



## **MAICSA Syllabus Document – Module 3**

# **Corporate Law**

**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 Law*. All (100%) of the content specified in the IQS syllabus is covered in this module, although the content weightings of each learning outcome are slightly different in THE MAICSA version of this module.

## Module 3

# Company Law

Level: 6

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

Total hours study time: **200**

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### Introduction

The aim of this module is to provide a thorough grounding in, and knowledge and understanding of, the legal framework governing certain business organisations, with particular focus on the registered company. Where appropriate, the module will also cover relevant corporate governance topics, and the relationship between company law and corporate governance.

### Before studying this module

It is assumed that all students have a fundamental understanding of legal frameworks within their jurisdiction (legislation, case law, the legal system, foundation legal subjects (e.g. contract law, the law of torts)). This material is covered in all undergraduate law degrees, and business degrees focusing on accountancy, finance, management, economics, or similar.

If a student has not undertaken a law degree or an undergraduate degree with a business law unit, they must take the Level 4 Foundation Programme first in order to cover the concepts and terms of basic business law.

### Learning outcomes

After successful completion of this module you should:

- 1 Understand the legal framework within which commercial organisations operate.
- 2 Be able to provide reasoned opinion on the legal structures available to a variety of types of organisations and their appropriateness.
- 3 Understand the internal rules and the external regulatory environment which companies are subject to.
- 4 Be able to apply relevant legislation, case law and best practice recommendations to legal and governance issues arising in complex scenarios.
- 5 Be able to exercise appropriate judgement when presenting advice on structural and legal issues in a relevant form.

**Module content**

<b>Section A: Sources of company law, and the nature and formation of the company</b> <span style="float: right; color: red;">20% – 40 Learning hours</span>	
<i>L.O.1: Understand the legal framework within which commercial organisations operate</i>	
Topic area	Potential content
Legislation	<p>The importance of legislation as a source of company law</p> <p>The Companies Acts and the Company Law Review</p> <p>The structure, importance and evolution of the Companies Act 2016</p> <p>Other notable company law Acts of Parliament, including:</p> <ul style="list-style-type: none"> <li>Partnership Act 1961</li> <li>Limited Liability Partnerships Act 2012</li> <li>Registration of Businesses Act 1956</li> <li>Securities Commission Malaysia Act 1993</li> <li>Capital Markets and Services Act 2007</li> <li>Financial Services Act 2013</li> <li>Interest Schemes Act 2016</li> <li>Companies Commission of Malaysia Act 2001</li> <li>Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001</li> <li>Trust Companies Act 1949</li> <li>Trustees (Incorporation) Act 1952</li> </ul> <p>The role of subordinate legislation, including:</p> <ul style="list-style-type: none"> <li>establishing detailed rules</li> <li>amending existing legislation</li> </ul> <p>Rules with legislative backing (e.g. Malaysian Code of Corporate Governance, Bursa Malaysia Listing Requirements, Malaysian Code on Take-Overs and Mergers 2016, Malaysian Code for Institutional Investors 2014)</p> <p>The Companies Commission of Malaysia’s role in relation to company law legislation</p>
Case law	The importance of case law as a source of company law
The constitution of the company	<p>The importance of the constitution as a source of company law</p> <p>The relationship between company law legislation and the company’s constitution</p>
Contract	<p>The importance of contracts as a source of company law</p> <p>Special rules relating to companies entering into contracts</p>

Topic area	Potential content
Codes and reports	<p>The relationship between company law and corporate governance</p> <p>The role of company law and corporate governance reports</p> <p>The role of domestic corporate governance codes, especially the Malaysian Code of Corporate Governance 2017, Malaysian Code for Institutional Investors 2014</p> <p>Corporate governance and unlisted companies</p>
Business structures	<p>Unincorporated business structures, including:</p> <ul style="list-style-type: none"> <li>the sole proprietorship</li> <li>the general partnership</li> <li>Unincorporated associations</li> </ul> <p>Incorporated business structures, including:</p> <ul style="list-style-type: none"> <li>the company</li> <li>the limited liability partnership</li> <li>the charitable incorporated organisation</li> </ul> <p>Other business structures, including:</p> <ul style="list-style-type: none"> <li>the co-operatives</li> <li>the trust companies</li> </ul>
Incorporation	<p>Definition and duties of a promoter</p> <p>Regulation of pre-incorporation contracts under the statute</p> <p>Incorporation of a registered company, including:</p> <ul style="list-style-type: none"> <li>the role of Companies Commission of Malaysia</li> <li>the application for registration and accompanying Documentation</li> <li>company names</li> </ul> <p>Notice of registration and certificate of incorporation</p>

