en.wikipedia.org/wiki/Good_faith); (2) with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the directors reasonably believe to be in the best interests of the corporation.[[4]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-3) As part of their duty of care, directors have a duty not to waste corporate assets by overpaying for property or employment services. The business judgment rule is very difficult to overcome and courts will not interfere with directors unless it is clear that they are guilty of fraud or misappropriation of the corporate funds, etc.[[5]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-4)

In effect, the business judgment rule creates a strong [presumption](http://en.wikipedia.org/wiki/Presumption) in favour of the Board of Directors of a corporation, freeing its members from possible liability for decisions that result in harm to the corporation. The presumption is that "in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest."[[6]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-5) In short, it exists so that a Board will not suffer legal action simply from a bad decision. As the [Delaware Supreme Court](http://en.wikipedia.org/wiki/Delaware_Supreme_Court) has said, a court "will not substitute its own notions of what is or is not sound business judgment"[[7]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-Aronson-6) if "the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company."[[8]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-7)

Duty of care and duty of loyalty

Although a distinct common law concept from [duty of care](http://en.wikipedia.org/wiki/Duty_of_care), [duty of loyalty](http://en.wikipedia.org/wiki/Duty_of_loyalty) is often evaluated by courts in certain cases dealing with violations by the board. While the business judgment rule is historically linked particularly to the duty of care standard of conduct,[[9]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-8) shareholders who sue the directors often charge both the duty of care and duty of loyalty violations.

This forced the courts to evaluate duty of care (employing the business judgment rule standard of review) together with duty of loyalty violations that involve self-interest violations (as opposed to gross incompetence with duty of care). Violations of the duty of care are reviewed under a [gross negligence](http://en.wikipedia.org/wiki/Gross_negligence) standard, as opposed to simple [negligence](http://en.wikipedia.org/wiki/Negligence).

Consequently, over time, one of the points of review that has entered the business judgment rule was the prohibition against self-interest transactions. Conflicting interest transactions occur when a director, who has a conflicting interest with respect to a transaction, knows that she or a related person is (1) a party to the transaction; (2) has a beneficial financial interest in, or closely linked to, the transaction that the interest would reasonably be expected to influence the director's judgment if she were to vote on the transaction; or (3) is a director, general partner, agent, or employee of another entity with whom the corporation is transacting business and the transaction is of such importance to the corporation that it would in the normal course of business be brought before the board.[[10]](http://en.wikipedia.org/wiki/Business_judgment_rule#cite_note-9)

Standard of review

The following test was constructed in the opinion for *Grobow v. Perot*, 539 A.2d 180 (Del. 1988), as a guideline for satisfaction of the business judgment rule. Directors in a business should:

* act in good faith;
* act in the best interests of the corporation;
* act on an informed basis;
* not be wasteful;
* not involve self-interest (duty of loyalty concept plays a role here).

Offshore financial centre

[](http://en.wikipedia.org/wiki/File:Cane_Garden_Bay,_Tortola.JPG)

[magnify-clip](http://en.wikipedia.org/wiki/File:Cane_Garden_Bay,_Tortola.JPG)

Many leading offshore financial centres are located in small tropical Caribbean countries.

An **offshore financial centre** (**OFC**), though not precisely defined, is usually a small, low-tax [jurisdiction](http://en.wikipedia.org/wiki/Jurisdiction) specializing in providing corporate and commercial services to non-resident [offshore companies](http://en.wikipedia.org/wiki/Offshore_company), and for the [investment](http://en.wikipedia.org/wiki/Investment) of offshore funds. The term is a relatively modern [neologism](http://en.wikipedia.org/wiki/Neologism), first coined in the 1980s.[[1]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-0) Academics Rose & Spiegel,[[2]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-1) [Société Générale](http://en.wikipedia.org/wiki/Soci%C3%A9t%C3%A9_G%C3%A9n%C3%A9rale),[[3]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-2) and the [International Monetary Fund](http://en.wikipedia.org/wiki/International_Monetary_Fund) (IMF)[[4]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-3) consider offshore centres to include all economies with financial sectors disproportionate to their resident population:

An OFC is a country or jurisdiction that provides financial services to non-residents on a scale that is incommensurate with the size and the financing of its domestic economy.

—Ahmed Zoromé, IMF Working Paper/07/87[[5]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-4)

Definition

It has been remarked more than once that whether a financial centre is characterized as "offshore" is really a question of degree.[[6]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-5)[[7]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-6) Indeed, the IMF Working Paper cited above notes that its definition of an offshore centre would include the United Kingdom and the United States, which are ordinarily counted as "onshore" because of their large populations and inclusion in international organisations such as the G20 and OECD.[[8]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-7)

The more nebulous term “[tax haven](http://en.wikipedia.org/wiki/Tax_haven)” is often applied to offshore centres, leading to confusion between the two concepts. In *Tolley's International Initiatives Affecting Financial Havens* [[9]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-8) the author in the Glossary of Terms defines an “offshore financial centre” in forthright terms as “a politically correct term for what used to be called a tax haven.” However, he then qualifies this by adding, “The use of this term makes the important point that a jurisdiction may provide specific facilities for offshore financial centres without being in any general sense a tax haven.” A 1981 report by the IRS concludes, “a country is a tax haven if it looks like one and if it is considered to be one by those who care.”

With its connotations of [financial secrecy](http://en.wikipedia.org/wiki/Banking_secrecy) and [tax avoidance](http://en.wikipedia.org/wiki/Tax_avoidance), “tax haven” is not always an appropriate term for offshore financial centres, many of which have no statutory banking secrecy,[[10]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-9) and most of which have adopted tax information exchange protocols to allow foreign countries to investigate suspected tax evasion.[[11]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-10) [[12]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-11)

Views of offshore financial centres tend to be polarised. Proponents suggest that reputable offshore financial centres play a legitimate and integral role in international finance and trade, and that their zero-tax structure allows financial planning and risk management and makes possible some of the cross-border vehicles necessary for global trade, including financing for aircraft and shipping or reinsurance of medical facilities.[[13]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-12) Proponents point to the tacit support of offshore centres by the governments of the United States (which promotes offshore financial centres by the continuing use of the [Foreign Sales Corporation](http://en.wikipedia.org/wiki/Foreign_Sales_Corporation) (FSC)) and United Kingdom (which actively promotes offshore finance in Caribbean dependent territories to help them diversify their economies and to facilitate the British [Eurobond](http://en.wikipedia.org/wiki/Eurobond) market).

Scrutiny

Offshore finance has been the subject of increased attention since 2000 and even more so since the April 2009 G20 meeting, when heads of state resolved to “take action” against non-cooperative jurisdictions.[[14]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-13) Initiatives spearheaded by the [Organisation for Economic Cooperation and Development](http://en.wikipedia.org/wiki/Organisation_for_Economic_Cooperation_and_Development) (OECD), the [Financial Action Task Force on Money Laundering](http://en.wikipedia.org/wiki/Financial_Action_Task_Force_on_Money_Laundering) (FATF) and the [International Monetary Fund](http://en.wikipedia.org/wiki/International_Monetary_Fund) have had a significant effect on the offshore finance industry.[[15]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-FATF-14) Most of the principal offshore centres considerably strengthened their internal regulations relating to money laundering and other key regulated activities. Indeed, Jersey is now rated as the most compliant jurisdiction internationally, complying with 44 of the "40+9" recommendations.[[16]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-15)

Taxation

Although most offshore financial centres originally rose to prominence by facilitating structures which helped to minimise exposure to [tax](http://en.wikipedia.org/wiki/Tax), [tax avoidance](http://en.wikipedia.org/wiki/Tax_avoidance) has played a decreasing role in the success of offshore financial centres in recent years. Most professional practitioners in offshore jurisdictions refer to themselves as "tax neutral" since, whatever tax burdens the proposed transaction or structure will have in its primary operating market, having the structure based in an offshore jurisdiction will not create any additional tax burdens.

A number of pressure groups suggest that offshore financial centres engage in "unfair [tax competition](http://en.wikipedia.org/wiki/Tax_competition)" by having no, or very low tax burdens, and have argued that such jurisdictions should be forced to tax both economic activity and their own citizens at a higher level. Another criticism levelled against offshore financial centres is that whilst sophisticated jurisdictions usually have developed tax codes which prevent tax revenues leaking from the use of offshore jurisdictions, less developed nations, who can least afford to lose tax revenue, are unable to keep pace with the rapid development of the use of offshore financial structures.[[17]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-16) [[18]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-gfintegrity1-17)

Regulation

Offshore centres benefit from a low burden of regulation. An extremely high proportion of [hedge funds](http://en.wikipedia.org/wiki/Hedge_funds) (which characteristically employ high risk investment strategies) who register offshore are presumed to be driven by lighter regulatory requirements rather than perceived tax benefits.[[19]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-18) Many [capital markets](http://en.wikipedia.org/wiki/Capital_markets) bond issues are also structured through a [special purpose vehicle](http://en.wikipedia.org/wiki/Special_purpose_vehicle) incorporated in an offshore financial centre specifically to minimise the amount of regulatory red-tape associated with the issue.

