15.0 **COMPANY SECRETARIAL PRACTICE (3 HOURS)**

**AIM:** To examine the candidate’s knowledge and understanding of application of statutory requirements under the Companies Act and company secretarial best practices and the principles and procedures of conducting a professional practice and its underlying regulatory framework and the demonstration of his ability to deal with many different types of assignment.

**Learning Outcomes:**

Upon completion of this subject, the students should be able to:

- Describe and explain the role, duties and functions of the professional company secretary;
- Demonstrate knowledge of Company law and practice for corporate compliance and application;
- Explain the responsibilities of the company secretary as an advisor to the board in corporate governance, including the core duties of organising meetings, drafting of company resolutions, minutes writing and lodging of returns to the Registrar of Companies.

**SYLLABUS**

15.1 **Formation and Administration of Companies**

Types of registered companies; Private or public company; Procedure and practice in respect of the incorporation of different types of companies, documents to be lodged with the Companies Commission of Malaysia (SSM). Name and availability of name of company; Default provisions of the Companies Act, 2016 regulating Constitutional documents; replaceable rules; Option to adopt a Constitution; Contents of a company’s constitution; Certificate of Incorporation; post-incorporation returns and commencement of business; procedures in change of company’s name, conversion from public to private limited company and vice-versa; Effect of Constitution; Alteration or amendment of constitution; Limited Liability Partnership - formation, registration, rights and liabilities of partners. Company limited by guarantee; Registered Office and Registers; Register of members; register of directors, managers and secretaries; register of directors’ shareholding; register of substantial shareholders; register of debenture holders; register of charges; register of holders or participatory interests; register of options; Company seals; company contracts; Pre-incorporation contracts and execution of documents and deeds; Lodgement of Annual Returns.

15.2 **Management of Company**

Different types of shares, debentures and convertible securities; classes of shares; No par value regime; methods and procedures of raising new capital – private companies; methods and procedures of raising new capital – public companies; prospectus, supplementary prospectus and abridged prospectus; rights issues, bonus issues and Employee Share Option Scheme (ESOS); alteration to share capital and capital maintenance doctrine; requirements of the Bursa Malaysia Listing Requirements, Securities Commission’s Guidelines; issue, allotment, call, forfeiture and surrender; registration of shares and issue of share certificates; transfers and transmission of shares; Central Depository System; procedure for payment of dividends; dividend to be distributed out of profit; substantial shareholdings and disclosure requirements under Companies Act, 2016 and Capital Market and Services Act 2007; Solvency test and solvency statement; Debentures and deposit of debentures to secure advances; restrictions on allotment and commencement of business for companies whose shares are offered to the public or offered for subscription and public companies.

15.3 **Members, Directors and Officers of Companies**

Single member/ Single Director Company; Distinction between a member and a shareholder of a Company; rights and duties of different types of shareholders as set out in the Companies Act/Constitution of a Company. Appointment and qualification of directors; resignation, retirement, vacation, disqualification and removal from office; powers, responsibilities, rights and duties of directors; disclosure and self-dealings by Directors; Approval for fees for directors, loans to directors and persons connected and substantial property transactions; related party
transactions and recurrent related party transactions; responsibilities for accounting records, and internal control; provisions indemnifying directors or officers; “Next of kin” for single director company; Whistleblower Protection Act 2010; Company Directors’ Code of Ethics, and Malaysian Code on Corporate Governance.

15.4 **Company Secretary**

Requirements for a secretary; procedure relating to the appointment, qualifications, vacation and removal of secretary; Secretary’s powers, statutory duties and responsibilities; Approved bodies under Fourth Schedule of Companies Act, 2016; Company Secretaries’ Code of Ethics and Malaysian Business Ethics; Requirement to register with Registrar; Practising Certificate; duties of secretary before, during and after all types of general meetings of public-listed and public companies - dealing with shareholders requisitions, Board and Committee meeting procedures, including drafting of minutes and resolutions; custody of Common Seal and authentication of documents; additional compliance obligations and responsibilities under Anti-Money Laundering and Anti-Terrorism Financing Act 2001, Competition Act 2010, Personal Data Protection Act 2010, SST Regime; whistle-blowing protection under the Whistleblower Protection Act 2010.

15.5 **Accounts and Audit**

Compliance with approved accounting standards; keeping of the accounts of a company; system of internal control; accounting periods of companies within the same group; directors’ responsibilities for accounts - the annual accounts, filing of returns; contents and statutory requirements and contents of the Directors’ Report; duty to lodge financial statements and report with Registrar; certificate relating to exempt private company; Auditor’s statements; contents and statutory requirement of the Auditors’ Report; the concept of true and fair view and the statutory requirements; definition of ‘outgoing auditor’; Provisions relating to auditor of private company and auditor of public company; Audit exemption pursuant to Section 267(2) of the Companies Act, 2016 for private companies; Company auditors: procedures relating to the appointment, approved auditor, eligibility for appointment, statutory requirements for appointment; the function and independence of auditors; remuneration, rights, duties and liabilities of auditors, Auditors’ Qualified Privilege as provided under the Companies Act, 2016, Capital Market and Services Act 2007 and Bursa Malaysia Listing Requirements; removal and resignation from office; the company’s obligations to its auditors; auditors’ liability to the company and third parties; Indemnity and insurance for officers and auditors.