Topic area	Potential content
	<p>Classifications of company, including:                      public and private companies                      limited and unlimited companies                      companies limited by shares and companies limited by guarantee                      parent, holding, and subsidiary companies</p> <p>Main board and ACE companies                      foreign companies</p> <p>classification of companies by size (e.g. micro, small and medium companies)</p> <p>re-registration of a company</p>
Corporate personality	<p>Distinguishing between legal and natural persons, and persons and individuals</p> <p>Separate legal personality – the company as a person                      The case of Salomon v A Salomon &amp; Co Ltd</p> <p>Consequences of corporate personality, including:                      nationality, domicile, and residence                      perpetual succession                      contractual capacity                      ownership of assets                      distinction between a company and its business                      commencing and defending legal proceedings                      ‘human’ rights</p> <p>Disregarding corporate personality under statute                      Disregarding corporate personality under the common law                      Disregarding corporate personality via contract</p>
The constitution of the company	<p>Defining the constitution of the company</p> <p>The requirement for a constitution:                      companies limited by guarantee                      other types of companies e                      Contents of the constitution</p> <p>Adopting the constitution                      Altering the constitution</p>

Topic area	Potential content
	<p>Resolutions and agreements, and other constitutional Documents</p> <p>Enforcing the constitution, including:                      the statutory contract under s 33 of the Companies Act 2016                      the constitution as a contract between the company and its members                      the constitution as a contract between members outsiders, and outsider rights</p> <p>Shareholders' agreements</p>
<p>Corporate capacity and liability</p>	<p>How companies enter into contracts, including:                      use of the common seal                      execution of documents</p> <p>Corporate capacity and the ultra vires doctrine</p> <p>Agency and the authority of agents, including:                      the actual authority of an agent                      the apparent authority of an agent                      the ratification of an agent's acts</p> <p>Legal protection of third parties, including:                      s 39 of the Companies Act 2016                      the 'indoor management rule'</p> <p>The imposition of personal liability on the company and Others</p> <p>Making a company vicariously liable</p> <p>The imposition of strict liability</p> <p>Corporate liability imposed via attribution, and the use of identification theory</p>

**Section B: The board of directors**

**25% – 50 Learning hours**

*LO.2: Be able to provide reasoned opinion on the legal structures available to a variety of types of organisations and their appropriateness*

Topic area	Potential content
What is a director?	Defining what a 'director' is The legal status of a director  Classifications of directors, including: <i>de facto</i> and <i>de jure</i> directors <i>shadow directors</i> <i>executive and non-executive directors</i> <i>alternate directors</i> <i>nominee</i> directors  Specific board roles, e.g. CEO, chairman
The appointment of directors	Who is and is not eligible to act as a director The appointment process The nomination committee The register of directors Defective appointments Directors' service contracts
Directors' remuneration	The directors' entitlement to remuneration How directors are remunerated The determination of directors' remuneration The role and composition of the remuneration committee Disclosure requirements relating to remuneration The members' rights to vote on directors' remuneration
Board structure and composition	Board structure Board size The split between executive to non-executive directors Board leadership, and splitting the roles of CEO and Chairman Board diversity, notably gender diversity and ethnic Diversity
	The nomination committee The remuneration committee The audit committee The risk committee

