

Corporate Secretaryship and Compliance

Chartered Governance Qualifying Programme Syllabus

Corporate Secretaryship and Compliance

Part One Programme

Total study time: 200 hours

Introduction

The aim of this module is for students to develop their knowledge and skills to prepare for practice as a company secretary/governance professional in Hong Kong private or non-governmental organisations and listed companies. This involves ensuring that the company operates and complies in accordance with good corporate governance principles and the law, rules, codes and regulations, especially the Companies Ordinance (Cap. 622), the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Listing Rules, the Securities and Futures Ordinance (Cap. 571) and the Codes on Takeovers and Mergers and Share Buy-backs in Hong Kong, and in establishing efficient internal communication of board's decisions and external reporting.

For the purpose of this module, the term 'company secretary' also covers the role of the governance professional.

Learning outcomes

After successful completion of this module you should be able to:

1. Demonstrate an understanding of the scope, role and functions of the company secretary/governance professional and the differing responsibilities of the company secretary, the board, management, shareholders and other stakeholders.
2. Demonstrate an understanding of the nature and principles of the company's regulatory requirements and best practices and their interpretation and practice in the company secretarial/governance professional function to ensure compliance.
3. Apply appropriate judgment to advise the board on the expectations of and compliance with regulatory requirements.
4. Apply appropriate judgment to advise the board on matters relating to various governance and compliance issues under the law and regulations relating to shares and share capital.
5. Apply appropriate judgement to advise the board on various governance and compliance issues in relation to continuing obligations, notifiable and connected transactions under the Listing Rules.

Module content

Section A: The role of the company secretary, the board and other stakeholders	
<i>20% - 40 learning hours</i>	
LO.1: Demonstrate an understanding of the scope, role and functions of the company secretary/ governance professional and the differing responsibilities of the company secretary, the board, management, shareholders and other stakeholders	
Topic area	Learning areas
The role of the company secretary	<ul style="list-style-type: none"> • The role, functions and duties of the company secretary: <ul style="list-style-type: none"> • background: <ul style="list-style-type: none"> - an officer of the company - potential liability for breach of statutory duties - board advisor • duties: <ul style="list-style-type: none"> - board - company - shareholders • Qualifications under the Companies Ordinance and Listing Rules • disqualification of company secretary • Appointment and vacation of the office of the company secretary: <ul style="list-style-type: none"> • appointment • resignation or death (vacation of office) of the company secretary • removal of the company secretary • Relationship with the chairperson and directors: <ul style="list-style-type: none"> • reporting to the board, chairperson and/or the chief executive • independence • reporting lines for executive duties • Company secretary as adviser to the chairperson, chief executive and directors • Dissemination of information and decisions: <ul style="list-style-type: none"> • before the board meeting • during the board meeting • after the board meeting • Communication with shareholders and other stakeholders, including electronic communication: <ul style="list-style-type: none"> • delivery of documents and information to a company • delivery of documents and information by a company

Topic area	Learning areas
The directors	<ul style="list-style-type: none"> • Types of directors: <ul style="list-style-type: none"> • executive • non-executive and independent non-executive • shadow • de facto • alternate and reserve • Recruitment, appointment, re-appointment and rotation: <ul style="list-style-type: none"> • qualification • recruitment • regulatory approval • procedure for appointment • induction • rotation and reappointment • number of directors • personal data of directors and officers • defective appointment of directors • disputed appointments • contracts of employment and directors' service contracts • Roles, duties, responsibilities and mandates: <ul style="list-style-type: none"> • executive and non-executive roles • collective responsibility • duties <ul style="list-style-type: none"> - common law - Companies Ordinance - Listing Rules - Corporate Governance Code - Securities and Futures Ordinance - Takeovers and Mergers Code and Share Buy-back Code • other statutory duties • contractual • regulatory • authority to exercise company's power • liability for actions or inaction • Retirement, removal and disqualification: <ul style="list-style-type: none"> • vacation of office • retirement by rotation • removal of directors • disqualification • Succession planning: <ul style="list-style-type: none"> • diversity • independence • balance • Directors' and officers' indemnification and liability insurance • Co-option

