

ICSA International Qualifying Scheme (IQS): Professional Part 2

CORPORATE SECRETARYSHIP

SYLLABUS

This module examines the role of the Chartered Secretary in promoting and reinforcing good governance across the organisation by ensuring compliance with statutory obligations and good practice. In particular, this module explains the role of the Chartered Secretary in devising and overseeing appropriate compliance systems and processes to ensure that the company and its directors are compliant with the Companies Act 2016 and with the company's constitution. The module also deals with managing the practical and company law issues in relation to shareholders. Chartered Secretaries need to understand the application of statutory requirements and other best practice and how this underpins good governance and compliance, irrespective of sector. The module examines corporate secretaryship practices and processes within legal and other frameworks of best practice and the role of the Chartered Secretary in ensuring organizational effectiveness.

LEARNING OUTCOME

On successful completion of this module will be able to:

- Identify the scope, role and functions of the company secretary and apply them in the employing or client organisation.
- Critically evaluate and apply the role of company secretary as an advisor to the board.
- Ensure effective communication and dissemination of information to and from the board, both internally and externally, for the optimum benefit of the organisation.
- Understand the law and best practice in key functional matters (for example, meetings and share capital management) and apply them in the secretaryship function and ensure corporate compliance.
- Apply the functions of a company secretary in ensuring corporate compliance through good disclosure and observance of statutory and other regulations
- Take responsibility for the ongoing responsibilities of the secretary as a professional practitioner in the organisation and be responsible for continuing personnel development within the secretariat.
- Identify required actions arising from statutory obligations and best practice in terms of financial, compliance and governance reporting and disclosure; understand why such disclosure is necessary.
- Apply statutory requirements and good practice in relation to shareholder related communications.
- Critically assess the role played by the secretary in supporting compliance, disclosure, and accountability across the organisation to ensure the effective achievement of organisational objectives.

SYLLABUS CONTENT

FORMATION AND ADMINISTRATION OF COMPANIES

1) Types of Companies

Essential requirements of a company; private or public company; prohibition on companies limited by guarantee with a share capital;

2) Incorporation and Its Effects

Application for incorporation; registration for incorporation; power to refuse registration of incorporation; certificate of incorporation; effect of incorporation; notice of registration as conclusive evidence; separate legal entity; companies have unlimited capacity.

3) Restriction on Subsidiary Being Member of Its Holding Company

Membership of holding company; subsidiary acting as a participating dealer; protection of third parties in other cases where a subsidiary acts as a dealer in securities.

4) Name of Company

Name of company; availability of name; confirmation of availability and reservation of name; change of name; power of Registrar to direct a change of name; publication of name.

5) Constitution of A Company

Constitution of a company; company may opt a constitution, effect of constitution; form of constitution; contents of a company's constitution; company may alter or amend constitution; Court may alter or amend constitution; company limited by guarantee shall have a constitution; non-application of doctrine of constructive notice.

6) Conversion of Company Status

Conversion from an unlimited company to a limited company; conversion from public companies to private companies or private companies to public companies.

7) Provisions Applicable To Certain Types of Companies

Private companies; prohibition of private companies to offer shares or debentures or invite to deposit money; offer to the public; company limited by guarantee.

8) Registered Office and Registers

Registered office and office hours; documents to be kept at registered office; inspection of documents and records kept by company; register of members; inspection and closing of register of members and index; power of company to require disclosure of beneficial interest in its voting shares; register of directors, managers and secretaries; register of directors' shareholdings; register of debenture holders and copies of trust deed.

9) Annual Return

Duty to lodge annual return.

MANAGEMENT OF COMPANY

10) Share and Capital Maintenance

10.1 Share capital

Types of shares; rights and powers attached to shares; preference shares; no par value shares; exercise of power of directors to allot shares or grant rights; registration of allotment in the register of members; return of allotment; power of company to alter its share capital; rights attached to shares; classes of shares; description of shares of different classes; variation of class rights; notifying shareholders of variation; disallowance or confirmation of variation by Court.

CORPORATE SECRETARYSHIP

10.2 Share certificate, title, transfer and transmission

Issuance of share certificate; application for issuance of share certificate; delivery of share certificate; registration of members constitute as evidence of legal title; loss or destruction of certificates; requirement for instrument of transfer; registration of transfer or refusal of registration; validation of shares improperly issued; registration of transmission of shares or debentures.

