

# Corporate Governance

## Module outline and aims

The aim of the Corporate Governance module is to equip the Chartered Secretary with the knowledge and key skills necessary to act as adviser to governing authorities across the private, public and voluntary sectors. The advice of the Chartered Secretary will include all aspects of the governance obligations of organisations, covering not only legal duties, but also applicable and recommended standards of best practice.

The module will enable the development of a sound understanding of corporate governance law and practice in a national and international context. It will also enable you to support the development of good governance and stakeholder dialogue throughout the organisation, irrespective of sector, being aware of legal obligations and best practice.

## Learning outcomes

On successful completion of this module, you will be able to:

- Appraise the frameworks underlying governance law and practice in a national and international context.
- Distinguish between and compare the legal obligations for governance and recommended best practice.
- Advise on governance issues across all sectors, ensuring that the pursuit of strategic objectives is in line with regulatory developments and developments in best practice.
- Analyse and evaluate situations in which governance problems arise and provide recommendations for solutions.
- Demonstrate how general concepts of governance apply in a given situation or given circumstances.
- From the perspective of a Chartered Secretary, provide authoritative and professional advice on matters of corporate governance.
- Assess the relationship between governance and performance within organisations.
- Apply the principles of risk management and appraise the significance of risk management for good governance.
- Compare the responsibilities of organisations to different stakeholder groups, and advise on issues of ethical conduct and the application of principles of corporate responsibility or corporate citizenship.

## Syllabus content

Governance is a continually developing subject, and good candidates will be aware of any major developments that have occurred at the time they take their examination.

The detailed syllabus set out here has a strong UK emphasis, and it is expected that UK corporate governance will be the focus of study for most candidates. A good knowledge of the principles and provisions of the UK Corporate Governance Code will therefore be required, together with any supporting Guidance on the Code published from time to time by the Financial Reporting Council. However, a good knowledge and understanding of the code of corporate governance in another country will be acceptable in answers, provided that candidates indicate which code they are referring to in their answer.

The UK Corporate Governance Code ('the Code'; formerly 'the UK Combined Code') is subject to frequent review and amendment by the Financial Reporting Council. You are advised to check the student newsletter and student news area of the ICSA website to find out when revisions to the Code will first be examined.

### General principles of corporate governance – weighting 20%

Candidates are expected to demonstrate an awareness of all areas of governance, and to be able to review common themes. They will be able to understand the scope of corporate governance, the various issues with which governance is concerned, and how these issues relate to each other.

Meaning of corporate governance

- Difference between governance and management
- Purpose of good governance

Agency theory, transaction cost theory, stakeholder theory

Stakeholder value approach, enlightened stakeholder approach, stakeholder approach

Governance, risk and financial stability

- The balancing of conflicting objectives

Potential consequences of poor corporate governance

- Business failure and the contribution of poor governance

Governance and ethics, corporate ethics, corporate codes of ethics, professional ethics

Key issues in corporate governance

- Role and composition of the board, remuneration of directors and senior executives, accounting and audit, relations with shareholders and other stakeholders

Applying best practice in governance: voluntary and regulatory approaches, rules or principles, concept of 'comply or explain'

Governance problems for global companies and groups

Governance issues in the public sector

- Nolan Principles

Governance issues in the voluntary sector (charities)

Candidates may be required to be aware of the unique circumstances that may apply to governance for a non-corporate entity or a global company

Legal and regulatory aspects of governance

Candidates may study and apply the legal and regulatory measures on governance in their own country, but should also be aware of the following:

Governance aspects of the UK Companies Act 2006, including duties of directors and reporting and disclosure requirements

- Statutory duties of directors, and the concepts of duty of care and skill and fiduciary duty on which these statutory duties are based
- Business review requirements are referred to elsewhere in the syllabus
- An awareness of the requirements for reporting on directors' remuneration is required, but not the detailed regulations

Corporate governance aspects of EU Directives (and subsequent legislation)

- An awareness is required of the EU as a potential source of new legislation on governance issues, with examples of changes introduced by the EU

