

# Corporate Law

## Module outline and aims

This module provides you with an understanding of the legal framework governing organisations with particular focus on the registered company but with applications in all sectors. Its themes relate closely to those of the Corporate Governance module and draw heavily upon the Companies Act 2006 and the role of the Chartered Secretary.

Chartered Secretaries work in a range of organisations and are involved with issues of regulatory compliance. The aim of the module is to provide you with an understanding of the legal framework governing a range of organisations, dealing with legal principles, their practical application and governance issues that may arise.

## Learning outcomes

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

- Demonstrate knowledge of the theories, concepts and principles related to the structure and regulation of commercial and non-commercial organisations.
- Give a reasoned opinion on the legal structures available to organisations and their appropriateness.
- Identify the legal and other issues arising in complex scenarios and apply relevant law such as the Companies Act 2006.
- Understand the impact of the external regulatory environment on the structure of commercial and non-commercial organisations.
- Present advice on structural and legal issues in a relevant form.

## **Syllabus content**

### The nature and structure of a company – weighting 20%

Sources of company law; case law, statutes and the impact of EU law, self-regulation.

Types of registered companies; registered, limited & unlimited, overseas companies, holding and subsidiary companies, chartered and statutory in outline only, LLP's, charities and non-profit making organisations in outline only.

Unincorporated associations in outline only; sole traders, partnerships under the Partnership Act 1890.

Promotion and pre-incorporation contracts; role of a promoter; duties and liability for breach of duty, recovery promotional expenses, liability on pre-incorporation contracts under the common law and under statute.

Formation and registration of companies; formation procedures and documents, the use of shelf companies, the role of the registrar, the certificate of incorporation, the commencement of trading certificate, choice and use of the company name.

Consequences of incorporation; separate legal personality, the veil of incorporation, lifting the veil of incorporation, the criminal and civil liability of a company.

The constitution of a company; the memorandum and the articles of association, content, model articles, alteration of the constitution, the statutory contract, shareholder agreements, class rights in the articles.

Company contracts; executing company contracts, company capacity and the doctrine of *ultra vires*, statutory protection, the rule in Turquand's case, the authority of agents to bind the company.

### Capital and membership – weighting 25%

Raising capital from the public; the role of the prospectus and listing particulars, content and the general duty of disclosure, statutory compensation for misleading statements, common law remedies, underwriting and commission.

Shares and class rights; types of shares, alteration of share capital, class rights, variation of class rights, the issue of shares, payment for shares, premiums and discounts, and pre-emption rights.

Capital maintenance; types of capital, the doctrine of capital maintenance, capital reductions, purchase and redemption of a company's own shares, financial assistance, exemptions and exceptions from financial assistance, remedies for breach, dividends, and recovering improperly paid dividends.

Membership; becoming a member, share certificates and warrants, the members' register, transfer and transmission of shares, calls, mortgages, liens, surrender and forfeiture of shares.

Loan capital; debentures, types, use of a trust deed, secured and unsecured debentures, fixed and floating charges, charges over book debts, crystallisation of floating charges, priority of charges, registration of charges and avoidance of charges, debenture holder remedies.

The regulation of insider dealing; inside information, insiders, offences and defences, investigation and criminal penalties, civil remedies for insider dealing, market abuse.

#### Company management and shareholder remedies – weighting 25%

Directors; types, appointment, remuneration, retirement, removal and vacation for office, disqualification orders and undertakings, the division of power between the board of directors and the general meeting.

Directors' duties; the codification process, scope and nature of the general duties, duty to act within powers, duty to promote the success of the company, duty to exercise independent judgment, duty to exercise reasonable skill, care and diligence, duty to avoid a conflict of interest, duty not to accept benefits from third parties, duty to declare interest in proposed and existing transactions or arrangements, civil consequences for breach of duty, release and ratification of breach of duty.

Transactions with directors requiring members' approval, long term service contracts, substantial property transactions, loans to directors, compensation for loss of office.

The company secretary; appointment and qualifications, role, authority to bind the company.

The auditor: the audit requirement, appointment and removal, rights and duties, liability for negligence.

Enforcement of directors' duties under the common law; corporate actions, personal actions, representative actions, derivative actions, the rule in *Foss v Harbottle*, the common law exceptions of illegality and *ultra vires*, special majorities and personal rights, costs.

Enforcement of directors' duties under statute; the derivative action, petitions under s994 CA 2006, petitions under s122 IA 1986, grounds, claimants, remedies and costs, company investigations in outline only.

#### Meetings and resolutions – weighting 10%

Company meetings; the annual general meeting, general meetings, class meetings, court ordered meetings, notice periods, content of notices, adjournments and the minutes.

Company resolutions; ordinary resolutions, special resolutions, written resolutions, the Duomatic principle and informal unanimous consent, voting and the use of proxies, electronic communications and corporate representatives.

Board meetings and voting at board meetings.

#### Company restructuring and winding up – weighting 20%

Methods of restructuring; amalgamations and reconstructions, the procedure in s110 IA 1986, amalgamation or reconstruction under s895 CA 2006, schemes of arrangement under s900 CA 2006, the City Code, the work of the Takeover Panel and judicial review of its decisions in outline only.

Alternatives to winding up – the compulsory voluntary arrangement; the nominee, proposal and approval of the arrangement, the small company moratorium, implementing and terminating the arrangement.

Alternatives to winding up – administration orders; the purpose of administration, appointment of administrator, interim moratorium, effects of administration on directors, contracts and employees, role and power of administrators, ending the administration.

Winding up; voluntary and compulsory winding up orders, commencement of winding up, grounds, appointment of the liquidator, function and powers of a liquidator, effect of a winding up order, order of distribution of assets, property not available to a liquidator, trust property and Romalpa clauses, completion of the winding up and company dissolution.

Challenging pre-liquidation transactions and personal contributions; misfeasance proceedings under s212 IA 1986, transactions at an undervalue, preferences, extortionate credit transactions, avoidance of floating charges, disclaiming onerous property, fraudulent and wrongful trading, prohibition in the re-use of company names.