



# Examiner's report

## F4 Corporate & Business Law (CYP)

### June 2009

#### **General Comments**

The examination consisted of ten compulsory questions: seven questions which tested candidates' general knowledge of the law, and three problem-based questions which tested candidates' ability to apply the law.

Candidates are advised to attempt all questions.

The overall performance of candidates was average, with most successful candidates achieving scores near the pass mark.

As always, candidates are advised to pay more attention to the wording of the questions, and to focus their answers on tackling the particular issues involved, rather than attempting to reiterate everything they know on the general subject-matter of the question.

Candidates should note that each question should be started on a new page.

#### **Specific Comments**

##### **Question One**

Question 1 was a straightforward question on the legal system of Cyprus. It was surprising to note that many candidates failed to differentiate between the common law and case law of the Supreme Court of Cyprus. The common law, which is the basis of the legal system of the UK, applies in Cyprus pursuant to the provisions of the Courts of Justice Law, provided there is no statutory provision governing the matter and provided there is no conflict with the Constitution. The decisions of the Supreme Court are binding upon lower courts and the Supreme Court itself (subject to the Supreme Court's right to overturn its own decision in exceptional circumstances) pursuant to the application of the doctrine of precedent.

##### **Question Two**

Question 2 required candidates to analyse the main constituent elements of a simple contract i.e. offer, acceptance, consideration, intention to create legal relations. Credit was awarded to candidates who included in their answers other constituent elements of a contract such as capacity, legality, certainty and form. Therefore it was relatively easy for candidates to obtain full marks on this question since this could be achieved by covering the majority (albeit not all) of the constituent elements of a contract.

Some candidates misinterpreted the meaning of the question and instead of explaining the above they gave an outline of the contents of a contract, distinguishing between terms, conditions and warranties. Even though this was incorrect, some credit was awarded to cater for the potential misapprehension of what was required by the question.

##### **Question Three**

This was a straightforward question on agency law, which required candidates to describe the various types of authority that an agent may have. Answers focused on the actual authority (express or implied), ostensible or apparent authority, and agency by ratification. Credit was also awarded for describing agency by necessity which may arise in cases where there is a prior agency relationship between the parties and the agent acts for the benefit of the principal under circumstances in which it is not possible for him to communicate with the principal in advance of the act.

##### **Question Four**

Question 4 required candidates to explain and distinguish between private and public companies. Candidates were expected to mention the attainment of distinct legal personality upon registration of both private and public companies and the limited liability of the shareholders. Moreover, apart from the restrictions contained in the articles of association of private companies (relating to the restriction to transfer shares, limitation of the number

of members to 50, and prohibition of an invitation to the public for the subscription of shares/debentures) there are various other distinctions between public and private companies. By way of example, these include the minimum capital, minimum number of directors and minimum number of shareholders of public companies. Candidates were awarded credit for correctly identifying distinctions between private and public companies even if these were not mentioned in the model answers (e.g. public companies are generally prohibited from issuing shares at a discount whereas private companies may do so provided the conditions set out in the relevant provisions of the Companies Law are satisfied).

Quite a few candidates noted that private companies do not need to convene annual general meetings. This is not correct and candidates apparently confused this with the requirement of public companies to convene a statutory meeting in accordance with section 124 of the Companies Law, which does not apply to private companies.

Candidates should note that even though pre-emption rights of existing shareholders are usually included in the articles of association of private companies, the requirement under the Companies Law for having restrictions on the right to transfer shares in private companies is open-ended and any kind of restrictions may be provided for in the articles of association.

#### **Question Five**

Question 5 was divided into two parts. Part (a) required candidates to analyse the provisions of the Companies Law relating to financial assistance and part (b) required candidates to explain whether companies could make loans to their directors or to directors of their holding company. In other words the two parts of question 5 related to the provisions of sections 53 and 182 of the Companies Law respectively. Although there have recently been amendments to the relevant provisions of the Law relating to financial assistance, section 53 provided, at the relevant time of the examination, that there was a general prohibition on companies from making loans to their directors or to directors of their holding company. The exceptions to the general prohibition relate to (i) companies providing loans in the ordinary course of their business where the lending of money is part of their ordinary business, (ii) provision of money for the purchase or subscription of shares in the company or its holding company for the benefit of employees including directors; and (iii) making of loans to employees other than directors to enable them to purchase or subscribe for fully paid shares in the company or its holding for their benefit.

A common error in part (a) was to discuss the issue whether a company can purchase its own shares rather than whether it can provide financial assistance for the acquisition of its own shares. However given that these issues are closely related, some credit was awarded to candidates who correctly identified when a company can purchase its own shares.

In relation to part (b) of the question, it was satisfactory to note that most candidates were familiar with the provisions of the Law relating to the provision of loans to directors of the company or its holding company.

#### **Question Six**

Question 6 was divided into two parts with the first part focusing on registration of charges and the second part focusing on the issuing of shares at a discount.

A common mistake in part (a) was to explain the differences between fixed and floating charges with no reference or connection with the requirements or procedure for registration of charges in accordance with the question.

Part (b) was generally answered in a satisfactory manner.

### **Question Seven**

Answers to question 7 were generally inadequate. Nevertheless there were quite a few candidates who achieved full marks on this question. The concept of fraudulent trading is governed by section 311 of the Companies Law.

A common error was to describe the rules and regulations relating to money laundering and/or insider dealing. However the question specifically refers to fraudulent and wrongful trading in the context of the Companies Law.

### **Question Eight**

Question 8 was a problem-based question on employment law and required candidates firstly to identify whether Michael was an employee and thus entitled to the benefits under the Termination of Employment Law or an independent contractor, secondly to identify what those rights were and thirdly to determine which relevant remedies were available to Michael. In particular, the issues of unlawful termination and breach of a fixed term contract were relevant. It is noted that in the case of unlawful dismissal, any amount payable to Michael by way of compensation is over and above any payment made in lieu of notice.

A common error was to assume that the first six months of employment constituted a probation period. However this is not evident unless specified as such in the contract of employment.

It is not necessary or advisable for responses to take the form of a letter addressed to Michael. The aim is to identify the legal issues and to correctly apply the legal principles to the facts of the case.

### **Question Nine**

Question 9 was another problem-based question with part (a) focusing on the distribution of profits as dividends and in particular the ability of the directors to declare interim dividends in case they satisfy themselves that the financial position of the company so warrants. Part (b) of question 9 required candidates to identify the procedure and effect of reducing the share capital by an amount which was stated to be in excess of the needs of the company.

### **Question Ten**

Question 10 was on a subject that is not often examined and in particular the applicable procedure for varying class rights and the possibility of the dissenting minority to apply to the court to have the variation cancelled even though it was agreed by the holders of 75% of the issued shares of that class – this is a measure of protection of the minority in the particular case of variation of class rights pursuant to section 70 of the Companies Law.