Offshore centres have historically been seen as venues for laundering the proceeds of illicit activity.[[18]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-gfintegrity1-17) However, following a move towards transparency during the 2000s and the introduction of strict AML regulations, some [[15]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-FATF-14) now argue that offshore are in many cases better regulated than many onshore financial centres.[[20]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-19)[[21]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-20) For example, in most offshore jurisdictions, a person needs a licence to act as a [trustee](http://en.wikipedia.org/wiki/Trustee), whereas (for example) in the United Kingdom and the United States, there are no restrictions or regulations as to who may serve in a fiduciary capacity.[[22]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-21) The leading offshore financial centres are more compliant with the [Financial Action Task Force on Money Laundering](http://en.wikipedia.org/wiki/Financial_Action_Task_Force_on_Money_Laundering)'s '40+9' recommendations than many OECD countries.[[23]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-22)

Some commentators have expressed concern that the differing levels of sophistication between offshore financial centres will lead to regulatory [arbitrage](http://en.wikipedia.org/wiki/Arbitrage),[[24]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-23) and fuel a race to the bottom, although evidence from the market seems to indicate the investors prefer to utilise better regulated offshore jurisdictions rather than more poorly regulated ones.[[25]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-24) A study by Australian academic found that shell companies are more easily set up in many OECD member countries than in offshore jurisdictions.[[26]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-25) A report by [Global Witness](http://en.wikipedia.org/wiki/Global_Witness), *Undue Diligence*, found that kleptocrats used French banks rather than offshore accounts as destinations for plundered funds.[[27]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-26)

Confidentiality

Critics of offshore jurisdictions point to excessive secrecy in those jurisdictions, particularly in relation to the beneficial ownership of offshore companies, and in relation to offshore bank accounts. However, banks in most jurisdictions will preserve the confidentiality of their customers, and all of the major offshore jurisdictions have appropriate procedures for law enforcement agencies to obtain information regarding suspicious bank accounts, as noted in FATF ratings.[[28]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-27) Most jurisdictions also have remedies which private citizens can avail themselves of, such as [Anton Piller orders](http://en.wikipedia.org/wiki/Anton_Piller_order), if they can satisfy the court in that jurisdiction that a bank account has been used as part of a legal wrong.

Similarly, although most offshore jurisdictions only make a limited amount of information with respect to companies publicly available, this is also true of most states in the U.S.A., where it is uncommon for share registers or company accounts to be available for public inspection. In relation to trusts and unlimited liability partnerships, there are very few jurisdictions in the world that require these to be registered, let alone publicly file details of the people involved with those structures.

Statutory banking secrecy is a feature of several financial centres, notably Switzerland and Singapore.[[29]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-28) However, many offshore financial centres have no such statutory right. Jurisdictions including Aruba, the Bahamas, Bermuda, the British Virgin Islands, the Cayman Islands, Jersey, Guernsey, the Isle of Man and the Netherlands Antilles have signed tax information exchange agreements based on the OECD model, which commits them to sharing financial information about foreign residents suspected of evading home-country tax.[[30]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-29)

## Effects on international trade

Offshore centres act as conduits for global trade and ease international capital flows. International [joint ventures](http://en.wikipedia.org/wiki/Joint_ventures) are often structured as companies in an offshore jurisdiction when neither party in the venture party wishes to form the company in the other party's home jurisdiction for fear of unwanted tax consequences. Although most offshore financial centres still charge little or no tax, the increasing sophistication of onshore tax codes has meant that there is often little tax benefit relative to the cost of moving a transaction structure offshore.[[31]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-30)

Recently, several studies have examined the impact of offshore financial centres on the world economy more broadly, finding the high degree of competition between banks in such jurisdictions to increase liquidity in nearby onshore markets. Proximity to small offshore centres has been found to reduce credit spreads and interest rates, [[32]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-31) while a paper by James Hines concluded, "by every measure credit is more freely available in countries which have close relationships with offshore centres."[[33]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-32)

Low-tax financial centres are becoming increasingly important as conduits for investment into emerging markets. For instance, 44% of [foreign direct investment](http://en.wikipedia.org/wiki/Foreign_direct_investment) (FDI) into India came through [Mauritius](http://en.wikipedia.org/wiki/Mauritius) last year,[[34]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-33) while over two thirds of FDI into Brazil came through offshore centres.[[35]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-34) Blanco & Rogers find a positive correlation between proximity to an offshore centre and investment for [least developed countries](http://en.wikipedia.org/wiki/Least_developed_countries) (LDCs); a $1 increase in FDI to an offshore centre translates to an average increase of $0.07 in FDI for nearby developing countries.[[36]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-35)

## Offshore financial structures

The bedrock of most offshore financial centre is the formation of offshore structures – typically:

* [offshore company](http://en.wikipedia.org/wiki/Offshore_company)
* offshore [partnership](http://en.wikipedia.org/wiki/Partnership)
* [offshore trust](http://en.wikipedia.org/wiki/Offshore_trust)
* [private foundation](http://en.wikipedia.org/wiki/Private_foundation)[[37]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-36)

Offshore structures are formed for a variety of reasons.

**Legitimate** reasons include:

* *Asset holding vehicles*. Many corporate conglomerates employ a large number of holding companies, and often high-risk assets are parked in separate companies to prevent legal risk accruing to the main group (i.e. where the assets relate to [asbestos](http://en.wikipedia.org/wiki/Asbestos), see the English case of [*Adams v Cape Industries*](http://en.wikipedia.org/wiki/Adams_v_Cape_Industries)). Similarly, it is quite common for fleets of ships to be separately owned by separate offshore companies to try to circumvent laws relating to group liability under certain environmental legislation.
* *Asset protection*. Wealthy individuals who live in politically unstable countries utilise offshore companies to hold family wealth to avoid potential [expropriation](http://en.wikipedia.org/wiki/Nationalization) or [exchange control](http://en.wikipedia.org/wiki/Exchange_control) restrictions in the country in which they live. These structures work best when the wealth is foreign-earned, or has been expatriated over a significant period of time (aggregating annual exchange control allowances).[[38]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-37)
* *Avoidance of forced heirship provisions*. Many countries from France to [Saudi Arabia](http://en.wikipedia.org/wiki/Saudi_Arabia) (and the U.S. State of [Louisiana](http://en.wikipedia.org/wiki/Louisiana)) continue to employ [forced heirship](http://en.wikipedia.org/wiki/Forced_heirship) provisions in their succession law, limiting the testator's freedom to distribute assets upon death. By placing assets into an offshore company, and then having probate for the shares in the offshore determined by the laws of the offshore jurisdiction (usually in accordance with a specific [will](http://en.wikipedia.org/wiki/Will_(law)) or [codicil](http://en.wikipedia.org/wiki/Codicil_(will)) sworn for that purpose), the testator can sometimes avoid such strictures.
* *Collective Investment Vehicles*. [Mutual funds](http://en.wikipedia.org/wiki/Mutual_funds), [Hedge funds](http://en.wikipedia.org/wiki/Hedge_funds), [Unit Trusts](http://en.wikipedia.org/wiki/Unit_Trusts) and [SICAVs](http://en.wikipedia.org/wiki/SICAV) are formed offshore to facilitate international distribution. By being domiciled in a low tax jurisdiction investors only have to consider the tax implications of their own domicile or residency.
* *Derivatives trading*. Wealthy individuals often form offshore vehicles to engage in risky investments, such as [derivatives](http://en.wikipedia.org/wiki/Derivative_(finance)) trading, which are extremely difficult to engage in directly due to cumbersome financial markets regulation.
* *Exchange control trading vehicles*. In countries where there is either [exchange control](http://en.wikipedia.org/wiki/Exchange_control) or is perceived to be increased political risk with the repatriation of funds, major exporters often form trading vehicles in offshore companies so that the sales from exports can be "parked" in the offshore vehicle until needed for further investment. Trading vehicles of this nature have been criticised in a number of shareholder lawsuits which allege that by manipulating the ownership of the trading vehicle, majority shareholders can illegally avoid paying minority shareholders their fair share of trading profits.
* *Joint venture vehicles*. Offshore jurisdictions are frequently used to set up [joint venture](http://en.wikipedia.org/wiki/Joint_venture) companies, either as a compromise neutral jurisdiction (see for example, [TNK-BP](http://en.wikipedia.org/wiki/TNK-BP)) and/or because the jurisdiction where the joint venture has its commercial centre has insufficiently sophisticated corporate and commercial laws.
* *Stock market listing vehicles*. Successful companies who are unable to obtain a [stock market](http://en.wikipedia.org/wiki/Stock_market) listing because of the underdevelopment of the [corporate law](http://en.wikipedia.org/wiki/Corporate_law) in their home country often transfer shares into an offshore vehicle, and list the offshore vehicle. Offshore vehicles are listed on the [NASDAQ](http://en.wikipedia.org/wiki/NASDAQ), [Alternative Investment Market](http://en.wikipedia.org/wiki/Alternative_Investment_Market), the [Hong Kong Stock Exchange](http://en.wikipedia.org/wiki/Hong_Kong_Stock_Exchange) and the [Singapore Stock Exchange](http://en.wikipedia.org/wiki/Singapore_Exchange). It is estimated that over 90% of the companies listed on Hong Kong's [Hang Seng](http://en.wikipedia.org/wiki/Hang_Seng) are incorporated in offshore jurisdictions. 35% of companies listed on AIM during 2006 were from OFCs.[[39]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-38)
* *Trade finance vehicles*. Large corporate groups often form offshore companies, sometimes under an [orphan structure](http://en.wikipedia.org/wiki/Orphan_structure) to enable them to obtain financing (either from [bond issues](http://en.wikipedia.org/wiki/Bond_(finance)) or by way of a [syndicated loan](http://en.wikipedia.org/wiki/Syndicated_loan)) and to treat the financing as "[off-balance-sheet](http://en.wikipedia.org/wiki/Off-balance-sheet)" under applicable accounting procedures. In relation to bond issues, offshore special purpose vehicles are often used in relation to [asset-backed securities](http://en.wikipedia.org/wiki/Asset-backed_security) transactions (particularly [securitisations](http://en.wikipedia.org/wiki/Securitization)).