Topic area	Learning areas
Effective board practices	<ul style="list-style-type: none"> • Board evaluation: <ul style="list-style-type: none"> • board structure • board and company governance • board monitoring • board processes and interactions • internal • external • Director education and guidance: <ul style="list-style-type: none"> • induction • continuing professional development (CPD) • availability of internal and external support • Best practices, policies and procedures: <ul style="list-style-type: none"> • matters reserved for the board: <ul style="list-style-type: none"> - authority limits - code of conduct - tenure policy for NEDs - expense policy - Disclosure of directors' interests - Directors' code of conduct - independence guidelines for independent NEDs - board committee terms of reference: audit, remuneration and nomination - Model Code for Securities Transactions by Directors of Listed Issuers - whistle-blowing policy - risk management policy

Topic area	Learning areas
Members	<ul style="list-style-type: none"> • Defining a member: <ul style="list-style-type: none"> • agreement to become a member • entry in the register of members • minimum numbers of members and shares • Restrictions on membership: <ul style="list-style-type: none"> • defining a legal person • restrictions in the articles • minors as members of a company • Shareholders: <ul style="list-style-type: none"> • shareholder specific provisions • Share pledge • Other types of member • Member activism: <ul style="list-style-type: none"> • investor activism • pressure group activism • Articles of association: <ul style="list-style-type: none"> • members' rights • classes of shares • rights attaching to a class of shares • variation of rights • Unfair prejudice: <ul style="list-style-type: none"> • protection from unfair prejudice • defining unfair prejudice • defining unfair conduct • members' rights must not be prejudiced • remedies available • Derivative action claims: <ul style="list-style-type: none"> • grounds for bringing a derivative action • application for permission to continue derivative claim • application to continue an action brought by another member <ul style="list-style-type: none"> • grounds for permission to continue • alternative remedies • Membership: <ul style="list-style-type: none"> • registered members • beneficial ownership
Trust or company service provider (TCSP)	<ul style="list-style-type: none"> • Trust or company service provider • Exemptions • Fit and proper test • Continuing AML compliance obligations

Section B: Regulatory requirements for companies

40% – 80 learning hours

LO.2: Demonstrate an understanding of the nature and principles of the company's regulatory requirements and best practices and their interpretation and practice in the company secretarial/governance professional function to ensure compliance

Topic area	Learning areas
Company compliance	<ul style="list-style-type: none"> • Company formation: <ul style="list-style-type: none"> • matters to consider when incorporating a company • types of companies • how to form a company • registration of companies • additional requirements for the registration of a public company • additional requirements for the registration of a company limited by guarantee • company names: <ul style="list-style-type: none"> - permitted characters - 'too like' names - sensitive words - trademarks and intellectual property • articles of association: <ul style="list-style-type: none"> - company limited by guarantee - shareholders agreement • re-registration – changing the status of a company • Filing of company returns: <ul style="list-style-type: none"> • change of articles of association • special resolution • re-registration • change of name • address of registered office • location of registers and company records • accounting disclosure: <ul style="list-style-type: none"> - report exemption and simplified accounts, business review and directors' report - change of financial year end - publication of financial information • change of officers: <ul style="list-style-type: none"> - appointment - termination

Topic area	Learning areas
Company compliance (cont.)	<ul style="list-style-type: none"> • share capital changes: <ul style="list-style-type: none"> - alteration of share capital - allotment of shares - share redemption - share buy-backs - increase in share capital - reduction of share capital - share consolidation - share subdivision - variation of right attached to shares - bonus issue of shares and warrant • charges: <ul style="list-style-type: none"> - creation and release - filing requirements: registration requirements of charges and register of charges • Offences under the relevant corporations or associations legislation • Corporate governance overview: <ul style="list-style-type: none"> • background • Appendix 14 Corporate Governance Code and Corporate Governance Report of the SEHK Listing Rules • SFC Principles of Responsible Ownership • Mergers, de-mergers, arrangements and reconstructions: <ul style="list-style-type: none"> • mergers • divisions • arrangements and reconstructions: <ul style="list-style-type: none"> - court-approved scheme of arrangement • Takeovers and acquisitions: <ul style="list-style-type: none"> • types of takeover • agreements with individual members • purchases in the market • general offers • action following the first closing date of a general offer • transfers to offeror company • Takeovers and Mergers Panel • compulsory acquisition • stamp duty exemptions • Culture and corporate behaviours: <ul style="list-style-type: none"> • board leadership and governance

