



MAICSA Syllabus Document – Module 2

Corporate Secretarial Practice

January 2020

Introduction

The content for this module is an expanded version of the content specified in the *International Qualifying Scheme (IQS)* module entitled *Corporate Secretarial Practice*. **All** (100%) of the content specified in the IQS syllabus is covered in this module.

The name of the module has been retained as *Corporate Secretarial Practice*.

Module 2

Corporate Secretarial Practice

Level: 6

Module type: **Mandatory – Part One (Level 6) Programme**

Total hours study time: **200**

Introduction

The aim of this module is for students to develop their knowledge and skills to prepare for practice as a company secretary/governance professional, ensuring that the company operates in accordance with good governance principles and the regulations of the jurisdiction in which it operates.

For the purpose of this module, where ‘company secretary’ is referred to, this also covers the role of the governance professional.

Before studying this module

It is recommended that the student has completed the *Company Law and Corporate Governance* prior to undertaking *Corporate Secretarial Practice*, or has completed *Company Law* and taking *Corporate Governance* concurrently with this module. This will ensure that, at completion of this module, the student is able to apply the principles of good governance in the context of effective company secretarial/governance professional practice.

Learning outcomes

After successful completion of this module you should:

1. Understand the role of the company secretary and the differing responsibilities of the company secretary, the board, management, shareholders and other stakeholders
2. Understand the nature and principles of the company’s regulatory requirements and interpret and practise in the sector to ensure compliance
3. Be able to exercise appropriate judgment to advise the board on the expectations of and compliance with regulatory requirements
4. Be able to exercise appropriate judgment to advise the board on matters relating to shares and share capital.

Module content

Section A: The role of the company secretary, the board and other stakeholders	
<i>30% – 60 Learning hours</i>	
<i>LO.1: Understand the role of the company secretary and the differing responsibilities of the company secretary, the board, management, shareholders and other stakeholders</i>	
Topic area	Potential content
The company secretary, the board and shareholders	<p>Role, functions and duties of the company secretary:</p> <p>background:</p> <ul style="list-style-type: none"> – 1856 clerk to board – 1948 officer of company – 1971 chief administration officer/ ostensible authority – 1980 qualification required for Plc company secretary – 1992 role recognised in Cadbury report <p>· 2008 company secretary for Ltd companies Optional</p> <p>The legal and regulatory framework that binds the role and functional duties of a company secretary in Malaysia includes:</p> <ul style="list-style-type: none"> – Companies Act 1965 – Companies Act 2016 – Companies Commission of Malaysia (Amendment) Act 2015 – Limited Liability Partnership Act 2012 – Securities Commission Act 2015 – The Bursa Malaysia Listing Requirements 2018 – The Malaysian Code on Corporate Governance – The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) – The Malaysian Code on Takeovers and Mergers 2016 – Companies (Corporate Rescue Mechanism) Rules 2018 <p>Office of the company secretary qualifications duties</p> <ul style="list-style-type: none"> - Board meetings - General meetings - Articles of association - General compliance - Statutory registers - Statutory returns

Topic area	Potential content
	<ul style="list-style-type: none"> - Report and accounts - Members - Share capital - Acquisitions and disposals - Corporate governance - Non-executive directors - Registered office - Subsidiaries <p>Appointment and vacation of the office of company secretary:</p> <ul style="list-style-type: none"> appointment process – board decision prohibited appointments resignation removal joint, deputy and assistant company secretaries <p>Relationship with the chair and directors:</p> <ul style="list-style-type: none"> reporting to chair independence reporting lines for executive duties <p>Company secretary as adviser to the chair and directors</p> <p>Dissemination of information and decisions</p> <p>Communication with shareholders and other stakeholders, including electronic communication</p>

