

# STAGE: PROFESSIONAL 1

Subject Title:

## CORPORATE LAWS AND GOVERNANCE

Examination Duration: 3 Hours

### Aim

This subject aims to ensure that students understand the theory and application of key aspects of business and commercial law to business organisations and recognise issues that require the advice of a legal professional. In addition, they must comprehend, apply and advise on the regulatory and governance requirements applicable to business organisations.

### Corporate Laws and Governance as an Integral Part of the Syllabus.

The legal principles learnt in this subject will be relevant to students throughout their professional accountancy studies. In particular, this syllabus is an essential component for the study of Corporate Reporting, Managerial Finance, Auditing, Advanced Corporate Reporting, Advanced Corporate Finance and Audit Practice & Assurance Services, Strategic Performance Management.

Stage	Subject	Subject	Subject	Subject	Subject	Subject
P2	Strategic Corporate Finance	Strategic Performance Management	Advanced Corporate Reporting	Strategy & Leadership	Audit Practice and Assurance Services	Advanced Taxation
P1		Managerial Finance	Corporate Reporting	Corporate Laws and Governance	Auditing	
F2		Management Accounting	Financial Accounting	Information Systems	Taxation	
F1			Management in Organisations	Economics and Business Planning	Business Law and Professional Ethics	

The above table shows the linkages between Corporate Laws and Governance and the subjects highlighted. The capabilities developed will be built upon in the study of the subjects highlighted above.

## Learning Outcomes

On successful completion of this subject, students should be able to:

- Interpret, discuss and apply aspects of the law relating to the structuring of business entities and their commercial relationships.
- Discuss the role of company officers, including directors, the auditor and the company secretary, the various classifications of company capital and the rules governing its maintenance.
- Comprehend the nature of corporate offences and their sanctions
- Discuss the appointment, rights and duties of receivers, liquidators and examiners and outline the effects of receiverships, liquidations or examinerships on key stakeholders, including shareholders, directors, employees and creditors.
- Distinguish between the different types of credit and security, their legal consequences and the formalities applicable to these.
- Advise on and lead best practice in governance.
- Interpret and discuss the law of agency, and distinguish between principal and agent and their rights and duties.
- Discuss and apply the main aspects of employment law and be able to refer to and interpret relevant sources.
- Recognise when more specialist knowledge is required and the source of such expertise.

## Syllabus

1: COMPANY LAW	CL*
Introduction	2
Companies and other forms of business organisation, the development of company law in Ireland, Irish company law and E.U. law.	
Company Formation	2

Review of the various classifications of companies, including a company limited by shares, a designated activity company, a public limited company, guarantee companies and unlimited companies.	2
How a company is formed, the Constitutional Document - its contents and how it can be altered, the legal effect of the Constitutional Document, the promoters and preincorporation contracts.	2
Separate legal personality of the company, lifting the veil of incorporation, the ultra vires rule and designated activity and public limited companies, liability of a company in respect to unauthorised or irregular transactions in both tort and criminal law, the doctrine of ostensible or apparent authority and the rule in Royal British Bank v. Turquand.	2
Corporate Finance	
Floation of a public limited company, application for and allotment of shares, the capital of the a company – types of capital and shares, the maintenance of capital, the alteration and reduction of capital.	2
Nature of a share, rights of the shareholder, duties of the shareholder, different classes of shares, variation of rights of classes of shareholders, share certificates and warrants.	2
Calls, liens, forfeiture and surrender of shares.	2
Transfer and transmission of shares.	2
Shareholder agreements.	
Membership of the company – Becoming a Member, Capacity to be a Member, Register of Members, Disclosure of interests in shares.	2
Dividends and distribution of profits.	2
Borrowing by the company – borrowing powers of companies, debentures and charges, registration crystallisation and invalidity of charges.	2
Company Officers	

Formalities; types of directors appointment, removal, eligibility, resignation	2
Directors' Duties; under the Companies Act 2014	2
Corporate Offences; fraudulent trading, reckless trading, insider dealing and money laundering	2
Liability; restriction and disqualification orders	2
Company Secretary; qualifications appointment, powers and duties.	2
Company Auditor; appointment, removal powers and duties - the role of IAASA	2
Internal Management of Companies	
Meetings of the Company	2
Majority and minority rights, the rule in Foss v. Harbottle and its exceptions, Oppression and the Companies Act 2014.	2
Investigation of a company's affairs liability arising from investigations.	2
<b>2: EXAMINERSHIP, RECEIVERSHIP AND LIQUIDATIONS</b>	
Charges and crystallisation of charges	2
Protection of investors and creditors.	2
Appointment, rights, duties and powers of an Examiner.	2
Examinership process, report, schemes of arrangement.	2
Appointment, rights, duties and powers of a Receiver.	2
Appointment, rights and duties of a Liquidator.	2

