

Company Law

ICSA qualifying programme

Syllabus



icsa

Company Law

Level 6, Part One 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.

Learning outcomes

After successful completion of this module you should:

- 1 Understand the legal framework within which commercial organisations operate, their business structures and corporate personality.
- 2 Be able to understand the roles and statutory duties of directors, as well as the composition and structure of the board.
- 3 Understand the internal rules and the external regulatory environment which companies are subject to regarding membership.
- 4 Be able to apply relevant legislation, case law and best practice recommendations to legal and governance issues arising in complex scenarios, relating to shares, capital maintenance and loans.
- 5 Be able to exercise appropriate judgement when presenting advice on structural and legal issues in a relevant form (corporate restructuring).

Module content

Section A: Sources of law , business structures and company formation 20% – 40 Learning hours <i>LO.1: Understand the legal framework within which commercial organisations operate, their business structures and corporate personality.</i>	
Topic area	Exemplification
Sources of company law and governance	<ul style="list-style-type: none"> • The importance of legislation as a source of company law • The Companies Acts and the Company Law Review • The structure, importance and evolution of the Companies Act 2006 • Other notable Acts of Parliament, including: <ul style="list-style-type: none"> • the Insolvency Act 1986 • the Company Directors Disqualification Act 1986 • the Financial Services and Markets Act 2000 • the Enterprise and Regulatory Reform Act 2013 • The role of subordinate legislation, including: <ul style="list-style-type: none"> • establishing detailed rules • amending existing legislation • bringing primary law into force • implementing EU law • The Department for Business, Energy and Industrial Strategy: <ul style="list-style-type: none"> • Secretary of State's role in relation to company law legislation • Rules with legislative backing (e.g. the Listing Rules, the City Code on Takeovers and Mergers) • The importance of case law as a source of company law • The importance of the constitution as a source of company law: <ul style="list-style-type: none"> • the relationship between company law legislation and the company's constitution • The importance of contracts as a source of company law: <ul style="list-style-type: none"> • special rules relating to companies entering into contracts • Corporate governance codes and reports: • The role of corporate governance codes: <ul style="list-style-type: none"> • UK Corporate Governance Code • Wates Corporate Governance Principles • UK Stewardship Code • The role of corporate governance reports • European Law: <ul style="list-style-type: none"> • the impact of EU law upon UK company law: <ul style="list-style-type: none"> – right of establishment – harmonisation programme

Topic area	Exemplification
Sources of company law and governance (<i>cont.</i>)	<ul style="list-style-type: none"> – UK's withdrawal from the EU and the effects on UK company law • Human rights laws: <ul style="list-style-type: none"> • relevance of the European Convention on Human Rights
Business structures	<ul style="list-style-type: none"> • Sole proprietorships: <ul style="list-style-type: none"> • formation and operation • finance • dissolution • Partnerships: <ul style="list-style-type: none"> • ordinary partnerships: <ul style="list-style-type: none"> – the relationship between the partners – the relationship between the partners and third parties – dissolution • Limited partnerships: <ul style="list-style-type: none"> • private fund limited partnerships • Limited liability partnerships: <ul style="list-style-type: none"> • comparison to ordinary partnerships and companies • liability • Companies, including classification of companies: <ul style="list-style-type: none"> • public and private companies: <ul style="list-style-type: none"> – quoted, listed and traded companies • Share capital • Limited and unlimited companies • Company size: <ul style="list-style-type: none"> • FTSE 100, 250, and 350 companies • Specific company types: <ul style="list-style-type: none"> • charitable, social and community focused companies: <ul style="list-style-type: none"> – the community interest company • overseas companies • European companies <ul style="list-style-type: none"> – Societas Europaea – Societas Privata Europaea – Societas Unius Personae • Re-registration • Mutual organisations: <ul style="list-style-type: none"> • the co-operative society • the community benefit society • credit unions • friendly societies

