

Unit 39: Company Law and Corporate Governance

Unit code	T/617/0739
Unit level	5
Credit value	15
Prerequisite	Unit 7

Introduction

The aim of this unit is to give students knowledge and understanding of the law with regard to how companies are formed, administered, financed and managed. Students will learn skills in applying the relevant rules, particularly in business situations, as this unit is linked with the general business law unit which students have already completed.

Students will gain practical knowledge of the advantages and disadvantages of carrying out business through the medium of a company limited by shares, different types of shares and procedure for the issue of shares. They will also be able to identify the rights of shareholders with a board of a company. Student engagement in the learning process will help them better understand the procedure required for company administration, along with the rights and liabilities of directors and companies to outsiders.

Students will look at the modern organisational requirement of governance, leading to the evaluation of good practice relating to company affairs. Using examples of local and international companies, students will gain the knowledge and skills to identify governance issues and the impact on directors' behaviour, and their duties and care.

On successful completion of this unit, students will have the confidence to advise on the matters of company administration and the modern requirement of good governance, and to make a positive contribution in the workplace.

Learning Outcomes

By the end of this unit students will be able to:

- LO1 Evaluate the nature and legal status of companies
- LO2 Assess the importance of meetings and resolutions in corporate management
- LO3 Analyse the process of raising and maintaining capital for a company
- LO4 Evaluate the role and impact of corporate governance in the management of companies.

Essential content

LO1 Evaluate the nature and legal status of companies

Concept of corporate personality:

The different types of legal status.

Legal person and the capacity to be sued or prosecuted.

Characteristics of different forms of business organisations.

Incorporation and corporate personality, advantages and disadvantages of incorporation, promoters, pre-incorporation contracts and commencement of trading.

Formation and constitution:

Memorandum and Articles of Association, public, private and community interest companies, purchasing 'off the shelf'.

Community interest companies.

The capacity and ability of a company to contract and doctrine of *ultra vires*.

LO2 Assess the importance of meetings and resolutions in corporate management

Corporate management:

The definition of corporate management, divisions and functions of corporate management.

Board of directors, appointment, retirement, disqualification and removal of directors, and their power and duties during office.

Personal liability of directors.

Qualifications, powers and duties of the company secretary.

Rights of shareholders with the board of the company.

Company administration:

Rules and procedure, on different types of meetings, such as, board meetings, Annual General Meeting (AGM) and Extraordinary General Meeting (EGM).

Company resolutions and the use of different types of resolutions, rights attaching to different types of shares and the purpose and procedure for issuing shares.

The process of issuing shares, class rights and dividends.

Audits and record keeping.

LO3 Analyse the process of raising and maintaining capital for a company

Raising of share capital:

The nature of shares, different rights, types of capital debt and equity, public subscription, issue of shares, authorised capital, pre-emption rights, payment of shares.

Maintenance of share capital:

General rule, reduction of capital, procedure, duties of directors, purchase of own shares, financial assistance by the company for acquisition of own shares, statutory restriction and distribution of profit.

Loan capital:

The advantages and disadvantages of raising loan capital.

Fixed vs floating charges.

Nature of debenture, comparison of share and debenture, debenture trust deed, fixed and floating charges, registration of charges, debenture holders' remedies.

LO4 Evaluate the role and impact of corporate governance in the management of companies.

Role of corporate governance:

Definition of corporate governance.

The history of corporate governance, international requirement, Enron case, interaction of governance with business ethics and company law.

Impact of corporate governance:

The corporate governance code.

The need for corporate governance.

Effect of corporate governance on directors' behaviour and duties of care and skill.

Different board structures, role of the board on governance issues, types and policies and procedures leading to best practice, requirement under company law for governance framework in companies.

Conflicts of interest and policies, e.g. bribery, compliance, data protection regulations.

Rules – based vs principles approach.

Corporate rescue and liquidations.

Rationale of corporate rescue, role of Administrator, voluntary winding up, creditors winding up, duties and functions of a liquidator, distribution of surplus assets, dissolution.

Learning Outcomes and Assessment Criteria

Pass	Merit	Distinction
LO1 Evaluate the nature and legal status of companies		<p>LO1, LO2 and LO3</p> <p>D1 Provide a critical evaluation of how private and public limited companies are administered, financed and managed, with evidence drawn from local and international case law and judgment.</p>
P1 Assess the meaning of corporate personality and the procedure of forming a company for both private and public limited companies.	M1 Compare and contrast a private limited liability company with a public limited liability company to evaluate advantages and disadvantages.	
LO2 Assess the importance of meetings and resolutions in corporate management.		
<p>P2 Examine the status of directors and their involvement in the management of a company.</p> <p>P3 Using examples, illustrate the procedure relating to company meetings and resolutions.</p>	M2 Evaluate the statutory requirement of directors' duties and their liability to a company's creditors.	
LO3 Analyse the process of raising and maintaining capital for a company		
P4 Analyse the rules on raising and maintaining capital for a limited liability company.	M3 Critically analyse the law on issues of shares, dividends and insider dealing.	
LO4 Evaluate the role and impact of corporate governance in the management of companies.		<p>D2 Critically evaluate the types of policies and procedures of best-practice to make valid and justified recommendations for improving corporate governance.</p>
<p>P5 Evaluate the principles of corporate governance in the management of companies.</p> <p>P6 Recommend duties of directors in complying with principles of governance in the management of companies.</p>	M4 Critically evaluate the role of a board in corporate governance issues and different approaches taken.	

Recommended Resources

Textbooks

BAINBRIDGE, S. (2015). *Corporate Law*. 3rd Ed. St Paul, MN: Foundation Press.

REISBERG, A. and DONNAVAN, A. (2018). *Pettet's, Lowry and Reisberg Company Law and Corporate Finance*. 5th Ed. Harlow: Pearson Education.

MOORE, M. and PERTIN, M. (2017). *Corporate Governance: Law, Regulations and Theory*. London: Macmillan Publishers.

TAYLOR, C. (2016). *Company Law*. 4th Ed. Harlow: Pearson Education.

Websites

www.chambersstudent.co.uk	Chambers Student (General reference)
www.lawdonut.co.uk	Business Law Donut (General reference)
www.lawinfo.com	LawInfo Legal resources (General reference)

Links

This unit links to the following related unit:

Unit 7: Business Law