Topic area	Potential content
The role of the board	<p>The general functions of the board</p> <p>The managerial powers of the board</p> <p>The division of power between the board and the members</p> <p>The Third Schedule to the Companies Act 2016 pertaining to the rules relating to board meetings, including:</p> <ul style="list-style-type: none"> <li>notice of meetings</li> <li>establishing a quorum</li> <li>board decision-making</li> <li>minutes of meetings</li> </ul> <p>Delegation of powers</p>
The company secretary	<p>The legal status of the company secretary</p> <p>Who is and is not eligible to be appointed as the company secretary</p> <p>The appointment of the company secretary</p> <p>The role of the company secretary</p> <p>The authority of the company secretary as an agent</p>
Directors' duties	<p>Codification of directors' duties</p> <p>To whom do the duties apply, and to whom are the duties owed</p> <p>Remedies for breach of duty</p> <p>The general duties, namely:</p> <ul style="list-style-type: none"> <li>the duty to act within powers</li> <li>the duty to promote the success of the company</li> <li>the duty to exercise independent judgement</li> <li>the duty to exercise reasonable care, skill and diligence</li> <li>the duty to avoid conflicts of interest</li> <li>the duty not to accept benefits from third parties</li> <li>the duty to declare interest in transactions or arrangements</li> </ul> <p>Avoiding liability for breach of the general duties, including:</p> <ul style="list-style-type: none"> <li>obtaining consent, approval or authorisation of the members</li> <li>exclusion and indemnity clauses</li> <li>ratification under s 218 of the Companies Act 2016</li> <li>relief from the court</li> </ul> <p>Transactions requiring member approval, including:</p> <ul style="list-style-type: none"> <li>service contracts</li> <li>substantial property transactions</li> <li>loans, quasi-loans, and credit transactions</li> <li>remuneration and payments for loss of office</li> </ul>



Topic area	Potential content
Vacation of office	<p>Resignation of a director</p> <p>Vacation of office in accordance with the constitution</p> <p>Retirement by rotation</p> <p>Removal of a director, including:</p> <ul style="list-style-type: none"> <li>removal under s 206 of the Companies Act 2016</li> <li>removal under the constitution</li> <li>the relationship between removal under s 206 and removal under the constitution</li> </ul>
Disqualification of a director	<p>The grounds for disqualification, including:</p> <ul style="list-style-type: none"> <li>breaches of companies legislation</li> <li>fraud or breach of duty</li> <li>convictions relating to companies legislation</li> <li>conviction of certain offences</li> <li>unfitness in insolvent companies</li> <li>bankruptcy</li> </ul>

<b>Section C: Membership of a company</b>	
<i>10% – 20 Learning hours</i>	
<i>L.O.3: Understand the internal rules and the external regulatory environment which companies are subject to</i>	
<b>Topic area</b>	<b>Potential content</b>
What is membership?	<p>Becoming a member under s 18(2) of the Companies Act 2016</p> <p>Distinguishing between members and shareholders</p> <p>Restrictions and limitations on who can be a member, including:</p> <ul style="list-style-type: none"> <li>minors</li> <li>unincorporated associations</li> <li>companies as members</li> </ul>
The register of members	<p>The requirement to keep a register of members</p> <p>Information that must be included in the register of members</p> <p>The right to inspect the register of members</p> <p>Rectification of the register of members</p>
Transparency and membership	<p>Inquiring into share ownership</p> <p>Disclosure of interests in shares, and the register of interests disclosed</p> <p>Legal and beneficial ownership of shares, and the issue of transparency</p> <p>The register of substantial shareholder</p>
Termination of membership	<p>The ways in which a person’s membership can be terminated, including:</p> <ul style="list-style-type: none"> <li>death of a member</li> <li>transfer, transmission, forfeiture, and surrendering of shares</li> <li>where a contract to purchase shares is rescinded or declared void</li> <li>where the constitution specifies that membership should Terminate</li> </ul>
Members’ decision-making powers	<p>How public and private companies make decisions</p> <p>Resolutions</p> <p>The rules relating to general meetings, including:</p> <ul style="list-style-type: none"> <li>calling general meetings</li> <li>notice of general meetings</li> <li>establishing a quorum</li> <li>voting at general meetings</li> <li>the use of proxies</li> <li>the annual general meeting</li> </ul>