Topic area	Exemplification
Incorporation and corporate personality	<ul style="list-style-type: none"> • Promotion and pre-incorporation contracts: <ul style="list-style-type: none"> • promotion of the company: <ul style="list-style-type: none"> – duties of a promoter • pre-incorporation contracts: <ul style="list-style-type: none"> – agreements to the contrary – binding the company • Incorporation of an unregistered company: <ul style="list-style-type: none"> • incorporation by Royal Charter • incorporation by Act of Parliament • delegation of authority to incorporate • Incorporation of a registered company: <ul style="list-style-type: none"> • the role of Companies House and the registrar of companies • the memorandum of association • the application for registration and accompanying documentation: <ul style="list-style-type: none"> – the proposed name of the company • statement of compliance • submission and registration: <ul style="list-style-type: none"> – certificate of incorporation – trading certificate • 'off the shelf' companies • Corporate personality: <ul style="list-style-type: none"> • distinguishing between legal and natural persons, and persons and individuals • the company as a person: <ul style="list-style-type: none"> – 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 • The case of Salomon v A Salomon & Co Ltd • Consequences of corporate personality, including: <ul style="list-style-type: none"> • disregarding corporate personality under statute • disregarding corporate personality under the common law, including: <ul style="list-style-type: none"> – when courts can disregard corporate personality – the application of Prest

Topic area	Exemplification
Incorporation and corporate personality (<i>cont.</i>)	<ul style="list-style-type: none"> • use of conventional legal principles (e.g. establishing a duty of care) • Circumventing corporate personality via contract • Corporate liability: <ul style="list-style-type: none"> • personal liability: <ul style="list-style-type: none"> – civil liability – criminal liability • strict liability • vicarious liability • attribution: <ul style="list-style-type: none"> – attribution as a defence
Legally binding the company	<ul style="list-style-type: none"> • How companies enter into contracts, including: <ul style="list-style-type: none"> • use of the common seal • execution of documents • The constitution of a company: <ul style="list-style-type: none"> • defining the constitution of the company • The memorandum of association • The articles of association, including: <ul style="list-style-type: none"> • content of the articles • the model articles • class rights • interpretation of the articles • implying terms into the articles • amending the articles • entrenched article provisions • The constitution as a contract: <ul style="list-style-type: none"> • a standard contract • the s. 33 contract: <ul style="list-style-type: none"> – enforcing the s. 33 contract – outsiders and outsider rights – internal irregularities • shareholders' agreements: <ul style="list-style-type: none"> – enforcement • Corporate capacity: <ul style="list-style-type: none"> • the ultra vires doctrine • unrestricted objects • section 39 of the Companies Act 2006 • Agency and the authority of agents: <ul style="list-style-type: none"> • the ratification of an agent's acts • the actual authority of an agent <ul style="list-style-type: none"> – express actual authority – implied actual authority

Topic area	Exemplification
Legally binding the company (<i>cont.</i>)	<ul style="list-style-type: none">• the apparent authority of an agent<ul style="list-style-type: none">– representation– reliance– alteration of position• Board authority:<ul style="list-style-type: none">• section 40 of the Companies Act 2006:<ul style="list-style-type: none">– persons dealing with the company– dealing in good faith– the power of directors– the ‘indoor management rule’

Section B: The board of directors**25% – 50 Learning hours**

LO.2: Be able to understand the roles and statutory duties of directors, as well as the composition and structure of the board.

Topic area	Exemplification
The board of directors	<ul style="list-style-type: none"> • Defining a 'director' • The legal status of a director • Types of director: <ul style="list-style-type: none"> • de facto and de jure directors • shadow directors • executive and non-executive directors • alternate directors • nominee directors • Specific board roles: <ul style="list-style-type: none"> • splitting the roles of CEO and chairman • The appointment of directors: <ul style="list-style-type: none"> • the appointment process: <ul style="list-style-type: none"> – the nomination committee • the register of directors • defective appointments • Directors' remuneration: <ul style="list-style-type: none"> • directors' entitlement to remuneration • the determination of directors' remuneration <ul style="list-style-type: none"> – the role and composition of the remuneration committee – how directors are remunerated • disclosure requirements relating to remuneration • Board structure and composition: <ul style="list-style-type: none"> • board structure and size: <ul style="list-style-type: none"> – unitary and two-tier boards • the role of board committees: <ul style="list-style-type: none"> – nomination committee – remuneration committee – audit committee • board composition: <ul style="list-style-type: none"> – the split between executive and non-executive directors – board diversity • Vacation of office: <ul style="list-style-type: none"> • resignation of a director • vacation in accordance with the articles <ul style="list-style-type: none"> – retirement by rotation • Removal of a director:

