

Company Secretarial Practice

Module outline and aims

This module examines the role of the Corporate Secretary in promoting and reinforcing good governance across the organization by ensuring compliance with statutory obligations and good practice. In particular, this module explains the role of the Corporate Secretary in devising and overseeing appropriate compliance systems and processes to ensure that the company and its directors are compliant with the corporate legislation in Canada, predominantly the Canada Business Corporations Act (students are encouraged to be fully conversant with this Act), and also have comprehensive knowledge of applicable legislative provisions of the corporation's acts and articles or by-laws with respect to Directors, secretaries and auditors. The module also deals with managing the practical and company law issues in relation to shareholders. The Corporate Secretary is the focal point for shareholder communication and is generally the shareholder's first point of contact with the organization.

Corporate Secretaries need to understand the application of statutory requirements and other best practice and how this underpins good governance and compliance, irrespective of sector, including comprehensive knowledge of emerging trends in corporate governance on a global basis in order to act as the governance face of the corporation both internally and externally. The module examines company secretarial practices and processes within legal and other frameworks of best practice and the role of the Corporate Secretary in ensuring organizational effectiveness.

Students are encouraged to review Volumes 1 and 2 of Chartered Secretaries Canada for full details on certain elements contained in the study guide.

Learning outcomes

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

- Identify the scope, role and functions of the corporate secretary and apply them in the employing or client organization. Critically evaluate and apply the role of corporate secretary as an advisor to the board and be recognized as the subject area expert within the corporation
- Ensure effective communication and dissemination of information to and from the board and management, both internally and externally, for the optimum benefit of the organization.
- Understand the law and best practice in key functional matters (for example, meetings and share capital management) and apply them in the secretary ship function and ensure corporate compliance.
- Apply the functions of a corporate secretary in ensuring corporate compliance through good disclosure and observance of statutory and other regulations, and understanding the corporate secretary's role in corporate governance in Canada.
- Take responsibility for the ongoing duties of the secretary as a professional practitioner in the organization and be responsible for continuing personnel development within the secretariat.
- Identify required actions arising from statutory obligations and best practice in terms of financial, compliance and governance reporting and disclosure; understand why such disclosure is necessary.

- Apply statutory requirements and good practice in relation to shareholder related communications.
- Critically assess the role played by the secretary in supporting compliance, disclosure, and accountability across the organization to ensure the effective achievement of organizational objectives by measuring and evaluating complex, extensive and specialized programs that impact on a corporation-wide basis, including assessing the impact, effectiveness and feasibility
- Liaise with the external auditors of the corporation to facilitate appropriate access to required corporate information and advising external auditors on the required scheduling and report to the Board of Directors and its Committees under the legislative and regulatory context.

Syllabus content

The role of the company secretary involves maintaining three key elements of an organization: the company itself, the board of directors and the shareholders. The Corporate Secretary is sometimes also required to assume the normal office management functions in connection with the management of the Corporate Secretary's office or division. The aim of the module is to specify and assess the essential knowledge and skills involved in taking overall responsibility for the corporate secretarial function in large-scale organizations. The practice of corporate secretary ship in this module extends to both the strategic and functional contexts, in advising the board, in leading teams in secretarial best practice, in ensuring compliance with law and regulation and in establishing and maintaining appropriate processes in respect of the company's shareholders.

The secretary, the board and members

Candidates need to understand the importance of the role of secretary and how the secretary interrelates with others in the board and the company's shareholders. An important aspect of the role of the secretary is the interaction with the board. The role of secretary is quite unusual as it can provide direct access to the board of large organizations at a relatively early career stage. It is therefore all the more important that the secretary is equipped with the professionalism that the board expects. This opening part of the syllabus serves as a useful foundation for the rest of the subject.

Content:

Role of the secretary, functions, duties, appointment and vacation of office

The secretary as advisor to the board

The secretary's role in ensuring compliance and lead in governance

Directors:

- Appointment, removal and disqualification
- Roles and duties

Members:

- Types of shareholders
- Member rights and duties

Corporate compliance

This part of the syllabus focuses on the creation of different types of legal entities and ongoing compliance: the importance of Articles for a company cannot be underestimated, as

it is essentially the company's written constitution. The secretary is expected to have a working knowledge of the Articles of Association and to apply that knowledge in a practical way to a variety of situations.

There is a host of statutory returns that need to be submitted to the Corporations Directorate and, in addition, the secretary should have a good understanding of possible offences under statutory legislation to prevent inadvertent breaches of the law. The directors of a company are held responsible for non-compliance and so depend on the secretary to protect their interests and the reputation of the company in ensuring the company remains compliant.

Candidates may go on to work for listed companies and therefore need to be aware of the framework of regulations for listed companies and the general ongoing requirements. Shareholders, potential investors and other stakeholders need to have a high degree of confidence that a listed company is properly run, not only in accordance with the Companies Act and best practice, but also to the standards demanded by the Listing Regime. It is the secretary's duty to advise the board so that this is maintained.

Content:

Company formation, company constitutions, different types of companies

Company insolvency, winding up, striking off and dissolution of companies

Maintenance of statutory records

Filing of company returns

The regulation of listed companies: Required documents under the Income Tax Act (Canada), Stock Exchanges in Canada, Securities Regulation e and takeovers / mergers

Shares:

- Share capital
- Share transfer, transmission and registration
- Regulation of the securities industry
- The company registrar function
- Capital events
- Employee share schemes
- Dividends

Students must be able to apply theoretical concepts to case studies and be able to draw on conclusions based on facts within the case studies. Students are encouraged to

Regulation and disclosure

The corporate secretary has an important role to play in the dissemination of information about the company, its directors and its members. These are required as most companies have limited liability and hence many third parties will wish to know with whom they are doing business.

Secretaries also need to be mindful of legal implications and best practice with regard to such areas as formal meetings of either the board or shareholders.

The importance of the annual report – both in compliance with statutory legislation and as a shareholder relations tool – cannot be underestimated. The secretary has a pivotal role to play, by ensuring that the annual report is distributed to those who are entitled by law to

receive it and also to other important interested parties. The secretary also drafts the directors' report.

Content:

Regulation of companies and disclosure requirements – Required documents under the Income Tax Act (Canada), Stock Exchanges in Canada, Securities Regulation

The links between disclosure, accountability, transparency and trust

Understanding of the importance of the disclosure process for ensuring statutory compliance and for securing support from the organization's stakeholders. Implications for failing to keep proper records and failing to disclose.

Company law, statutory rights of shareholders and the public to information about companies.

Statutory requirements and good practice in relation to member and board meetings:

- Convening meetings
- Notice
- Agenda
- Quorum
- Voting and other procedures
- Minutes and resolutions
- The role of the chairman The role of the corporate secretary before, during and after meetings
- Statutory records

Meetings of the members:

- Annual general meetings
- Special Shareholder meetings
- Other general meetings
- Class meetings
- Written member resolutions
- Meeting procedures (e.g. disorder, dealing with members' questions)

The Annual Report and Accounts: Role and duties of the corporate secretary

- Statutory reporting requirements including required documents under the Income Tax Act (Canada)
- Narrative reporting
- Financial Statements Generally
- Filing of Financial Statements
- Legislation and other developments

Auditors:

- Appointment and termination
- Role, liability, disclosure and other duties
- Auditor's Report for Public Corporations
- Auditors and the Audit Committee