

Corporate Law

Module outline and aims

This module provides you with an understanding of the legal framework governing organizations with particular focus on the registered corporation but with applications in all sectors. Its themes relate closely to those of the Corporate Governance module and draw heavily upon the *Canada Business Corporations Act*, R.S.C. 1985 (“CBCA”) and the role of the Chartered Secretary.

Chartered Secretaries work in a range of organizations and are involved with issues of regulatory compliance. The aim of the module is to provide you with an understanding of the legal framework governing a range of organizations, dealing with legal principles, their practical application and governance issues that may arise.

Learning outcomes

On successful completion of this module, you will be able to:

- Demonstrate knowledge of the theories, concepts and principles related to the structure and regulation of commercial and non-commercial organizations.
- Give a reasoned opinion on the legal structures available to organizations and their appropriateness.
- Identify the legal and other issues arising in complex scenarios and apply relevant law such as the CBCA.
- Understand the impact of the external regulatory environment on the structure of commercial and non-commercial organizations.
- Present advice on structural and legal issues in a relevant form.

Syllabus content

1. The nature and structure of a corporation – weighting 20%

- Sources of corporate law; case law, statutes, self-regulation.
- Types of corporations; registered, public and private, holding corporations, affiliates and subsidiaries, charities and non-share capital corporations in outline only.
- Unincorporated associations in outline only; sole proprietorships, partnerships and LLPs under the Partnerships Act 1990; limited partnerships under the Limited Partnerships Act 1990.
- Promotion and pre-incorporation contracts; role of a promoter, duties and liability for breach of duty, recovery promotional expenses, liability on pre-incorporation contracts under the common law and under statute.

- Formation and registration of corporations; formation procedures and documents, the use of shelf corporations, the role of the Director, the certificate of incorporation, choice and use of the corporate name.
- Consequences of incorporation; separate legal personality, the veil of incorporation, lifting the veil of incorporation, the criminal and civil liability of a corporation.
- The constitution of a corporation; the articles and by-laws, amending articles and by-laws, shareholder agreements, class rights in the articles.
- Corporate contracts; executing corporate contracts, corporate capacity and the doctrine of ultra vires, statutory protection, the authority of agents to bind the corporation.

2. Capital and share ownership – weighting 25%

- Shares and class rights; types of shares, alteration of share capital, class rights, variation of class rights, the issue of shares, payment for shares, and pre-emptive rights.
- Capital maintenance; types of capital, the doctrine of capital maintenance, capital reductions, purchase and redemption of a corporation's own shares, dividends, and recovering improperly paid dividends.
- Becoming a shareholder, share certificates and warrants, the securities register, transfer and transmission of shares, calls, mortgages, liens, surrender and forfeiture of shares.
- Loan capital; debentures, types, use of a trust deed, secured and unsecured debentures, fixed and floating charges, charges over book debts, crystallisation of floating charges, priority of charges, registration of charges and avoidance of charges, debenture holder remedies.
- The regulation of insider dealing; inside information, insiders, offences and defences, investigation and criminal penalties, civil remedies for insider dealing, market abuse.

3. Corporate management and shareholder remedies – weighting 25%

- Directors; types, residency requirements, appointment, remuneration, retirement, removal and vacation for office, disqualification orders and undertakings, the division of power between the board of directors and the general meeting.
- Directors duties; the codification process, scope and nature of the general duties, duty to act honestly and in good faith with a view to the best interests of the corporation, duty to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, duty to avoid a conflict of interest, duty to declare interest in proposed and existing transactions or arrangements, liability to employees for wages, civil consequences for breach of duty, release and ratification of breach of duty.

- Transactions with directors requiring shareholders' approval.
- The corporate secretary; appointment and qualifications, role, authority to bind the corporation.
- The auditor; the audit requirement, appointment and removal, rights and duties, liability for negligence.
- Enforcement of directors' duties under the common law; corporate actions, personal actions, representative actions, derivative actions, the rule in Foss v Harbottle, the common law exceptions of illegality and ultra vires, special majorities and personal rights, costs.
- Enforcement of directors' duties under statute; the derivative action, oppression remedy, winding up, grounds, claimants, remedies and costs, investigations in outline only.

4. Meetings and resolutions – weighting 10%

- Corporate meetings; the annual general meeting, general meetings, class meetings, court ordered meetings, notice periods, content of notices, adjournments and the minutes.
- Corporate resolutions; ordinary resolutions, special resolutions, written resolutions, voting and the use of proxies, electronic communications and corporate representatives.
- Board meetings; quorum, voting, declaration of conflict, dissent.

5. Corporate restructuring and winding up – weighting 20%

- Methods of restructuring; amalgamations, take-over bids, continuance, reorganizations, schemes of arrangement.
- Termination of corporate existence; voluntary and involuntary dissolution, court supervision, court ordered dissolution, liquidation, role of the liquidator.