Topic area	Exemplification
The board of directors (<i>cont.</i>)	<ul style="list-style-type: none"> • removal under Companies Act 2006 • removal under the articles • Disqualification of a director: • The grounds for disqualification, including: <ul style="list-style-type: none"> • conviction of an indictable offence • persistent breaches of companies legislation • fraud or breach of duty during winding up • summary convictions relating to companies legislation • conviction of certain offences abroad • unfitness in an insolvent company • expedient in the public interest • breach of competition law • participation in fraudulent or wrongful trading • bankruptcy • Disqualification orders and undertakings • Applying for leave to act whilst disqualified • Compensation orders and undertakings
The role of the board	<ul style="list-style-type: none"> • The general functions of the board • The managerial powers of the board: <ul style="list-style-type: none"> • the division of powers: <ul style="list-style-type: none"> – subject to the articles – reversion of powers • delegation of powers • The rules relating to board meetings: <ul style="list-style-type: none"> • calling a meeting and notice • establishing a quorum • board decisions: <ul style="list-style-type: none"> – private companies – public companies • minutes of meetings • The company secretary: <ul style="list-style-type: none"> • legal status of the company secretary • appointment and qualifications • role and powers: <ul style="list-style-type: none"> – authority of the company secretary as an agent
Directors' duties	<ul style="list-style-type: none"> • The general duties: <ul style="list-style-type: none"> • scope of the general duties • duty to act within powers: <ul style="list-style-type: none"> – duty to act in accordance with the constitution – duty to exercise powers for the purposes for which they are conferred • duty to promote the success of the company

Topic area	Exemplification
Directors' duties (<i>cont.</i>)	<ul style="list-style-type: none"> • 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 • Remedies for breach of duties • Codification of directors' duties • Avoiding liability: <ul style="list-style-type: none"> • exclusion and indemnity provisions • relief from liability: <ul style="list-style-type: none"> – ratification under s. 239 of the Companies Act 2006 – relief from the court • Transactions requiring member approval: <ul style="list-style-type: none"> • service contracts • substantial property transactions: <ul style="list-style-type: none"> – substantial non-cash asset – connected persons – exceptions – consequences of contravention • loans, quasi-loans, and credit transactions: <ul style="list-style-type: none"> – exceptions – consequences of contravention • remuneration and payments for loss of office: <ul style="list-style-type: none"> – unquoted companies – quoted companies

Section C: Membership of a company**10% – 20 Learning hours**

LO.3: Understand the internal rules and the external regulatory environment which companies are subject to regarding membership.

Topic area	Exemplification
Membership	<ul style="list-style-type: none"> • Defining membership: <ul style="list-style-type: none"> • becoming a member under s. 112 of the Companies Act 2006 • distinguishing between members and shareholders • restrictions on membership • The register of members: <ul style="list-style-type: none"> • legal status and content <ul style="list-style-type: none"> – requirement to keep a register of members – information that must be included in the register • Inspection of the register • Transparency and membership: <ul style="list-style-type: none"> • inquiring into share ownership • register of interests disclosed • legal and beneficial ownership of shares, and the issue of transparency • register of people with significant control (PSC register) • Termination of membership <ul style="list-style-type: none"> • ways in which a person's membership can be terminated, including: <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 articles specify that membership should terminate – where a member is declared bankrupt
Company meetings and decision making	<ul style="list-style-type: none"> • How public and private companies make decisions • Resolutions, and the unanimous assent rule • Rules relating to general meetings: <ul style="list-style-type: none"> • calling a meeting • notice: <ul style="list-style-type: none"> – electronic communication • quorum • voting: <ul style="list-style-type: none"> – voting by proxy – corporate representatives • annual general meetings • adjourning a meeting • records of meetings and resolutions

Topic area	Exemplification
Company meetings and decision making (<i>cont</i>).	<ul style="list-style-type: none"> • class meetings • member engagement: <ul style="list-style-type: none"> – electronic meetings – institutional investors and the UK Stewardship Code
Members' remedies	<ul style="list-style-type: none"> • Personal, representative, and corporate actions <ul style="list-style-type: none"> • the relationship between personal and corporate actions: <ul style="list-style-type: none"> – the 'no reflective loss' principle • representative actions and GLOs • The derivative claim: <ul style="list-style-type: none"> • the rule in <i>Foss v Harbottle</i> • the derivative action • the statutory derivative claim • causes of action • the derivative claim procedure: <ul style="list-style-type: none"> – establishing a prima facie case – determining whether to grant permission • costs • The unfair prejudice remedy: <ul style="list-style-type: none"> • petitioners and respondents: <ul style="list-style-type: none"> – who may petition the court – against whom may a petition be brought • unfairly prejudicial conduct: <ul style="list-style-type: none"> – 'the company's affairs' – 'actual or proposed act or omission' – when conduct is 'unfairly prejudicial' • the 'interests of members' <ul style="list-style-type: none"> – member <i>qua</i> member – equitable considerations • remedies: <ul style="list-style-type: none"> – share purchase orders – winding up • The petition for winding up: <ul style="list-style-type: none"> • who can apply • 'just and equitable': <ul style="list-style-type: none"> – quasi partnerships and equitable considerations • relationship with other remedies: <ul style="list-style-type: none"> – winding up and the unfair prejudice remedy

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, relating to shares, capital maintenance and loans.