15.6 **Meetings and Resolutions for Members**

Written Resolutions Regime; Procedure for Majority written resolution; ordinary resolutions; special resolutions; general rules on voting; procedure relating to written resolutions of private companies and passing of resolutions at meetings of members; notice of meetings; procedure at meetings; chairman’s duties and casting vote; quorum; adjournment and postponement; proxies and corporate representatives; requirements on proxies appointment and voting rights; voting and rights to demand a poll; Annual General Meeting for Public Companies; records of resolutions and meetings; details of resolution provided by sole member; extraordinary meetings, class meetings and meetings convened by Court; convening of meetings and requisitioned meetings; Minutes of proceedings; inspection of minutes books; institutional investors, shareholder engagement.

15.7 **Charges, Arrangement and Reconstructions and Receivership**

Powers to borrow and statutory requirements and restrictions; public debentures and the registration of charges; trust deed and trustees for debenture holders; obligation of borrowing company; procedure for issue and redemption of debentures; private debentures; fixed and floating charges; Power to compromise with creditors and members, schemes of arrangement; power of Courts to restrain proceedings; provisions for facilitating reconstruction and amalgamation of companies; power to acquire shares of dissenting minority shareholders; arrangement with creditors and members; power of Court to appoint an approved liquidator; Receivership: Appointment, disqualification and remuneration of Receivers; difference between Receiver and Receiver and Manager, duties; procedures, records and returns to be maintained; submission of statement of affairs; responsibilities and liabilities of receiver or receiver or manager; takeovers and mergers under the Malaysian Code on Takeovers and Mergers 2016.
15.8 **Corporate Rescue Mechanism**

Corporate voluntary arrangement; moratorium; summoning of meetings and decision of meetings; implementation of proposal; Judicial Management: application to Court for company to be placed under judicial management and for appointment of insolvency practitioner to act as judicial manager; effect of judicial management order; company’s statement of affairs; committee of creditors; protection of interests of creditors and members; application of provisions of winding up of company under judicial management.

15.9 **Voluntary and Compulsory Winding-Up**

Winding-up: Members’ voluntary winding-up; creditors’ voluntary winding-up, compulsory winding-up; winding-up by Court; provisions relating to liquidators in winding-up by Court; interim liquidator; powers of the liquidator; report by liquidator; general powers of Court in winding-up by Court; provisions applicable to every winding-up; proof and ranking of claims; effect on other transaction; winding up of unregistered companies; Striking off a company and its procedures; Management of assets of dissolved companies.

15.10 **Foreign Companies**

Procedure relating to registration of foreign companies; name of foreign company and its publication; registered office of foreign companies; accounts to be kept for foreign companies; annual return; cessation of business in Malaysia; power to hold immovable property.

15.11 **Enforcement and Sanctions**

Enforcement of the Act and general offences: disposal of shares of shareholders whose whereabouts are unknown; translation of documents; general penalties; false and misleading statements; false reports; fraud by officer; restriction on the use of words “Limited”, “Berhad” and “Sendirian”; Prosecution of delinquent officers of company; General Provisions: Evidence of statutory requirements; rectification of registers; disposal of old records; electronic lodgement of documents; time for lodging of documents and extension of time; Companies Commission (Amendment) Act, 2015; Companies Regulations 2017; Interest Schemes Act, 2016; Interest Schemes Regulations 2017.

**RECOMMENDED READING TEXTS**


3.0 Chen Thim Wai (2012), *Guide to Table A – Articles of Association*, Petaling Jaya: LexisNexis


**Statute Books**

1. Companies Act, 2016 (together with Companies Regulations 2017)
2. Companies Commission of Malaysia (Amendment) Act, 2015
3. Companies (Winding-Up) Rules 1972
4. Bursa Malaysian Securities Bhd (BMSB) Listing Requirements of the Main Market (together with Practice Notes, regulations and amendments thereunder)
5. Capital Market Services Act, 2007 (and the regulations thereunder)
6. Securities Commission Guidelines (together with Practice Notes, Guidance Notes, and amendments thereunder)
7. Limited Liability Partnership Act, 2012
8. Interest Schemes Act, 2016 (together with Interest Schemes Regulations 2017)
9. Competition Act, 2010
10. Malaysian Code on Corporate Governance 2017
11. Personal Data Protection Act 2010
12. Whistleblowers’ Protection Act 2010
15. Rules on Takeovers, Mergers and Compulsory Acquisitions, 2016
16. Insolvency Guidance Notes by Malaysian Institute of Accountants (MIA)

**Journals**

1. *The Malaysian Corporate Secretary*, MACS, Malaysia
2. *The Voice*, MAICSA, Malaysia
3. *Accountants Today*, MIA, Malaysia

**Informative Web-sites**

3. [http://www.bursamalaysia.com](http://www.bursamalaysia.com) - Bursa Malaysia
6. [http://www.micg.net](http://www.micg.net) - Malaysian Institute of Corporate Governance
8. [http://www.insolvensi.gov.my](http://www.insolvensi.gov.my) - Malaysia Department of Insolvency
9. [http://www.icsi.edu](http://www.icsi.edu) - Institute of Company Secretaries of India