Governance issues for financial organisations arising from the Financial Services and Markets Act 2000 and the Basel 'rules'

- The regulatory supervision of banks: its implications for governance

Law relating to insolvency and regulations relating to assessment of going concern status

Law on insider dealing and market abuse

- The nature of insider dealing: the law and inside dealing, its implications for governance

Governance aspects of UK Listing Rules, including the Model Code

- Comply or explain
- Model code and directors' dealings in shares

Governance aspects of Sarbanes-Oxley Act 2002

- Section 302: CEO/CFO certifications
- Section 404(a): internal control report

Codes of corporate governance practice and reports on governance

Candidates will be expected to demonstrate an awareness of the prominent codes or reports on governance and to be aware of current developments, such as when these codes or reports are being reviewed or re-drafted.

- UK Corporate Governance Code
- OECD Principles
- King Reports

Role of the company secretary

Role of the company secretary in the identification of governance issues, and the application of governance rules and principles in practice.

Comparison of the governance role of the company secretary and the role of the company lawyer.

The application of governance rules and principles – weighting 40%

Candidates will be required to discuss in detail statutory rules and the principles or provisions of governance codes, and apply them to specific situations or case studies. Candidates will also be expected to understand the role of the company secretary in providing support and advice regarding the application of best governance practice. Although the syllabus presents governance issues mainly from the perspective of companies, candidates may be required to apply similar principles to non-corporate entities, such as government organisations and organisations in the voluntary sector.

The broad areas that will be examined are as follows:

*The board of directors or governing board*

Role of the board and its governance responsibilities

Unitary and two-tier boards

Matters reserved for the board

- ICSA Guidelines

Roles of the chairman and chief executive officer

Size, structure and composition of the board: board balance, independence

Independent non-executive directors

- Functions of the independent NED

Good boardroom practice

- Responsibilities of the chairman and company secretary

Appointments to the board: nominations committee

- Contribution of the nominations committee to good governance
- Higgs Guidance on duties of the nomination committee
- Tyson Report

Information and professional development for board members

- Induction and ongoing training
- Role of the company secretary in the efficient provision of information
- Directors and external professional advice

Effectiveness of the board, its committees and individual board members. Performance evaluation of the board

- UK Corporate Governance Code
- Annual performance evaluation of the board, its committees and individual directors
- Higgs Guidance on performance evaluation

Re-election of board members

- Retirement by rotation

Boardroom ethics

- Link to statutory duties of directors

Dealings by directors in shares of their company

- Link to law on insider trading, stock market rules on dealings by directors

Liability of directors: directors' and officers' liability insurance

- The reasons for and nature of directors' liability

Personal interests of directors in transactions of their company

Independent and non-independent non-executive directors: their role and effectiveness

- Good practice suggestions from the Higgs Report
- Senior independent director: role
- Criticisms of the ineffectiveness of NEDs

### Remuneration of directors and senior executives

Principles of remuneration structure: elements of remuneration

Remuneration policy

The design of performance-related remuneration

- Elements of a remuneration package
- Candidates will not be required to discuss performance targets in detail, but need to be aware of short-term incentives (e.g. cash bonuses) and longer term bonuses (share grants, share options). They also need to be able to discuss the difficulties in designing a suitable remuneration structure

Role of the remuneration committee

- Higgs Guidance on role of the remuneration committee

Deciding a remuneration package for individual directors and senior executives

Compensation for loss of office

Disclosures of directors' remuneration

- Candidates will be expected to show an awareness of issues relating to the disclosure of directors' remuneration in the annual report and accounts, but not the detail (e.g. not the detail of the directors' remuneration report)

Shareholder approval of incentive schemes and voting rights with regard to remuneration

- Candidates will be required to show an understanding that approval of remuneration schemes by shareholders may be required, but legislation on this topic will not be examinable

The recommendations or guidelines of institutional investor groups on matters relating to directors' remuneration, including the avoidance of 'reward for failure'

Reporting to shareholders and external audit

Financial reporting, going concern status (review of future solvency): responsibilities of the board, executive management and the external auditors

