



# Syllabus

# STEP Advanced Certificate in Company Law and Practice



[www.step.org/qualifications](http://www.step.org/qualifications)

# Company Law and Practice

## Introduction

This document contains the detailed syllabus for the STEP Advanced Certificate in Company Law and Practice.

For more information about the course and how to apply, please visit the [course page](#) on the CLTI website.



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## Module 1

### AN INTRODUCTION TO COMPANY LAW AND PRACTICE

#### **The purpose of this module is to:**

- Introduce company law and the practice of private company management
- Review the position of the offshore company in context, i.e. as part of a structure used by trustees, private banking institutions and other firms to hold and manage clients' assets
- Summarise the role of this text, give a brief overview of the study of company law and introduce what is to come in subsequent modules.

#### **By the end of this module you should be able to:**

- Understand why those working for an offshore trust company need an appreciation of company law
- Appreciate how the wealth management industry has developed in recent decades
- Appreciate the use made by trustees, private bankers and other service providers of offshore companies
- Appreciate why every company is potentially unique, given the permissive rules in relevant legislation, while still being governed by mandatory rules and presumptive rules
- Understand the purpose of the course manual and how to make it relevant to companies administered by your firm
- Know what to expect in forthcoming modules.



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## Module 2

### CHARACTERISTICS OF A COMPANY

#### The purpose of this module is to:

- Define a company
- Outline the evolution of company law in England and assess its effect on company law in other common law jurisdictions, particularly the offshore financial centres
- Consider some of the fundamental features of a company and distinguish companies from other forms of undertaking
- Introduce the companies legislation applicable to the jurisdiction where you work or with which you have a substantial connection
- Analyse the arguments for and against the integrity of 'one-man' companies and the limited liability of shareholders
- Explore the typical use made of companies incorporated in an offshore jurisdiction.

#### By the end of this module you should be able to:

- Understand the broad features of a private limited company and how it differs from a sole trader or partnership
- Appreciate the fundamental economic principles behind much company legislation which:
  - Provides a structure whereby entrepreneurs may raise capital from the public
  - Enables investors to contribute capital to an enterprise without having to manage and control the business on a day-to-day basis
  - Limits shareholders' liability for the debts of the company
  - Facilitates the transferability of an owner's interest in a business undertaking
  - Protects the capitalist investor against the actions of a rogue director who abuses their position



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- See the private limited company in context by comparing it with other business media
- Appreciate how the company legislation in the common law offshore jurisdictions derives in the most part from English statutory provisions that are used as a model
- Identify and describe the common features of an incorporated company
- Understand the implications that flow from a company having a separate legal personality
- Explain the significance of the 'veil of incorporation' and how it can be pierced
- Appreciate the typical uses made of companies incorporated offshore.



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## Module 3

### COMPANY FORMATION AND RELATED ISSUES

#### The purpose of this module is to:

- Explain the role, duties and rights of a promoter
- Raise awareness of pre-incorporation contracts and relevant modern offshore companies legislation
- Review the theoretical and practical aspects of incorporation of a private limited company
- Introduce the skill of drafting minutes
- Review some of the preliminary issues relating to the migration of companies
- Outline the main features and characteristics of a variety of offshore vehicles.

#### By the end of this module you should be able to:

- Understand the role of promoters, both offshore and onshore, their duties to the company upon incorporation and how they may be paid and recover their expenses
- Understand the issues, at common law, affecting enforceability of pre-incorporation contracts and be able to indicate how problems are solved by modern offshore legislation
- Analyse the theoretical and practical aspects of incorporation of a private limited company in the offshore jurisdiction where you work
- Know how to incorporate a company in the jurisdiction where you work or have some other substantial connection
- Know how to draft certain key documents, in particular minutes of the first meeting of directors
- Describe some of the distinguishing features of a number of different types of company and, in particular, the types of company that you tend to manage in the office, in practice.



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## Module 4

### REGISTRATION AND MIGRATION OF FOREIGN COMPANIES

#### **The purpose of this module is to:**

- Review the requirements that must be complied with when a foreign company wishes to establish a place of business in, and operate such business from, a typical offshore financial centre
- Review the requirements that must be complied with when a foreign company wishes to migrate to, and re-domicile in, a typical offshore financial centre.

#### **By the end of this module you should be able to:**

- Understand how the continuation procedure can allow companies to migrate from one jurisdiction to another, and why they might want to do so
- Understand what is meant by 'establishing a place of business' in a particular state
- Know the kind of information that a company established in one state is likely to need when registering in another
- Appreciate the role of the authorised agent/representative
- Know what is involved in an application for continuation and the legal effect of continuation
- Comply with statutory requirements when a foreign company wishes to establish a place of business, and to operate such business, in the jurisdiction where you work
- Comply with statutory requirements when a foreign company wishes to migrate to, and re-domicile in, the jurisdiction where you work.