Topic area	Learning areas
Company compliance (<i>cont.</i>)	<ul style="list-style-type: none"> • policies: <ul style="list-style-type: none"> - diversity - equal opportunities - whistleblowing - remuneration - nomination - employment handbook • Share schemes: <ul style="list-style-type: none"> • share option schemes • Company insolvency, dissolution and restoration: <ul style="list-style-type: none"> • defining insolvency • members' voluntary winding up • creditors' voluntary winding up • winding up by the court • liquidator • report on conduct of directors • de-registration of companies • striking off by the Registrar of Companies • restoration • Dormant companies • Open-ended Fund Company • Limited Partnership Fund
Annual or integrated report	<ul style="list-style-type: none"> • Roles and duties of company secretary in preparing the annual report and interim report • Statutory, regulatory and listing requirements: <ul style="list-style-type: none"> • disclosure of annual report: <ul style="list-style-type: none"> - chairperson's statement - management discussion and analysis - report of the directors - corporate governance report - financial information • disclosure of financial statements: <ul style="list-style-type: none"> - filing requirements: <ul style="list-style-type: none"> ○ Companies Registry ○ Hong Kong Stock Exchange ○ Inland Revenue Department • listed companies: publication of annual and interim results announcement • annual report and accounts • additional disclosures • Narrative reporting: <ul style="list-style-type: none"> • corporate governance report • board committee reports

Topic area	Learning areas
Annual or integrated report (cont.)	<ul style="list-style-type: none"> • auditor's report • report to the audit committee • Disclosure of financial statements: <ul style="list-style-type: none"> • availability of annual accounts and reports • Legislative and other developments: <ul style="list-style-type: none"> • sustainability report; social, environmental and government (ESG) reports under the Listing Rules • key performance indicators • recommendation or guidelines of institutional investor groups on matters relating to social and environmental issues
External audit	<ul style="list-style-type: none"> • Role and responsibilities of the company secretary in the external audit process: <ul style="list-style-type: none"> • access to documents • report to members • Independence of external auditors: <ul style="list-style-type: none"> • non-audit services: <ul style="list-style-type: none"> - non-audit fees • Appointment of auditors: <ul style="list-style-type: none"> • private company • listed company • audit • appointment of auditors • audit tender and maximum engagement period for auditors: <ul style="list-style-type: none"> - requirements for re-election of auditors • appointment of a partnership as auditor • auditor remuneration • auditor liability • Inland Revenue Department • Rotation of auditors: <ul style="list-style-type: none"> • audit partner • audit firm • Termination of auditor's appointment: <ul style="list-style-type: none"> • resignation of auditors • rights of auditors who are removed or not reappointed • company's obligations on cessation of auditor's appointment: <ul style="list-style-type: none"> - auditor notification to the Companies Registry • Role of external auditors: <ul style="list-style-type: none"> • duties of auditor • auditor's right to information and access • auditor's report to members • report to audit committees • signing of audit report

Topic area	Learning areas
Securities exchange listing regime	<ul style="list-style-type: none"> • Listing requirements: <ul style="list-style-type: none"> • eligibility of initial public offerings • capital requirements • sufficiency of operations requirements • procedures for new listings in Hong Kong • regulatory regime • eligibility • listing process • types of public issue • role of the advisers: <ul style="list-style-type: none"> - sponsor - corporate broker - financial public relations consultants - lawyers - reporting accountant - share registrars - other advisers • prospectus rules: <ul style="list-style-type: none"> - offer to the public - exemptions - prospectus contents - prospectus approval • Hong Kong Stock Exchange as secondary listing • admission and disclosure standards: <ul style="list-style-type: none"> - eligibility criteria • disclosure and transparency • Ongoing reporting, filings and compliance: <ul style="list-style-type: none"> • financial • issue of securities • constitutional changes • disclosure of inside information • restrictions on dealing of the company's securities • disclosure of securities dealing • purpose of the law and obligations of disclosure of interests in listed securities under the SFO • Corporate Governance Code under the Listing Rules • SFC Principles of Responsible Ownership • Insider dealing: <ul style="list-style-type: none"> • definition and offences of insider dealing under the SFO • role of the Market Misconduct Tribunal and SFC • Dematerialisation: <ul style="list-style-type: none"> • current proposal

Topic area	Learning areas
Maintenance of records	<ul style="list-style-type: none"> • Statutory registers: <ul style="list-style-type: none"> • which statutory registers must be kept: <ul style="list-style-type: none"> - directors - directors' personal data - secretaries - members - charges - debentures • significant controllers register (SCR): <ul style="list-style-type: none"> - types of significant controllers - conditions for significant control - particulars to be kept at SCR - consequences for failing to keep SCR • CCASS, rules, participants, settlement system • Location of records and registers: <ul style="list-style-type: none"> • registered office • location other than registered office • share register • Access to records and registers: <ul style="list-style-type: none"> • location • inspection: <ul style="list-style-type: none"> - in person - right to request copies - fees • Minute books: <ul style="list-style-type: none"> • where kept • security • directors • members • access rights • Meeting materials/board papers: <ul style="list-style-type: none"> • directors • board papers • members: <ul style="list-style-type: none"> - member communications - access rights • Financial records: <ul style="list-style-type: none"> • information required • location • retention periods • inspection

