CILEX

CPQ

P9 – Business and Commercial Law and Practice

Professional Stage

2026 - 2027

P9: Business and Commercial Law and Practice

The overall aim of this module is to give you the essential knowledge and understanding of specialist business-related topics. With detailed reference to the Companies Act 2006 (CA 2006) and other legislation and case law where relevant, this module will focus on company transactions including company financing and dealings with directors. It also provides an introduction to typical commercial contracts and buying and selling businesses. The module will also introduce common shareholder considerations, relevant taxation and insolvency issues (building on the knowledge of business accounts acquired from the Advanced Stage Skills module).

The module covers:

1. Companies and their directors
2. Removal of directors
3. Financing the company
4. Key shareholder issues
5. Partnerships
6. Further taxation
7. Introduction to buying and selling businesses and companies
8. Commercial contracts
9. Insolvency issues

Learning Outcomes

By the end of this module, you will be able to:

1. Explain and advise on some of the key corporate transactions that are regulated by the Companies Act 2006 and the law and practice in relation to partnerships
2. Advise on procedure to be adopted by a company when entering into a transaction
3. Evaluate the most appropriate method to finance a company based on their instructions and advise the client accordingly and understand in outline taxation matters including loss reliefs, capital allowances and CGT reliefs and exemptions
4. Identify and advise on key issues concerning shareholders including maintenance of capital, minority protection and shareholder agreements
5. Identify and explain key commercial contracts and insolvency issues
6. Review, comment on and draft some key documents including a partnership agreement, shareholder agreement, LLP agreement and acquisition agreement
7. Identify situations that potentially give rise to conflicts of interest, issues of professional ethics and obligations or other issues under the applicable Codes of Conduct

Linked online assessment: P9
TQT: 300 hours

Prerequisite knowledge: Advanced Stage Business and Employment Law

Module Resources

In addition to the course book, there is a reading list that accompanies the module along with an updates document, both located in the ‘Study Guide and Content Updates (latest edition)’ document in the VitalSource bookshelf, Training Provider hub and in ‘myCILEX’.

All CPQ candidates must read the relevant CILEx Regulation Education Standards Handbook.

Details of updates included in 2026-2027 Module Specification

- 4a) Addition- ‘…or proceeds of a fresh issue of shares, or of capital’

<table>
<tr>
<td>1. Companies and their directors</td>
<td>You must understand the detailed regulation of companies' dealings with their directors and be able to advise corporate clients on the key transactions as regulated by the Companies Act 2006. Therefore, you will need to know the following:

a) Service contracts
• Approval requirements and procedure: contracts awarded by the board; model arts 3 and 19, guaranteed term contracts, s188 CA 2006
• Shareholder right of inspection; s228/229 CA 2006

b) Substantial property transactions
• s190 CA 2006
• Requirements: substantial non-cash asset; sale to or purchase from a director
• Meaning of substantial"
• Shareholder approval procedure
• Exceptions from shareholder approval

c) Loans to directors
• Restrictions on provision
• s197 CA 2006
• Requirements for shareholder approval
• Exemptions from shareholder approval (e.g. 204 CA 2006)</td>
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<td>2. Removal of directors</td>
<td>Advising on how directors may be removed and the consequential implications is another important element of advising corporate clients or individual shareholders or directors. Therefore, you will need to know the following:

a) Statutory removal procedure (including special notice requirements) – s168 and s312 CA 2006

b) Restrictions in articles: Bushell v Faith [1970] clause

c) Implications of service contract
• Employment law rights and financial considerations, e.g. fixed term contracts without a break clause

d) Compensation
• Contractual
• s215 CA 2006

e) Company Directors Disqualification Act 1986 (CDDA): implications</td>
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3. Financing the company	Knowing and understanding the legal regulation on how a company can raise finance through issuing shares or taking a loan are essential for advising companies. You must also be able to draft relevant documents including shareholder resolutions, and complete relevant forms. Therefore, you will need to know the following:
	
	a) Shares
	• Types of shares
	  ○ Ordinary
	  ○ Preference
	• Issuing new shares; s549 etc CA 2006
	• Procedural requirements and filing issues
	  ○ Shareholder approval
	  ○ Appropriate resolutions
	  ○ Compliance with articles and shareholder agreement provisions
	• Pre-emption rights; s561 CA 2006
	• Public companies
	
	b) Loans
	• Types
	  ○ Overdraft
	  ○ Term loan
	  ○ Revolving credit facility
	• Borrowing restrictions
	• Articles of association/shareholders' agreement
	
	c) Secured debt
	• Charges: fixed and floating
	• Case law
	• Key terms: Security/Representations and warranties/Covenants/Enforcement and powers.
	• Validity and registration
	  ○ Relevant CA 2006 provisions
	  ○ Completing MR01 including impact of failing to register
	