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## Module 5

### THE COMPANY'S CONSTITUTION

#### The purpose of this module is to:

- Review the historical development of the corporate constitution
- Discuss the principles behind modern rules and their original basis
- Examine the functions and typical content of the memorandum and articles of association and determine how they can be changed to meet the requirements of the client
- Analyse corporate capacity and trace the evolution of the ultra vires doctrine
- Examine whether, and if so how, the memorandum may be altered
- Examine how the articles may be altered.

#### By the end of this module you should be able to:

- Appreciate the historical development and current theories relating to the constitution of a company
- Understand the typical content of the memorandum of association, and be able to determine how it can be moulded, within the legislative framework, to meet the requirements of the client
- Analyse the capacity of a company to transact business under modern companies legislation that repeals the ultra vires doctrine
- Amend the memorandum to meet the client's requirements
- Understand the functions and typical content of the articles of a company, and to determine how they can be moulded, within the legislative framework, to meet the client's requirements
- Determine the rights, powers of and procedures affecting the shareholders, directors and officers of a company
- Amend, or re-state, the articles.



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## Module 6

### EQUITY, CAPITAL AND DISTRIBUTIONS

#### The purpose of this module is to:

- Introduce the concept of equity finance and 'capital' in different contexts
- Explain how a company may issue shares to raise capital and is required to allocate and preserve the consideration received
- Review how the capital maintenance rules restrict the funds that can be used to distribute as dividends to shareholders
- Investigate how such restrictions are circumnavigated.

#### By the end of this module you should be able to:

- Appreciate what is meant by the term 'capital' in the context of a business, company law generally and the doctrine of capital maintenance
- Issue shares in a private company under your administration
- Transfer shares that have been issued by a company under your administration
- Understand the capital structure of a company and how capital is allocated between the share capital and the share premium
- Understand the principles of, and justification for, the capital maintenance rules and how these can be circumnavigated by:
  - funding the company by a nominal share capital and substantial shareholder loan, and
  - the amendment or total repeal of the capital maintenance doctrine by modern offshore companies legislation.
- Compare typical onshore regulations with the liberal and flexible distributions provisions that exist in most offshore jurisdictions



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- Make a distribution from a typical offshore company, either
  - under flexible IBC and similar legislation, or
  - under less flexible legislation by repayment, in whole or part, of the shareholder loan.



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## Module 7

### DIRECTORS PART I – ROLE, APPOINTMENT AND REMOVAL OF DIRECTORS

#### The purpose of this module is to:

- Carry out an initial review of corporate governance under the traditional onshore corporate model
- Illustrate how the traditional Anglo-American corporate model has been used as a template by legislators and service providers offshore
- Examine the provisions conferring powers of management upon the directors
- Analyse the different methods of appointing the initial directors during the incorporation process
- Review typical provisions dealing with the removal of directors and the appointment of subsequent directors.

#### By the end of this module you should be able to:

- Explain what is meant by the ‘traditional corporate model’ and the term ‘corporate governance’ and their relevance to companies registered offshore
- Appreciate how the traditional corporate model is used by legislators and by corporate service providers when drafting standard articles and the differences commonly found offshore
- Construe the following standard articles conferring powers of management upon the directors, namely:
  - Article 80, Table A, Companies Act 1948
  - Article 70, Table A, Companies Act 1985
  - Article 3, Model Articles for Private Companies (old Table A), Companies Act 2006

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- Know how to appoint the initial directors upon incorporation of a company and understand the factors affecting the choice of directors
- Appreciate why it might be necessary to remove directors and appoint new ones, how these processes are governed, and know how to remove directors and appoint replacements.



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## Module 8

### DIRECTORS PART II – DIRECTORS’ POWERS AND DUTIES

#### The purpose of this module is to:

- Review the powers usually conferred upon directors
- Introduce the mechanics of board meetings and the directors’ decision-making process
- Analyse the legal effect of a transaction purportedly entered into on behalf of a company, but which was beyond the powers conferred upon the directors
- Outline the duties owed by the directors to their company
- Examine a director’s fiduciary duty
- Examine a director’s duty to exercise their powers of management with appropriate care and skill
- Consider what is expected of a director of an offshore company
- Explain the circumstances in which a director may become liable to the company and to creditors of the company.