Topic area	Potential content
Directors	<p>Types of directors:</p> <ul style="list-style-type: none"> executive non-executive shadow de facto / Nominee Directors (CA 2016 Sec. 2) <p>Recruitment, appointment, re-appointment, rotation and disclosure:</p> <ul style="list-style-type: none"> eligibility criteria procedure for appointment induction rules and guidance on rotation, reappointment and minimum number of directors <p>Companies Commission of Malaysia requirements regarding directors' addresses</p> <ul style="list-style-type: none"> defective and disputed appointments contracts of employment <p>Roles, duties, responsibilities and mandates:</p> <ul style="list-style-type: none"> executive and non-executive roles collective responsibility duties <ul style="list-style-type: none"> Companies Act 2016 Malaysia other statutory duties <ul style="list-style-type: none"> Common Law Contractual Regulatory authority to exercise company's power liability for actions or inaction <p>Removal, retirement and disqualification:</p> <ul style="list-style-type: none"> vacation of office <p>Retirement by rotation, resignation, non-re-appointment, removal disqualification:</p> <ul style="list-style-type: none"> failure to meet share or professional qualification <p>Succession planning:</p> <ul style="list-style-type: none"> diversity independence balance <p>Directors' and officers' indemnification and liability</p> <ul style="list-style-type: none"> insurance co-option

Topic area	Potential content
Effective board practices	<p>Board evaluation:</p> <ul style="list-style-type: none"> internal external requirements for listed companies <p>Director education/guidebooks:</p> <ul style="list-style-type: none"> induction <p>Continuing Professional Development (CPD)</p> <p>availability of internal and external support</p> <p>Best practices, policies and procedures:</p> <ul style="list-style-type: none"> matters reserved for board authority limits code of conduct tenure policy expense policy independence standards <p>committee terms of reference:</p> <ul style="list-style-type: none"> – audit – remuneration – nomination – disclosure <p>share dealing policy</p> <p>whistleblowing</p> <p>risk management policy</p>

Topic area	Potential content
Members	<p>Restrictions on membership</p> <p>Shareholders: liability share classes: – ordinary – preference share – deferred</p> <p>shareholder and member rights Guarantors – liability</p> <p>Member activism: disruption at meetings right of entry to company property - rights to documents right to require company to enquire into ownership - verification of polls</p> <p>Articles of association / Constitution: voting rights rights to distributions transfer of shares: – pre-emption provisions – restrictions – valuation – drag along and tag along rights</p> <p>issue of new shares – pre-emption provisions variation of rights</p> <p>Unfair prejudice: by directors by other members minority oppression derivative actions</p> <p>Membership: registered beneficial ownership</p>

Section B: Regulatory requirements for companies

50% – 100 Learning hours

LO.2: Understand the nature and principles of the company’s regulatory requirements and interpret and practise in the sector to ensure compliance

Topic area	Potential content
Company compliance	<p>Company formation:</p> <p>matters for company secretary to consider:</p> <ul style="list-style-type: none"> - type of company required - bespoke articles - entrenched provisions - share capital structure <p>company names:</p> <ul style="list-style-type: none"> - permitted characters - ‘too like’ names - sensitive words - adjudication - trading disclosures <p>shareholders agreement</p> <p>by-laws:</p> <ul style="list-style-type: none"> - membership-type organisations, e.g. sports clubs <p>how to incorporate:</p> <ul style="list-style-type: none"> - documents required (when doing it yourself) - direct with–Companies Commission of Malaysia <p>limitations</p> <ul style="list-style-type: none"> - via an agent – information required, anti-money laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) requirements <p>Filing of company returns:</p> <p>annual confirmation statement</p> <p>change of constitution:</p> <ul style="list-style-type: none"> - which resolutions - re-registrations - change of name - registered office <p>accounting disclosures:</p> <ul style="list-style-type: none"> - change of year end - filing accounts - interim accounts <p>change of officers:</p> <ul style="list-style-type: none"> - appointments - termination - objections