- The need for reliable financial reporting: true and fair view
- The nature of the going concern statement and its relevance for governance
- Directors' responsibility for the financial statements
- Responsibility of the external auditors
- Responsibility for the discovery of fraud

Role of the audit committee: the audit committee and the external auditors

- Composition of the committee and skills of committee members
- ICSA Guidance on terms of reference of audit committees
- FRC Guidance on Audit Committees

Independence of the external auditors

- The significance of auditor independence: threats to auditor independence
- Auditors and non-audit work

Principles of reporting requirements for good governance: accountability, transparency

- The meaning of transparency

Disclosures of governance arrangements

Reporting non-financial information: business review or operating and financial review

- The significance of narrative reporting for better governance

Relations with shareholders

The equitable treatment of shareholders

- The meaning of equitable treatment: examples of inequitable treatment

Rights and powers of shareholders

Dialogue and communications with institutional shareholders (companies) or major stakeholders

Role of institutional investor organisations (or major stakeholders)

- In the UK, the role of the ABI and NAPF and the relevance for corporate governance

Constructive use of the annual general meeting

Shareholder activism

- The recommendations or guidelines of institutional investor groups on matters relating to activism and considered use of votes

Other shareholders: short-term investors, small investors

- The rights of minority shareholders

Candidates will be required to have an awareness of the benefits of electronic communications between companies and their shareholders, but will not be required to know the detailed law and regulations on electronic communications.

Risk management and internal control – weighting 20%

Candidates will be able to discuss aspects of risk facing an organisation, and to comment and advise on the systems in place for the identification and assessment of risks, the management of risk and monitoring the effectiveness of risk management and internal control systems.

The nature of risks facing companies and other organisations: categories of risk

- The difference between ‘business risk’ and ‘governance risk’ (internal control risk)

Risk tolerance levels: risk and return, risk appetite

Responsibilities for risk management and internal control: board of directors, executive management, audit committee, internal and external auditors

- Risk management committees in companies

Risk management policies, systems and procedures

Risks in the business environment

- The implications of business risk and strategy selection for governance: a general understanding only is required

Internal control risks: financial, operational and compliance risks

Elements of an internal control system

- The Turnbull Guidance and subsequent reviews of this guidance

Function, scope and status of internal audit and internal auditors: independence of the internal auditors: the need for internal audit

- Role of internal audit within an internal control system

Identifying key risk areas: key performance indicators

Disaster recovery plans

Whistle-blowing policy and procedures

- ICSA best practice on whistle-blowing procedures

Reviewing and reporting on the effectiveness of the risk management system

Reviewing and reporting on the effectiveness of the internal control system

- UK Corporate Governance Code requirements and Turnbull guidelines

Corporate social responsibility and sustainability – weighting 20%

The nature of corporate responsibility and corporate citizenship

Corporate responsibility and stakeholders

- Internal and external stakeholders
- Responsibility to various stakeholder groups
- Interest and influence of various stakeholder groups

Elements of corporate social responsibility: employees, the environment, human rights, communities and social welfare, social investment, ethical conduct

Reputation risk: placing a value on reputation

Other risk issues

- Economic
- Political, legal, regulatory
- Social: demographic risk, educational issues
- Possible implications of these risks for the social and environmental policy of companies

Corporate social responsibility: financial performance, business ethics and public relations

Formulating and implementing a policy for corporate social responsibility

The nature of sustainability

Sustainability and long-term corporate performance

Reporting to stakeholders: CSR reporting

Sustainability reporting: triple bottom line reports

- The content of sustainability reports (also CSR reports, ESG reports, social and environmental reports)

Benchmarking with other organisations

Social responsibility in the public and voluntary sectors

The recommendations or guidelines of institutional investor groups on matters relating to social and environmental issues.

NOTE: Candidates will not be required to have a detailed knowledge of the 'history' of the development of corporate governance guidelines and rules. For example, knowledge of the detailed content of the Cadbury Report, Greenbury Report and Hampel Report in the UK will not be required.