

# Examiner's report

## F4 Corporate and Business Law (MLA)

June 2011



### General Comments

The examination paper consisted of ten compulsory questions, all of which had 10 marks each. There were only very few candidates who did not attempt all the questions, and in most cases candidates left one or a part of a question out. This does not appear to have been due to time pressure but due to lack of knowledge of the subject-matter posed in the relative questions. From the answers given the majority of candidates allocated the same amount of time to answering each question as in the majority of cases appropriate detail was given and the length of the answers given were commensurate to the mark allocation of each part of the question.

From the answers given one could note that candidates did read the questions and identify the requirements of each part of the question given. There were only few instances and in particular with reference to questions 1 and 2 where candidates could have given more direct answers.

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 performers and performance.

In this session there were few high performers and in the majority candidates obtained average marks close to the pass mark. As stated in previous sessions, this is evidence that with a little more effort better marks can be achieved. The principal reason for the under performance of candidates is lack of adequate preparation for the examination with many answers not having sufficient detail to be afforded higher marks.

Some general indications of good practice to follow:

- candidates must be well prepared for the exam - on all topics and not on what they consider the 'most important';
- candidates need to manage their time effectively;
- candidates must read carefully and understand the requirements of each question;
- 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 reply;
- start each question on a new page;
- general essay answer format should not be used for problem questions as these will contain little information relating to the specific issues raised in the problem question.

### Specific Comments

#### Question One

The question dealt with the two principal sources of Maltese law, namely the primary and secondary sources. Candidates were expected to identify the main sources of law, where one can distinguish between primary legislation and secondary legislation. Primary legislation refers to laws enacted by Parliament. Secondary legislation is also referred to as subsidiary or delegated legislation. Secondary legislation in Malta takes the form of Legal Notices. Bye-laws and statutory instruments are often also deemed to be a form of subsidiary legislation.

All candidates attempted this question. Most candidates gave satisfactory answers with many going into great detail and giving a thorough explanation of the sources of Maltese law.

### **Question Two**

This question was divided into two parts with the first part referring to an essential requisite for a valid contract and the other part dealing with breach of contract. The vast majority of candidates attempted this question. The first part referred to an essential requisite for a valid contract, namely its subject matter, without which a valid contract will not be concluded. With regards to this part of the question, many candidates went into extra detail and explained all the essential requisites to a contract rather than directing their replies to the question posed. Nonetheless answers given were satisfactory.

The answers given on the second part of the question were not of the same level as those for the first part of the question. Often candidates failed to explain what the statutory consequences for breach of contract are in terms of Maltese law.

### **Question Three**

The question dealt with employment law and specifically to an employee's right to information in the event that no contract of employment is entered into on commencement of employment. All candidates attempted this question. Candidates were expected to make reference to the provisions of the Legal Notice 431 of 2002 entitled Information to Employees Regulations, 2002 issued under the Employment and Industrial Relations Act 2002.

Most candidates gave satisfactory answers and listed the terms and conditions which must be included in the statement given by the employer to the employee in lieu of a contract of employment.

### **Question Four**

This question dealt with a principle of company law, namely the concept of the separate legal personality of a company and the instances in which the courts may lift the corporate veil. The vast majority of candidates answered this question. Several gave detailed answers listing those instances and also explaining in each case when the courts will intervene and what action shall be taken to remedy the situation.

### **Question Five**

This question was divided into two parts, with the first part dealing with the contents of a partnership deed and the second part with the procedure to be followed to effect changes to the said partnership deed.

Most answers given in respect of the first part of the question were satisfactory with the majority of candidates listing all that must be included in a partnership deed. More marks would have been awarded if a brief explanation of each requirement would have been given. Answers to the second part of the question were not as accurate with only a few candidates making references to the procedure stipulated at law to be followed where particular changes are to be made.



### **Question Six**

The question refers to the issued share capital of a limited liability company. In terms of law, the capital may be increased or reduced. An increase in capital may be in cash or in kind. The question refers to the latter and candidates were required to detail the procedure which must be followed in order to increase the share capital for a consideration in kind. Candidates would have been awarded higher marks had they focused on the question being posed and directed their answers to an increase in capital for a consideration other than in cash.

### **Question Seven**

This question dealt with decisions taken by the shareholders of a limited liability company. Decisions of shareholders are either classified as extra-ordinary resolutions or ordinary resolutions. Candidates were expected to refer to the relative provisions of the Companies Act, which clearly indicate the percentages required in order for an ordinary and extra-ordinary resolution to be passed.

All candidates answered this question and the vast majority gave precise and detailed answers.

### **Question Eight**

This question is divided into two parts, both dealing with company law. The first part of the question dealt specifically with the two principal offences for which directors can be held liable in the case where the company continues to trade when in financial difficulties and such company is subsequently dissolved, namely fraudulent and wrongful trading. The main differing feature between the two offences is the intention to defraud, which must be found to exist in order to hold a person liable for fraudulent trading.

While in the case of fraudulent trading an application can be made by the official receiver, the liquidator or any creditor or contributory of the company, in the case of wrongful trading action can only be taken by the liquidator. Therefore, candidates were expected to provide that action on the basis of the provisions of fraudulent and wrongful trading against the directors of Sparks Limited could be taken once the court upheld the application to dissolve the company for inability to pay its debts.

The second part of the question dealt with the statutory provisions which deal with offences antecedent with the winding up of a company and the extent of liability of the directors of Sparks Limited.

Many candidates gave satisfactory answers to both parts of the question.

### **Question Nine**

This question dealt with the fiduciary duties of directors. Directors must act honestly and in good faith in the best interests of the company. Thus, they must not place themselves in a position in which their personal interests conflict with those of the company. To avoid such conflicts from arising, the law provides for measures of disclosure. An important fiduciary duty, which is statutorily imposed on directors, is that they must not create conflict between the duties they owe to the company and their personal interests and those they owe to others. To avoid such situations arising, the law provides for measures of disclosure. One of the most obvious examples of a situation which might be expected to give rise to a conflict between a director's interests and his duties is where he carries on, or is associated with, a business competing with that of the company as in the given facts. Article 143 Companies Act is precisely geared towards such undesirable situation. Thus, a director may not, in competition with the company and without the approval of the same company given in a general meeting, carry



on business for his own account or on account of others, nor may he be a partner with unlimited liability in another partnership or a director of a company which is in competition with that company. This is the provision which candidates were expected to refer to and many did so refer.

### **Question Ten**

This last question was again divided into two parts with five marks being allocated to each part. The question dealt with the provisions of the law on money laundering.

With respect to the first part of the question candidates had to analyse the facts given to determine whether Mark could be held so liable. Most candidates answering this part of the question did provide sufficient detail and analysis.

The second part of the question required candidates to outline the principal obligations of subject persons as defined under the relative law. However, while many candidates did explain which persons would fall under the definition of a 'subject person', many failed to go into sufficient detail on the said obligations.