	d) Comparison of debt and equity finance, including shareholder dilution and impact on balance sheet
	
	e) Crowdfunding in outline
	• Methods
	• Benefits

4. Key shareholder issues	Corporate clients or individual shareholders must be advised on the practical implications of the maintenance of capital principle. You must understand and be able to advise on the rights associated with holding shares in a company, especially where there is apparent prejudice to the rights of shareholders. Therefore, you will need to know the following: a) Capital maintenance principle • Capital and reserves in a company's balance sheet • Payment of dividends • Restrictions on purchase of own shares • Reduction of capital • Use of distributable profits or proceeds of a fresh issue of shares, or of capital • Financial assistance b) Minority protection • Foss v Harbottle [1843] • Unfair prejudice ○ s994 CA 2006 ○ Relevant case law • Derivative claims and Part 11 CA 2006 • Just and equitable winding up ○ s122 Insolvency Act 1986 (IA 1986) c) Shareholder agreements; nature and typical drafting considerations: • Unanimous/higher % vote required for major decisions: amendment of articles/changes in capital or structure/sale of company • Restrictions on borrowing • Dispute resolution • Distribution of dividends • Restrictive covenants • Confidential information and IP rights • Departure of shareholder ○ Death ○ Illness ○ Bankruptcy ○ Retirement ○ Sale of shares ○ Considering cross options combined with life or critical illness cover ○ Good and bad leaver clauses for employee/director shareholders • Resolving deadlock • Share transfers and restrictions

	o Rights of first refusal to shareholders/company etc. d) Restrictions on transfers of shares • Pre-emption rights • Right to refuse registration
5. Partnerships	You must have a detailed knowledge of the formalities in forming a partnership or LLP and be able to advise clients on the roles and responsibilities of partners. You must understand the form and content of a partnership agreement, be able to advise on appropriate terms and be able to draft an agreement to reflect your client's instructions. Therefore, you will need to know the following: a) Setting up a partnership and requirements • s.1 and s2 Partnership Act 1890 and statutory obligations • Regulation of choice of business name under s1192 CA 2006 • Notifying HMRC • Registering for income tax, NI, VAT b) Partnership Agreements • PA 1890 implied terms and their limitations • ss.6-8, 14, 17, 24, 28-30 PA 1890 • Impact of a partnership agreement - contractual obligations between partners • Drafting a partnership agreement: key terms and considerations • Why there should be a partnership agreement in place • Commencement and duration • Name; premises; nature of business • Financial input: initial and ongoing • Salaries, roles and responsibilities • Allocation of shares in profit • Drawings process • Assets of the partnership • Decision making and deadlock • Liability and indemnities • Retirement/bankruptcy/death/expulsion of partner • Restrictions: non-compete clauses • Dissolution c) Limited Liability Partnerships • Process of setting up an LLP o Companies House filing requirements o LL IN01

	• Authority to bind LLP
	  ○ s.6 Limited Liability Partnerships Act 2000
	• Partner responsibilities and liability generally
	• Designated partners additional responsibilities
	  ○ s.444(6)
	  ○ s.854 CA 2006; s.9(1) LLPA 2000
	• Funding: debt; equity options
	• Advantages and disadvantages of LLPs
	
	d) LLP Agreements
	• LLP Regulations 2001 implied terms
	• No obligation to have an LLP agreement but strongly recommended
	• Drafting the LLP agreement: key terms and considerations
	• Why there should be a partnership agreement in place
	• Commencement and duration
	• Name/premises/nature of business
	• Financial input: initial and ongoing
	• Salaries, roles and responsibilities
	• Dividing shares in profit
	• Drawings process
	• Assets of the partnership
	• Decision making and deadlock
	• Retirement/bankruptcy/death/expulsion of partner
	• Restrictions: non-compete clauses
	• Dissolution
	
	e) Outline and nature of limited partnerships under the Limited Partnerships Act 1907

6. Further taxation	Knowing and understanding the taxation issues below will complement your work in a business law department. You must be able to outline to a client the key elements of various taxation issues. Therefore, you will need to know the following: a) Loss reliefs • Individuals: sole traders; partners • Companies • Start-up reliefs • Carry forward and back reliefs • Terminal loss reliefs b) Capital allowances • Availability • Rates • Effect on taxable profits

	c) Capital gains: business reliefs and exemptions • Individuals • Companies • Business asset disposal relief • Replacement of business assets • Incorporation of a business • Share for share exchange
7. Introduction to buying and selling businesses and companies	Many law firms advise on and assist clients with business and company sale and purchase transactions. You will need to know and understand the core elements of these transactions to advise clients appropriately and draft relevant documents. Therefore, you will need to know the following: a) Structure of the transaction • Distinguish share sale from business/asset sale b) The parties • Individual selling a business/share in a business • Company sale of a business/division • Shareholders and a company sale c) Due diligence and disclosure letters • Principles and core issues • Sample documents d) Consideration e) Effecting the transfer: implications of different assets • Assigning IP/goodwill/know how, • Transferring property; e.g. lease assignment • Employees ○ Significance of Transfer of Undertakings (Protection of Employment) Regulations • Novating contracts with suppliers and customers/clients f) Drafting a simple acquisition agreement • Key terms • Content of agreement • Conditions and warranties g) Tax implications • Deferred consideration • Relevant capital gains reliefs

