Examiners' report

F4 Corporate and Business Law (GLO)
December 2008

It is pleasing to report that the performance of candidates sitting the Global variant did not dip as much it did in relation to those doing the English paper. The single most damaging factor for the performance of the Global candidates, which they shared with those doing the English paper, was the almost total lack of awareness of the existence, let alone the detailed provisions, of the Companies Act 2006. Three of the questions, numbers four, five and six focused on the provisions of that Act in areas where the law had changed significantly. Very few candidates appeared to be aware of the provisions, but perhaps of more concern, a considerable number appeared not even to be aware of the existence of the 2006 Act, repeatedly referring to the provisions of the Companies Act 1985. The really surprising, not to say disappointing thing is that this was the second F4 Global in which the 2006 Act has been the basic legislation. The response to question four was inadequate, given that the examiner had produced an article on that very topic in student accountant. However the difference between those doing the Global variant and those doing the English one was that many of the Global candidates managed to make up for their inadequate performance in the company law questions by a much better performance in the other areas of the syllabus and paper.

What follows will consider the individual questions in turn.

Specific Comments

Question 1
This question required candidates to explain the main sources of law in three systems of law; Common Law, Civil Law and Sharia. On the whole, this question was dealt with well. In relation to the Common Law system most candidates were able to explain the operation of the doctrine of precedent, although a number spent unnecessary time in considering the historical sources of English law. The Civil Law systems were the least well done element in the question. Although most candidates were aware of the centrality of codification, a number confused the Civil law system with civil law as opposed to criminal law within the English system. Part (c) on Sharia law was also well done.

Question 2
This question required candidates to consider Article 34 of the UNCITRAL Model Law on International Commercial Arbitration relating to the circumstances under which a party may have recourse against an arbitration award. It was not done particularly well, with a significant number of candidates simply producing a general essay on the nature of arbitration and a comparison with court systems. It was apparent that some candidates simply did not understand the meaning of the term 'recourse' but as that is the term used in the Article, any failure to understand it merely reveals a lack of knowledge of the Model Law. Such a reading is confirmed by the fact that many candidates dealt with the question well and provided answers based on a closed reading and understanding of Article 34.

Question 3
This question required candidates to explain the circumstances under which a party can avoid a contract under the UN Convention on the International Sale of Goods (CISG) on the grounds of anticipatory breach of contract. Very few candidates tried to use English contract law to answer this question, which suggests that at last the Global variant is taking on a recognised existence in its own right. However, that being said it has also to be recognised that a number of candidates did not actually answer the question as asked, but preferred to interpret in such a way as to allow them to produce the answer on the CISG that they had prepared, whether it was appropriate or not. Once again the best candidates were fully aware of the provisions of the Model Law and in particular Articles 71 and 72.

Question 4
This question required an explanation of the different types of share capital listed together with an explanation of the difference between the nominal value of shares and their market value. Given that the examiner had provided

an article on this very topic, the inadequate performance in this question gives ground for concern. This was the first question that required an understanding of the provision in the Companies Act 2006 and unfortunately the majority of candidates were simply unaware of the changes introduced by that piece of legislation. As a result part (a) was unsatisfactory. Answers also indicated that many candidates still are of the opinion that the memorandum of association is still the most important constitutional document for companies and that it contains the company's 'authorised capital', a concept completely removed by the 2006 Act.

The three other parts of the question were done better, for the simple reason that they did not require any real knowledge of the Companies Act 2006 and any legal regulation required in the answers was not changed by it. On some occasions decent performance in the latter three parts was sufficient to compensate for an inadequate performance in part (a).

Question 5
This question required candidates to explain the meaning of and procedure for the passing of (a) an ordinary and a special resolution and (b) a written resolution. Once again although the terms were continued from the previous companies Act, the 2006 Act made significant changes to them.

As a whole, candidates performed well on part (a) with the majority of candidates identifying that resolutions were decisions by members, usually held by a poll or a show of hands at a meeting (either AGM or GM) and that a simple majority is required for the passing of the ordinary resolution and 75% for a special resolution. Some candidates went further and provided examples of when the two types of resolutions would be used. It has to be noted, however, that a number of candidates thought that such decisions were taken by directors rather than members.