#### By the end of this module you should be able to:

- Construe the usual powers conferred upon the directors by the articles of association
- Understand the basic procedures involved in the directors’ decision-making process
- Advise upon the legal effect of a transaction entered into by the directors but which involved the exercise of powers the directors did not possess
- Appreciate the constituent parts of a director’s fiduciary duty to the company, and be able to apply the relevant principles to typical factual scenarios encountered in offshore corporate management practice



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- Understand the directors' duty to use appropriate care and skill in the management of the company, both at common law and under modern companies legislation, and be able to apply the relevant principles to typical factual scenarios encountered offshore
- Know how to protect a director from liability for breach of certain duties by obtaining shareholder approval
- Appreciate the methods whereby a director may be protected by express provisions in the articles and/or director's service agreement and/or directors' indemnity insurance policy.



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## Module 9

### OTHER OFFICERS OF A COMPANY: SECRETARY AND REGISTERED AGENT

#### **The purpose of this module is to:**

- Place company officers in context
- Explain the procedures for the appointment, removal and retirement of company secretaries
- Review the usual duties and functions of a company secretary
- Highlight the potential liability of the company secretary
- Review the role, powers and duties of a registered agent.

#### **By the end of this module you should be able to:**

- Ascertain whether a company secretary is required for private companies in the jurisdiction where you work or have some other connection
- Know the procedures for the appointment, removal and retirement of a company secretary and how these are covered in typical articles
- Comply with the duties of a secretary
- Describe the usual powers conferred upon, and delegated responsibilities of, a company secretary



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- Demonstrate an understanding of the functions and practice of the company secretary
- Advise upon the potential liability of the company secretary
- Appreciate the role, powers and duties of a registered agent under jurisdiction-specific, (I)BC, statutory provisions.



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## Module 10:

### COMPANY DECISION-MAKING PROCEDURES

#### The purpose of this module is to:

- Explain the difference between the decision-making powers of the board of directors and the powers of shareholders of a company in general meetings
- Review the procedures involved in convening and conducting general meetings of shareholders
- Review the procedures for convening and conducting board meetings
- Summarise and illustrate other decision-making procedures
- Develop your drafting skills, with particular emphasis on drafting notices, resolutions and minutes of meetings.

#### By the end of this module you should be able to:

- Understand the division of powers between the directors, who manage the business, and the members, who own it and be aware of the legal aspects of this and the importance of the articles in defining some aspects
- Take the required steps to convene, hold and conduct a general meeting including:
  - giving notice to members
  - permitting members to appoint proxies
  - determining the quorum for a meeting and the importance of its being quorate
  - appointing the chairman and secretary
  - conducting the vote, counting votes and recording resolutions
- Know how to convene, hold and conduct meetings of directors, according to correct procedure
- Draft appropriate minutes for a variety of meetings, including recording all resolutions passed.



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## Module 11

### THE PROVISION OF COMPANY MANAGEMENT SERVICES AND BENEFICIAL OWNER CONTROL

#### **The purpose of this module is to:**

- Describe the range of company services that are provided by corporate service providers from offshore centres
- Review potential problems when the beneficial owner of a company wishes to exercise too much control.

#### **By the end of this module you should be able to:**

- Understand the range of company services that are provided from offshore centres including:
  - Incorporation
  - Registration and continuance
  - Provision of directors and officers
  - Provision of shareholders
  - Provision of registered office facilities
  - Corporate filing and general secretarial and accounting services
- Avoid problems associated with allowing beneficial owners too much control over the affairs of their companies, including the risk that:
  - The company will be liable to pay tax in the beneficial owner's home state
  - The service company and its officers will become liable for losses suffered by the company owing to the beneficial owner's actions
  - The beneficial owner will use the company for illegal purposes and the service company will become criminally liable to prosecution under AML and CFT legislation.



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## Module 12

### TERMINATION OF COMPANIES

#### The purpose of this module is to:

- Review the giving of security by fixed and floating charge and enforcement thereof by the appointment of a receiver
- Outline ways in which an insolvent company may continue to trade as an alternative to liquidation
- Review the typical process and procedures involved in:
  - A compulsory winding-up or liquidation of a company
  - A voluntary winding-up
- Explain the difference between dissolution and striking off and take a look at voluntary striking off.

#### By the end of this module you should be able to:

- Understand how creditors may recover moneys owed to them when a company is in difficulties and be able to distinguish fixed from floating charges
- Take steps, as a director of an insolvent company, to try to avoid liquidation
- Understand the role of a receiver and manager, where appointed by a secured creditor
- Appreciate the grounds for compulsory winding-up, the role of the court, the consequences of making a winding-up order, and the role of the liquidator
- Take the required steps to initiate a members' voluntary winding-up and follow the requisite procedure for voluntarily striking a company off the register
- Reinstate a company to the register when it has been struck off on a compulsory basis.



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