

Professional Diploma In Corporate Administration (PDCA): Part 2

CORPORATE COMPLIANCE AND PRACTICE

SYLLABUS

DESCRIPTION

This subject introduces students to the fundamental principles of corporate law and regulations that cover the issues from formation of a company to its winding up. The topics covered include types of companies, process of incorporation, constitution of a company, management, capital raising and maintenance, receivership, reconstructions and winding up.

LEARNING OUTCOME

On completion of this module, the student should be able to:

- Understand the general principles of corporate law
- Identify what must be done and/or what must not be done to comply with the legal requirements set out by the various regulatory bodies
- Relate better in the subsequent courses that he or she in the Professional Level.

LEARNING CONTENTS

Types of companies

- The registered company being a corporation.
- Different types of companies.
- Other classifications.
- Limited and unlimited company.
- Private and public company.
- Related corporations.

Process of incorporation

- Reasons for registering a company.
- The opportunity cost of registering a company
- Pre-incorporation Procedure
- Post-incorporation procedure
- Significance of the certificate of incorporation
- Registrar's refusal to register

Memorandum and Articles of Association

- A company's Memorandum and Articles of Association.
- Contents of the Memorandum
- Form and contents of the Company's Articles
- Table A, Fourth Schedule Companies Act 1965
- Alteration of the company's Memorandum
- Effect of alteration of the Memorandum on the company's existing rights and obligations
- Alteration of the company's Articles

Directors and Officers

- Division of powers within a company
- Statutory powers vested in the general meeting
- Types of directors
- Committee of directors
- Appointment of directors
- Qualification and disqualification of directors
- Vacation of office
- Removal of directors
- The company secretary; Appointment of secretaries, functions of a secretaries, statutory responsibilities and duties, removal of secretary.
- Auditor; Who may be an auditor, role of auditors, powers of auditors, duties of the auditor, removal of auditor, professional negligence and auditors
- Directors duties: Common Law fiduciary duties, duties of care, skill and diligence, Statutory duties, right to sue errant directors and remedies

Shares

- Nature of shares
- Types of shares
- Procedures for its allotment and transfer
- Alteration
- Increase
- Reduction capital
- Procedures for share buy back
- Procedures for issuance of share at a discount and reduction of share capital
- Variations of class rights in brief

Charges

- What is a charge?
- Fixed and floating charges
- Crystallisation of floating charges
- Priorities between floating charges and later fixed charges
- Registration of charges
- Priorities of registrable charges
- Effect of failure to lodge notice of charge

Prospectus

- Prospectus, abridged prospectus and supplementary prospectus.
- Section 41 SCA 1993
- Registering a prospectus with SC
- Regulating the contents of a prospectus – material information
- Reasonable investor information: s 45 SCA 1993
- Disclosure based approach
- 'Specific content' information: s 44 SCA
- Consequences for contravening SS 44 and 45 SCA
- Liability for incorrect statements in the prospectus- Civil and Criminal Liabilities

Arrangements and Reconstructions

- Scheme of Arrangement
- S.176(10) Restraining Order
- S.178
- S.180

Receivers and Managers

- Receivership
- Receiver and manager
- Who may be a Receiver?
- Appointment of a Receiver
- Effects of appointment
- Powers of a receiver/Manager
- The effect of Liquidation on the Powers of a Receiver and Manager
- Duties of a Receiver/Manager
- Termination of a Receivership

Winding Up

- Voluntary winding up – Members’ and Creditors’ voluntary winding ups
- Compulsory winding up – Who may apply and Grounds for winding up
- Winding up in insolvency – Deemed inability to pay debts and Statutory Demands
- Commencement of winding up
- Winding up and its effect on the company
- Liquidators – Appointment and disqualification of liquidators, Powers of the liquidator and specific duties of liquidators
- Recovery of assets
- Division of assets
- Priorities on payment of debts

Regulatory Bodies

- The roles and functions of the Foreign Investment Committee
- Securities Commission,
- Companies Commission of Malaysia
- Bursa Malaysia Securities Berhad
- Employee Provident Fund
- Social Security Organisation
- Inland Revenue Board

Corporate Governance

- Finance Committee Report on Corporate Governance
- The Malaysian Code on Corporate Governance
- Meaning of Corporate Governance
- Audit committees
- Independent directors and Corporate Governance

RECOMMENDED READING

1. **MAICSA Study Manual** – Corporate Compliance and Practice
2. **Kang Shew Meng (2005)**, *Handbook on Company Secretarial Practice in Malaysia*, 4th Edition, Kuala Lumpur: Lexis Nexis Business Solutions.
3. **Mohd Sulaiman, A N & Bidin, A., Hanrahan, P., Ramsay, I, & Stapledon, G., (2008)** *Commercial Applications of Company Law in Malaysia*, 3rd ed. Kuala Lumpur, CCH
4. **Rachagan, Pascoe, Joshi** on ‘*Principles of Company Law in Malaysia*’ MLJ.
5. **Cheah, Foo Seong** (2006), *Guide to company practice in Malaysia*, Kuala Lumpur, CCH
6. *Company Secretarial Practice Manual*. Kuala Lumpur: **MAICSA**, MAICSA Best Practice Series

FURTHER READING

1. *Business & Company Law A Study Text for MICPA Students* The Malaysian Institute of Certified Public Accountants 2003.
2. MAICSA Best Practice Guide Series. Code of Ethics for Directors and Code of Ethics for Company Secretaries: ROC.
3. Malaysian Code on Corporate Governance.
4. Malaysian Companies Act 1965.