



Examiner's report

F4 Corporate and Business Law (MYS)

September 2016

General Comments

This report aims to provide feedback on the performance of candidates in the September 2016 F4 MYS examination. It considers 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. 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 majority of the candidates passed Section A with reasonable marks. Section B required short and straightforward answers based on the given scenarios. Generally, a majority of candidates passed Section B with satisfactory marks. 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.

Comments on Section A performance

Questions in this Section come from all sections of the syllabus. Needless to say, candidates can only perform well in this part if they had prepared and revised across the syllabus in its entirety. As mentioned above, a majority of students passed Section A with reasonable marks. This suggests that the majority of students had prepared adequately for the examination.

Syllabus areas/topics on which candidates performed very well included on hierarchy of the court structure, sources of law, distinguishing between a contract of service from a contract for services, remedies for unfair dismissal, types of companies, qualification of directors, rules on creation of an agency and rights of employees under the Employment Act 1955.

Syllabus areas/topics on which candidates performed inadequately included requirements to establish a misrepresentation in contracts, principles relating to limited liability partnerships, equitable remedies in contract, registration of company charges, functions of a receiver and principles relating to a compulsory winding-up.

Sample question for discussion

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

Question 6

In relation to a limited liability partnership, what is the MAXIMUM number of partners in a limited liability partnership?

- A. 20
- B. 50
- C. No limit

The correct answer is C. A majority of candidates gave A as the answer. This indicates that many candidates are unaware of the maximum number of partners in a limited liability partnership. Many candidates may have confused a limited liability partnership with a conventional partnership where the maximum number of partners is 20 (unless the partnership is formed for the purpose of carrying on a profession prescribed by the Minister charged with the responsibility of companies). Candidates are expected to know that under the Limited Liability Partnership Act 2012, there must be a minimum of 2 partners and there is no limit for maximum number of partners.

Question 43

In the context of a compulsory winding up, when is a company deemed to be unable to pay its debts?

1. If a creditor to whom the company owes more than RM500 has served on the company a written demand and the company has failed for 3 weeks thereafter to pay the debt
 2. If a creditor has obtained from the court an execution against the company and this has not been satisfied by the company
 3. If the directors of the company sign a declaration stating that the company is unable to pay its debts
- A. 1 and 3 only
 - B. 1 and 2 only
 - C. 2 and 3 only
 - D. 1, 2 and 3

The correct answer is B. A very small number of candidates answered this question correctly and most gave a variety of incorrect answers. This shows that candidates are not well-versed with the statutory provision as to when a company is deemed to be unable to pay its debts. The relevant provision here is s. 218(2) Companies Act, 1965. The section states,

Definition of inability to pay debts

(2) A company shall be deemed to be unable to pay its debts if—

(a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding RM500 then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the court shall take into account the contingent and prospective liabilities of the company.

As can be seen from above, there is no requirement for directors to sign a declaration that the company is unable to pay its debts.

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 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. Generally the questions in this Section were satisfactorily answered. However, there is much room for improvement. A sizeable majority of candidates did not perform well and it was clear that they did not have the requisite knowledge and understanding of some of the topics asked in the examination.

A question in Section B in which many candidates performed inadequately was Question 3. The question concerned the payment of cash dividends by a company. Part (a) of the question required candidates to discuss whether or not dividends may be paid out of the company's capital. A large number of candidates were unable to explain that under the Companies Act 1965, dividends can only be paid out of the *profits* of the company (s. 365(1)). Furthermore, the profits must exist at the time fixed for payment of the dividends (on the facts of this question, there were no profits). A sound answer should also point out that dividends which are paid other than out of profits will involve a reduction of capital, which is not allowed unless it complies with s. 64 Companies Act 1965. Part (b) of the question required the candidates to explain whether any consequences may ensue under the Companies Act 1965, if directors paid the dividends out of capital. Most candidates failed to point out that under s.365(2) Companies Act 1965, a director of a company who willfully pays or permits to be paid a dividend in contravention of s. 365(1) is guilty of an offence. Candidates were also expected to know that the director concerned is personally liable to the creditors for the company's debt to the extent by which the dividends exceed the profit and that amount may be recovered by the creditors or the liquidator suing on behalf of the creditors (s. 365(2)).

Another question in Section B in which many candidates struggled was Question 5. The question dealt with the law of partnerships. The question presented a scenario where R owed a debt to N. N agreed to take one quarter share in R's business and to receive 25% of the business' net profits until the debt was settled. N was not responsible for any losses of the business and did not take part in management of the business. Part (a) was a "knowledge" question and required candidates to state the elements of a conventional partnership. Part (b) required candidates to explain whether a partnership relationship existed between R and N.

For part (a), candidates were expected to explain the basic and fundamental definition of a partnership namely, that it is "the relation which subsists between persons carrying on business in common with a view of profit" (s. 3 Partnership Act 1961). A sizeable number of candidates failed to do this and wrote irrelevant answers. Part (b) also was not answered well and it was clear that many candidates did not have knowledge of the legal rules to determine whether or not a

partnership exists. Many candidates answered that there was a partnership relationship between R and N simply because N received profits of the business. Some candidates answered (incorrectly) that N was a sleeping partner. Candidates were required to explain that the receipt by a person of a share of the profits of business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business (s. 4(c) Partnership Act 1961). Additionally, by section 4(c)(i), the receipt by a person of a debt or other liquidated amount out of the accruing profits of a business does not of itself make him a partner in the business. A small minority of candidates were able to answer this question correctly.

Conclusion

It must be emphasized that the F4 MYS examination is a very broad-based one. It calls for knowledge and understanding of many legal principles, concepts and practical applications in business and company law. 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.