Topic area	Exemplification
Shares and share capital	<ul style="list-style-type: none"> • What is a share? <ul style="list-style-type: none"> • the legal definition of a 'share' • the nature of a share • Terms used to describe share capital: <ul style="list-style-type: none"> • nominal value and the share premium • authorised and allotted share capital • issued and unissued share capital • paid-up share capital • called-up and uncalled share capital • Allotment and issuing of shares: <ul style="list-style-type: none"> • authority to allot shares: <ul style="list-style-type: none"> – share warrants • minimum share capital • pre-emption rights • payment for shares: <ul style="list-style-type: none"> – means of payment – allotment of shares at a discount • share certificates • Offering shares to the public: <ul style="list-style-type: none"> • the regulatory framework: <ul style="list-style-type: none"> – EU Law – Financial Services and Markets Act 2000 – the FCA and the FCA Handbook • types of public offer and stock exchanges • listing: <ul style="list-style-type: none"> – the listing process – continuing obligations • the prospectus: <ul style="list-style-type: none"> – obligation to publish a prospectus – content of a prospectus – approval and publication of a prospectus – liability for untrue or misleading statements and omissions • Underwriting and commissions • Classes of share: <ul style="list-style-type: none"> • ordinary and preference shares • variation of class rights: <ul style="list-style-type: none"> – how to vary class rights – right of objection

Topic area	Exemplification
Shares and share capital (<i>cont.</i>)	<ul style="list-style-type: none"> • Transfer and transmission of shares: <ul style="list-style-type: none"> • transfer of shares: <ul style="list-style-type: none"> – transfer of certificated shares – transfer of uncertificated shares • transmission of shares:
The capital maintenance rules	<ul style="list-style-type: none"> • Definition of the doctrine of capital maintenance • Alteration of share capital: <ul style="list-style-type: none"> • reduction of share capital: <ul style="list-style-type: none"> – special resolution and court confirmation – special resolution and solvency statement • Acquisition of own shares: <ul style="list-style-type: none"> • redeemable shares • purchase of own shares: <ul style="list-style-type: none"> – authorisation – payment and cancellation • acquisition of shares out of capital: • Financial assistance to acquire shares: <ul style="list-style-type: none"> • financial assistance • prohibited financial assistance • exceptions to the general prohibition • consequences of providing prohibited financial assistance • Distributions: <ul style="list-style-type: none"> • rules relating to distributions: <ul style="list-style-type: none"> – dividends • profits available for distribution <ul style="list-style-type: none"> – accumulated profits and losses – realised profits and losses – net asset rules • reference to relevant accounts • payment of a dividend • consequences of payment of an unlawful distribution: <ul style="list-style-type: none"> – liability of the directors – liability of the members
Loan capital	<ul style="list-style-type: none"> • Sources of loan capital: <ul style="list-style-type: none"> • debentures • The power to borrow • Security: <ul style="list-style-type: none"> • types of security • Charges: <ul style="list-style-type: none"> • fixed charges • floating charges

Topic area	Exemplification
Loan capital (<i>cont.</i>)	<ul style="list-style-type: none"> - crystallisation • determining the type of charge <ul style="list-style-type: none"> - charges over changing assets • registration of charges: <ul style="list-style-type: none"> - post-2013 system of registration - the effects of registration - the effects of non-registration
Corporate transparency	<ul style="list-style-type: none"> • The statutory registers: <ul style="list-style-type: none"> • election to keep information on the public register • The annual accounts and reports: <ul style="list-style-type: none"> • the obligation to keep accounts • annual accounts: <ul style="list-style-type: none"> - individual company accounts - group accounts • annual reports: <ul style="list-style-type: none"> - strategic report - directors' report, including corporate governance statement - auditor's report - directors' remuneration report • The auditor: <ul style="list-style-type: none"> • appointment: <ul style="list-style-type: none"> - eligibility requirements and prohibitions - appointing and re-appointing an auditor of a private company - appointing an auditor of a public company - remuneration • duties and rights: <ul style="list-style-type: none"> - powers of investigation • auditor liability: <ul style="list-style-type: none"> - contractual liability - tortious liability - criminal liability • vacation of office: <ul style="list-style-type: none"> - resignation - removal - replacement - rotation • Periodic financial reporting • Confirmation statement • Liability limitation agreements

