

EXAMINABLE DOCUMENTS JUNE 2009 AND DECEMBER 2009

PAPER F4 CORPORATE AND BUSINESS LAW

Knowledge of new examinable regulations and legislation issued by 30th September will be examinable in examination sessions being held in the following calendar year. Documents may be examinable even if the effective date is in the future. This means that all regulations and legislation issued by 30th September 2008 will be examinable in the June and December 2009 examinations.

The study guide offers more detailed guidance on the depth and level at which the examinable documents will be examined. The study guide should be read in conjunction with the examinable documents list.

Note on Case Law

Candidates should support their answers with analysis referring to cases or examples. There is no need to detail the facts of the case. Remember, it is the point of law that the case establishes that is important, although knowing the facts of cases can be helpful as sometimes questions include scenarios based on well-known cases.

PAPER F4 (ENG) AND PAPER F4 (SCT)

English Legal System

Knowledge of the Human Rights Act 1998 and the Constitutional Reform Act 2005 is required.

The Law of Obligations

Knowledge of the Unfair Contract Terms Act 1977, the Unfair Terms in Consumer Contracts Regulations 1999, and the Contracts (Rights of Third Parties) Act 1999 is required.

Employment Law

Knowledge of the Employment Rights Act 1996 and the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 is required.

Partnership Law

Knowledge will be required of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000, and the Civil Liability Act 1978.

Company Law

Knowledge of the Companies Act 2006 is required. Knowledge is also required of the Business Names Act 1985, the Company Directors Disqualification Act 1986, the Insolvency Act 1986, and the Financial Services and Markets Act 2000.

Governance and Ethical Issues

Knowledge of the Combined Code on Corporate Governance is required.

Knowledge of the Criminal Justice Act 1993 in relation to insider dealing, and the Proceeds of Crime Act 2002, the Prevention of Terrorism Act 2005 and the Money Laundering Regulations 2007 in relation to money laundering, is required.

PAPER F4 CHN

These exam notes are intended to give students a more detailed guideline to study the three recently adopted laws, namely the Property Law, the Labour Contract Law and the Law of Enterprises Bankruptcy. As these laws introduce many new rules and legal terms, students are recommended to be familiarised themselves with the new rules and the relevant legal terms. The exam notes are divided into two Sections: Section 1 lists the important legal terms used in these laws; Section 2 provides the major contents of these laws.

1. Students are encouraged to grasp the meaning of the following legal terms in relation to the above-mentioned laws:

In relation to the Property Law

Registration of Immovables; Expropriation; Divided Co-ownership Interest in Buildings; Neighbouring Right; Co-ownership; Joint Tenancy; Tenancy in Common; Assignee in Good Faith; Unauthorised Assignor; Lost Property; Natural Fruits and Legal (or Statutory) Fruits; Usufruct Rights; Right to the Use of Construction Land; Right to Use of Homestead; Easement; Security Interest; Collateral; Personal Guarantee; Mortgagor and Mortgagee; Maximum Amount Mortgage; Pledge of movables; Pledge of Rights; Pledgor and Pledgee; Lien.

In relation to the Labour Contract Law

Open-ended (Non-fixed Term) Labour Contract; Fix-term Contract for the Completion of Certain Work Assignment; Probation Period; Severance Payment; Trade Union; Placement.

In relation to the Law of Enterprises Bankruptcy

Bankruptcy Liquidation; Bankruptcy Administrator; Debtor's Assets; Bankruptcy Expenses; Community Liabilities; Joint and Several Debtor; Creditors Meeting; Creditors' Committee; Inventory; Rectification; Period of Rectification; Rectification Plan; Compromise; Conversion; Insolvent Assets; Conversion of Insolvent Assets; Distribution of Insolvent Assets.