8. Commercial contracts	You will need to understand a range of commercial contracts that a business may enter in to and how to advise a client. Therefore, you will need to know the following:
	
	a) Joint venture (JV) agreements
	• Reasons for JV's
	  o Shared costs/risk
	  o Access to technology/know how
	  o Access to markets
	  o Increase customer base
	• Types of JV
	  o Short term collaboration
	  o Limited or full function JV's
	  o Full scale mergers
	• Structure of JV
	  o Contractual/collaboration agreement
	  o Corporate JV
	  o Partnership
	• Issues
	  o Management and decision making
	  o Control
	  o Differences in aims/culture
	  o Resolving disagreements
	  o Competition law
	
	b) Key issues on standard terms and conditions
	• Goods or services
	  o Business to business or business to consumer
	  o Unfair Contract Terms Act 1977
	  o Consumer Rights Act 2015
	  o Consumer Contracts Regulations 2013
	  o Implied terms
	• Limitation of liability
	  o Jurisdiction
	  o Cross jurisdiction drafting
	• Effect
	  o Construction
	  o Incorporation of standard terms
	  o 'battle of the forms'
	  o Course of dealing
	
	c) Agency agreements:
	• Sales, marketing and del credere agency
	• Commercial Agents Directive implications
	• Written and implied terms
	• Commission and payment terms
	  o Minimum notice

	- Termination payments - Post termination restrictions

- Drafting considerations
  - Exclusivity
  - Territory
  - Control
  - IP and marketing
  - Warranties
  - Term and termination

d) Distribution agreements

- Types
  - Exclusive
  - Sole
  - Non-exclusive
  - Selective distributorship
- Drafting considerations
  - Exclusive or non-exclusive
  - Territory
  - Control: suitability of third parties/brand guidance
  - Term and duration
  - Prices and controls; competition law; Competition Act 1998/Enterprise Act 2002

e) Franchising agreements

- Principles
- Advantages and disadvantages
- Drafting considerations
  - Fees: initial; ongoing, term and renewal
  - The Manual
  - IP and branding
  - Support and training
  - Franchisor and franchisee obligations
  - Restrictions (e.g. non-compete)
  - Liability and indemnity
  - Termination/sale

f) Other considerations

- Anti-bribery
- Anti-slavery
- Force majeure
- Confidentiality
- Rights of third parties' clauses

9. Interpretation of Accounts	You need to be able to identify and understand key indicators from a set of company accounts, so as to establish when a business is at risk of not meeting its financial commitments. You therefore need to be able to: a) Calculate a liquidity ratio, including the current ratio and the quick ratio ("acid test") b) Identify and explain the early indicators of a failing business
10. Insolvency issues	You may be involved in more complex insolvency cases in a business department. Therefore, you will need to know the following: a) Application of the statutory test for insolvency under s123 IA 1986 b) Voidable transactions (companies and individuals) - core elements c) Preferences: ss239 and 340 IA1986; core elements, including desire to prefer, time limits, burden of proof and connected persons d) Transactions at undervalue: ss 238 and 339 IA 1986; core elements, including time limits, burden of proof and connected persons e) Invalidity of floating charges: companies only; s245 IA 1986 f) Extortionate transactions g) Consequences - avoidance of transactions h) Wrongful trading and fraudulent trading - core elements • Wrongful: s214 IA 1986; objective test • Fraudulent: s213 IA 1986 • Consequences: liability to contribute to company's assets • Directors' misfeasance: s212 IA 1986 • CDDA implications i) Company voluntary arrangement (CVA) • IA 1986 • Process (proposals, meetings and approvals) • Supervisor – role and powers

	j) Administration • IA 1986, Sch B1 • Purposes • Appointment of administrator • Qualifying floating charge holder • Administration procedure • Powers and duties of administrator • Wrongful trading (s246ZB IA 1986) and fraudulent trading (s246ZA IA 1986) – key elements k) Corporate Insolvency and Governance Act 2020 – core elements • Moratorium • Restructuring plan • Restrictions on termination of contracts for the supply of goods and services