Examiner's report

F4 Corporate and Business Law (MLA)
December 2014

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the December 2014 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 examination introduced a new format through which candidates were asked to answer 45 questions, worth 1 or 2 marks each, and 5 further questions worth 6 marks each in 2 hours. All questions were compulsory. The questions in Section A were multiple-choice questions (MCQs) and were objective in that the correct answers had to be selected in order to earn marks. It was not possible to award marks when candidates offered more than one answer. The questions in Section B were divided into tri-partite questions with each part of the question having 2 marks. As opposed to Section A, the questions in Section B were scenarios. The overall standard of answers was reasonable, suggesting that the majority of candidates had prepared well for the examination.

From an analysis of the answers given, the majority of candidates adopted sound time management skills, attempting all the 45 questions in Section A and very few not attempting the 5 questions from Section B or parts thereof. It is to be noted however that a number of candidates failed to provide sufficient detail in their answers to the questions in Section B, many of which provided a single line answer. Answers to questions from Section B had to be brief, given the 2 mark allocation, to each part of the question but clearly meriting a few sentences for each answer. Candidates were expected to not simply give a negative or affirmative reply but to give a reason for their answers.

Syllabus topics on which candidates performed very well included human rights, regulation of the accountancy profession, employment, partnerships, powers of directors and the role of the company secretary. Syllabus topics on which candidates performed inadequately related to the dissolution procedure of companies and the prevention of market abuse regulation.

The report will begin with some general brief comments on the overall performance of candidates in this session before going on to look at the questions in the paper in detail. One notes that both positive and negative aspects of performance are given so as to enable candidates to learn from past performance.

Some general indications of best practice to follow:

- candidates must be well prepared for the exam - on all topics and not on what they consider the 'most important' and this in particular with the increased number of questions which are all compulsory and therefore candidates require knowledge a full overview of the subject areas;
- candidates need to manage their time effectively given that the paper has so many questions which should all be attempted;
- candidates must read carefully understand the requirements of each question, in particular each distractor in the Section A questions;

- keep in mind that the marks that the examiner allocates to each part of the question is indicative of the detail which candidates are required to go into;
- provide concise and complete answers;
- candidates should indicate the question number in the paper on each page of the respective answer;
- start each question on a new page.

Specific Comments

The report shall focus on some questions were candidates experienced particular difficulty.

Section A

Question 9

The Companies Act, 1995 stipulates those cases where the courts shall dissolve a company.
Which of the following is NOT a case where the courts must dissolve a company?

A The number of shareholders is reduced to less than two and remains so for more than six months
B The court is of the opinion that there are grounds of sufficient gravity to warrant dissolution
C The company is unable to pay its debts
D The number of directors is reduced below the prescribed minimum and remains so for more than six months

The correct answer is C. Only 23% of the candidates selected the correct answer.

In terms of article 214 of the Companies Act 1995, a company shall be dissolved and consequently wound up either if (a) the company has by extraordinary resolution resolved that the company be dissolved and consequently wound up by the court; or if (b) the company has by extraordinary resolution resolved that the company be dissolved and consequently wound up voluntarily.

In addition, the law mentions those instances where a company may be or shall be dissolved and wound up by the Court. A company may be dissolved and wound up by the court if (a) the business of a company is suspended for an uninterrupted period of 24 months; or (b) the company is unable to pay its debts. A company shall be deemed to be unable to pay its debts (a) if a debt due by the company has remained unsatisfied in whole or in part after 24 weeks from the enforcement of an executive title against the company by any of the executive acts specified in article 273 of the Code of Organisation and Civil Procedure; or (b) if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.

In addition, a company shall be dissolved and wound up by the court if (i) the number of members of the company is reduced to below two and remains so reduced for more than six months, other than in the case of a single member company; (ii) the number of directors is reduced to below the minimum and remains so reduced for more than six months; (iii) the court is of the opinion that there are grounds of sufficient gravity to warrant the dissolution and consequent winding up of the company; (iv) when the period, if any, fixed for the duration of the company by the memorandum or articles expires, or the event occurs, if any, on the occurrence of which the

memorandum or articles provide that the company is to be wound up, and the company in a general meeting has not before such expiry or event passed a resolution to be wound up voluntarily. Therefore, as can be noted in the event that a company be unable to pay its debts it can be wound up by the court, but not necessarily so.

Question 12

In terms of the Prevention of Financial Markets Abuse Act, 2005, what is 'inside information'?

A Information which has not been published
B Information which is only known to the officers of the company
C Information which has not been divulged to the media
D Information which is not in the public domain

The correct answer is D.

In terms of Article 2(1) of the Prevention of Financial Markets Abuse Act 2005 'inside information' is defined as 'information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, including information regarding any takeover offer for a company, and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments; being information which a reasonable investor would be likely to use as part of the basis of his investment decisions.', in relation to securities of such company, is prohibited from using that inside information in the trade of those financial instruments on a recognised stock exchange. When candidates are faced with MCQs it is imperative that the distractors are read carefully and candidates understand the exact significance of each in order to difference between each of them. Clearly this is one such case.

Question 18
Which of the following is NOT a maxim of doctrinal interpretation of Maltese law?