2. In preparing for the examination, students are encouraged to understand clearly the following rules and relevant legal relations:

In relation to the Property Law

- ◆ The coverage of the property rights: ownership rights, rights to profit and security interests
- ◆ The four kinds of rights a property owner shall have: right to possess property, right to use property, right to receipt of proceeds from property, right to dispose of property
- ◆ The legal effect of immovables registration on the transactions: creation, modification, assignment and termination of rights in immovables taking effect when such rights are recorded in registration authority
- ◆ The time of taking effect for the creation, modification, assignment and termination of rights in movables, as well as the legal effect of registration in movables
- ◆ The pre-conditions for the state to expropriate the properties (collective-owned land, buildings and other immovables) owned by entities or individuals
- ◆ The meaning of the divided co-ownership in buildings by owners and its coverage: roads, parking lots and garages, green areas, common facilities and other public places

- ◆ The ways of use and dispose of the divided co-ownership in buildings, as well as the legal remedies for the owners to deal with the acts violating their property rights
- ◆ The owners' rights with respect to the building and its affiliated facilities
- ◆ The ways to disposal and assignment of the co-owned property and the ways to be borne with respect to the management costs
- ◆ The conditions for a person to acquire the property in good faith and the ways to deal with a lost property
- ◆ The differences between the usufruct right and ownership
- ◆ The restrictions for a usufruct holder in excising usufruct right and the restrictions for an owner of property to grant others the usufruct right
- ◆ The creation of the right to the use of construction land and the various forms of the creation
- ◆ The disposal (such as assignment, exchange, contribution, donation and mortgage) of the right to the use of construction land and the registration requirement
- ◆ The legal liability of the party causing the invalidity of the security contract
- ◆ The coverage of the security interest and the extinguishment of the property rights for security
- ◆ The conditions required for the mortgagee to excise mortgage right and the time limitation for the mortgagee to excise such right
- ◆ The creation of mortgage right and the legal effect of the registration of mortgage right
- ◆ The assignment of mortgage right and the transfer of the property mortgaged
- ◆ The creation of pledge right and the conditions for the effectiveness of pledge right
- ◆ The duty of the pledgee to take care of the property pledged and the exercise of the pledge right
- ◆ The conditions for the pledge to transfer the pledge and the liability for unlawful transfer
- ◆ The major differences between mortgage and pledge.

In relation to the Labour Contract Law

- ◆ The circumstances under which a non-fixed term employment contract (labour contract) must be concluded by an employer and employees
- ◆ The establishment of the employment and legal consequence for without a written employment contract between an employer and employees
- ◆ The fixed-term contract for the completion of certain work assignment and the duration of such a contract
- ◆ The rules of the probation period in an employment contract
- ◆ The non-competition restriction or confidentiality obligation by employees and the statutory compensation by the employer
- ◆ The conditions for an employee to terminate an employment under the various circumstances
- ◆ The functions and duties of the labour administration at the county level or above.

In relation to the Enterprise Bankruptcy Law

- ◆ The parties entitled to file a bankruptcy application with the court: creditors, the persons in charge of enterprise liquidation and the debtor being unable to settle the debts due
- ◆ The time limitation for the court to accept the bankruptcy application and the time limitation of the service of the court order
- ◆ The rules dealing with and preserving the assets of bankrupt enterprise upon the acceptance of a bankruptcy application by the court, as well as the ways to deal with the contracts concluded before the acceptance of a bankruptcy application
- ◆ The rules as to the pending litigation or arbitration proceedings upon the acceptance of a bankruptcy application by the court and the exclusive jurisdiction of the court accepting the bankruptcy application
- ◆ The debtor's assets and the various measures to be taken by a bankruptcy administrator in the situation where the debtor dealt with assets in a way against the law and damaging the interests of creditors
- ◆ The coverage of bankruptcy expenses and community liabilities, as well as their order of settlement in the process of liquidation

- ◆ The creditor's right and the declaration of the creditor's right, especially the rules as to the declaration of the joint and several creditors
- ◆ The application of bankruptcy compromise and the approval of the compromise agreement, as well as the legal effect of the compromise agreement upon the guarantor of its debtor and other joint and several debtors.

On 27 October 2005, the Standing Committee of the Tenth National People's Congress of the People's Republic of China adopted the revised Company Law and the revised Securities Law. They are examinable legislation. The English versions of these two laws are on the ACCA website at http://www.accaglobal.com/students/study_exams/qualifications/acca_choose/acca/fundamentals/cl/docs/.

It should be noted that several substantive revisions have taken place and several substantive rules have been established in these two laws. Beside other provisions, the examiner requests that candidates pay more attention to the following points and understand the differences between the revised Company Law and Securities Law and their previous versions.