Topic area	Potential content
	<ul style="list-style-type: none"> <li>electronic communication</li> <li>minutes of meetings</li> <li>class meetings</li> <li>investor engagement</li> </ul>
Members' remedies	<p>Distinguishing between personal, representative, and corporate actions</p> <p>The rule in Foss v Harbottle</p> <p>The statutory derivative claim, including:</p> <ul style="list-style-type: none"> <li>the scope of the derivative claim</li> <li>grounds for a derivative claim</li> <li>the process for bringing a derivative claim</li> <li>obtaining permission to continue a derivative claim</li> <li>costs</li> </ul> <p>The unfair prejudice remedy, including:</p> <ul style="list-style-type: none"> <li>who may petition the court</li> <li>against whom may a petition be brought</li> <li>the grounds for the petition</li> <li>the remedies</li> </ul> <p>The petition for winding up, especially winding up on just and equitable grounds</p> <p>The relationship between the statutory member remedies</p>

<b>Section D: Capital and corporate transparency</b>	
<b>25% – 50 Learning hours</b>	
<i>LO.4: Be able to apply relevant legislation, case law and best practice recommendations to legal and governance issues arising in complex scenarios.</i>	
<b>Topic area</b>	<b>Potential content</b>
What is a share?	<ul style="list-style-type: none"> <li>The legal definition of a ‘share’</li> <li>The share as a thing in action</li> <li>The nature of a share</li> </ul>
Classifications of share capital	<ul style="list-style-type: none"> <li>Share capital</li> <li>Paid-up share capital</li> <li>called-up and uncalled share capital</li> </ul>
Allotment and issuing of shares	<ul style="list-style-type: none"> <li>The distinction between allotting and issuing shares</li> <li>The power to allot shares</li> <li>Limitations and restrictions on the power to allot shares, including:                             <ul style="list-style-type: none"> <li>pre-emption rights</li> </ul> </li> <li>Payment for shares</li> <li>Public companies</li> <li>Share certificates and uncertificated shares</li> </ul>
Classes of share	<ul style="list-style-type: none"> <li>Class rights</li> <li>Ordinary and preference shares</li> <li>Variation of class rights</li> </ul>
Offering shares to the public	<ul style="list-style-type: none"> <li>The advantages and disadvantages of offering shares to the public</li> <li>The Capital Markets and Services Act 2007, and The Malaysian listing authority</li> <li>Listing shares on a stock exchange</li> <li>The prospectus, including:                             <ul style="list-style-type: none"> <li>the obligation to publish a prospectus</li> <li>the structure and content of a prospectus</li> <li>the approval of a prospectus</li> <li>liability for false or misleading statements and omissions</li> </ul> </li> <li>Underwriting and commissions</li> <li>The Listing Rules</li> </ul>

Topic area	Potential content
Transfer and transmission of shares	<p>Distinguishing transfer and transmission</p> <p>The transfer of shares, including:                      the right to transfer shares                      limitations on the right to transfer shares                      the share transfer process</p> <p>Transmission of shares, including:                      transmission upon the death of a shareholder                      transmission upon the bankruptcy of a shareholder</p>
Alteration of share capital	<p>Increasing share capital</p> <p>Subdivision and consolidation of share capital</p> <p>Reducing share capital, including:                      reduction by special resolution and court confirmation                      reduction by special resolution supported by solvency statement</p>
Capital maintenance	<p>Definition of the doctrine of capital maintenance</p> <p>Rules relating to a company's acquisition of its own shares</p> <p>Rules relating to a company providing financial assistance to acquire its shares</p> <p>Rules relating to distributions, including:                      entitlement to a dividend                      the authorization and payment of a dividend                      profits available for distribution                      solvency of company                      penalties for breach of the rules relating to distributions</p>
Loan capital	<p>The role and importance of loan capital</p> <p>The power to borrow</p> <p>Types of security</p> <p>Debentures</p> <p>Charges, including:                      fixed charges                      floating charges                      crystallisation of floating charges                      determining the type of charge                      the registration of charges                      enforcement of charges</p>

