



# Examiner's report

## F4 (CYP) Corporate & Business Law

### For Paper Variant exams December 2015

#### General Comments

The purpose of this report is to provide feedback on the performance of candidates in the December 2015 examination. It identifies strengths and weaknesses demonstrated by candidates, and also highlights best practices that those presenting themselves for the examination in the future should consider in order to maximise their prospects of success.

The December 2015 examination followed the new format which was introduced in December 2014 through which candidates were asked to answer 45 questions, worth 1 or 2 marks each (Section A), and 5 further questions worth 6 marks each (Section B) in 2 hours. All questions were compulsory. Questions in Section A were objective in that the correct answers had to be selected in order to earn marks. Questions in Section B required candidates to explain their answers in writing. The overall standard of scripts was reasonable, suggesting that the vast majority of candidates had prepared well for the examination.

Candidates should attempt all questions. While it is recognised that not all individuals may be fully prepared to deal with every question, it should be possible to make a reasonable attempt at every requirement. As mentioned in Section A below, distractors can often be eliminated by a process of deduction.

Syllabus topics on which candidates performed very well included formation of contract, law of torts and company directors.

There was no evidence to suggest that the examination was time pressured, given that the vast majority of candidates attempted all questions in both Section A and Section B.

There was no evidence that there were any questions which had been so worded that candidates failed to understand what they were required to do.

#### Section A

Most candidates attempted all questions in Section A. It is emphasised that even if a candidate is not certain of the correct answer, by reading and considering the choices provided carefully it is often possible to eliminate some of them, enabling an informed decision to be made. There is no good reason for leaving questions unanswered in an examination of this type, as in some cases this may be the difference between success and failure.

One question with which candidates experienced difficulties is discussed below.

#### Which of the following must be true in relation to public companies?

- (1) The transfer of shares must be unrestricted
  - (2) The number of its directors must be at least two
  - (3) The secretary can never be the same person as a director
- A (2) only  
B (1) and (2) only  
C (1), (2) and (3) only  
D (1) and (3) only
- (2 marks)



The correct answer is A.

Pursuant to section 2 Companies Law Cap. 113, a public company is a company which is not private. Moreover, pursuant to section 29 of Companies Law Cap. 113, a private company must restrict the right to transfer its shares. Consequently, a public company does not have to restrict the right to transfer its shares. This does not however mean that the right to transfer shares must necessarily be unrestricted. In other words, the transfer of shares in a public company does not have to be restricted, however it does not have to be unrestricted either. In fact, it is usual for the right to transfer shares in an unlisted public company to be subject to certain restrictions. Therefore, given that (1) above is not true, the only possible answer is A.

This is a question where candidates could have reached the right answer by considering only one of the available options – a correct assessment of option (1) alone would have led to the conclusion that A is the correct answer.

The correct answer can also be verified by considering options (2) and (3). Section 170 Companies Law Cap. 113 provides expressly that every company, other than a private company, shall have at least two directors. Therefore (2) must be true. Finally, section 171 Companies Law Cap. 113 provides that a sole director shall not also be secretary (except in the case of private companies with one member only), although there is no restriction for a director (who is not the sole director) to also be secretary. Therefore (3) above is false.

This question was answered unsatisfactorily by candidates.

## **Section B**

Section B comprised five questions worth six marks each. It is vitally important that candidates read the questions carefully. Too many candidates answered questions by writing narrative answers that were of no benefit. For example, some candidates answered these questions by reiterating general information on the subject-matter of the question, without attempting to respond to the specific question asked.

For example, question 1 required candidates to apply the principles relating to formation of a contract. Anna's advertisement for the sale of her car was an invitation to treat and Bill's response amounted to an offer to buy the car for a fixed price. The fact that Anna communicated her agreement to sell the car to Bill only much later than within the time frame she had initially indicated to, and agreed with, Bill raises the question whether Anna's response in fact amounts to a new offer which Bill is not obliged to accept.

Question 3 required candidates to apply the principles relating to fraudulent trading. Section 311 Companies Law Cap. 113, which provides for personal responsibility of persons concerned for fraudulent trading, is not restricted to company directors but rather applies to any persons who were knowingly parties to the carrying of business of the company with intent to defraud its creditors. Therefore, the fact that Fiona is the company secretary does not automatically relieve Fiona from potential liability – the key issue is whether she was knowingly party to the fraudulent trading.

## **Conclusion**

The F4 paper is broad-based, requiring a relatively fundamental knowledge of many theories, concepts and practical applications.

The performance of candidates at the December 2015 session was reasonable in that the majority of those who attempted the paper were able to make creditable attempts at most of the questions.



Candidates should attempt all the questions and a reasonable attempt at every requirement should be possible for all candidates. As mentioned above, distractors can often be eliminated by a process of deduction.

As the paper now includes five questions worth six marks each, it is vitally important that candidates read the questions carefully.