Types of winding up, compulsory winding up, voluntary winding up the distinction between members and creditors voluntary liquidations.	2
Effects of examinerships, receiverships or liquidations on shareholders, directors and employees - as well as potential liability.	2
Order of payment of debts and charges on liquidation.	2
Accounts of an Examiner, Receiver and Liquidator.	2

## 3: COMMERCIAL CREDIT AND SECURITY

Types of credit – vendor credit, lender credit, fixed term and revolving credit.	2
Types of security – real security, possessory security interests, pledges, liens, non-possessory security interests, mortgages, charges, personal security, guarantees, indemnities, letters of credit, performance guarantees, letters of comfort, quasi-security, retention of title, bills of exchange, set-off agreements, use of assets as quasi-security.	2
Formalities and registration of security interests, Bills of Sale Acts, Companies Acts.	2

## 4: CORPORATE GOVERNANCE

Definition(s) of Corporate Governance	2
Agency Theory – potential conflicts of interest.	2
The role of the board – board structures, holding board meetings, importance of agendas and meetings, accountability of boards. Directors' responsibility for Internal Control.	2
Remuneration, transparency and accountability – the design of incentive compatible contracts, management incentives, role of remuneration committees, legal and stock exchange requirements, recognition and remuneration systems, disclosure requirements.	2

Developing and supporting a compliance culture – directors' compliance statements, role of the audit committee, role of non-executive board members. 2

Corporate Regulation in Ireland, the objectives and functions of: 2

- The Companies Registration Office (CRO)
- Administration of the company the directors, the secretary, the annual return, accounts and audit, mergers, arrangements, reconstructions and takeovers.
- Office of the Director of Corporate Enforcement (ODCE)
- Irish Stock Exchange (ISE)
- The Financial Regulator
- Irish Auditing and Accounting Supervisory Authority (IAASA).

UK Corporate Governance Code and related FRC/ISE guidness. 2

Risk Management - Steps in developing a risk management strategy, Governance Code guidance, risk management activities.

Sarbanes-Oxley Act – objectives, provisions, requirements and impact. 2

Emerging issues and developments in Corporate Governance 2

## 5: LAW OF AGENCY

Introduction – nature and consequences of agency, identifying agents, types of agent, agency distinguished. 2

Authority and power of company officers under the Law of Agency. 2

Principal and agent relations. 2

## 6: LAW OF EMPLOYMENT

Contract of employment, contract of service and contract for services. 2

Formation of the contract. 2

Terms of the contract. 2

Rights and duties of the employee. 2

Duties and rights of the employer. 2

Termination, unfair, constructive and wrongful dismissal, redundancy. 2

Maternity leave, Paternity leave, Adoptive leave, Parental leave, Force majeure leave – rights and entitlements 2

## COMPANIES ACT

See Examinable Material Document on pages 92 to 99 for details of the Companies Act applicable to this examination.

## Assessment Strategy

### EXAMINATION APPROACH

Students are expected to demonstrate a detailed critical understanding of, and the ability to apply, the legal and governance principles and concepts studied. They are required to analyse practical situations and apply the correct legal and governance principles, supporting their answers with relevant case law, statutory provisions or best practice guidelines, as appropriate. Students are also expected to demonstrate clear logical thinking, excellent written communication skills and the ability to integrate learning from this and other syllabi.

### EXAMINATION FORMAT

The assessment is by an unseen, closed book examination of 3 hours' duration. The paper is divided into two sections. In Section A students are required to answer 2 compulsory 25 mark questions and one question from the other two 20-mark questions. In Section B (Corporate Governance) students are required to answer one question from two. In summary, students are required to answer a total of 4 questions out of 6.

Marks Allocation	Marks
Section A	
<ul style="list-style-type: none"> <li>Questions 1 and 2, compulsory, (25 Marks each)</li> </ul>	50
<ul style="list-style-type: none"> <li>Questions 3 and 4, answer either, but not both</li> </ul>	20
Section B	
<ul style="list-style-type: none"> <li>Questions 5 and 6, answer either, but not both</li> </ul>	30
Total 100	

## Learning Resources

### CORE TEXTS

Keane / Company Law, 5th revised edition / Bloomsbury 2016 / ISBN-13: 978-1780435428.

Courtney / Guide to the Companies Act 2014, 1st ed/ Bloomsbury Professional / ISBN-13: 978-1780438344 / White / Commercial Law / Wiley and Sons 2nd ed 2012 / ISBN-13: 978-1858006321.

Forde / Commercial Law, 3rd edition / Tottel 2005/ ISBN-10: 1845922034.

