

**Chartered Secretaries Qualifying Scheme – Level 2**

# Corporate Secretarial Practice

Sample paper

**Time allowed: 3 hours and 15 minutes**  
(including reading time)

**Do not open this examination paper until the presiding officer or an invigilator tells you to.**

**You must not take this paper out of the examination room.**

The examination paper contains **six** questions. Each question carries 25 marks. You must attempt **four questions only**.

Note: Where questions refer to the Articles of Association, you should assume the relevant Model Articles apply, as prescribed under the Companies Act 2006.

# Case study

## Trymore plc

You have just joined Trymore plc ('Trymore'), a company listed on the London Stock Exchange, as company secretary. This is the first time that a company secretary has been appointed as a separate role in Trymore, as the position had previously always been held by the finance director. Trymore manufactures and sells luxury jewellery and the business has suffered as a result of an economic downturn. Several issues have arisen with certain stakeholders of the company, including unions, shareholders, auditors and the media. The board of directors is very worried about these problems and has convened a special board meeting to discuss what to do. The chairman believes that some of the issues will require input from the company secretary, as a senior member of the company's management team. You hold a series of meetings with your senior colleagues to find out more about the problems. The matters set out below are discussed with you.

Firstly, you hold a meeting with Ms People, the director of human resources. Ms People provides you with an update on a number of matters, including staffing numbers, future wage proposals and relationships between staff, management and the Employees' Union ('the Union'). She also tells you that the Union is concerned about some of the decisions and actions taken recently by the directors and the effectiveness of the board generally. In particular, the Union:

- Has accused several directors of planning to "help themselves" to the company's assets, rather than investing the company's funds into protecting jobs.
- Is not convinced that many of the decisions taken by the directors recently have benefited the company, particularly in the short-term.

Ms People tells you that the company is keen to preserve good relations with the Union, so it will be important to fully address these issues in any dealing with them.

Several hundred staff were recently made redundant, mainly at the head office, and many of the remaining staff are fearful that they will lose their jobs. The redundancies have even spread to the company secretarial department, where 25% of the staff have been made redundant as part of cost-cutting measures. This has made the workload of the company secretarial department very heavy. You have already explained to Ms People that your staff have complained that they are finding it very difficult to cope and that you fear more staff will resign unless staffing numbers increase.

Ms People tells you that morale within the company seems particularly low. In order to expand the business, the Union understands that the company has recently acquired several overseas companies which have poor human rights records. Staff in the overseas countries are not part of the Union and are cheaper to employ, and the Union is worried that there will be further job losses among their members as a result. The Union is also concerned with the behaviour of Big Holdings plc ('Big Holdings'), the company's largest shareholder – Trymore is not a subsidiary of Big Holdings. The Union claims that Big Holdings has excessive influence over Trymore, and that Big Holdings' strategy is very similar to Trymore's regarding the investment into overseas companies. However, Ms People tells you that this approach is the most effective way to reduce the cost of employment.

Your second meeting is with Mrs Gain, the finance director and your predecessor as company secretary. She summarises the company's current financial position to you and outlines the key financial priorities for the rest of the year. She also tells you that she is worried that many of the company's shareholders will be concerned with the company's external auditors, following an alleged scandal in the press regarding several senior partners of the audit firm. Many clients of the audit firm have announced that they will no longer use

them. The company is keen to preserve its reputation and is monitoring developments on this closely.

Mrs Gain shows you a copy of the recently received audit letter which refers to a number of company secretarial issues. These centre on the fact that due to the redundancies, and the resulting disorganisation in the company secretarial department, Trymore's statutory records have not been kept up-to-date, with minutes not being prepared and some statutory filings missed. She is particularly worried that there may be some consequences if the requirements for statutory filings have not been fulfilled. Nevertheless, she also tells you that she has to balance the need to control costs in the company with the need to ensure that the company adheres to its statutory requirements, and that she will need some input from you and Ms People to help her decide the best way to address this.