Topic area	Learning areas
Maintenance of records (<i>cont.</i>)	<ul style="list-style-type: none"> • Corporate records: <ul style="list-style-type: none"> • directors' service contracts • directors' indemnities • minutes • accounting records • contracts for purchase of own shares • documents for purchases out of capital • investigation of shareholdings by corporation • Retention periods for documents and registers
Company secretarial software	<ul style="list-style-type: none"> • Evaluation of needs for company secretarial software • Implementation of appropriate software • Security issues • Potential uses and benefits of company secretarial software • Ongoing maintenance and updates
Minutes and minute books	<ul style="list-style-type: none"> • Required information in minutes: <ul style="list-style-type: none"> • static data • variable data • The six 'Cs': <ul style="list-style-type: none"> • clarity • coherence • conciseness • consistency • completeness • correctness • Proof of existence of an organisation and its historical development • Record of decisions made and actions taken • Demonstration of due diligence on part of decision-makers • Legal evidence in support of actions taken • Record retention: <ul style="list-style-type: none"> • security of documents • Risk management – protecting the organisation

Corporate Secretaryship and Compliance

Topic area	Learning areas
Oversight by regulators	<ul style="list-style-type: none"> • Governance practices – processes and procedures • Assessment of performance in carrying out governance responsibilities: <ul style="list-style-type: none"> • board performance and evaluation • Protection of stakeholders • Investigation powers of regulators: <ul style="list-style-type: none"> • Companies Registry • Hong Kong Stock Exchange • Securities and Futures Commission • Takeovers and Mergers Panel
Regulation and disclosure	<ul style="list-style-type: none"> • Disclosure requirements for listed companies: <ul style="list-style-type: none"> • Companies Ordinance obligations • Listing Rules and disclosure and transparency obligations • Securities and Futures Ordinance obligations • Link between disclosure, accountability, transparency and trust: <ul style="list-style-type: none"> • clear and concise annual reporting • Personal data protection and compliance: <ul style="list-style-type: none"> • Personal Data (Privacy) Ordinance: six data protection principles • inside information for data breach • application of EU's General Data Protection Regulation (GDPR) in Hong Kong • Public access to corporate information: <ul style="list-style-type: none"> • right to request details of data held by an employer or company • freedom of information
Non-Hong Kong company	<ul style="list-style-type: none"> • Place of business in Hong Kong • Comparison with Hong Kong incorporated company • Initial registration • Authorised representative • Annual and other continuing obligations • Representative office in Hong Kong

Section C: Meetings	
<i>10% – 20 learning hours</i>	
LO.3: Apply appropriate judgment to advise the board on the expectations of and compliance with regulatory requirements	
Topic area	Learning areas
Meetings of shareholders and members	<ul style="list-style-type: none"> • Members’ meeting or written resolutions • General meetings: <ul style="list-style-type: none"> • annual general meetings (AGMs) • business at AGMs • members’ right to propose directors at an AGM • general meetings • class meetings • Regulations governing general meetings • Role of the company secretary, before, during and after the general meetings • Notice of meetings: <ul style="list-style-type: none"> • deemed notice • clear days • notice period • agreement to short notice of meeting • entitlement to notice of general meetings • form of notice • content of notices • special notice • Quorum, agenda, meeting materials • Resolutions: <ul style="list-style-type: none"> • ordinary • special • Role of the chairperson • Rules of order, standing orders: <ul style="list-style-type: none"> • procedural motions • speaking • adjournment of general meetings • postponement of general meetings • Proxies: <ul style="list-style-type: none"> • at the meeting • proxy voting agencies • proxy solicitation • appointment of a proxy • evaluation of proxies • Polls: <ul style="list-style-type: none"> • demand for a poll • when a poll is demanded