Topic area	Potential content
	<p>share capital changes:</p> <ul style="list-style-type: none"> - allotments - purchases - cancellations consolidations, sub-divisions - statement of capital <p>charges:</p> <ul style="list-style-type: none"> - creation - satisfaction <p>filing requirements:</p> <ul style="list-style-type: none"> - deadlines - paper based - online - software <p>Offences under the relevant corporations or associations legislation:</p> <p style="padding-left: 40px;">breaches of articles of association – how to enforce breaches of Malaysian Companies Act or other legislation</p> <p style="padding-left: 40px;">liability for prosecution:</p> <ul style="list-style-type: none"> - criminal offences - civil offences - how to enforce - time limits <p>Corporate governance overview:</p> <p style="padding-left: 40px;">Malaysian Corporate Governance Code Malaysian Code for Institutional Investor (MCII) diversity disclosure of wage comparisons disclosure payment practices current proposals for change</p> <p>Mergers, de-mergers, acquisitions, amalgamations and takeovers:</p> <p style="padding-left: 40px;">share purchase share exchange de-merger</p> <ul style="list-style-type: none"> - by distribution in specie - by share sale <p style="padding-left: 40px;">takeover panel</p> <p>Arrangements, reconstructions:</p> <p style="padding-left: 40px;">court-approved scheme of arrangement</p>

Topic area	Potential content
	<p>Culture and corporate behaviours: setting the tone from the top policies: – diversity and discrimination – whistleblowing – remuneration – employment handbook share schemes</p> <p>Company insolvency, dissolution and restoration: defining insolvency – Section 443 CA 2016 definition administration: – purpose – appointment of liquidator – close of administration liquidation: – purpose – appointment – members voluntary, creditors voluntary, by the Court – investigation into conduct of directors, preferences, fraud and criminal offences receivership: – purpose – appointment and duties – close of receivership company voluntary arrangement: – purpose and approval – effect of CVA – close of CVA pitfalls: – fraudulent and wrongful trading – misfeasance – fraud and criminal acts dissolution: – at request of directors – by Registrar restoration: – administrative – by Court deregistration Phoenix companies</p> <p>Dormant companies: filing requirements audit exemptions</p>

Topic area	Potential content
Annual and integrated report	<p>Role and duties of the company secretary in the annual report cycle</p> <p>Statutory, regulatory and listing requirements:</p> <p>micro companies:</p> <ul style="list-style-type: none"> - eligibility - filing requirements <p>small companies:</p> <ul style="list-style-type: none"> - eligibility - filing requirements <p>medium sized:</p> <ul style="list-style-type: none"> - eligibility - filing requirements <p>full accounts:</p> <ul style="list-style-type: none"> - filing requirements <p>listed company accounts:</p> <ul style="list-style-type: none"> - filing requirements <p>Narrative reporting:</p> <p>strategic report</p> <p>directors report</p> <p>remuneration report</p> <p>committee reports</p> <p>Disclosure of financial statements:</p> <p>filing requirements:</p> <ul style="list-style-type: none"> - registrar <ol style="list-style-type: none"> 1. Bank Negara Malaysia (BNM) 2. Securities Commission Malaysia (SC) 3. Labuan Financial Services Authority (Labuan FSA) <p>Legislative and other developments:</p> <p>non-financial performance indicators</p> <p>integrated reporting – overview and purpose</p> <p>Financial Reporting Council (FRC):</p> <ul style="list-style-type: none"> - introduction of new UK GAAP (generally accepted accounting principles) - triennial review of Financial Reporting Standards (FRS) <ol style="list-style-type: none"> 1. Malaysian Financial Reporting Standard (MFRS) 2. Malaysian Private Entities Reporting Standard (MPERS)

