



Examiner's report

F4 Corporate and Business Law (MYS)

For Paper Variant exams March 2016

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the March 2016 F4 MYS examination. It discusses strengths and weaknesses demonstrated by candidates and considers ways for candidates to enhance their prospects of success in the future.

The examination paper was divided into two parts, both of which were compulsory. Section A consisted of multiple choice questions (MCQs). In this Part, there were 45 questions carrying a total of 70 marks. Of these, 25 questions carried 2 marks each and 20 questions carried 1 mark each. Section B consisted of 5 scenario based questions carrying 6 marks each. These scenario based questions tested candidates' ability to identify and apply the relevant law to the given scenarios. All questions in Sections A and B were compulsory.

On the whole, the standard of the scripts was fair. A sizeable majority of the candidates passed Section A with reasonable marks. Since Section A is MCQ based, there were no issues or problems associated with examination technique. Similarly, Part B required direct and straightforward answers from the candidates based on the given scenarios. Hence, candidates were able to achieve satisfactory marks for Section B so long as they correctly identified the relevant issue, stated the law and applied it to the given facts.

Comments about Section A performance

A majority of candidates performed well on Section A, suggesting that the majority of candidates had prepared adequately for the examination. As the questions in this Section come from all sections of the syllabus, candidates could only do well in this part if they had studied across the syllabus and not selectively.

Syllabus topics on which candidates performed very well included hierarchy of the court structure, formation of a contract, remedies for unfair dismissal, the distinction between a contract of service and a contract for services, age limit of a director and the nature of a conventional partnership.

Syllabus topics on which candidates performed inadequately included the law of agency, types of shares, voluntary winding up of a company, the role and function of receivers and insider trading under the Capital Markets and Services Act 2007.

It is imperative that candidates study and prepare well for all topics in the syllabus and not just a select few. Candidates must bear in mind that questions in this Section will include questions from all topics of the syllabus, thus studying and equipping themselves with adequate knowledge of all topics will certainly maximise prospects of success in future examinations.

Sample question for discussion

This section of the report discusses a question with which candidates experienced difficulties.

Question 26

In the context of types of shares, which of the following shares carry voting rights?

- (1) Ordinary
 - (2) Preference
- A. 1 only
 - B. 2 only
 - C. Both 1 and 2
 - D. Neither 1 or 2

The correct answer is C. A large majority of the candidates gave A as the answer. This indicates most candidates were of the view that only ordinary shares carry voting rights. This may be because s. 4 Companies Act 1965 defines preference shares as “a share by whatever name called, which does not entitle the holder thereof to the right to vote at a general meeting or to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise.” However, candidates are expected to understand that in certain circumstances, preference shareholders may be given the right to vote. For example, s. 148 Companies Act 1965 provides as follows,

1) Subject to subsection (2), every member shall notwithstanding any provision in the memorandum or articles have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting:

Provided that the company's articles may provide that a member shall not be entitled to vote unless all calls or other sums personally payable by him in respect of shares in the company have been paid.

(2) Notwithstanding subsection (1), the articles may provide that the right of holders of preference shares to attend and vote at a general meeting of the company may be suspended upon such conditions as may be specified:

Provided that any preference shares issued after the commencement of this Act shall carry the right to attend any general meeting and in a poll thereat to at least one vote for each ringgit or part of a ringgit that is paid up on each share—

(a) during such period as the preferential dividend or any part thereof remains in arrear and unpaid, such period starting from a date not more than twelve months, or such lesser period as the articles may provide, after the due date of the dividend;

(b) upon any resolution which varies the rights attached to such shares; or

(c) upon any resolution for the winding up of the company. (emphasis added)

Further, s. 65 states when a company allots preference shares or converts any issued shares into preference shares, its memorandum or articles must set out the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative

or non-cumulative dividends, **voting**, and priority of payment of capital and dividend in relation to other shares or other classes of preference shares. Hence, these sections illustrate that preference shares may also carry voting rights, in particular voting rights under those circumstances mentioned in s. 148(2).

Comments about Section B performance

Section B contained 5 scenario-based questions and each question carried 6 marks. Each question was further divided into two or three parts. Questions in this part came from various sections of the syllabus. The questions were designed to test the candidates' ability to identify the legal issue(s), explain the law on that issue, apply the law to the given scenario and arrive at a sound legal conclusion.

Although on the whole the questions in this Section were answered satisfactorily, there is room for improvement. A sizeable majority of candidates did not perform well and it was clear that they were not adequately prepared for some of the topics asked in the examination.

An example of a question in which many candidates fared inadequately was Question 2. The question related to the liability of a retired partner (Rahman) and of an incoming partner (Abu) towards a claim against the partnership, arising from an act of negligence done in the course of the partnership business. Many candidates arrived at a simple conclusion that since Rahman was already retired, he would not be liable for the claim made against the partnership. Most candidates were unable to explain that by virtue of s. 19(2) and 38(1) Partnership Act 1961, a partner retiring from a firm is not automatically released from their liability for debts or acts of the partnership whether incurred before or after their retirement. Candidates were also expected to state that under s. 38(1), 'where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change'. With regard to the liability of Abu the incoming partner, a large majority of candidates answered that since Abu was coming in as a partner, he would have to assume liability for all debts and liabilities of the partnership. Most candidates failed to point out that under s. 19(1) Partnership Act 1961, a person who is admitted as a partner into an existing firm does not become liable for anything done before they became a partner. In the given scenario, Abu was not yet a partner when the act of negligence was committed in the course of the partnership business.

Another question in Section B in which many candidates performed poorly was Question 4. This question contained 3 parts, namely parts (a), (b) and (c). Part (a) of the question tested the candidates' knowledge on the law concerning the age limit of a director of a public company. A large number of candidates performed well in part (a). Part (b) required the candidates to explain the procedure for removal of a director of a public company. This part was not answered well and it was clear that many candidates did not have knowledge of the procedure to remove a director of a public company under the s. 128 Companies Act 1965. A large number of candidates stated that a special resolution was required to be passed at a general meeting to remove a director. Candidates were expected to state that a member intending to remove a director of a public company must serve a notice of such intention to the company at least 28 days before the relevant meeting. This is called the 'special notice'. On receipt of the special notice the company must serve a copy of the notice on the director concerned. Candidates were also required to explain that the director concerned is entitled to make a written representation of a reasonable length to be

forwarded to members and he has a right to be heard at the meeting. At the meeting, the resolution to remove the director is passed if it obtains more than 50% of the votes cast. Part (c) required candidates to state whether a director who was removed has any rights against the company in the event of his removal. Only small minority of candidates were able to answer this question satisfactorily. Most candidates stated that a removed director had no rights against the company once removed. Some candidates stated a director who was removed has rights against the company but did not venture to explain further. Candidates were expected to know that pursuant to s. 128(7) of the Companies Act 1965, director who was removed may claim compensation arising from his removal. For example, where a company has entered into a service contract with the director and the company breaches the contract by removing them, they may claim compensation from the company.

Conclusion

The F4 MYS examination paper is broad-based, requiring basic knowledge of many legal principles, concepts and practical applications of various areas of business and company law. In order to perform satisfactorily it is imperative for candidates to demonstrate that they have this basic knowledge on the various topics on which questions are asked. Therefore candidates are reminded to study and prepare for all topics in the syllabus and not concentrate on a select few.

Candidates should also try their best to attempt all questions. For questions in Section B, candidates are reminded that they are not expected to write lengthy and detailed answers. As long as they are able to identify the relevant issue, provide a brief explanation on the law relating to the issue and apply the law correctly to the given problem they will obtain satisfactory marks.