MacDonnell / An Introduction to Business Law 2nd Edition / CAI 2015 /

Governance Risk and Ethics / BPP Manual ACCA P1 / ISBN-13: 978-1472744272

Thuillier/Company Law in Ireland/2nd edition/Clarus Press/2015/ ISBN-13: 978-1905536757

Shareholders Rights and Remedies / Karole Cuddily / Bloomsbury Professional 2016 1st ed / ISBN-13: 978-1780430188

Companies Act 2014 / Thomas Courtney and Lyndon McCann / Bloomsbury Professional 2015 / ISBN-13: 978-1780438559

### MANUALS

Griffith College CPA P1 Corporate Laws & Governance - Latest edition.

### SUPPLEMENTARY TEXTS AND JOURNALS

Office of the Director of Corporate Enforcement / Books 1 to 7 (setting out the principal duties and powers of companies, company directors, company

secretaries, members and shareholders, auditors, creditors, liquidators, receivers and examiners), free to download from: [www.odce.ie/publications/companylawguidance/informationbooks.aspx](http://www.odce.ie/publications/companylawguidance/informationbooks.aspx)

Regan / Employment Law in Ireland 2nd ed/ Bloomsbury/ 2015 / ISBN-13: 9781847663764

Forde / Employment Law / Thomson Round Hall 2009 / 3rd ed/ ISBN-13: 978-1858005522.

Solomon / Corporate Governance & Accountability / Wiley Publishers, 4th edition 2014 / ISBN-13: 978-1118449103

Monks and Minow / Corporate Governance / Wiley / 5th. Edition / 2011 / ISBN-13: 978-0470972595

Christine Mallin / Corporate Governance / Oxford University Press/ 4th ed/ 2012 / ISBN-13: 978-0199644667

FRC Governance Guidance on Audit Committees: [www.frc.org.uk/OurWork/Publications/Corporate-Governance/uk-Corporate-Governance-Code-2014.pdf](http://www.frc.org.uk/OurWork/Publications/Corporate-Governance/uk-Corporate-Governance-Code-2014.pdf)

Guidance on Risk Management, Internal Control and Related Financial and Business Reporting: [www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Risk-Management,-Internal-Control.pdf](http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Risk-Management,-Internal-Control.pdf)

B. Tricker / Corporate Governance: Principles, Policies, Practices, 2nd edition / (2012) Oxford University Press/ ISBN-13: 978-0199607969

AccountancyPlus. CPA Students' eBulletin.

### USEFUL WEBSITES (AS OF DATE OF PUBLICATION)

[www.ise.ie](http://www.ise.ie) - Irish Stock Exchange.

[www.irishstatutebook.ie](http://www.irishstatutebook.ie) - Irish Statute Book – Office of the Attorney General.

[www.cro.ie](http://www.cro.ie) - Companies Registration Office.

[www.odce.ie](http://www.odce.ie) - Office of the Director of Corporate Enforcement.

[www.clrg.org](http://www.clrg.org) - Company Law Review Group.

[www.lawreform.ie](http://www.lawreform.ie) - The Law Reform Commission.

[www.courts.ie](http://www.courts.ie) - Irish Courts Service.

[www.cpaireland.ie](http://www.cpaireland.ie) - CPA Ireland.

[www.frc.org.uk](http://www.frc.org.uk) - Financial Reporting Council.

[www.frc.org.uk/About-the-FRC/FRCstructure/Former-FRC-structure/ProfessionalOversight-Board.aspx](http://www.frc.org.uk/About-the-FRC/FRCstructure/Former-FRC-structure/ProfessionalOversight-Board.aspx) - Professional Oversight Board

[www.ifac.org/](http://www.ifac.org/) - International Federation of Accountants.

[www.iaasa.ie](http://www.iaasa.ie) - Irish Auditing & Accounting Supervisory Authority

[www.auditcommitteeinstitute.ie](http://www.auditcommitteeinstitute.ie) - Audit Committee Institute Ireland

[www.smurfitschool.ie/researchandfaculty/researchcentres/centreforcorporategovernance/](http://www.smurfitschool.ie/researchandfaculty/researchcentres/centreforcorporategovernance/) Institute of Directors Centre for Corporate Governance.

[www.sec.gov/about/laws/soa2002.pdf](http://www.sec.gov/about/laws/soa2002.pdf) Sarbanes-Oxley Act of 2002

[www.ifsra.ie](http://www.ifsra.ie) - The Irish Financial Services Regulatory Authority

[www.irishtakeoverpanel.ie](http://www.irishtakeoverpanel.ie) - The Irish Takeover Panel

[www.iodireland.ie/](http://www.iodireland.ie/) - The Institute of Directors in Ireland

[www.iaim.ie](http://www.iaim.ie) - Irish Association of Investment Managers

[www.icsa.com/charteredsecretaries.ie/](http://www.icsa.com/charteredsecretaries.ie/) - The Institute of Chartered Secretaries & Administrators

[www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf](http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf) - OECD Principles of Corporate Governance