**Illegitimate** purposes include:

* *Creditor avoidance*. Highly indebted persons may seek to escape the effect of bankruptcy by transferring cash and assets into an anonymous offshore company.[[40]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-39)
* *Market manipulation*. The [Enron](http://en.wikipedia.org/wiki/Enron_scandal) and [Parmalat](http://en.wikipedia.org/wiki/Parmalat#Financial_fraud_.282002.E2.80.932005.29) scandals demonstrated how companies could form offshore vehicles to manipulate financial results.
* *Tax evasion*. Although numbers are difficult to ascertain, it is widely believed that individuals in wealthy nations unlawfully [evade tax](http://en.wikipedia.org/wiki/Tax_evasion) through not declaring gains made by offshore vehicles that they own. Multinationals including [GlaxoSmithKline](http://en.wikipedia.org/wiki/GlaxoSmithKline) and [Sony](http://en.wikipedia.org/wiki/Sony) have been accused of [transferring profits](http://en.wikipedia.org/wiki/Transfer_pricing) from the higher-tax jurisdictions in which they are made to zero-tax offshore centres.[[41]](http://en.wikipedia.org/wiki/Offshore_Financial_Centre#cite_note-40)

Tax haven

A **tax haven** is a state or a country or territory where certain [taxes](http://en.wikipedia.org/wiki/Tax) are levied at a low rate or not at all while offering [due process](http://en.wikipedia.org/wiki/Due_process), [good governance](http://en.wikipedia.org/wiki/Good_governance) and a low [corruption](http://en.wikipedia.org/wiki/Political_corruption) rate.[[1]](http://en.wikipedia.org/wiki/Tax_haven#cite_note-ssrn-0)

Individuals and/or corporate entities can find it attractive to move themselves to areas with reduced or nil taxation levels. This creates a situation of [tax competition](http://en.wikipedia.org/wiki/Tax_competition) among governments. Different [jurisdictions](http://en.wikipedia.org/wiki/Jurisdiction) tend to be havens for different types of taxes, and for different categories of people and/or companies.

States that are [sovereign](http://en.wikipedia.org/wiki/Sovereignty) or self-governing under [international law](http://en.wikipedia.org/wiki/International_law) have theoretically unlimited powers to enact tax laws affecting their territories, unless limited by previous international treaties.

There are several definitions of tax havens. [*The Economist*](http://en.wikipedia.org/wiki/The_Economist) has tentatively adopted the description by Geoffrey Colin Powell (former economic adviser to [Jersey](http://en.wikipedia.org/wiki/Jersey)): "What ... identifies an area as a tax haven is the existence of a composite tax structure established deliberately to take advantage of, and exploit, a worldwide demand for opportunities to engage in [tax avoidance](http://en.wikipedia.org/wiki/Tax_avoidance)." *The Economist* points out that this definition would still exclude a number of jurisdictions traditionally thought of as tax havens.[[2]](http://en.wikipedia.org/wiki/Tax_haven#cite_note-1) Similarly, others have suggested that any country which modifies its tax laws to attract foreign capital could be considered a tax haven.[[3]](http://en.wikipedia.org/wiki/Tax_haven#cite_note-2) According to other definitions, [[4]](http://en.wikipedia.org/wiki/Tax_haven#cite_note-3) the central feature of a haven is that its laws and other measures can be used to evade or avoid the tax laws or regulations of other jurisdictions.

In its December 2008 report on the use of tax havens by American corporations, [[5]](http://en.wikipedia.org/wiki/Tax_haven#cite_note-4) the U.S. [Government Accountability Office](http://en.wikipedia.org/wiki/Government_Accountability_Office) was unable to find a satisfactory definition of a tax haven but regarded the following characteristics as indicative of a tax haven:

1. nil or nominal taxes;
2. lack of effective exchange of tax information with foreign tax authorities;
3. lack of transparency in the operation of legislative, legal or administrative provisions;
4. no requirement for a substantive local presence; and
5. self-promotion as an [offshore financial centre](http://en.wikipedia.org/wiki/Offshore_financial_centre).

Examples

The U.S. National Bureau of Economic Research has suggested that roughly 15% of countries in the world are tax havens, that these countries tend to be small and affluent, and that better governed and regulated countries are more likely to become tax havens, and are more likely to be successful if they become tax havens.[[23]](http://en.wikipedia.org/wiki/Tax_haven#cite_note-22)

No two commentators can generally agree on a "list of tax havens", but the following countries are commonly cited as falling within the "classic" perception of a sovereign tax haven.

* [Andorra](http://en.wikipedia.org/wiki/Andorra)
* The [Bahamas](http://en.wikipedia.org/wiki/Bahamas)
* [Cyprus](http://en.wikipedia.org/wiki/Cyprus)
* [Liechtenstein](http://en.wikipedia.org/wiki/Liechtenstein)
* [Luxembourg](http://en.wikipedia.org/wiki/Luxembourg)
* [Monaco](http://en.wikipedia.org/wiki/Monaco)
* [Panama](http://en.wikipedia.org/wiki/Panama)
* [San Marino](http://en.wikipedia.org/wiki/San_Marino)
* [Seychelles](http://en.wikipedia.org/wiki/Seychelles)
* [Switzerland](http://en.wikipedia.org/wiki/Switzerland)

Non-sovereign jurisdictions commonly labelled as tax havens include:

* [Bermuda](http://en.wikipedia.org/wiki/Bermuda) ([United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom))
* [British Virgin Islands](http://en.wikipedia.org/wiki/British_Virgin_Islands) ([United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom))
* [Campione d'Italia](http://en.wikipedia.org/wiki/Campione_d%27Italia) an Italian [exclave](http://en.wikipedia.org/wiki/Exclave) ([Italy](http://en.wikipedia.org/wiki/Italy))
* [Cayman Islands](http://en.wikipedia.org/wiki/Cayman_Islands) ([United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom))
* The [Channel Islands](http://en.wikipedia.org/wiki/Channel_Islands) of [Jersey](http://en.wikipedia.org/wiki/Jersey) and [Guernsey](http://en.wikipedia.org/wiki/Guernsey) ([United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom))
* [Delaware](http://en.wikipedia.org/wiki/Delaware) ([United States](http://en.wikipedia.org/wiki/United_States))
* The [Isle of Man](http://en.wikipedia.org/wiki/Isle_of_Man) ([United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom))
* [Jebel Ali Free Zone](http://en.wikipedia.org/wiki/Jebel_Ali_Free_Zone) in the [United Arab Emirates](http://en.wikipedia.org/wiki/United_Arab_Emirates)
* [Labuan](http://en.wikipedia.org/wiki/Labuan), a [Malaysian](http://en.wikipedia.org/wiki/Malaysia) island off [Borneo](http://en.wikipedia.org/wiki/Borneo)
* [Netherlands Antilles](http://en.wikipedia.org/wiki/Netherlands_Antilles) ([Netherlands](http://en.wikipedia.org/wiki/Netherlands))
* [Nevada](http://en.wikipedia.org/wiki/Nevada) ([United States](http://en.wikipedia.org/wiki/United_States))
* [Turks and Caicos Islands](http://en.wikipedia.org/wiki/Turks_and_Caicos_Islands) ([United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom))
* [United States Virgin Islands](http://en.wikipedia.org/wiki/United_States_Virgin_Islands) ([United States](http://en.wikipedia.org/wiki/United_States))
* [Wyoming](http://en.wikipedia.org/wiki/Wyoming) ([United States](http://en.wikipedia.org/wiki/United_States))

Some tax havens including some of the ones listed above do charge income tax as well as other taxes such as [capital gains](http://en.wikipedia.org/wiki/Capital_gains), inheritance tax, and so forth. Criteria distinguishing a taxpayer from a non-taxpayer can include citizenship and residency and source of income.

# X Import and Export

International trade

[](http://en.wikipedia.org/wiki/File:Silkroutes.jpg)

[magnify-clip](http://en.wikipedia.org/wiki/File:Silkroutes.jpg)

Ancient [Silk Road](http://en.wikipedia.org/wiki/Silk_road) [trade routes](http://en.wikipedia.org/wiki/Trade_routes) across [Eurasia](http://en.wikipedia.org/wiki/Eurasia).

**International trade** is the exchange of [capital](http://en.wikipedia.org/wiki/Capital_(economics)), [goods](http://en.wikipedia.org/wiki/Good_(economics)), and [services](http://en.wikipedia.org/wiki/Service_(economics)) across [international borders](http://en.wikipedia.org/wiki/International_borders) or territories.[[1]](http://en.wikipedia.org/wiki/International_trade#cite_note-0) In most countries, such trade represents a significant share of [gross domestic product](http://en.wikipedia.org/wiki/Gross_domestic_product) (GDP). While international [trade](http://en.wikipedia.org/wiki/Trade) has been present throughout much of history (see [Silk Road](http://en.wikipedia.org/wiki/Silk_Road), [Amber Road](http://en.wikipedia.org/wiki/Amber_Road)), its economic, social, and political importance has been on the rise in recent centuries.

[Industrialization](http://en.wikipedia.org/wiki/Industrialization), advanced [transportation](http://en.wikipedia.org/wiki/Transport), [globalization](http://en.wikipedia.org/wiki/Globalization), [multinational corporations](http://en.wikipedia.org/wiki/Multinational_corporation), and [outsourcing](http://en.wikipedia.org/wiki/Outsourcing) are all having a major impact on the international trade system. Increasing international trade is crucial to the continuance of [globalization](http://en.wikipedia.org/wiki/Globalization). Without international trade, nations would be limited to the goods and services produced within their own borders.

International trade is, in principle, not different from [domestic trade](http://en.wikipedia.org/wiki/Domestic_trade) as the motivation and the behaviour of parties involved in a trade do not change fundamentally regardless of whether trade is across a border or not. The main difference is that international trade is typically more costly than domestic trade. The reason is that a border typically imposes additional costs such as [tariffs](http://en.wikipedia.org/wiki/Tariff), time costs due to border delays and costs associated with country differences such as language, the legal system or culture.

Another difference between domestic and international trade is that [factors of production](http://en.wikipedia.org/wiki/Factors_of_production) such as capital and [labour](http://en.wikipedia.org/wiki/Labor_economics) are typically more mobile within a country than across countries. Thus international trade is mostly restricted to trade in goods and services, and only to a lesser extent to trade in capital, labour or other factors of production. Trade in goods and services can serve as a substitute for trade in factors of production.

Instead of importing a factor of production, a country can import goods that make intensive use of that factor of production and thus embody it. An example is the import of labour-intensive goods by the United States from China. Instead of importing Chinese labour, the United States imports goods that were produced with Chinese labour. One report in 2010 suggested that international trade was increased when a country hosted a network of immigrants, but the trade effect was weakened when the immigrants became assimilated into their new country.[[2]](http://en.wikipedia.org/wiki/International_trade#cite_note-twsA36-1)

International trade is also a branch of [economics](http://en.wikipedia.org/wiki/Economics), which, together with [international finance](http://en.wikipedia.org/wiki/International_finance), forms the larger branch of [international economics](http://en.wikipedia.org/wiki/International_economics).