10.3 Solvency statement

Solvency test; solvency statement; offences regarding solvency statement.

10.4 Reduction of share capital

Company may reduce its share capital; reduction of share capital by Court; reduction of share capital by private or public company; creditor's rights to object to the reduction of the share capital by the company; power of Court in relation to objection by creditor; liability of members on reduced shares.

10.5 Assistance by a company in the purchase of its own shares

Financial assistance by a company in dealings in its shares; consequences of failing to comply; general exceptions; financial assistance not exceeding ten per centum of shareholders' funds; purchase by a company of its own shares; options to take up unissued shares; power of company to pay interest out of capital in certain cases.

10.6 Dividends

Distribution out of profit; distribution only if company is solvent; recovery of distribution.

10.7 Substantial shareholdings

Substantial shareholdings and substantial shareholders; substantial shareholder to notify company of his interests; person who ceases to be substantial shareholder to notify company; references to operation of interests in shares; company to keep and maintain register of substantial shareholders; powers of Court with respect to defaulting substantial shareholders.

10.8 Prospectus

Requirement to register and lodge prospectus; registration of prospectus; refusal to register prospectus; invitations to the public to lend money to or to deposit money with a corporation; form and content of prospectus; certain advertisements deemed to be prospectus; civil and criminal liability for misstatement in prospectus.

11) Members, Director and Officers of Companies

11.1 Members

Liability of members; liability for calls and forfeiture; shareholders not bound to acquire additional shares by alteration to constitution; members' rights for management review; shareholders activism.

11.2 Directors

Directors of company; persons connected with directors; persons disqualified from being a director; power of Court to disqualify persons from acting as director or promoter; power of Registrar to remove name of disqualified director; directors' consent required; named directors and subsequent directors; appointment of directors of public company to be voted on individually; validity of acts of directors and officers; retirement of directors; removal of directors; right to be heard for directors of public company against removal; vacation of office of director; resignation, vacation or death of sole director or last remaining director.

11.3 Directors' duties and responsibilities

Functions of board; proceedings of board; duties and responsibilities of directors; responsibility of a nominee director; prohibition against improper use of property, position; general duty to make disclosure; disclosure of interest in contracts, proposed contracts, property, offices; interested director not to participate or vote; approval of company required for disposal by directors of company's undertaking or property; loans to directors; prohibition of loans to persons connected with directors; prohibition of tax free payments to directors; payment to directors for loss of office; transactions with directors, substantial shareholders or connected persons; exception to section 228; approval for fees of directors; director's service contracts; copy of contracts to be available for inspection; right of member to inspect and request copy; contract with sole member who is also a director.

11.4 Secretary

Requirement for a secretary; appointment of a secretary; resignation of a secretary; disqualification to act as a secretary; removal of a secretary; office of secretary shall not be left vacant; requirement to register with Registrar; prohibition to act in dual capacity; role, functions and duties of a secretary; relationship of the secretary as advisor to directors; communication with shareholders and stakeholders;

11.5 Financial statements and report

Accounts to be kept; directors shall prepare financial statements; financial statements to be approved by the board; directors shall prepare directors' report; contents of directors' report; duty to circulate copies of financial statements and reports; time allowed for sending out copies of financial statements and reports; duty to lodge financial statements and reports with the Registrar; duty to lodge certificate relating to exempt private company.

CORPORATE SECRETARYSHIP

12) Meetings

12.1 Meetings and resolutions for members

Passing of resolutions; ordinary resolutions; special resolutions; general rules on voting; votes by proxy; votes of joint holders of shares; right to object to a person's entitlement to vote.

12.2 Written resolutions for private companies

Eligibility of members to receive written resolution; circulation date; manner in which a written resolution to be circulated; circulation of written resolutions proposed by directors; members' power to require circulation of written resolution; circulation of written resolution proposed by members.

12.3 Passing resolutions at meetings of members

Resolutions at meetings of members; power to convene meetings of members; power to require directors to convene meetings of members; directors' duty to call meetings required by members; power of members to convene meeting of members at company's expense; power of Court to order meeting; resolution passed at adjourned meeting.

12.4 Notice of meetings

Notice required for meetings of members; contents of notices of meetings; notice of adjourned meetings; manner in which notice to be given; notification of publication of notice of meeting on website; persons entitled to receive notice of meetings; resolution requiring special notice; power of members to require circulation of statements; director's duty to circulate members' statement; power of Court to order non-circulation of members' statement.