Topic area	Learning areas
Meetings of shareholders and members (cont.)	<ul style="list-style-type: none"> • publication of results of a poll • Attendance: <ul style="list-style-type: none"> • by a corporate member • by a member that is a natural person • disruption • Voting: <ul style="list-style-type: none"> • abstaining • Meeting technology: <ul style="list-style-type: none"> • electronic voting • online meetings • meetings in multiple locations • the electronic or hybrid meeting • Share registrar and role of scrutineer: <ul style="list-style-type: none"> • independent proxy report • Communication with shareholders and other stakeholders
Meetings of the board and its committees	<ul style="list-style-type: none"> • Board meetings: <ul style="list-style-type: none"> • types of meeting: <ul style="list-style-type: none"> - management meetings - board meetings • convening directors' meetings • quorum • minutes of directors' meetings • chairperson • Role of the company secretary before, during and after board meetings: <ul style="list-style-type: none"> • preparation for a board meeting • at the board meeting • after the board meeting • Delegation of authority and responsibility • Reliance on management and advisers • Committees – types, purpose and composition • Matters reserved for the board • Executive discretion • Motions and written/circular resolutions • Conflicts of interest <ul style="list-style-type: none"> • duty to avoid conflicts of interest • interests in contracts • substantial property transactions • loans to directors

Section D: Shares	
<i>10% – 20 learning hours</i>	
LO.4: Apply appropriate judgment to advise the board on matters relating to various governance and compliance issues under the law and regulations relating to shares and share capital	
Topic area	Learning areas
Shares, share capital, share register and debt capital	<ul style="list-style-type: none"> • Regulation of the securities industry: <ul style="list-style-type: none"> • Insider dealing, market misconduct: <ul style="list-style-type: none"> - regulated investment activity - insider dealing - market misconduct • Types of share and debt capital: <ul style="list-style-type: none"> • ordinary, preference and deferred capital • issued capital • paid-up capital • called-up capital • equity capital • changes to capital • debt capital • types of debenture • debt securities • convertible debt securities • Share capital: <ul style="list-style-type: none"> • authority for allotment • pre-emption rights • disapplication of pre-emption rights • pre-emption group guidance • allotment procedure: <ul style="list-style-type: none"> - issue price - partly paid-up share capital - paid-up share capital - shares allotted for non-cash consideration - financial assistance - calls on shares - forfeiture - buy-backs of own shares • Company share registrar function: <ul style="list-style-type: none"> • role of the share registrar • change of share registrar

Topic area	Learning areas
<p>Shares, share capital, share register and debt capital (cont.)</p>	<ul style="list-style-type: none"> • Share transfers: <ul style="list-style-type: none"> • overview • share transfer form • stamp duty • CCASS, rules, participants, settlement system • Transmission of shares • Registration of documents affecting title: <ul style="list-style-type: none"> • documents received for registration • Share certificates: <ul style="list-style-type: none"> • issue on allotment or transfer • lost share certificate • certification • Distributions: <ul style="list-style-type: none"> • by listed companies • by private companies • cash dividends • mandates • unclaimed dividends • scrip dividends • Rights and warrants, debentures and bonds: <ul style="list-style-type: none"> • warrants • subscriptions rights • debentures, loan stocks and corporate bonds • Capital events and role of share registrar: <ul style="list-style-type: none"> • open offer • rights issue • consolidation/subdivision • takeover • scheme of arrangement • Share option schemes and share award schemes

Section E: Continuing obligations of listed companies	
<i>20% - 40 learning hours</i>	
LO.5: Apply appropriate judgement to advise the board various governance and compliance issues in relation to continuing obligations, notifiable and connected transactions under the Listing Rules	
Topic area	Learning areas
Continuing obligations	<ul style="list-style-type: none"> • Chapter 13 of the Main Board Listing Rules: <ul style="list-style-type: none"> • disclosure of inside information • unusual movements in price and/or trading volume • trading halt and trading suspension • advance to an entity • financial assistance and guarantees to affiliated companies • pledging of shares by the controlling shareholder • breach of loan agreement • sufficient operations • public float • high concentration of shareholding • disclosure of corporate changes
Notifiable transactions	<ul style="list-style-type: none"> • Chapter 14 of the Main Board Listing Rules: <ul style="list-style-type: none"> • definition of transaction • size tests • share transaction • disclosable transaction • major transaction • very substantial acquisition • very substantial disposal • reverse takeover • backdoor listing
Connected transactions	<ul style="list-style-type: none"> • Chapter 14A of the Main Board Listing Rules: <ul style="list-style-type: none"> • definition of connected transaction • connected persons • independent shareholders' approval • independent board committee • independent financial advisor • continuing connected transaction • disclosure requirements • exemptions

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