Import

The term **import** is derived from the conceptual meaning as to bring in the goods and services into the port of a country. The buyer of such goods and services is referred to an "importer" who is based in the country of import whereas the overseas based seller is referred to as an "exporter". [[1]](http://en.wikipedia.org/wiki/Import#cite_note-0) Thus an import is any [good](http://en.wikipedia.org/wiki/Good_(economics_and_accounting)) (e.g. a [commodity](http://en.wikipedia.org/wiki/Commodity)) or [service](http://en.wikipedia.org/wiki/Service_(economics)) brought in from one country to another country in a legitimate fashion, typically for use in [trade](http://en.wikipedia.org/wiki/Trade). It is a good that is brought in from another country for sale.[[2]](http://en.wikipedia.org/wiki/Import#cite_note-1) Import goods or services are provided to domestic [consumers](http://en.wikipedia.org/wiki/Consumer) by foreign [producers](http://en.wikipedia.org/wiki/Production,_costs,_and_pricing). An import in the receiving country is an [export](http://en.wikipedia.org/wiki/Export) to the sending country.

Imports, along with [exports](http://en.wikipedia.org/wiki/Exports), form the basis of [international trade](http://en.wikipedia.org/wiki/International_trade). Import of goods normally requires involvement of the [customs](http://en.wikipedia.org/wiki/Customs) authorities in both the country of import and the country of [export](http://en.wikipedia.org/wiki/Export) and are often subject to [import quotas](http://en.wikipedia.org/wiki/Import_quota), [tariffs](http://en.wikipedia.org/wiki/Tariff) and [trade agreements](http://en.wikipedia.org/wiki/Trade_agreements). When the "imports" are the set of goods and services imported, "Imports" also means the [economic value](http://en.wikipedia.org/wiki/Value_(economics)) of all goods and services that are imported. The [macroeconomic](http://en.wikipedia.org/wiki/Macroeconomics) variable I usually stands for the value of these imports over a given period of time, usually one year.

Definition

"Imports" consist of transactions in goods and services (sales, barter, gifts or grants) from non-residents [residents](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Resident_institutional_unit) to residents.[[3]](http://en.wikipedia.org/wiki/Import#cite_note-2) The exact definition of imports in [national accounts](http://en.wikipedia.org/wiki/National_accounts) includes and excludes specific "borderline" cases. [[4]](http://en.wikipedia.org/wiki/Import#cite_note-3) A general delimitation of imports in national accounts is given below:

* An import of a good occurs when there is a change of ownership from a non-resident to a resident; this does not necessarily imply that the good in question physically crosses the frontier. However, in specific cases national accounts impute changes of ownership even though in legal terms no change of ownership takes place (e.g. *cross border financial leasing*, *cross border deliveries between affiliates of the same enterprise*, *goods crossing the border for significant processing to order or repair*). Also smuggled goods must be included in the import measurement.
* Imports of services consist of all services rendered by non-residents to residents. In national accounts any direct purchases by residents outside the [economic territory](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Economic_territory) of a country are recorded as imports of services; therefore all expenditure by tourists in the economic territory of another country are considered as part of the imports of services. Also international flows of illegal services must be included.

Basic trade statistics often differ in terms of definition and coverage from the requirements in the national accounts:

* Data on international trade in goods are mostly obtained through declarations to custom services. If a country applies the general trade system, all goods entering the country are recorded as imports. If the special trade system (e.g. extra-EU trade statistics) is applied goods which are received into customs warehouses are not recorded in external trade statistics unless they subsequently go into free circulation of the importing country.
* A special case is the intra-EU trade statistics. Since goods move freely between the member states of the EU without customs controls, statistics on trade in goods between the member states must be obtained through surveys. To reduce the statistical burden on the respondents small scale traders are excluded from the reporting obligation.
* Statistical recording of trade in services is based on declarations by banks to their central banks or by surveys of the main operators. In a globalized economy where services can be rendered via electronic means (*e.g. internet*) the related international flows of services are difficult to identify.
* Basic statistics on international trade normally do not record smuggled goods or international flows of illegal services. A small fraction of the smuggled goods and illegal services may nevertheless be included in official trade statistics through dummy shipments or dummy declarations that serve to conceal the illegal nature of the activities.

Export

This term **export** is derived from the conceptual meaning as to ship the goods and services out of the port of a country. The seller of such goods and services is referred to as an "exporter" who is based in the country of export whereas the overseas based buyer is referred to as an "importer". In International Trade, "exports" refers to selling goods and services produced in the home country to other markets.[[1]](http://en.wikipedia.org/wiki/Exports#cite_note-0)

Any [good](http://en.wikipedia.org/wiki/Good_(economics_and_accounting)) or [commodity](http://en.wikipedia.org/wiki/Commodity), [transported](http://en.wikipedia.org/wiki/Transport) from one country to another country in a legitimate fashion, typically for use in [trade](http://en.wikipedia.org/wiki/Trade). Export goods or services are provided to foreign [consumers](http://en.wikipedia.org/wiki/Consumer) by domestic [producers](http://en.wikipedia.org/wiki/Production_theory_basics).[[2]](http://en.wikipedia.org/wiki/Exports#cite_note-1)

Export of commercial quantities of goods normally requires involvement of the customs authorities in both the country of export and the country of import. An export's counterpart is an [import](http://en.wikipedia.org/wiki/Import).

Definition

"Foreign demand for goods produced by home country"

In [national accounts "exports"](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Exports_-_NA) consist of transactions in goods and services (sales, barter, gifts or grants) from [residents](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Resident_institutional_unit) to non-residents.[[3]](http://en.wikipedia.org/wiki/Exports#cite_note-2) The exact definition of exports includes and excludes specific "borderline" cases.[[4]](http://en.wikipedia.org/wiki/Exports#cite_note-3) A general delimitation of exports in national accounts is given below:

* An export of a good occurs when there is a change of ownership from a resident to a non-resident; this does not necessarily imply that the good in question physically crosses the frontier. However, in specific cases national accounts impute changes of ownership even though in legal terms no change of ownership takes place (e.g. *cross border financial leasing*, *cross border deliveries between affiliates of the same enterprise*, *goods crossing the border for significant processing to order or repair*). Also smuggled goods must be included in the export measurement.
* Export of services consists of all services rendered by residents to non-residents. In national accounts any direct purchases by non-residents in the [economic territory](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Economic_territory) of a country are recorded as exports of services; therefore all expenditure by foreign tourists in the economic territory of a country is considered as part of the exports of services of that country. Also international flows of illegal services must be included.

National accountants often need to make adjustments to the basic trade data in order to comply with national accounts concepts; the concepts for basic trade statistics often differ in terms of definition and coverage from the requirements in the national accounts:

* Data on international trade in goods are mostly obtained through declarations to custom services. If a country applies the general trade system, all goods entering or leaving the country are recorded. If the special trade system (e.g. extra-EU trade statistics) is applied goods which are received into customs warehouses are not recorded in external trade statistics unless they subsequently go into free circulation in the country of receipt.
* A special case is the intra-EU trade statistics. Since goods move freely between the member states of the EU without customs controls, statistics on trade in goods between the member states must be obtained through surveys. To reduce the statistical burden on the respondents small scale traders are excluded from the reporting obligation.
* Statistical recording of trade in services is based on declarations by banks to their central banks or by surveys of the main operators. In a globalized economy where services can be rendered via electronic means (*e.g. internet*) the related international flows of services are difficult to identify.
* Basic statistics on international trade normally do not record smuggled goods or international flows of illegal services. A small fraction of the smuggled goods and illegal services may nevertheless be included in official trade statistics through dummy shipments or dummy declarations that serve to conceal the illegal nature of the activities.

Customs

**Customs** is an [authority](http://en.wikipedia.org/wiki/Authority) or [agency](http://en.wikipedia.org/wiki/Government_agency) in a country responsible for collecting and safeguarding [customs duties](http://en.wikipedia.org/wiki/Duty_(economics)) and for controlling the flow of goods including animals, transports, personal effects and [hazardous](http://en.wikipedia.org/wiki/Hazard) items in and out of a country. Depending on local legislation and regulations, the [import](http://en.wikipedia.org/wiki/International_trade) or [export](http://en.wikipedia.org/wiki/Export) of some goods may be restricted or forbidden, and the customs agency enforces these rules.[[1]](http://en.wikipedia.org/wiki/Customs#cite_note-Chowdhury_1992-0) The customs authority may be different from the immigration authority, which monitors persons who leave or enter the country, checking for appropriate documentation, apprehending people wanted by international [arrest warrants](http://en.wikipedia.org/wiki/Arrest_warrant), and impeding the entry of others deemed dangerous to the country. In most countries customs are attained through government agreements and international laws.

A customs [duty](http://en.wikipedia.org/wiki/Duty_(economics)) is a [tariff](http://en.wikipedia.org/wiki/Tariff) or [tax](http://en.wikipedia.org/wiki/Tax) on the importation (usually) or exportation (unusually) of goods. In the [Kingdom of England](http://en.wikipedia.org/wiki/Kingdom_of_England), customs duties were typically part of the customary revenue of the [king](http://en.wikipedia.org/wiki/Monarch), and therefore did not need [parliamentary](http://en.wikipedia.org/wiki/Parliament_of_England) consent to be levied, unlike [excise duty](http://en.wikipedia.org/wiki/Excises), [land tax](http://en.wikipedia.org/wiki/Land_tax), or other forms of taxes.

Commercial goods not yet cleared through customs are held in a [customs area](http://en.wikipedia.org/wiki/Customs_area), often called a bonded store, until processed. All authorised ports are recognised customs area.