12.5 Procedure at meetings

Meetings of members at two or more venues; quorum at meetings; chairperson of meetings of members; declaration by chairperson on a show of hands; right to demand a poll; voting on a poll; representation of corporations at meetings of members.

12.6 Proxies

Appointment of proxies; notice of meetings of members to contain statement of rights to appoint proxies; proxy as a chairperson of a meeting of members; right of proxy to demand for a poll; termination of a person's authority to act as a proxy.

CESSATION OF COMPANIES

13) Voluntary and Compulsory Winding Up

Types of shares; rights and powers attached to shares; preference shares; no par value shares; exercise of power of directors to allot shares or grant rights; registration of allotment in the register of members; return of allotment; power of company to alter its share capital; rights attached to shares; classes of shares; description of shares of different classes; variation of class rights; notifying shareholders of variation; disallowance or confirmation of variation by Court.

13.1 Voluntary winding up

Circumstances in which company may be wound up voluntarily; interim liquidators; date of commencement of winding up; effect of voluntary winding up; declaration of solvency; distinction between "members" and "creditors" voluntary winding up.

13.2 Members' voluntary winding up

Appointment and removal of liquidator; power to fill vacancy in office of liquidator; duty of liquidator to call for creditors' meeting in case of insolvency; conversion to creditors' voluntary winding up.

13.3 Creditors' voluntary winding up

Meeting of creditors; liquidators in creditors' voluntary winding up; property and proceedings.

13.4 Provisions applicable to every voluntary winding up

Distribution of property of company; appointment or removal of liquidator by Court; remuneration of liquidators in voluntary winding up; act of liquidator valid; power of liquidator in a voluntary winding up; power of liquidator to accept shares as consideration for sale of property of company; annual meeting of members and creditors; final meeting and dissolution; arrangement binding on creditors.

14) Winding Up By Court

Petition of winding up; circumstances in which company may be wound up by Court; definition of "inability to pay debts"; commencement of winding up by the Court; powers of Court on hearing petition for winding up; power of Court to stay or restrain proceedings against company prior to order of winding up; action or proceeding stayed after winding up order; lodgment of winding up order; effect of winding up order.

14.1 Provisions relating to liquidators in winding up by court

Interim liquidator; appointment of liquidator; appointment of other person as liquidator other than Official Receiver; remuneration of liquidators; resignation or removal of liquidator; custody and vesting of company's property; submission of statement of affairs of company; report by liquidator; powers of liquidator; settlement of list of contributories and application of assets; release of liquidators and dissolution of company.

14.2 Members' voluntary winding up

Appointment and removal of liquidator; power to fill vacancy in office of liquidator; duty of liquidator to call for creditors' meeting in case of insolvency; conversion to creditors' voluntary winding up.

15) Striking Off

Power of Registrar to strike off company; application to strike off company; notice of intention to strike off company; objection to striking off; withdrawal of striking off application; effect of striking off; power of Court to reinstate struck off company into register.

CORPORATE SECRETARYSHIP

16) Foreign companies

Prohibition on carrying on business in Malaysia; registration of foreign company; requirement for foreign company to have agent; name of foreign company and its publication; obligation to state name of foreign company, whether limited and place where incorporated; requirement to have a registered office; return to be filed where documents altered; branch register; transfer of shares and rectification; accounts to be kept by foreign companies; financial statements; annual return; service of notice; cessation of business in Malaysia; power of foreign companies to hold immovable property.

RECOMMENDED READING

1. Cheah Foo Seong (2018) Guide to Company Secretarial Practice in Malaysia (4th Edition) CCH Malaysia
2. Zubaidah Zainal Abidin (2018) Corporate Secretaryship and Governance, UiTM Press (in progress)

FURTHER READING

1. Malaysian Code on Corporate Governance
2. Statutes, Regulations and Guidelines:
 - Companies Act 2016
 - Companies Regulations 2017
 - Companies Commission of Malaysia Regulations 2017
 - Securities Commission Act 1993
 - Limited Liability Partnership Act 2012
 - Malaysian Code on Take-overs and Mergers 2016
 - The Bursa Securities Berhad Listing Requirements & Practice Notes
 - Rules of the Malaysian Central Depository Sendirian Berhad

