



Examiner's report

F4 (MYS) Corporate and Business Law

March 2017

General Comments

The aim of this report is to provide feedback on the performance of candidates in the March 2017 F4 MYS examination. It highlights the strengths and weaknesses demonstrated by candidates and discusses ways for candidates to improve their performance in future examinations.

The examination paper was divided into two parts, both of which were compulsory. Section A consisted of multiple choice questions (MCQs). In this Section, 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 reasonable. A significant majority of the candidates passed Section A with reasonable marks, with a number performing very well. Section B required short and straightforward answers based on the given scenarios. Candidates were able to achieve reasonable marks for Section B if they correctly identified the relevant issue(s), stated the law and applied it to the given facts. Generally, candidates achieved satisfactory marks for Section B. However, a number of candidates experienced difficulties with some of the questions and did not perform well in this Section.

Comments on Section A performance

Questions in this Section come from all parts of the syllabus. Therefore, candidates can only perform well in this part if they had revised across the syllabus in its entirety. As mentioned above, a majority of candidates performed well in Section A, suggesting that the majority of candidates had prepared adequately for the examination.

Syllabus areas/topics on which candidates performed well included the following - tests to determine an employment relationship, rights of employees under the Employment Act 1955, rules relating to an offer, elements of a conventional partnership, insider trading under the Capital Markets and Services Act 2007 and types of business organisations.

Syllabus areas/topics on which candidates performed inadequately included types of business entities which enjoy separate legal entity, rules relating to limited liability partnerships, compulsory winding up by the court, schemes of arrangement and compromise under s. 176 Companies Act 1965 and agreements enforceable although there is a want of consideration.

Sample question for discussion

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

Which of the following business associations enjoy separate legal entity from its members?

1. A limited liability partnership
2. A company limited by shares
3. An unlimited company
4. A company limited by guarantee

- A. 2, 3 and 4 only
- B. 1, 2 and 4 only
- C. 1, 3 and 4 only
- D. 1, 2, 3 and 4

The correct answer is D. A majority of students gave B as the answer, indicating that many candidates are under the mistaken view that the concept of separate legal entity does not apply to an unlimited company. Candidates may have been confused with the use of the word “unlimited” in the description of this type of company. An unlimited company is for all intents and purposes, still a company, and once incorporated, it becomes a legal person with legal personality separate from its members. Under the Companies Act 1965, an “unlimited company” is defined as a company formed on the principle of having no limit placed on the liability of its members. This means this type of company has a share capital and its members are liable in a winding-up, for the debts of the company without limit if the company has insufficient assets to meet its debts. In contrast, a company limited by shares is formed on the principle that the liability of its members is limited to the amount unpaid on the shares held by them. This means that a member’s liability to pay for the company’s debts is limited to the amount of shares they have agreed to take but have not paid for.

Which of the following business names reflects a limited liability partnership in Malaysia?

- A. Allen & Peters Sdn Bhd
- B. Allen & Peters LLP
- C. Allen & Peters PLT

The correct answer is C. Most candidates answered B. Candidates are expected to know that in Malaysia the abbreviation for a limited liability partnership is “PLT” which stands for “Perkongsian Liabiliti Terhad”.

Comments on 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 selected 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. It was apparent that many candidates struggled with the questions in Section B. A sizeable majority of candidates did not perform well in this Section and it was clear that they were not adequately prepared for some of the topics covered in the examination.

A question in Section B in which many candidates performed in was Question 3. The question concerned a limited liability partnership formed by two partners, S and Z. The question presented a scenario that Z discovered she was terminally ill and expressed her intention to retire from the partnership with immediate effect. Part (a) of the question required candidates to discuss whether S, the sole remaining partner, could carry on the partnership business as a sole partner. Candidates were expected to explain that according to s. 7 Limited Liability Partnership Act 2012 (LLPA 2012), if the membership of a limited liability partnership falls below two, it may carry on business with the sole remaining partner only for a period of six months or such longer period as extended by the Registrar, provided that the extended period does not exceed one year. Further, if the limited liability partnership (a) continues its business with a sole partner for more than six months or the period which was extended by the Registrar and (b) the sole partner knew or ought to have known that the business was carried on in this manner, the sole partner will be jointly and severally liable with the limited liability partnership

for all obligations of the limited liability partnership incurred after the expiry of this period. The sole partner and the limited liability partnership concerned will also commit criminal offences if there is a breach of s 7(1). A significant number of candidates had no knowledge of s. 7(1) LLPA 2012 and did not discuss it in their answer. Further, many candidates referred to the provisions of the Partnership Act 1961 which applies to conventional partnerships and not to limited liability partnerships.

Part (b) of Question 3 required the candidates to explain if there were any steps that S may take to inform third parties dealing with the partnership that Z has ceased to be a partner. Most candidates did not have knowledge of s. 23(3) LLPA 2012, which provides that partners of a limited liability partnership are still regarded as being a partner, unless the third party dealing with the limited liability partnership either (i) knows that the former partner has ceased to be the partner or (ii) a notice that the former partner has ceased to be a partner has been lodged with the Registrar. Therefore candidates were required to explain that S should take effective steps to inform third parties of Z's resignation and/or lodge a notice with the Registrar that Z has ceased to be partner. Many candidates did not have knowledge of these matters and wrote irrelevant answers. Again, a number of candidates attempted to apply the provisions of the Partnership Act 1961, which is inapplicable as the question concerns a limited liability partnership.

Question 4 was another question in which many candidates struggled. The question dealt with the reduction of a company's capital under company law. Briefly, the scenario in that question was as follows. R, a creditor of a company, was informed that the company intends to reduce its share capital. R was concerned that his interest as a creditor may be prejudiced and wished to object to the reduction of capital. Part (a) was a "knowledge" question and required candidates to state the requirements needed to be fulfilled by the company to reduce its capital under the Companies Act 1965. A large majority of students did not write correct answers to this part. Many candidates did not possess knowledge of the governing law, namely s.64 Companies Act 1965. Candidates were expected to state that s. 64 allows a company to reduce its capital if three conditions are met, namely, the reduction is (i) authorised by the company's articles, (ii) approved by shareholders by the passing of a special resolution and (iii) confirmed by the court.

Part (b) required candidates to explain whether R, as a creditor, may object to the reduction of capital. This part was not answered well at all and most candidates wrote unclear or irrelevant answers. Candidates were required to explain that as a general rule, the court will not approve a reduction of capital unless every creditor of the company has consented to the reduction. Such consent is required where a company wishes to (i) relieve members wholly or in part on their liability to pay the amount unpaid on their shares or (ii) return any part of the company's capital to members. Where such consent is necessary, the court will settle a list of creditors of the company and every creditor on the list is entitled to object to the reduction. Where a creditor objects, the court will not make an order confirming the reduction of capital unless the creditor's debt has been paid or has been secured by the company providing security. Thus R in this instant scenario may object to the reduction of capital if the reduction fell within (i) or (ii) above.

Conclusion

It must be emphasised that the F4 MYS examination is a very broad-based one and covers a variety of topics. It calls for knowledge and understanding of many legal principles/concepts in business and company law and practical applications of those principles/concepts. It is imperative that candidates study and prepare well for all topics in the syllabus and not concentrate on a few areas only. Equipping themselves with knowledge of all topics will certainly maximise candidates' prospects of success in future examinations.