Tariff

A **tariff** is either (1) a tax on [imports](http://en.wikipedia.org/wiki/Imports) or [exports](http://en.wikipedia.org/wiki/Exports) (trade tariff) in and out of a country, or (2) a list or schedule of prices for such things as [rail](http://en.wikipedia.org/wiki/Rail_transport) service, [bus routes](http://en.wikipedia.org/wiki/Bus_routes), and [electrical](http://en.wikipedia.org/wiki/Electrical) usage (electrical tariff, etc.).[[1]](http://en.wikipedia.org/wiki/Tariff#cite_note-0)

The word comes from the Italian word *tariffa* "list of prices, book of rates," which is derived from the Arabic *ta'rif* "to notify or announce."[[2]](http://en.wikipedia.org/wiki/Tariff#cite_note-1)

*Ad valorem* tax

An ***ad valorem* tax** ([Latin](http://en.wikipedia.org/wiki/Latin_language) for "according to value") is a [tax](http://en.wikipedia.org/wiki/Tax) based on the value of [real estate](http://en.wikipedia.org/wiki/Real_estate) or [personal property](http://en.wikipedia.org/wiki/Personal_property). It is more common than a **specific duty**, a tax based on the quantity of an item, such as cents per kilogram, regardless of price.

An *ad valorem* tax is typically imposed at the time of a transaction(s) (a [sales tax](http://en.wikipedia.org/wiki/Sales_tax) or [value-added tax](http://en.wikipedia.org/wiki/Value-added_tax) (VAT)), but it may be imposed on an annual basis (real or personal [property tax](http://en.wikipedia.org/wiki/Property_tax)) or in connection with another significant event ([inheritance tax](http://en.wikipedia.org/wiki/Inheritance_tax), surrendering citizenship,[[1]](http://en.wikipedia.org/wiki/Ad_valorem_tax#cite_note-0) or [tariffs](http://en.wikipedia.org/wiki/Tariff)). In some countries [stamp duty](http://en.wikipedia.org/wiki/Stamp_duty) is imposed as an *ad valorem* tax.

Harmonized System

The **Harmonized Commodity Description and Coding System** (HS) of [tariff](http://en.wikipedia.org/wiki/Tariff) [nomenclature](http://en.wikipedia.org/wiki/Nomenclature) is an internationally standardized system of names and numbers for classifying traded products developed and maintained by the [World Customs Organization](http://en.wikipedia.org/wiki/World_Customs_Organization) (WCO) (formerly the Customs Co-operation Council), an independent intergovernmental organization with over 170 member countries based in [Brussels](http://en.wikipedia.org/wiki/Brussels), Belgium.

Structure

Under the HS Convention, the contracting [parties](http://en.wikipedia.org/wiki/Party_(law)) are obliged to base their tariff schedules on the HS nomenclature, although parties set their own rates of [duty](http://en.wikipedia.org/wiki/Duty_(economics)). The HS is organized into 21 sections and 96 chapters, accompanied with general rules of interpretation and explanatory notes. The system begins by assigning goods to categories of crude and natural products, and from there proceeds to categories with increasing complexity. The codes with the broadest coverage are the first four digits, and are referred to as the heading. The HTS therefore sets forth all the international nomenclature through the 6-digit level and, where needed, contains added subdivisions assigned 2 more digits, for a total of 8 at the tariff-rate line (legal) level. Two final (non-legal) digits are assigned as statistical reporting numbers if warranted, for a total of 10 digits to be listed on entries.

To ensure harmonization, the contracting parties must employ all 4- and 6-digit provisions and the international rules and notes without deviation, but are free to adopt additional subcategories and notes. The two final chapters, 98 and 99, are reserved for national use. Chapter 77 is reserved for future international use. Chapter 98 comprises special classification provisions, and chapter 99 contains temporary modifications pursuant to a parties' national directive or legislation.

Classification

All existing [products](http://en.wikipedia.org/wiki/Product_(business)) can be classified into the existing HS utilizing the General Rules of Interpretation. This structure allows for placement through research of the products form and function. An example of the former would be whole potatoes, while an example of the latter would be a [resistance heated](http://en.wikipedia.org/wiki/Joule_heating) electric oven.

Applications

[As of](http://en.wikipedia.org/wiki/As_of) 17 October 2011, there are 206 countries or territories applying the Harmonized System worldwide,[[1]](http://en.wikipedia.org/wiki/Harmonized_System#cite_note-0) representing more than 98% of world trade. The HS is used as a basis for:

* Customs tariffs
* Collection of [international trade](http://en.wikipedia.org/wiki/International_trade) statistics
* [Rules of origin](http://en.wikipedia.org/wiki/Rules_of_origin)
* Collection of internal taxes
* Trade negotiations (e.g., the [World Trade Organization](http://en.wikipedia.org/wiki/World_Trade_Organization) schedules of [tariff](http://en.wikipedia.org/wiki/Tariff) concessions)
* Transport tariffs and statistics
* Monitoring of controlled goods (e.g., wastes, [narcotics](http://en.wikipedia.org/wiki/Narcotic), [chemical weapons](http://en.wikipedia.org/wiki/Chemical_weapon), [ozone layer](http://en.wikipedia.org/wiki/Ozone_layer) depleting substances, [endangered species](http://en.wikipedia.org/wiki/Endangered_species))
* Areas of Customs controls and procedures, including risk assessment, information technology and compliance.

Codes have been revised through the years. If it is necessary to reference a code related to a trade issue from the past, one must make sure the definition set being used matches the code.

Invoice

An **invoice** or **bill** is a [commercial](http://en.wikipedia.org/wiki/Commerce) document issued by a [seller](http://en.wikipedia.org/wiki/Sales) to the [buyer](http://en.wikipedia.org/wiki/Buyer), indicating the [products](http://en.wikipedia.org/wiki/Product_(business)), quantities, and agreed [prices](http://en.wikipedia.org/wiki/Price) for products or [services](http://en.wikipedia.org/wiki/Service_(economics)) the seller has provided the buyer. An invoice indicates the buyer must pay the seller, according to the [payment terms](http://en.wikipedia.org/wiki/Payment_terms). The buyer has a maximum amount of days to pay for these goods and is sometimes offered a discount if paid before the due date.

In the rental industry, an invoice must include a specific reference to the duration of the time being billed, so in addition to quantity, price and discount the invoicing amount is also based on duration. Generally speaking each line of a rental invoice will refer to the actual hours, days, weeks, months, etc. being billed.

From the point of view of a seller, an invoice is a *sales invoice*. From the point of view of a buyer, an invoice is a *purchase invoice*. The document indicates the buyer and seller, but the term *invoice* indicates money is owed *or* owing. In English, the context of the term *invoice* is usually used to clarify its meaning, such as "We sent them an invoice" (they owe us money) or "We received an invoice from them" (we owe them money).

Invoice

**A typical invoice contains** [[1]](http://en.wikipedia.org/wiki/Invoice#cite_note-0) [[2]](http://en.wikipedia.org/wiki/Invoice#cite_note-1)

* The word *invoice* (or *Tax Invoice* if in Australia and amounts include GST).
* A unique reference number (in case of correspondence about the invoice)
* Date of the invoice.
* Tax payments if relevant (e.g. GST or VAT)
* Name and contact details of the seller
* Tax or company registration details of seller (if relevant)
* Name and contact details of the buyer
* Date that the product was sent or delivered
* [Purchase order](http://en.wikipedia.org/wiki/Purchase_order) number (or similar tracking numbers requested by the buyer to be mentioned on the invoice)
* Description of the product(s)
* Unit price(s) of the product(s) (if relevant)
* Total amount charged (optionally with breakdown of taxes, if relevant)
* Payment terms (including method of payment, date of payment, and details about charges for late payment)

In countries where [wire transfer](http://en.wikipedia.org/wiki/Wire_transfer) is the preferred method of settling debts the printed bill will contain the [bank account number](http://en.wikipedia.org/wiki/Bank_account_number) of the debtor and usually a reference code to be passed along the transaction identifying the payer.

The US Defense Logistics Agency requires an [employer identification number](http://en.wikipedia.org/wiki/Employer_identification_number) on invoices.[[3]](http://en.wikipedia.org/wiki/Invoice#cite_note-2)

The European Union requires a [VAT (value added tax) identification number](http://en.wikipedia.org/wiki/Value_added_tax_identification_number).

In Canada, the registration number for [GST](http://en.wikipedia.org/wiki/Goods_and_Services_Tax_(Canada)) purposes must be furnished for all supplies over $30 made by a registered supplier, in order to claim input tax credits.[[4]](http://en.wikipedia.org/wiki/Invoice#cite_note-3)

Recommendation about invoices used in international trade is also provided by the [UNECE](http://en.wikipedia.org/wiki/United_Nations_Economic_Commission_for_Europe) Committee on Trade, which involves more detailed description of logistics aspect of merchandise and therefore may be convenient for international logistics and customs procedures.[[5]](http://en.wikipedia.org/wiki/Invoice#cite_note-4)

## Variations

There are different types of invoices:

* [**Pro forma**](http://en.wikipedia.org/wiki/Pro_forma) invoice — In [foreign trade](http://en.wikipedia.org/wiki/Foreign_trade), a *pro forma* invoice is a document that states a commitment from the seller to provide specified goods to the buyer at specific prices. It is often used to declare value for [customs](http://en.wikipedia.org/wiki/Customs). It is not a true invoice, because the seller does not record a *pro forma* invoice as an [accounts receivable](http://en.wikipedia.org/wiki/Accounts_receivable) and the buyer does not record a *pro forma* invoice as an [accounts payable](http://en.wikipedia.org/wiki/Accounts_payable). A *pro forma* invoice is not issued by the seller until the seller and buyer have agreed to the terms of the [order](http://en.wikipedia.org/wiki/Order_(business)). In few cases, *pro forma* invoice is issued for obtaining advance payments from buyer, either for start of production or for security of the goods produced.
* [**Credit memo**](http://en.wikipedia.org/wiki/Credit_memo) - If the buyer returns the product, the seller usually issues a credit memo for the same or lower amount than the invoice, and then refunds the money to the buyer, or the buyer can apply that credit memo to another invoice.
* [**Commercial invoice**](http://en.wikipedia.org/wiki/Commercial_invoice) - a [customs](http://en.wikipedia.org/wiki/Customs) declaration form used in international trade that describes the parties involved in the shipping transaction, the goods being transported, and the value of the goods.[[6]](http://en.wikipedia.org/wiki/Invoice#cite_note-5) It is the primary document used by customs, and must meet specific customs requirements, such as the [Harmonized System](http://en.wikipedia.org/wiki/Harmonized_System) number and the country of manufacture. It is used to calculate [tariffs](http://en.wikipedia.org/wiki/Tariff).
* **Debit memo** - When a company fails to pay or short-pays an invoice, it is common practice to issue a *debit memo* for the [balance](http://en.wikipedia.org/wiki/Balance_(accounting)) and any late fees owed. In function debit memos are identical to invoices.
* **Self-billing invoice** - A *self billing invoice* is when the buyer issues the invoice to himself (e.g. according to the consumption levels he is taking out of a [vendor-managed inventory](http://en.wikipedia.org/wiki/Vendor-managed_inventory) stock).
* **Evaluated receipt settlement (ERS)** - ERS is a process of paying for goods and services from a [packing slip](http://en.wikipedia.org/wiki/Packing_slip) rather than from a separate invoice document. The payee uses data in the packing slip to apply the payments. "In an ERS transaction, the supplier ships goods based upon an Advance Shipping Notice (ASN), and the purchaser, upon [receipt](http://en.wikipedia.org/wiki/Receipt), confirms the existence of a corresponding purchase order or contract, verifies the identity and quantity of the goods, and then pays the supplier."[[7]](http://en.wikipedia.org/wiki/Invoice#cite_note-6)
* **Timesheet** - Invoices for hourly services such as by [lawyers](http://en.wikipedia.org/wiki/Lawyer) and [consultants](http://en.wikipedia.org/wiki/Consultant) often pull data from a [timesheet](http://en.wiktionary.org/wiki/timesheet). A Timesheet invoice may also be generated by [Operated equipment rental companies](http://en.wikipedia.org/wiki/Operated_equipment_rental) where the invoice will be a combination of timesheet based charges and equipment rental charges.
* **Invoicing** - The term **invoicing** is also used to refer to the act of [delivering](http://en.wikipedia.org/wiki/Delivery_(business)) [baggage](http://en.wikipedia.org/wiki/Luggage) to a [flight company](http://en.wikipedia.org/wiki/Airline) in an [airport](http://en.wikipedia.org/wiki/Airport) before taking a flight.
* **Statement** - A periodic customer statement includes opening balance, invoices, payments, credit memos, debit memos, and ending balance for the customer's account during a specified period. A monthly statement can be used as a summary invoice to request a single payment for accrued monthly charges.
* **Progress billing** used to obtain partial payment on extended contracts, particularly in the construction industry (see [Schedule of values](http://en.wikipedia.org/wiki/Schedule_of_values))
* **Collective Invoicing** is also known as monthly invoicing in [Japan](http://en.wikipedia.org/wiki/Japan). Japanese businesses tend to have many orders with small amounts because of the outsourcing system ([Keiretsu](http://en.wikipedia.org/wiki/Keiretsu)), or of demands for less inventory control ([Kanban](http://en.wikipedia.org/wiki/Kanban)). To save the administration work, invoicing is normally processed on monthly basis.
* **Continuation or Recurring Invoicing** is standard within the equipment rental industry, including tool rental. A recurring invoice is one generated on a cyclical basis during the lifetime of a rental contract. For example if you rent an excavator from 1 January to 15 April, on a calendar monthly arrears billing cycle, you would expect to receive an invoice at the end of January, another at the end of February, another at the end of March and a final Off-rent invoice would be generated at the point when the asset is returned. The same principle would be adopted if you were invoiced in advance, or if you were invoiced on a specific day of the month.
* **Electronic Invoicing** is not necessarily the same as EDI invoicing. Electronic invoicing in its widest sense embraces EDI as well as XML invoice messages as well as other format such as pdf. Historically, other formats such as pdf were not included in the wider definition of an electronic invoice because they were not machine readable and the process benefits of an electronic message could not be achieved. However, as data extraction techniques have evolved and as environmental concerns have begun to dominate the business case for the implementation of electronic invoicing, other formats are now incorporated into the wider definition.

Commercial invoice

A **commercial invoice** is a document used in [foreign trade](http://en.wikipedia.org/wiki/Foreign_trade). It is used as a [customs](http://en.wikipedia.org/wiki/Customs) declaration provided by the person or corporation that is exporting an item across international borders.[[1]](http://en.wikipedia.org/wiki/Commercial_invoice#cite_note-0) [[2]](http://en.wikipedia.org/wiki/Commercial_invoice#cite_note-1)Although there is no standard format, the document must include a few specific pieces of information such as the parties involved in the shipping transaction, the goods being transported, the country of manufacture, and the [Harmonized System](http://en.wikipedia.org/wiki/Harmonized_System) codes for those goods. A commercial invoice must also include a statement certifying that the invoice is true, and a signature.

A commercial invoice is used to calculate [tariffs](http://en.wikipedia.org/wiki/Tariffs), international commercial terms (like the Cost in a CIF) and is commonly used for customs purposes.

Commercial invoices are in European countries not normally for payment. The definitive [**invoice**](http://en.wikipedia.org/wiki/Invoice) for payment usually has only the words "invoice". This invoice can also be used as a commercial invoice if additional information is disclosed.

**A sample commercial invoice format** [[3]](http://en.wikipedia.org/wiki/Commercial_invoice#cite_note-2)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **COMMERCIAL INVOICE** | | | | | | |
| SENDER: AUTO PARTS FEE WAREHOUSE 7634 KIMBEL STREET UNIT 1-9 MISSISSAUGA,ON L5S-1M6 Phone:905.677.0996 Fax: 999-999-9999 Tax ID/VAT/EIN# nnnnnnnnnn | | | RECIPIENT: XYZ Company 3 Able End There, Shropshire, UK Phone:99-99-9999 | | | |
| Invoice Date: 12 December 2007 | | | Invoice Number: 0256982 | | | |
| Carrier tracking number: 526555598 | | | Sender's Reference: 5555555 | | | |
| Carrier: GHI Transport Company | | | Recipient's Reference: 5555555 | | | |
| Quantity | Country of Origin | Description of Contents | [Harmonised Code](http://en.wikipedia.org/wiki/Harmonised_code) | Unit Weight | Unit Value | Subtotal (USD) |
| 1,000 | United States of America | Widgets | 999999 | 2 | 10.00 | 10,000 |
| Total Net Weight (lbs): | 2,000 | Total Declared Value (USD): | 10,000 | | | |
| Total Gross Weight (lbs): | 2,050 | Freight and Insurance Charges (USD): | 300.00 | | | |
| Total Shipment Pieces: | 1,000 | Other Charges (USD): | 30.00 | | | |
| Currency Code: | USD | Total Invoice Amount (USD): | 10,000 | | | |
| Type of Export: Permanent | | | Terms of Trade: Delivery Duty Unpaid | | | |
| Reason for Export: *stated reason* | | | | | | |
| General Notes: *notes and comments* | | | | | | |
| The exporter of the products covered by this document - *customs authorization number* - declares that, except where otherwise clearly indicated, these products are of United States Of America preferential origin.  I/We hereby certify that the information on this invoice is true and correct and that the contents of this shipment are as stated above.  Name, Position in exporting company, company stamp, signature | | | | | | |

Certificate of origin

A **Certificate of Origin** (often abbreviated to CO or COO) is a [document](http://en.wikipedia.org/wiki/Document) used in [international trade](http://en.wikipedia.org/wiki/International_trade). It is a printed form, completed by the exporter or its agent and certified by an issuing body, attesting that the goods in a particular export shipment have been wholly produced, manufactured or processed in a particular country.

The “origin” does not refer to the country where the goods were shipped from but to the country where they were made. In the event the products were manufactured in two or more countries, origin is obtained in the country where the last substantial economically justified working or processing is carried out. An often used practice is that if more than 50% of the cost of producing the goods originates from one country, the "national content" is more than 50%, then, that country is acceptable as the [country of origin](http://en.wikipedia.org/wiki/Country_of_origin).[[1]](http://en.wikipedia.org/wiki/Certificate_of_origin#cite_note-0)

When countries unite in trading agreements, they may allow Certificate of Origin [[2]](http://en.wikipedia.org/wiki/Certificate_of_origin#cite_note-1) to state the trading bloc, for example, the [European Union](http://en.wikipedia.org/wiki/European_Union) (EU) as origin, rather than the specific country. Determining the origin of a product is important because it is a key basis for applying tariff and other important criteria. However, not all exporters need a certificate of origin, this will depend on the destination of the goods, their nature, and it can also depend on the financial institution involved in the export operation.

Letter of credit

A **letter of credit** is a document that a financial institution or similar party issues to a seller of goods or services which provides that the issuer will pay the seller for goods or services the seller delivers to a third-party buyer.[[1]](http://en.wikipedia.org/wiki/Letter_of_credit#cite_note-0) The issuer then seeks reimbursement from the buyer or from the buyer's bank. The document serves essentially as a guarantee to the seller that it will be paid by the issuer of the letter of credit regardless of whether the buyer ultimately fails to pay. In this way, the risk that the buyer will fail to pay is transferred from the seller to the letter of credit's issuer.

Letters of credit are used primarily in [international trade](http://en.wikipedia.org/wiki/International_trade) for large transactions between a supplier in one country and a customer in another. In such cases, the International Chamber of Commerce [Uniform Customs and Practice for Documentary Credits](http://en.wikipedia.org/wiki/Uniform_Customs_and_Practice_for_Documentary_Credits) applies (UCP 600 being the latest version).[[2]](http://en.wikipedia.org/wiki/Letter_of_credit#cite_note-1)They are also used in the land development process to ensure that approved public facilities (streets, sidewalks, storm water ponds, etc.) will be built. The parties to a letter of credit are the supplier, usually called the **beneficiary**, *the issuing bank*, of whom the buyer is a client, and sometimes an [**advising bank**](http://en.wikipedia.org/wiki/Advising_bank), of whom the beneficiary is a client. Almost all letters of credit are irrevocable, i.e., cannot be amended or cancelled without the consent of the beneficiary, issuing bank, and confirming bank, if any. In executing a transaction, letters of credit incorporate functions common to [giros](http://en.wikipedia.org/wiki/Giro) and [traveller’s cheques](http://en.wikipedia.org/wiki/Traveler%27s_cheque).

