

Syllabus Outline Corporate Law

NQF8

Prescribed Textbook: Davis and Geach (eds.) *Companies and Other Business Structures in South Africa* (5th ed.) (2019): OUP

The aim of this module is to provide a thorough understanding of corporate law and the key specific provisions of the Companies Act 71 of 2008, as well as residual common law principles.

Syllabus Topics	Topic content	Textbook
Learning outcome 1: Conceptualise knowledge of the theories and principles related to the structure and regulation of commercial entities		
Sources of corporate law	<ul style="list-style-type: none"> • The Companies Act 71 of 2008 <ul style="list-style-type: none"> ○ Reasons for the new Act ○ Framework and structure of the new Act ○ Changes made from the old Companies Act • Residual common law principles • Definition of juristic person • Separate legal personality • Exceptions to the principle of separate legal personality 	Chapter 1 Chapter 2
Learning outcome 2: Give a reasoned opinion on the legal structures available to a variety of types of organisations and their appropriateness		
Nature and structure of a company, contrasting different types of corporate entity	<ul style="list-style-type: none"> • Types of companies <ul style="list-style-type: none"> ○ The private company ○ The public company ○ The personal liability company ○ The state-owned company ○ Non-profit companies ○ External companies ○ Domesticated companies ○ Partnerships, close corporations, pre-existing companies 	Chapter 2 Chapter 3 Chapter 16 Chapter 17
Learning outcome 3: Critically appraise the legal and other issues arising in complex scenarios and apply the relevant law		
The formation of a corporate body, legal capacity and representation	<ul style="list-style-type: none"> • Formation of companies and the company constitution <ul style="list-style-type: none"> ○ Incorporation and registration of companies ○ Company names ○ The legal status of the MOI and rules ○ Pre-incorporation contracts • Legal capacity of the company • The doctrine of constructive notice • The Turquand rule and the Companies Act • Representation and the authority of directors 	Chapter 2
Learning outcome 4: Critically examine the impact of the external regulatory environment on the structure of commercial organisations		
Regulatory agencies and enforcement in the South African corporate context	<ul style="list-style-type: none"> • General principles on remedies • The regulatory agencies <ul style="list-style-type: none"> ○ CIPC ○ The Companies Tribunal 	Chapter 14

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Syllabus Topics	Topic content	Textbook
	<ul style="list-style-type: none"> • Complaints to the Companies Commission • Companies Tribunal adjudication proceedings 	
Learning outcome 5: Demonstrate appropriate judgment and present advice on structural and legal issues		
Decision making by boards, management and shareholders Capital and membership Shares and class rights	<ul style="list-style-type: none"> • Governance and shareholders • Governance and the board of directors • The duties and liabilities of directors • Shares, securities and transfer 	Chapter 5 Chapter 6 Chapter 8 Chapter 9
Corporate finance Loan/debt capital	<ul style="list-style-type: none"> • Distributions • Repurchases • Indirect repurchases • Financial assistance for the acquisition of securities • Financial assistance to directors • Shareholders' pre-emption rights 	Chapter 4
The regulation of market abuse, takeovers/ mergers and the role of regulators Insolvency and liquidations	<ul style="list-style-type: none"> • Insider dealing/trading and market manipulation • Fundamental transactions, takeovers and offers • Shareholder remedies and minority protection • Business rescue and compromises • Winding up of solvent and insolvent companies 	Chapter 10 Chapter 11 Chapter 12 Chapter 14 Chapter 15

Practical and work competence

- Prepare advice for directors and officers regarding their duties and liabilities, using examples from case law
- Prepare advice for directors on the status of the MOI, including circumstances in which the MOI may be amended
- Prepare advice for minority shareholders regarding their remedies in terms of the Companies Act
- Using case studies and real examples, apply knowledge of the statutory provisions applicable to the company secretary, external auditors and accounting officers to explain their functions in relation to the company (see Chapter 13).
- Given a practical scenario, report to the board on the company's compliance with the provisions of the Companies Act and Regulations
- Carry out share transaction procedures and advise on the differing procedures and legal consequences for certificated and uncertificated share transactions.
- Given a practical scenario, advise the board as to whether a company should be wound up or initiate business rescue proceedings and the requirements for initiating these proceedings

Prescribed readings:

- the Companies Act 71 of 2008, as amended
- the Companies Regulations, 2011
- King Code on Corporate Governance 2016

Additional readings and resources: for downloading or reading/viewing:

- <https://www.werksmans.com/wp-content/uploads/2013/04/Werksmans-Directors-Liability-Booklet.pdf>
- <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2015/corporate/downloads/Corporate-and-Commercial-Alert-22-July-2015.pdf>

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- <https://dommisseattorneys.co.za/blog/companies-act-71-of-2008-series-part-6-share-capital-what-to-consider-2/>