Your next meeting is with Mr Spin, the director of corporate communications. Mr Spin tells you that Trymore has received a lot of negative media attention recently. This includes a negative article in a newspaper which suggested that Trymore, along with other companies in its sector, was overcharging its customers. The article also attacked Trymore's environmental record.

Relationships with shareholders have also become strained recently. Due to the business suffering, the press has speculated that the company is due to make a loss for the first time. Several of the large institutional shareholders based in the City of London have told the chairman that the performance of the company needs to improve.

The business will also need to communicate to stakeholders further ways to save on costs and/or raise extra funds. In particular, Trymore has a large number of shareholders with small shareholdings and Mr Spin is keen to address their concerns. Shareholders have complained that the company has not done enough to modernise the services it provides to them. Mr Spin has been monitoring internet chat rooms and sees that several shareholders with small holdings are proposing to set up a shareholder action group which will demand improvements in performance and services. Mr Spin is keen to improve relations with shareholders, particularly during this difficult time.

# Questions

(Answer **four** questions from this paper)

1. A meeting has been planned with the chairman of Trymore and the general director of the Union. The Union is expected to make several allegations and the chairman wishes to be well prepared for the meeting.

## Required

Prepare a briefing note for the chairman, analysing the following:

- (a) (i) What are the implications of being a shadow director and what steps in general should be taken to avoid any shadow directorships arising?  
(6 marks)
- (ii) Why might the Union consider Big Holdings to be a shadow director? Assuming Big Holdings is a shadow director, are there any exemptions which may apply?  
(4 marks)
- (iii) Assuming Big Holdings is a shadow director, what steps need to be taken by Trymore, particularly if Big Holdings is going to continue its level of involvement with Trymore?  
(4 marks)
- (b) On what grounds might the Union allege that the directors of Trymore have breached their statutory duties? What statutory considerations would the directors have against such allegations? How should the chairman ensure that directors are aware of their statutory duties?  
(11 marks)

(Total: 25 marks)

2. You have serious concerns about the issues regarding the statutory registers, statutory filings and auditors:

- (a) (i) You discover that no action has been taken in respect of the following:
- The Annual Return date for Trymore was two weeks ago.
  - Your appointment as company secretary was three weeks ago.
  - A shareholder requested minutes of the last Annual General Meeting (which was held two months ago) but no minutes have yet been prepared.

Explain if there are any statutory or regulatory implications in respect of the above and any required timescales.

(10 marks)

- (ii) Explain, in a memorandum to the finance director, why it is important for the company to promptly file all required returns with the Registrar of Companies and the implications of failing to do so.

(4 marks)

(continued)

- (b) The directors would like to know what the liability of the auditors to the company is, in relation to their auditing of the company's accounts. The directors are concerned that the auditors may seek to limit their liability and wish to know whether it is permitted under company law and what procedures would be involved for this. The directors expect shareholders to be concerned about the alleged scandal regarding the auditors and have asked you if there are any provisions of the Companies Act 2006 which enable shareholders to take action in this regard. The directors also ask you if there are any disclosure issues which the company would need to take into account regarding the position of the auditor.

*(11 marks)*

**Required**

Prepare an appropriate briefing note for the directors in respect of (a) and (b) above.

*(Total: 25 marks)*

3. You learn of some new developments with regard to the company's relationship with its shareholders:

- (a) The directors inform you that press speculation is indeed correct and that, due to a sudden change in trading, the company is expected to make a loss for the first time. They ask you what disclosure issues arise, why such issues arise and what actions should be taken. They also ask you to explain the process by which listed companies must disclose information.

*(12 marks)*

- (b) Mr Spin notes that the company does not send Summary Financial Statements (SFSs) to its shareholders and that this could be one way in which the company modernises its shareholder services. Mr Spin asks you to prepare a note for the board explaining the following:

- (i) What SFSs are and why companies might wish to send them to shareholders.

*(4 marks)*

- (ii) What statutory process and procedures a company must follow prior to issuing SFSs to shareholders.