Bankers' acceptance

A **banker's acceptance**, or **BA**, is a promised future payment, or [time draft](http://en.wikipedia.org/wiki/Bankers%27_acceptance#Comparison_with_other_drafts), which is accepted and guaranteed by a [bank](http://en.wikipedia.org/wiki/Bank) and drawn on a deposit at the bank. The banker's acceptance specifies the amount of money, the date, and the person to which the payment is due. After acceptance, the draft becomes an unconditional liability of the bank. But the holder of the draft can sell (exchange) it for cash at a discount to a buyer who is willing to wait until the maturity date for the funds in the deposit.

A banker's acceptance starts as a time draft drawn on a bank deposit by a bank's customer to pay money at a future date, typically within six months, analogous to a post-dated check. Next, the bank accepts (guarantees) payment to the holder of the draft, analogous to a post-dated check drawn on a deposit with over-draft protection.

The party that holds the banker's acceptance may keep the acceptance until it matures, and thereby allow the bank to make the promised payment, or it may sell the acceptance at a discount today to any party willing to wait for the face value payment of the deposit on the maturity date. The rates at which they trade, calculated from the discount prices relative to their face values, are called banker's acceptance rates.[[1]](http://en.wikipedia.org/wiki/Sight_draft#cite_note-0)

Banker’s acceptances make a transaction between two parties who do not know each other safer because they allow the parties to substitute the bank's credit worthiness for that who owes the payment. They are used widely in international trade for payments that are due for a future shipment of goods and services. For example, an importer may draft a banker's acceptance when it does not have a close relationship with and cannot obtain credit from an exporter. Once the importer and bank have completed an acceptance agreement, whereby the bank accepts liabilities of the importer and the importer deposits funds at the bank (enough for the future payment plus fees), the importer can issue a time draft to the exporter for a future payment with the bank's guarantee.

Banker's acceptances are typically sold in multiples of US $100,000[[2]](http://en.wikipedia.org/wiki/Sight_draft#cite_note-1) Banker's acceptances smaller than this amount are referred to as [odd lots](http://en.wikipedia.org/wiki/Odd_lot).

Comparison with other drafts

When a draft promises immediate payment to the holder of the draft, it is called a **sight draft**. [Cheques](http://en.wikipedia.org/wiki/Cheques) written on demand deposits are examples of sight drafts. When a draft promises a deferred payment to the holder of the draft, it is called a **time draft**. The date on which the payment is due is called the maturity date. In a case where the drawer and drawee of a time draft are distinct parties, the payee may submit the draft to the drawee for confirmation that the draft is a legitimate order and that the drawee will make payment on the specified date. Such confirmation is called an **acceptance** — the drawee accepts the order to pay as legitimate. The drawee stamps ACCEPTED on the draft and is thereafter obligated to make the specified payment when it is due. If the drawee is a bank, the acceptance is called a **banker's acceptance**.

Freight forwarder

[](http://en.wikipedia.org/wiki/File:Guangzhou-freight-forwarders-0448.jpg)

[magnify-clip](http://en.wikipedia.org/wiki/File:Guangzhou-freight-forwarders-0448.jpg)

The storefront of one of many freight forwarders located around [Guangzhou](http://en.wikipedia.org/wiki/Guangzhou)'s garment districts. The list of destinations indicates that this business serves importers of Chinese clothes to countries such as Russia and Azerbaijan.

A **freight forwarder**, **forwarder**, or **forwarding agent** is a person or company that organizes shipments for individuals or [corporations](http://en.wikipedia.org/wiki/Corporations) to get large orders from the [manufacturer](http://en.wikipedia.org/wiki/Manufacturer) or producer to market or final point of distribution. Forwarders will contract with a [carrier](http://en.wikipedia.org/wiki/Common_carrier) [[1]](http://en.wikipedia.org/wiki/Freight_forwarder#cite_note-0) [[2]](http://en.wikipedia.org/wiki/Freight_forwarder#cite_note-1) [[3]](http://en.wikipedia.org/wiki/Freight_forwarder#cite_note-2) to facilitate the movement of goods. A forwarder is not typically a carrier, but is an expert in supply chain management. In other words, a freight forwarder is a "travel agent," for the cargo industry, or a third-party (non-asset-based) [logistics](http://en.wikipedia.org/wiki/Logistics) provider. A forwarder will contract with asset-based carriers to move cargo ranging from raw agricultural products to manufactured goods. Freight can be booked on a variety of carrier types, including [ships](http://en.wikipedia.org/wiki/Ships), [airplanes](http://en.wikipedia.org/wiki/Fixed-wing_aircraft), [trucks](http://en.wikipedia.org/wiki/Truck), and [railroads](http://en.wikipedia.org/wiki/Railroad). It's not unusual for a shipment to move along its route on multiple carrier types.

International freight forwarders typically arrange [cargo](http://en.wikipedia.org/wiki/Cargo) movement to an international destination. International freight forwarders, have the expertise that allows them to prepare and process the documentation and perform related activities pertaining to international shipments. Some of the typical information reviewed by a freight forwarder is the [commercial invoice](http://en.wikipedia.org/wiki/Commercial_invoice), [shipper's export declaration](http://en.wikipedia.org/wiki/Automated_export_system), [bill of lading](http://en.wikipedia.org/wiki/Bill_of_lading), and other documents required by the carrier or country of [export](http://en.wikipedia.org/wiki/Export), [import](http://en.wikipedia.org/wiki/International_trade), or [transshipment](http://en.wikipedia.org/wiki/Transshipment). Much of this information is now processed in a [paperless environment](http://en.wikipedia.org/wiki/Paperless_office).

The [FIATA](http://en.wikipedia.org/wiki/International_Federation_of_Freight_Forwarders_Associations) short-hand description of the freight forwarder as the 'Architect of Transport' illustrates clearly the commercial position of the forwarder relative to his client. In Europe there are forwarders that specialize in 'niche' areas such as rail-freight and collection and deliveries around a large port. The latter are called Hafen (port) Spediteure (Port Forwarders).

Negotiable instrument

A **negotiable instrument** is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time. Negotiable instruments are often defined in legislation. For example, according to the Section 13 of the Negotiable Instruments Act, 1881 in India, a negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer. So, in India, there are just three types of negotiable instruments such as [promissory note](http://en.wikipedia.org/wiki/Promissory_note), [bill of exchange](http://en.wikipedia.org/wiki/Negotiable_instrument#Bill_of_exchange) and [cheque](http://en.wikipedia.org/wiki/Cheque). Cheque also includes Demand Draft [Section 85A].

More specifically, it is a document contemplated by a [contract](http://en.wikipedia.org/wiki/Contract), which (1) warrants the payment of money, the promise of or order for conveyance of which is unconditional; (2) specifies or describes the payee, who is designated on and memorialized by the instrument; and (3) is capable of change through transfer by valid negotiation of the instrument.

As a negotiable instrument is a promise of a payment of money, the instrument itself can be used by the [holder in due course](http://en.wikipedia.org/wiki/Holder_in_due_course) as a store of value; although, instruments can be transferred for amounts in contractual exchange that are less than the instrument’s face value (known as “discounting”). Under [United States law](http://en.wikipedia.org/wiki/United_States_law), Article 3 of the [Uniform Commercial Code](http://en.wikipedia.org/wiki/Uniform_Commercial_Code) as enacted in the applicable State law governs the use of negotiable instruments, except [banknotes](http://en.wikipedia.org/wiki/Banknotes) (“[Federal Reserve Notes](http://en.wikipedia.org/wiki/Federal_Reserve_Notes)”, aka "paper [dollars](http://en.wikipedia.org/wiki/Dollar)").

## Negotiable instruments distinguished from other types of contracts

A negotiable instrument can serve to convey value constituting at least part of the performance of a [contract](http://en.wikipedia.org/wiki/Contract), albeit perhaps not obvious in contract formation, in terms inherent in and arising from the requisite offer and acceptance and conveyance of consideration. The underlying contract contemplates the right to hold the instrument as, and to negotiate the instrument to, a *holder in due course*, the payment on which is at least part of the performance of the contract to which the negotiable instrument is linked. The instrument, memorializing (1) the power to demand payment; and, (2) the right to be paid, can move, for example, in the instance of a '[bearer instrument](http://en.wikipedia.org/wiki/Bearer_instrument)', wherein the possession of the document itself attributes and ascribes the right to payment. Certain exceptions exist, such as instances of loss or theft of the instrument, wherein the possessor of the note may be a holder, but not necessarily a holder in due course. Negotiation requires a valid *endorsement* of the negotiable instrument. The consideration constituted by a negotiable instrument is cognizable as the value given up to acquire it (benefit) and the consequent loss of value (detriment) to the prior holder; thus, no separate consideration is required to support an accompanying contract assignment. The instrument itself is understood as memorializing the right for, and power to demand, payment, and an obligation for payment evidenced by the instrument itself with possession as a holder in due course being the touchstone for the right to, and power to demand, payment. In some instances, the negotiable instrument can serve as the writing memorializing a contract, thus satisfying any applicable [Statute of Frauds](http://en.wikipedia.org/wiki/Statute_of_frauds) as to that contract.

### The holder in due course

The rights of a [holder in due course](http://en.wikipedia.org/wiki/Holder_in_due_course) of a negotiable instrument are qualitatively, as matters of law, superior to those provided by ordinary species of contracts:

* The rights to payment are not subject to [set-off](http://en.wikipedia.org/wiki/Set-off_(law)), and do not rely on the validity of the underlying contract giving rise to the debt (for example if a cheque was drawn for payment for goods delivered but defective, the drawer is still liable on the cheque)
* No notice need be given to any party liable on the instrument for transfer of the rights under the instrument by negotiation. However, payment by the party liable to the person previously entitled to enforce the instrument "counts" as payment on the note until adequate notice has been received by the liable party that a different party is to receive payments from then on. [U.C.C. §3-602(b)]
* Transfer free of equities—the holder in due course can hold better title than the party he obtains it from (as in the instance of negotiation of the instrument from a mere holder to a holder in due course)

Negotiation often enables the transferee to become the party to the contract through a contract assignment (provided for explicitly or by operation of law) and to enforce the contract in the transferee-assignee’s own name. Negotiation can be effected by endorsement and delivery (order instruments), or by delivery alone ([bearer instruments](http://en.wikipedia.org/wiki/Bearer_instrument)).

