



MAICSA Syllabus Document – Module 3

Corporate Law

April 2022

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**

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

Section A: Sources of company law, and the nature and formation of the company	
<i>20% – 40 Learning hours</i>	
<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"> Partnership Act 1961 Limited Liability Partnerships Act 2012 Registration of Businesses Act 1956 Securities Commission Malaysia Act 1993 Capital Markets and Services Act 2007 Financial Services Act 2013 Interest Schemes Act 2016 Companies Commission of Malaysia Act 2001 Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 Trust Companies Act 1949 Trustees (Incorporation) Act 1952 <p>The role of subordinate legislation, including:</p> <ul style="list-style-type: none"> establishing detailed rules amending existing legislation <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"> the sole proprietorship the general partnership Unincorporated associations <p>Incorporated business structures, including:</p> <ul style="list-style-type: none"> the company the limited liability partnership the charitable incorporated organisation <p>Other business structures, including:</p> <ul style="list-style-type: none"> the co-operatives the trust companies
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"> the role of Companies Commission of Malaysia the application for registration and accompanying Documentation company names <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 & 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:</p> <ul style="list-style-type: none"> 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>Shareholders' agreements</p>
<p>Corporate capacity and liability</p>	<p>How companies enter into contracts, including:</p> <ul style="list-style-type: none"> use of the common seal execution of documents <p>Corporate capacity and the ultra vires doctrine</p> <p>Agency and the authority of agents, including:</p> <ul style="list-style-type: none"> the actual authority of an agent the apparent authority of an agent the ratification of an agent's acts <p>Legal protection of third parties, including:</p> <ul style="list-style-type: none"> s 39 of the Companies Act 2016 the 'indoor management rule' <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?	<p>Defining what a 'director' is The legal status of a director</p> <p>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</p> <p>Specific board roles, e.g. CEO, chairman</p>
The appointment of directors	<p>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</p>
Directors' remuneration	<p>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</p>
Board structure and composition	<p>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</p>
	<p>The nomination committee The remuneration committee The audit committee The risk committee</p>

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"> notice of meetings establishing a quorum board decision-making minutes of meetings <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"> the duty to act within powers the duty to promote the success of the company the duty to exercise independent judgement the duty to exercise reasonable care, skill and diligence the duty to avoid conflicts of interest the duty not to accept benefits from third parties the duty to declare interest in transactions or arrangements <p>Avoiding liability for breach of the general duties, including:</p> <ul style="list-style-type: none"> obtaining consent, approval or authorisation of the members exclusion and indemnity clauses ratification under s 218 of the Companies Act 2016 relief from the court <p>Transactions requiring member approval, including:</p> <ul style="list-style-type: none"> service contracts substantial property transactions loans, quasi-loans, and credit transactions remuneration and payments for loss of office

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"> removal under s 206 of the Companies Act 2016 removal under the constitution the relationship between removal under s 206 and removal under the constitution
Disqualification of a director	<p>The grounds for disqualification, including:</p> <ul style="list-style-type: none"> breaches of companies legislation fraud or breach of duty convictions relating to companies legislation conviction of certain offences unfitness in insolvent companies bankruptcy

Section C: Membership of a company	
<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>	
Topic area	Potential content
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"> minors unincorporated associations companies as members
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"> death of a member transfer, transmission, forfeiture, and surrendering of shares where a contract to purchase shares is rescinded or declared void where the constitution specifies that membership should Terminate
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"> calling general meetings notice of general meetings establishing a quorum voting at general meetings the use of proxies the annual general meeting

Topic area	Potential content
	<p>electronic communication minutes of meetings class meetings investor engagement</p>
<p>Members' remedies</p>	<p>Distinguishing between personal, representative, and corporate actions</p> <p>The rule in Foss v Harbottle</p> <p>The statutory derivative claim, including: the scope of the derivative claim grounds for a derivative claim the process for bringing a derivative claim obtaining permission to continue a derivative claim costs</p> <p>The unfair prejudice remedy, including: who may petition the court against whom may a petition be brought the grounds for the petition the remedies</p> <p>The petition for winding up, especially winding up on just and equitable grounds</p> <p>The relationship between the statutory member remedies</p>

Section D: Capital and corporate transparency

25% – 50 Learning hours

LO.4: Be able to apply relevant legislation, case law and best practice recommendations to legal and governance issues arising in complex scenarios.

Topic area	Potential content
What is a share?	The legal definition of a 'share' The share as a thing in action The nature of a share
Classifications of share capital	Share capital Paid-up share capital called-up and uncalled share capital
Allotment and issuing of shares	The distinction between allotting and issuing shares The power to allot shares Limitations and restrictions on the power to allot shares, including: pre-emption rights Payment for shares Public companies Share certificates and uncertificated shares
Classes of share	Class rights Ordinary and preference shares Variation of class rights
Offering shares to the public	The advantages and disadvantages of offering shares to the public The Capital Markets and Services Act 2007, and The Malaysian listing authority Listing shares on a stock exchange The prospectus, including: the obligation to publish a prospectus the structure and content of a prospectus the approval of a prospectus liability for false or misleading statements and omissions Underwriting and commissions The Listing Rules

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"> the register of members the register of directors the register of substantial shareholders the register of interests disclosed the register of secretaries <p>The annual accounts, including:</p> <ul style="list-style-type: none"> financial years and accounting reference periods the obligation to keep accounts individual and group accounts the content of the annual accounts distribution, publication, and filing of accounts laying of accounts before the general meeting <p>Annual reports, including:</p> <ul style="list-style-type: none"> the strategic report the directors' report the remuneration report the auditor's report the corporate governance statement <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>

Section E: Corporate restructuring, rescue, and liquidation	
20% – 40 Learning hours	
<i>L.O.5: Be able to exercise appropriate judgement when presenting advice on structural and legal issues in a relevant form</i>	
Topic area	Potential content
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>

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