Topic area	Potential content
Corporate transparency	<p>The statutory registers, namely:</p> <ul style="list-style-type: none"> <li>the register of members</li> <li>the register of directors</li> <li>the register of substantial shareholders</li> <li>the register of interests disclosed</li> <li>the register of secretaries</li> </ul> <p>The annual accounts, including:</p> <ul style="list-style-type: none"> <li>financial years and accounting reference periods</li> <li>the obligation to keep accounts</li> <li>individual and group accounts</li> <li>the content of the annual accounts</li> <li>distribution, publication, and filing of accounts</li> <li>laying of accounts before the general meeting</li> </ul> <p>Annual reports, including:</p> <ul style="list-style-type: none"> <li>the strategic report</li> <li>the directors' report</li> <li>the remuneration report</li> <li>the auditor's report</li> <li>the corporate governance statement</li> </ul> <p>Publication of annual reports and accounts</p> <p>Disclosures under the disclosure and transparency rules</p>
The auditor	<p>The role of the auditor</p> <p>The requirement to appoint an auditor</p> <p>The process of appointing an auditor</p> <p>Remuneration of an auditor</p> <p>Powers of investigation</p> <p>Liability of an auditor</p> <p>Ceasing to hold office by resignation, removal or Replacement</p> <p>Auditor rotation</p>

Topic area	Potential content
<p>The offence of insider dealing, and offences relating to financial services</p>	<p>The offence of insider dealing under the Capital Services and Markets Act 2007</p> <p>Offences relating to prospectus under the Capital Services and Markets Act 2007</p>

<b>Section E: Corporate restructuring, rescue, and liquidation</b>	
<b>20% – 40 Learning hours</b>	
<i>L.O.5: Be able to exercise appropriate judgement when presenting advice on structural and legal issues in a relevant form</i>	
<b>Topic area</b>	<b>Potential content</b>
Corporate restructuring	<p>Schemes of reconstruction</p> <p>Schemes of arrangement</p> <p>Takeovers and Mergers Code 2016 the takeover process the mandatory offer</p>
Corporate rescue, and receivership	<p>Rescue culture</p> <p>Corporate rescue mechanisms</p> <p>Voluntary arrangement</p> <p>Judicial management</p> <p>Receivership and administrative receivership</p>
Liquidation	<p>Circumstances under which a company become insolvent</p> <p>Voluntary winding up, including: members' voluntary winding up creditors' voluntary winding up</p> <p>Compulsory winding up, including: who can petition the court for a winding up order the grounds for winding up</p> <p>The liquidator, including: the role of a liquidator the appointment of a liquidator</p> <p>The powers of a liquidator malpractice before and during liquidation, including: offences of fraud, deception, etc the summary remedy fraudulent trading wrongful trading restriction on re-use of company names</p>



Topic area	Potential content
	<p>Adjustment of prior transactions, including:                      transactions at an undervalue                      Preferences                      extortionate credit transactions                      avoidance of certain floating charges</p> <p>Distribution of assets, including:                      the <i>pari passu</i> principle                      the order of distribution</p>
Dissolution and restoration	<p>Defining dissolution                      Methods of dissolving a company                      The process for restoring a company that has been Dissolved</p>

## REFERENCES

1. Chan Wai Meng. (2017). Essential Company Law in Malaysia: Navigating the Companies Act 2016 (Thomson Reuters/ Sweet & Maxwell Asia).
2. Cheah Foo Seong (General Ed). (2017). The Annotated Malaysian Companies Act 2016. (Thomson Reuters/ Sweet & Maxwell Asia).
3. Cheah Foo Seong. (2018). Guide to Company Secretarial Practice in Malaysia (Wolters Kluwer).
4. Loh Siew Cheang (2018). Corporate Powers Accountability (LexisNexis).
5. Aiman Nariman Mohd Sulaiman and Effendy Othman (2018). Malaysia Company Law: Principles and Practices (Wolters Kluwer).