## Classes

Promissory notes and bills of exchange are two primary types of negotiable instruments.

### Promissory note

A [promissory note](http://en.wikipedia.org/wiki/Promissory_note) is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand to the *payee*, or at fixed or determinable future time, certain in money, to order or to bearer. (see Sec.194) [Bank note](http://en.wikipedia.org/wiki/Bank_note) is frequently referred to as a promissory note, a promissory note made by a bank and payable to bearer on demand.

### Bill of exchange

A bill of exchange or "draft" is a written order by the [*drawer*](http://en.wiktionary.org/wiki/drawer) to the [*drawee*](http://en.wiktionary.org/wiki/drawee) to pay money to the [*payee*](http://en.wiktionary.org/wiki/payee). A common type of bill of exchange is the [cheque](http://en.wikipedia.org/wiki/Cheque) (*check* in [American English](http://en.wikipedia.org/wiki/American_English)), defined as a bill of exchange drawn on a banker and payable on demand. Bills of exchange are used primarily in international trade, and are written orders by one person to his bank to pay the bearer a specific sum on a specific date. Prior to the advent of paper currency, bills of exchange were a common means of exchange. They are not used as often today.

[](http://en.wikipedia.org/wiki/File:Credit1.jpg)

[magnify-clip](http://en.wikipedia.org/wiki/File:Credit1.jpg)

Bill of exchange, 1933

A bill of exchange is essentially an order made by one person to another to pay money to a third person. A bill of exchange requires in its inception three parties—the drawer, the drawee, and the payee. The person who draws the bill is called the drawer. He gives the order to pay money to the third party. The party upon whom the bill is drawn is called the drawee. He is the person to whom the bill is addressed and who is ordered to pay. He becomes an acceptor when he indicates his willingness to pay the bill. The party in whose favor the bill is drawn or is payable is called the payee. The parties need not all be distinct persons. Thus, the drawer may draw on himself payable to his own order.

A bill of exchange may be endorsed by the payee in favour of a third party, who may in turn endorse it to a fourth, and so on indefinitely. The "holder in due course" may claim the amount of the bill against the drawee and all previous endorsers, regardless of any counterclaims that may have disabled the previous payee or endorser from doing so. This is what is meant by saying that a bill is negotiable.

In some cases a bill is marked "not negotiable" – see [crossing of cheques](http://en.wikipedia.org/wiki/Crossing_of_cheques). In that case it can still be transferred to a third party, but the third party can have no better right than the transferor.

Bill of lading

**A**[**bill of lading**](http://en.wikipedia.org/wiki/Bill_of_lading) (sometimes referred to as a BOL or B/L) is a document issued by a carrier to a shipper, acknowledging that specified goods have been received on board as cargo for conveyance to a named place for delivery to the consignee who is usually identified. A thorough bill of lading involves the use of at least two different modes of transport from road, rail, air, and sea. The term derives from the verb "to lade" which means to load a cargo onto a ship or other form of transportation.

A bill of lading can be used as a traded object. The standard short form bill of lading is evidence of the contract of carriage of goods and it serves a number of purposes:

* It is evidence that a valid contract of carriage, or a chartering contract, exists, and it may incorporate the full terms of the contract between the consignor and the carrier by reference (i.e. the short form simply refers to the main contract as an existing document, whereas the long form of a bill of lading (connaissement intégral) issued by the carrier sets out all the terms of the contract of carriage);
* It is a receipt signed by the carrier confirming whether goods matching the contract description have been received in good condition (a bill will be described as clean if the goods have been received on board in apparent good condition and stowed ready for transport); and
* It is also a document of transfer, being freely transferable but not a negotiable instrument in the legal sense, i.e. it governs all the legal aspects of physical carriage, and, like a cheque or other negotiable instrument, it may be endorsed affecting ownership of the goods actually being carried. This matches everyday experience in that the contract a person might make with a commercial carrier like FedEx for mostly airway parcels, is separate from any contract for the sale of the goods to be carried, however it binds the carrier to its terms, irrespectively of who the actual holder of the B/L, and owner of the goods, may be at a specific moment.

Terms of trade

In international [economics](http://en.wikipedia.org/wiki/Economics) and [international trade](http://en.wikipedia.org/wiki/International_trade), **terms of trade** or TOT is (Price of exportable goods)/(Price of importable goods). In layman's terms it means what quantity of imports can be purchased through the sale of a fixed quantity of exports. "Terms of trade" are sometimes used as a proxy for the relative [social welfare](http://en.wikipedia.org/wiki/Social_welfare) of a country, but this heuristic is technically questionable and should be used with extreme caution. An improvement in a nation's terms of trade (the increase of the ratio) is good for that country in the sense that it can buy more imports for any given level of exports. The terms of trade is influenced by the exchange rate because a rise in the value of a country's currency lowers the domestic prices for its imports but does not directly affect the commodities it produces (i.e. its exports).

Limitations

Terms of trade should not be used as synonymous with social welfare, or even [Pareto economic welfare](http://en.wikipedia.org/wiki/Pareto_efficiency). Terms of trade calculations do not tell us about the volume of the countries' exports, only relative changes between countries. To understand how a country's social [utility](http://en.wikipedia.org/wiki/Utility) changes, it is necessary to consider changes in the volume of trade, changes in productivity and resource allocation, and changes in capital flows.

The price of exports from a country can be heavily influenced by the value of its currency, which can in turn be heavily influenced by the interest rate in that country. If the value of currency of a particular country is increased due to an increase in interest rate one can expect the terms of trade to improve. However this may not necessarily mean an improved standard of living for the country since an increase in the price of exports perceived by other nations will result in a lower volume of exports. As a result, exporters in the country may actually be struggling to sell their goods in the international market even though they are enjoying a (supposedly) high price.

In the real world of over 200 nations trading hundreds of thousands of products, terms of trade calculations can get very complex. Thus, the possibility of errors is significant.

Import quota

An **import quota** is a limit on the quantity of a good that can be produced abroad and sold domestically.[[1]](http://en.wikipedia.org/wiki/Import_quota#cite_note-0) It is a type of [protectionist](http://en.wikipedia.org/wiki/Protectionism) [trade restriction](http://en.wikipedia.org/wiki/Trade_restriction) that sets a physical limit on the quantity of a good that can be [imported](http://en.wikipedia.org/wiki/Import) into a country in a given period of time. If a quota is put on a good, less of it is imported. [[2]](http://en.wikipedia.org/wiki/Import_quota#cite_note-1) Quotas, like other trade restrictions, are used to benefit the producers of a good in a domestic economy at the expense of all consumers of the good in that economy.

The primary goal of import quotas is to reduce [imports](http://en.wikipedia.org/wiki/Imports) and increase domestic production of a good, service, or activity, thus "protect" domestic production by restricting foreign competition. As the quantity of importing the good is restricted, the price of the imported good increases thus encourages consumers to purchase more domestic products. In general, a quota is simply a legal quantity restriction placed on a good imported that is imposed by the domestic government.

Effects

Because the import quota prevents domestic consumers from buying an imported good, the supply of the good is no longer perfectly elastic at the world price. Instead, as long as the price of the good is above the world price, the license holders import as much as they are permitted, and the total supply of the good equals the domestic supply plus the quota amount. The price of the good adjusts to balance supply (domestic plus imported) and demand. The quota causes the price of the good to rise above the world price. The domestic quantity demanded falls and the domestic quantity supplied rises. Thus, the import quota reduces the imports.

Because the quota raises the domestic price above the world price, domestic sellers are better off, and domestic buyers are worse off. In addition, the license holders are better off because they make a profit from buying at the world price and selling at the higher domestic price. Thus, import quotas decrease consumer surplus while increasing producer surplus and license-holder surplus.

While import quotas and other foreign trade policies can be beneficial to the aggregate domestic economy they tend to be most beneficial, and thus most commonly promoted by, domestic firms facing competition from foreign imports. Domestic firms benefit with higher sales, greater profits, and more income to resource owners. However, by increasing domestic prices and restricting accessing to imports, foreign trade policies also tend to be harmful to domestic consumers.

Import quotas vs. tariffs [[5]](http://en.wikipedia.org/wiki/Import_quota#cite_note-4)

Both tariffs and import quotas reduce quantity of imports, raise domestic price of good, decrease welfare of domestic consumers, increase welfare of domestic producers, and cause [deadweight loss](http://en.wikipedia.org/wiki/Deadweight_loss). However, a quota can potentially cause an even larger deadweight loss, depending on the mechanism used to allocate the import licenses. The difference between these tariff and import quota is that tariff raises revenue for the government, whereas import quota generates surplus for firms that get the license to import.

For a firm that gets a license to import, profit per unit equals domestic price (at which imported good is sold) minus world price (at which good is bought) (minus any other costs). Total profit equals profit per unit times quantity sold.

Government may charge fees for import license. If the government sets the import license fee equal to difference between domestic price and world price, the import quota works exactly like a tariff. The entire profit of the firm with an import license is paid to the government. Thus government revenue is the same under such an import quota and a tariff. Also, consumer surplus and producer surplus are the same under such an import quota and a tariff.

So why do countries use import quotas instead of always using a tariff?

When an import quota is used, it allows a country to be sure of the amount of the good imported from the foreign country. When there is a tariff, if the supply curve of the foreign country is unknown, the quantity of the good imported may not be predictable.

If world supply in the home country is upward-sloping and less elastic than domestic demand (as may be the case when the home country is the United States) then the incidence of the tariff may fall on producers, and the price paid domestically may not rise by much. Then if the tariff is supposed to make price of the good rise to allow domestic producers to sell at a higher price, the tariff may not have much of the desired effect. A quota may do more to raise price. However in competitive markets there is always some tariff that raises the price as high as the quota does.