A All the clauses of a contract shall be interpreted with reference to one another
B When a clause is susceptible of two meanings, it must be construed in the meaning in which it can have some effect
C The existence of defects in law is presumed
D Exceptions should not be presumed unless clearly stated or implied in the law

The correct answer is C.

Interpretation is said to be either doctrinal or authentic. Authentic interpretation is made in the law itself while doctrinal interpretation is that which is made by the judiciary, lawyers, text book writers and the like. Doctrinal interpretation refers to the search for the spirit of the law through its provisions and hence through an in-depth understanding of the provisions. There are several traditional maxims on doctrinal interpretation which are reflected in the provisions of the Civil Code and three of these are mentioned in distractors A, B and D. Answer C is that a further maxim provides that the existence of defects in law is not presumed and the interpretation which must be selected is that which does not contain any defects.

Section B

Question One

Question one was a tri-partite question dealing with employment law. Part (a) referred to the procedure to be followed by an employee to terminate his employment while part (b) and (c) referred to termination of employment on the grounds of redundancy. Replies to part (a) had to refer to the possibility that John terminate his employment at will by giving the required notice. Many the candidates did not refer to the correct notice period. Reference in the other parts of the questions had to be made to redundancy and the last in first out rule which employers have to apply. Most candidates mentioned this rule as well as the procedure that must be followed in terminating employment, namely that on receiving notice, the employee may choose either to continue performing work until the period of notice expires or, at any time during the currency of the period of notice, of requiring the employer to pay him a sum equal to half the wages which would be payable in respect of the unexpired period of notice.

Question Two

Question two was a tri-partite question dealing with the duties of directors and the offences of wrongful and fraudulent trading. From the facts given, Michael continued to trade through the company and incurs debts knowing full well that the company would not be able to satisfy and pay its debts. Therefore, if in the course of winding up, it appears that any business of the company has been carried on with the intent to defraud creditors of the company or any other person or for any fraudulent purpose, the court may declare that any persons who were knowingly parties to the carrying on of the business, hence Michael in this case, can be held liable for fraudulent trading. Most candidates gave a satisfactory answer to this part of the question. Likewise answers to the other two parts of the question were satisfactory with some candidates not being very specific about the punishment laid down at law in the case of fraudulent trading.

Question Three

This question was also a tri-partite question. Part (a) dealt with the procedure to alter shareholder class rights. The vast majority of candidates explained the procedure to be followed in order to vary the class shareholder rights. Part (b) dealt with the subscription of ordinary shares by a shareholder of a limited liability company and the part (c) dealt with the possibility or otherwise of a director taking a loan from a company. A significant number of candidates did not provide clear answers to parts (b) and (c) of the question and explain that there is nothing at law which stipulates that all shareholders must subscribe to ordinary shares. At law, a private limited liability company which is not a single member company must have a minimum of two shareholders. Therefore, the company may have three shareholders and each may subscribe to a different number of shares and to a different class of shares having varying rights. What is essential is that the company has ordinary shares which is the case under consideration. With respect to part (c) while as a general rule, a company is prohibited from making a loan to any person who is its director or a director of its parent company such prohibition shall not apply in the following cases: namely (i) to anything done, with the approval of the company given at a general meeting, to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by them for the purposes of the company or for the purpose of enabling them to properly perform their duties as an officer of the company; or (ii) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the

ordinary course of that business. However, private exempt companies are not subject to such prohibition and loans may freely be given to directors provided that this in no way violates any of the other provisions at law. Therefore Simon may obtain a loan from the company.

Question Four

Question Four dealt with the duties of directors. Part (a) dealt with the general notion of how directors must exercise their duties. Most candidates referred to the statutory provisions that directors shall be obliged to exercise the degree of care, diligence and skill which would be exercised by a reasonably diligent person having the knowledge, skill and experience which may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company, and the knowledge, skill and experience which the director has. Part (b) dealt with the rights which an identified director had in exercising his powers as a director while the last part dealt with the possibility or otherwise of a founding director resigning from his post. With respect to part (b), candidates were expected to refer to the provisions on conflict of interest and the obligations which directors must undertake to ensure that situations of conflict are not created. Most candidates answered the last part of the question satisfactorily, albeit some gave a yes or no answer without giving reasons for their answer.

Question Five

This question dealt with contracts and their validity. Part (a) dealt with the requirement of capacity and whether a contract entered into by a minor could be deemed invalid. The law provides that if a person is between the age of 9 and 14 years, any contract entered into by such person is only valid in so far as it relates to obligations entered into by the other person in their favour. The obligations undertaken by the child are null. The minor can institute an action in court to rescind the contract if it has been executed, whereas if they are called upon to perform, they can plead the legal exception of minority. The other contracting parties cannot take these courses of action. Therefore, should David institute a case against Stephen for payment of the price agreed upon for the phone, Stephen can claim nullity of the contract on the basis of minority. Most candidates reached this conclusion and gave reasons for their answer. Part (b) required candidates to identify whether a minor could open a bank account and part (c) whether the same minor could dispose of shares in a company. With respect to these two parts of the question, a number of candidates failed to give reasons for their answers, which, as stated above, is required to score better marks.