*(3 marks)*

- (iii) What key information must, at a minimum, be included in SFSs and how the SFSs should be approved.

*(6 marks)*

**Required**

Prepare a briefing note for the directors in respect of (a) and a note for the board in respect of (b), above.

*(Total: 25 marks)*

4. The directors strenuously deny that they are planning to “help themselves” to the company’s funds. The following transactions are intended to take place between the directors and the company:
- (a) The company plans to provide loans and credit transactions to two directors. Firstly, Mrs Gain, the finance director, will receive a loan of £8,000 for the purposes of buying a new car and separately will receive a loan of £18,000 (repayable next year) so she can buy jewellery from the company at market price. Secondly, Mr Sell, the marketing director, will receive a loan of £40,000 which he will use to clear personal debts as he was in severe financial difficulty.  
*(12 marks)*
- (b) The company also has plans to participate in property transactions with the directors. The company intends to purchase Mrs Gain’s old car for £4,000. Mrs Gain has pointed out that the car is registered in her husband’s name, and he is not a director of the company. The company also plans to purchase, for development, a plot of land owned by Mr Sell in exchange for £115,000, plus the allotment of 20,000 shares in the company. Each transaction is intended to be at market value.  
*(13 marks)*

The chairman has asked you to provide advice as to whether each of the above transactions are permitted under the Companies Act 2006 and, if so, what approvals, procedures and disclosures need to be made. The chairman has also asked you if Mr Sell’s financial difficulties raise any issues under statute or the company’s Articles of Association.

### **Required**

Prepare the responses required in (a) and (b) above.

*(Total: 25 marks)*

5. You are a Chartered Secretary in private practice. John Smith is a shareholder in Pots plc (‘Pots’), a company listed on the London Stock Exchange. Mr Smith tells you that he and many other shareholders of Pots, who hold between them 7% of the issued share capital, are unhappy with the way the company is being run and wish to put forward some proposals of their own for consideration. Mr Smith asks you to prepare a report giving your professional advice on the following:
- (a) How can shareholders of a company: (i) assert their rights by requisitioning a general meeting; and (ii) add a resolution to the agenda of the next Annual General Meeting (AGM) of Pots? Mr Smith would like to know the applicable statutory procedures and timescales, what documents would need to be produced and in what format, any related costs, and what information would be circulated and disclosed.  
*(16 marks)*
- (b) Once the general meeting/AGM has been held, how will Mr Smith and his associates know the result of their proposed resolution? What steps are available to Mr Smith and his associates if they are not satisfied with the way any vote at a general meeting/AGM has been conducted?  
*(9 marks)*

*(continued)*

## Required

Prepare the report required in (a) and (b) above.

*(Total: 25 marks)*

6. You are the board secretary to Westshire University ('the university'). Dr Smart informs you that the science department has produced an invention which has the potential to earn revenue for the university. You note that it is against University policy to operate public limited companies.

Professor Witty has told you that an old student of the school has made a large donation and wishes this to be used for charitable purposes or to benefit the local area through community enterprises.

Both Dr Smart and Professor Witty are keen for these ideas to be carried out by companies which are separate entities from the university but they wish the university to retain some control.

- (a) Prepare a report for the next board meeting of the university, setting out the steps, procedures, documentation and other matters to consider which are required to incorporate a company. Professor Witty and Dr Smart's considerations, as set out above, should be taken into account.  
*(15 marks)*
- (b) Prepare a report for the next board meeting, setting out the reasons why both a company limited by guarantee or a community interest company may be suitable for Dr Smart and Professor Witty's proposal. The report should include any additional relevant information on the formation, purpose, liability or winding up of each type of company and any board approvals which may be appropriate.  
*(10 marks)*

## Required

Prepare the responses required in (a) and (b) above.

*(Total: 25 marks)*

*The scenarios included here are entirely fictional. Any resemblance of the information in the scenarios to real persons or organisations, actual or perceived, is purely coincidental.*