Topic area	Exemplification
Market abuse	<ul style="list-style-type: none"> • The offence of insider dealing: <ul style="list-style-type: none"> • the offences: <ul style="list-style-type: none"> – dealing in price-affected securities – encouraging another person to deal – disclosing inside information • information as an insider: <ul style="list-style-type: none"> – provisions of the Criminal Justice Act 1993 – inside sources • defences • penalties • Offences relating to financial services under the Financial Services Act 2012: <ul style="list-style-type: none"> • the offences: <ul style="list-style-type: none"> – misleading statements – misleading omissions – misleading statements in relation to benchmarks • penalties and sanctions • The market abuse regime: <ul style="list-style-type: none"> • civil regime established by the Market Abuse Regulation • insider dealing: <ul style="list-style-type: none"> – inside information – legitimate behaviour • market manipulation • disclosure requirements • administrative sanctions

Section E: Corporate restructuring, rescue, and liquidation**20% – 40 Learning hours**

LO.5: Be able to exercise appropriate judgement when presenting advice on structural and legal issues in a relevant form (corporate restructuring)

Topic area	Exemplification
Corporate restructuring and takeovers	<ul style="list-style-type: none"> • Schemes of reconstruction: <ul style="list-style-type: none"> • dissenting from the scheme • Schemes of arrangement <ul style="list-style-type: none"> • procedure: <ul style="list-style-type: none"> – the application to summon meetings – approval of the scheme – court sanction • the effects of a scheme • Takeovers, including: <ul style="list-style-type: none"> • the legal framework of takeover regulation • the Panel on Takeovers and Mergers: <ul style="list-style-type: none"> – functions of the Takeover Panel • the City Code on Takeovers and Mergers: <ul style="list-style-type: none"> – scope of the Code – General Principles – rules – sanctions and compensation • the takeover process: <ul style="list-style-type: none"> – defensive action • minority shareholder protection <ul style="list-style-type: none"> – the mandatory offer – sell-out rights • squeeze-out rights
Corporate rescue	<ul style="list-style-type: none"> • The UK's rescue culture: <ul style="list-style-type: none"> • reform: <ul style="list-style-type: none"> – a preliminary moratorium – a flexible restructuring plan • Administration: <ul style="list-style-type: none"> • the purpose of administration • entering administration <ul style="list-style-type: none"> – appointment by the company or its directors – appointment by a qualifying floating chargeholder – appointment by court order • the effects of entering administration: <ul style="list-style-type: none"> – dismissal of winding up petitions – dismissal of receivers – moratorium on insolvency proceedings – moratorium on other legal processes

Topic area	Exemplification
Corporate rescue (<i>cont.</i>)	<ul style="list-style-type: none"> - interim moratorium - exercise of managerial powers by the directors - publicity • the role of an administrator • the powers of an administrator • ending administration • Company voluntary arrangements (CVA): <ul style="list-style-type: none"> • implementing a CVA • the small company moratorium • Receivership, including administrative receivership
Liquidation and dissolution	<ul style="list-style-type: none"> • Circumstances under which a company becomes insolvent • Liquidation: <ul style="list-style-type: none"> • voluntary winding up • members' and creditors' voluntary winding up • winding up by the court (compulsory winding up): <ul style="list-style-type: none"> - grounds for a winding up petition - the effects of winding up • The role of the liquidator: <ul style="list-style-type: none"> • distribution of assets: <ul style="list-style-type: none"> - the <i>pari passu</i> principle - the order of distribution - liquidation expenses - preferential debts - debts secured by floating charge - unsecured debts - deferred debts - members • Malpractice before and during liquidation: <ul style="list-style-type: none"> • offences of fraud and deception • summary remedy • fraudulent trading • wrongful trading • restriction on re-use of company names • Adjustment of prior transactions, including: <ul style="list-style-type: none"> • transactions at an undervalue • preferences • extortionate credit transactions • avoidance of certain floating charges • Dissolution • Restoration



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