In relation to the Company Law

- the one- person limited liability company and its major differences compared with the common limited liability company.
- the conditions to be met for the incorporation of a limited liability company, in particular that the shareholders can make their capital contributions by instalments after the incorporation of the company.
- the definitions of the senior executives of a company, the holding shareholders, actual controllers and their special fiduciary duties toward a company, and the special fiduciary duties of the directors, supervisors of a company.
- the shareholder's right to bring a law suit, in his or her own name, for the interests of the company and the conditions for such action.
- the elimination of the restriction on the investment by a company (Under the previous version a company was allowed to reinvest to other companies

subject to a restriction of maximum 50% of its net assets.).

- the special provisions on the organizational structure of a listed company.

In relation to the Securities Law

- the definition of public offering of the securities.
- the conditions of a company to issue corporate bonds and the special conditions for a listed company to issue corporate bonds.
- the sponsorship system in public offering of securities, the qualifications for a sponsor and his or her duties.
- the conditions to be satisfied for the establishment of a securities company, especially the minimum registered capital requirements for a securities company engaging in certain kinds of transactions.
- the conditions to be satisfied for a joint stock limited company to have its shares listed.
- the responsibility of the directors, supervisors, senior executives, sponsor and the underwriting securities company for the truthfulness, accuracy and completeness of the information and their joint and several liabilities for the losses of investors.

PAPER F4 CYP

Cypriot Legal System

General knowledge of the Constitution is required. General familiarity with other Cyprus legislation relating to the legal system, for example, the European Convention of Human Rights and Protocols as ratified and adopted with Law 39/62, the Courts of Justice Law 14/60, and the Administration of Justice (Miscellaneous Provisions) Law 33/64 is also required.

The Law of Obligations

Knowledge of the Contract Law, Cap. 149 is required. General knowledge of the Civil Wrongs Law, Cap. 148 is also required (tort of negligence).

Employment Law

Knowledge of the Termination of Employment Law 24/67 is required.

Agency and Partnership

Knowledge of the Contract Law, Cap. 149 and the Partnerships Law, Cap. 116 is required.

Company Law

Knowledge of the Companies Law, Cap. 113 is required.

Governance and ethical issues relating to business

Knowledge of the Insider Dealing and Market Manipulation (Market Abuse) Law 116(I)/2005 and the Prevention and Suppression of Money Laundering Activities Laws is required.

Paper F4 HKG

Candidates should bear in their mind that they need to answer all the questions of the question paper, that is ten questions, and they are advised to attempt all of the questions.

Tort

The tort of passing off: the area examinable is confined to the use of the name of a company.

The candidates should be able to distinguish the issue of causation and the issue of remoteness of damages.

Corporate governance

The duties of disclosure under section 341 of the Securities and Futures Ordinance (Cap 571) is examinable and the related materials can be found in the recommended text.

Amendment of Study Guide

As regard Paragraph C2(c), the students are now required to distinguish among wrongful dismissal, unreasonable dismissal and unlawful dismissal.

As regard the meaning of unlawful dismissal, page 35 of the publication of the Labour Department which is entitled 'A Concise Guide to the Employment Ordinance' has a very good summary of the concept. The students can easily download a copy of the Guide from the website of the Labour Department.

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PAPER F4 LSO

Lesotho Legal System

Knowledge of the Constitution (1993) for law making by Parliament and human rights is required. Do not ignore the system of delegated legislation which Parliament authorises. Constitution is the supreme law and all other laws have to be consistent with it.

The Law of Obligations

Both contracts and delicts are governed very largely by the received common law. The cases decided by the appellate courts in South Africa continue to be significant as the system of courts in Lesotho continue to be guided by them.

Employment Law

Knowledge of the Labour Code Order 1992 and the legal regulations made thereunder is required. There is a growing body of cases in labour law, with which some familiarity is expected.

Partnership Law

Knowledge will be required of the Partnership Proclamation 1957. The Proclamation provides how the partnerships are formed, their dissolution and various other matters.

Company Law

Knowledge of the Companies Act 1967 is required. Knowledge is also required of the leading cases in company law.