Topic area	Potential content
External auditors	<p>Role of the company secretary in operating effectively with external auditors and the audit committee:</p> <ul style="list-style-type: none"> access to documents report to members <p>Independence:</p> <ul style="list-style-type: none"> non-audit fees non-audit services <p>Appointment</p> <p>Rotation:</p> <ul style="list-style-type: none"> audit partner audit firm <p>Termination:</p> <ul style="list-style-type: none"> resignation <p>Non re-appointment</p> <ul style="list-style-type: none"> removal <p>Role of external auditors:</p> <ul style="list-style-type: none"> duties liabilities board audit committee audit exemptions
Securities exchange listing	<p>Listing requirements:</p> <ol style="list-style-type: none"> 1. Bank Negara Malaysia (BNM) 2. Securities Commission Malaysia (SC) 3. Labuan Financial Services Authority (Labuan FSA) <ul style="list-style-type: none"> regulatory regime eligibility listing process <p>types of public issue</p> <p>role of the advisors</p> <ul style="list-style-type: none"> prospectus rules <p>Bursa Malaysia as a primary and secondary market</p> <ul style="list-style-type: none"> admission and disclosure standards <p>Capital Market and Services Act</p> <p>Ongoing reporting, filings and compliance:</p> <ul style="list-style-type: none"> financial inside information: <ul style="list-style-type: none"> – Capital Market and Services Act – Disclosure committee

Topic area	Potential content
	<p>persons discharging managerial responsibilities (PDMRs) and persons closely associated with them (PCAs) dealing:</p> <ul style="list-style-type: none"> – who they are – dealing restrictions – disclosure of dealing <p>major shareholders’ dealing disclosure requirements</p> <p>Malaysian Corporate Governance Code Malaysian Code for Institutional Investor (MCII) Insider dealing: CMSA & CA Act 2016</p> <p>Dematerialisation – overview and current proposals</p>
<p>Maintenance of records</p>	<p>Minute books:</p> <ul style="list-style-type: none"> location and security directors members access rights <p>Meeting materials/board papers:</p> <ul style="list-style-type: none"> directors – board papers members – members communications access rights <p>Corporate records:</p> <ul style="list-style-type: none"> directors’ service contracts directors indemnities minutes accounting records contracts for purchase of own shares documents for purchases out of capital report to members of investigation by public company into interests in shares <p>Statutory registers – types and format:</p> <ul style="list-style-type: none"> directors directors residential addresses secretaries members charges debentures <p>Substantial Shareholders under S.144 interests in voting shares of Plc</p>

Topic area	Potential content
	<p>Location of records and registers: registered office</p> <p>central register</p> <p>Access to records and registers: location inspection – in person – right to request copies fees</p> <p>Retention periods for documents and registers Financial records: information required location retention periods Inspection</p>
Board software	<p>Evaluation, implementation, security, uses Ongoing maintenance and updates</p>
Minutes and minute books	<p>Required information in minutes: static data: – name – place, date and time of meeting – attendees</p> <p>variable data: – confirmation meeting opened – quorum – matters brought forward/action points – review/ agree last minutes – synopsis of discussions on matters on agenda, action points, decisions made – matters to be carried forward – Any Other Business (AOB)</p> <p>The 'Six Cs': correctness conciseness clarity consistency coherence completeness</p> <p>Proof of existence of an organisation and its historical development Record of decisions made and actions taken</p>

Topic area	Potential content
	<p>Demonstration of due diligence on part of decision-makers</p> <p>Legal evidence in support of actions taken</p> <p>Records retention – security of documents</p> <p>Risk management – protecting the organisation</p>
Oversight by regulators	<p>Governance practices – processes and procedures</p> <p>Assessment of performance in carrying out governance responsibilities</p> <p>Protection of stakeholders</p> <p>Investigation powers of regulators: Revenue & Customs (HMRC)</p>
Regulation and disclosure	<p>Disclosure requirements for listed companies</p> <p>Link between disclosure, accountability, transparency and trust – clear and concise annual reporting</p> <p>Data protection: Data Protection Act 2010 Malaysia:</p> <ul style="list-style-type: none"> – data protection principles – registration regime – obligation on companies <p>freedom of information</p> <p>Public access to corporate information: right to request details of data held by an employer or company</p> <p>freedom of information requests</p>