Part (b) relating to written resolutions was inadequately answered. Most candidates worked out from the question that this procedure applied only to private companies, but only a few went on to develop their answers. While some candidates were aware that these resolutions were available when such companies did not hold general meetings, some insisted that they were passed at general meetings. As has been said very few candidates were aware of the changes introduced by the 2006 Companies Act.

Question 6
This question required candidates to explain the duty of directors to promote the success of the company and to whom such a duty is owed. This question required specific reference to section 172 of the Companies Act 2006, but only a small minority of candidates appeared to be aware of that Act let alone the detail of section 172. Very few produced satisfactory answers to this question -They were clearly up to speed on the Companies Act 2006 and exhibited a sound knowledge and understanding of directors' duties and, specifically, the duty to promote the success of the company. The others either used the out of date 1985 Act or relied on a general description of directors' duties.

Question 7
This question was divided into two parts each carrying five marks.
(a)The first part related to 'letters of comfort' and it has to be stated that, on the whole, it was not done nearly as well as the second part. This is probably due to the fact that it is a recent introduction into the syllabus..Those candidates who did not have any real grasp of the topic produced some interesting guesses at what such instruments could be.

(b) This question, on letters of credit, was much more familiar to candidates and correspondingly it was done much better. Indeed many candidates provided extremely, if not over, full answers. Most candidates performed well in this question..

Question 8
This question required candidates to analyse and apply the appropriate law to a scenario involving issues relating to the formation of contracts under the UN Convention on Contracts for the International Sale of Goods. Candidates were required to demonstrate a thorough knowledge of the relevant law together with the ability to analyse the problems contained in the question and apply the law appropriately.

For the main part this question was done well, with candidates' evidence a sound understanding of the distinction between genuine offers and invitations to treat and counter offers. Most candidates were well able to explain that major changes to offers have the consequence of instituting a counter offer rather than an acceptance. This general understanding of the law was usually applied well to the particular situations of the characters in the scenario. However, there was evidence of a rather odd psychology on the part of candidates relating to the application of the law. Candidates seemed to decide that one of the parties *must* have formed a contract and usually they decided that it was the third character Das, even where this conclusion was contrary to their presentation of the law.

A number of candidates approached the question not from the expected offer/invitation to treat/acceptance point of view, but form the perspective of the possibility of Ari withdrawing his application to the various parties. Whilst this was not the expected approach, it was credited, although it could not result in many marks.

Question 9
This question required candidates to examine the law relating to the power of companies to change their articles of association. As the substantive law, either in the statute or case law relating to this area has not been changed this question allowed even those candidates who were unaware of the Companies Act 2006 an opportunity to do well. Unfortunately it was an opportunity taken by many candidates, as the question tended to be done inadequately. As has already been stated in the introduction above, a number of candidates wilfully misinterpreted the question as relating to directors' duties and wasted a lot of time and effort in pursuing that path. The majority of candidates recognised that the issue was about the alteration of articles, and recognised that it required the passing of a special resolution with a 75% majority. However very few were able to explain the tests for deciding whether the alteration could be challenged in court. Even those who were aware of the bona fide '*interest of the company as whole'* test tended not to gone to explain it further, with only a small number considering the situation of the '*hypothetical individual*' member.

As a result although many concluded that the alteration could be challenged in the courts, no legal principle or authority was cited to support that conclusion, or irrelevant law relating to directors or indeed partnerships was cited. The final point to mention is that candidates were credited with marks, even if they reached a different conclusion from that suggested in the model answer, just as long as they used the appropriate legal authorities to support their decision.

Question 10
This question required candidates to consider key issues relating to the powers, authority and liability of partners. Candidates were required to exhibit a thorough knowledge of partnership law together with the ability to analyse the problems contained in the question and apply the law accurately. While there were many decent answers to the question, with candidates demonstrating a reasonable understanding of partnership law, once again it has to be said that some candidates simply did not recognise the issues involved in the problem scenario. As has been said a small number of candidates appeared to take the fact that the business of the partnership was limited to the sale of petrol as an indication that it was a limited partnership and produced answers explaining that business form. Others presented general answers on the different possible partnership forms without making any real attempt to deal with the question, a clear indication that they prepared an answer and were going to reproduce it whether it was relevant or not.