

# Examiner's report

F4 Corporate and Business Law (SGP)

December 2013



## General Comments

The examination consisted of ten compulsory questions. Questions 1 to 7 are knowledge based while Questions 8 to 10 require application of law to the facts.

Most candidates attempted all ten questions. Questions 3(a), 4(a), 6(b) and 8 were the most inadequately answered questions. Questions 2 and 5 were the best answered questions.

Excellent answers were presented by some for all ten questions and very high marks were achieved by these candidates. The performance of candidates overall was similar with the previous year's. A fair number of candidates appear to be unprepared for the examination.

Other than lack of preparation for the examination, some candidates performed inadequately because they failed to carefully read the content and requirements of questions. This may have contributed to the inadequate performance on some descriptive questions. With regards questions 8 to 10 which require application of law to the facts, some candidates who performed inadequately merely regurgitated principles they learnt but did not apply them to the facts.

A number of common issues arose in the candidates' answers:

- Failing to read the question requirement clearly and therefore providing irrelevant answers which scored few if any marks.
- Inadequate time management between questions, some candidates wrote far too much for some questions and this put them under time pressure to finish remaining questions.
- Inadequate layout of answers.

## Specific Comments

### Question One

Many candidates scored well for Question 1(a). Some candidates lost marks as they left out the need for Presidential assent or that the Act has to be finally published in the Singapore Government Gazette before it becomes law. Question 1(b) was not as well answered. Some candidates did correctly refer to common law and the concept of stare decisis. However, many candidates discussed how common law historically came about in England and how it differed from equity.

### Question Two

Question 2 was answered well by many. Most candidates did not have a difficulty in giving a comprehensive discussion of conditions, warranties and innominate terms.

### Question Three

Only a minority of candidates gave an acceptable answer for Question 3(a). Most candidates missed the point that the memorandum and articles of association constitute a contract between the company and its members and among the members inter se. They did not focus on the legal effects of the memorandum and articles, but on what the memorandum and articles could contain. For Question 3(b), many candidates knew that the memorandum and articles of association could be amended by special resolution. However, few went on to

discuss that this was subject to statutory exceptions such as an entrenching provision (s.26A Companies Act Cap 50) or to the fact that members must vote 'bona fide for the benefit of the company as a whole'.

#### **Question Four**

Question 4(a) was not well attempted by many. Candidates knew that a debenture was connected to a debt or a loan, but they did not realise that a debenture was a document or certificate creating or acknowledging a debt, usually one that was long or medium term. Many also stated that debentures had to be secured by a charge. Others focused on the rights of debenture holders. For Question 4(b), almost all candidates did not discuss company charges generally, but focussed on the differences between fixed and floating charges. Many candidates answered. Question 4(c) reasonably well, mentioning that if the charges listed in s.131 Companies Act Cap 50 were not registered within 30 days of their creation, then they would be void against the liquidator or creditor of the company.

#### **Question Five**

Many candidates managed to give a comprehensive answer to Question 5(a) on annual and extraordinary general meetings. Inadequate answers were simply too short with hardly any content. Question 5(b) on ordinary and special resolutions was again not a difficult question for most. Inadequate answers were again those lacking in content. One problem that was noted in Question 5 was that quite a few candidates thought that special resolutions could only be made during extraordinary general meetings, and that the annual general meeting was for the making of ordinary resolutions.

#### **Question Six**

Question 6 was not answered particularly well by most candidates. For part (a), a significant minority of candidates were aware of what judicial management was. However, Question 6(b) was often not answered or the answer given related to creditors' ranking in the recovery of debt in a company's liquidation. Very few candidates understood what a scheme of arrangement was.

#### **Question Seven**

A small minority of candidates answered this question well, comprehensively referring to the law on insider trading as stated in ss. 218 and 219 Securities and Futures Act Cap 289. Inadequate answers were less comprehensive. However, quite a few answers erroneously confused insider trading with fraudulent trading under ss.340 and 339 Companies Act Cap 50 as well as fraudulent misrepresentation.

#### **Question Eight**

Few candidates managed to give a satisfactory answer for Question 8. They failed to address all the four issues in the question. Most did discuss the postal acceptance exception, but quite a few candidates erroneously concluded that Bill was right in accepting the offer by post. They appear to know about the postal rule but failed to appreciate the circumstances under which the postal rule might not apply e.g. if post was not contemplated by the parties and/or it was unreasonable to use the post. Overall, answers were unsatisfactory.

#### **Question Nine**

A reasonable number of candidates gave a fair answer for Question 9, referring to the law in s.216 and s.254 Companies Act Cap 50. Better answers were more comprehensive. However, a very large number of candidates erroneously discussed derivative actions under s.216A Companies Act Cap 50 and the common law. It was clear that candidates were confused between the two different types of action i.e. a personal action and a derivative action.

**Question Ten**

A fair number of candidates gave a reasonable answer for this question. Sound answers discussed the need for Chan to act with due care, skill and diligence; bona fide in the company's interest and without conflict of interest. Unsatisfactory answers either lacked details or referred to many other directors' duties that are irrelevant to the fact scenario given in Question 10.