Section C: Meetings	
10% – 20 Learning hours	
<i>LO.3: Be able to exercise appropriate judgment to advise the board on the expectations of and compliance with regulatory requirements</i>	
Topic area	Potential content
Meetings of shareholders and members	<p>Member meeting or written resolution</p> <p>Types of meeting:</p> <ul style="list-style-type: none"> general meetings special/extraordinary meetings class meetings annual general meetings (AGM) <p>Regulations governing general meetings:</p> <ul style="list-style-type: none"> Companies Act articles of association / Constitution corporate governance – best practice <p>Role of the company secretary before, during and after the annual meeting</p> <p>Notice of meetings:</p> <ul style="list-style-type: none"> notice periods notice content form of notice special notice <p>Quorum, agenda, meeting materials</p> <p>Resolutions:</p> <ul style="list-style-type: none"> special ordinary procedural <p>Role of the chair:</p> <ul style="list-style-type: none"> who chairs meeting business of meeting resolutions and amendments questions entitlement to speak procedural resolutions adjournment <p>Rules of order, standing orders</p> <p>Proxies:</p> <ul style="list-style-type: none"> appointment proxy voting agencies proxy solicitation <p>Polls:</p> <ul style="list-style-type: none"> right to call voting

Topic area	Potential content
	<p>declaration/publication of result independent proxy report</p> <p>Attendance: right to attend right of access unruly members/protests</p> <p>Voting</p> <p>Meeting technology: electronic voting online meetings meetings in multiple locations</p> <p>Share registrar and role of scrutineer</p> <p>Communication with shareholders and other stakeholders: postal website electronic</p>
<p>Meetings of the board and its committees</p>	<p>Board meetings: attendees: – directors – company secretary – managers – advisers</p> <p>notice: – timing and frequency – content – board papers – format</p> <p>quorum</p> <p>chair: – election – role – duties</p> <p>procedures: – agenda preparation and meeting materials – discussion – meeting technology, e.g. attendees present by telephone / video conferencing – voting – dealing with conflict of interests</p>

Topic area	Potential content
	<p>Role of the company secretary before, during and after board meetings</p> <p>Delegation of authority and responsibility</p> <p>Reliance on management and advisers</p> <p>Committees – types, purpose and composition</p> <p>Matters reserved for the board</p> <p style="padding-left: 20px;">Executive discretion</p> <p>Motions and written/circular resolutions</p> <p>Conflicts of interest:</p> <p style="padding-left: 20px;">declaration</p> <ul style="list-style-type: none"> – general – specific <p style="padding-left: 20px;">register</p>

Section D: Shares

10% – 20 Learning hours

LO.4: Be able to exercise appropriate judgment to advise the board on matters relating to shares and share capital

<p>Shares, share capital, share register and debt capital</p>	<p>Regulation of the securities industry: insider dealing market abuse</p> <p>Types of share and debt capital: ordinary preference deferred debentures loan stock options and warrants</p> <p>Share capital: allotment of shares: – issue price – acquisition of non-cash assets – financial assistance – share premium – part payment – calls – forfeiture</p> <p>purchase of own shares: – out of distributable profit – out of capital with solvency statement – out of capital with Court approval – simplified process for small purchases</p> <p>redemption of shares</p> <p>treasury shares</p> <p>alteration of share capital</p> <p>Company share registrar function: principles and procedures in share and membership registration role of share transfer agent de-materialisation</p> <p>Register of members: format</p> <p>Central Depository System (CDS) technology-based applications</p>
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Topic area	Potential content
	<p>Share transfers: over view stock transfer form stamp duty registration Central Depository System</p> <p>Transmission of shares – overview and documentation</p> <p>Registration of documents affecting title</p> <p>Share certificates: issue on allotment issue on transfer/transmission lost certificates: – liability – indemnification certification</p> <p>Distributions: dividends – approval – mandates – unclaimed – scrip and dividend reinvestment plans interest taxation of distributions</p> <p>Rights and warrants, debentures and bonds</p> <p>Capital events and role of share registrar: share offer rights issue consolidation/subdivision takeover scheme of arrangement conversion</p> <p>Key features and establishment of employee share schemes and their ongoing administration: Share Incentive Plans (SIPs) in Malaysia 1. Employment Insurance Scheme (EIS) 2. Employee Shares Option Scheme (ESOS)</p>