Governance and Ethical Issues

Knowledge of the division of powers between the shareholders and the board of directors and the few rules that are included in the Companies Act, 1967, on disclosure interest by the directors are required. A good deal of development has taken place in South Africa and there are indications that Lesotho may put governance on a statutory footing but until that happens, you are not expected to have knowledge of these developments.

PAPER F4 MLA

Continuance of companies

In terms of article 425(4) of the Companies Act, 1995 the Minister issued regulations on the continuance of companies registered in a country other than Malta, in Malta. The Minister also issued regulations on the continuance of companies registered in Malta, in an overseas jurisdiction.

The regulations provide for the procedure to be followed to bring such continuation of corporate existence into effect, in Malta and in the overseas jurisdiction which may be selected for such continuation.

Companies Act

In virtue of Act IV of 2003 (Set-Off and Netting on Insolvency Act, 2003) various amendments were introduced to the Companies Act, which amendments came into force on the 1 June 2003. Such amendments include provisions on the duties of directors, limited partnerships engaged in the collective investment of funds, and company recoveries.

Company Recovery Procedure

Where a company is unable to pay its debts or is imminently likely to become unable to pay its debts, an application may be made to the courts to place the company under Company Recovery Procedure and to issue a Company Recovery Order in terms of which a Special Controller shall be appointed to take over and manage the business of the company. Once appointed, the company shall continue to carry out its normal activities under the supervision of the Special Controller.

Employment and Industrial Relations

Previously, employment law emanated principally out of the Conditions of Employment (Regulations) Act and The Industrial Relations Act. These two pieces of legislation have now been repealed and have been replaced by the Employment and Industrial Relations Act, 2002. The new law now regulates both employment relations and industrial relations.

The main provisions dealing with employment relations regulate contracts of employment. Provisions include;

- the minimum amount of information to be given to employees in the absence of a contract of service or of one which fails to provide for the prescribed conditions of employment
- the protection of wages
- protection from harassment and victimisation
- the termination of employment.

Complementing these provisions are various regulations which have been brought into force by Legal Notices covering areas such as collective redundancies, parental leave, fixed term contracts and the guarantee fund.

The Act also regulates the settlement of trade disputes providing for the different modes of settlement and the procedure to be adopted in each case. It is pertinent to note that the powers of the Industrial Tribunal have been extended and the Tribunal is featured as the principal mode of dispute settlement.

It should also be noted that while the new law introduced various new concepts bringing Maltese legislation in line with modern employment and labour legislation, the law also transposed from previous legislation (updating where required) including several features of employment and industrial law. These are still deemed applicable and relevant despite the passage of time.

Prevention of Financial Markets Abuse Act

With the enactment of the Prevention of Financial Markets Abuse Act, the scope of the offence of insider dealing, as was previously referred to, is much wider. The purpose of the Act is to safeguard the integrity of Maltese and EU financial markets and to enhance

investor confidence in those markets. For this object, the Act has transposed and implemented the Market Abuse Directive and its Implementing Measures, and consequently the Act and any regulations adopted thereunder, must be interpreted and applied accordingly.

The prohibitions and requirements laid down in the Act apply to acts carried out
(a) by any person in Malta or outside Malta concerning financial instruments that are admitted to trading on a regulated market in Malta, including admission to a recognised investment exchange situated or operating in Malta or for which a request for admission to trading on such market in Malta has been made; or
(b) by any person in Malta concerning financial instruments that are admitted to trading on a regulated market in any other Member State or EEA State, or for which a request for admission to trading on such market has been made.

PAPER F4 MYS

The examinable legislation for F4 MYS consists of the following :

- Companies Act 1965 (including the Companies(Amendment) Act 2007)
- Capital Markets and Services Act 2007
- Securities Commission Act 1993
- Contracts Act 1950
- Partnership Act 1961
- Registration of Businesses Act 1956
- Employment Act 1955
- Industrial Relations Act 1967
- Malaysian Code on Corporate Governance.

Candidates are advised to take note of the Companies (Amendment) Act 2007 came into effect on 15 August 2007. It implements a number of the recommendations made by the High Level Finance Committee Report on Corporate Governance, 1999. Although no questions relating to the amendments have been set until the December 2008 paper, candidates can expect questions encompassing the amendments from June 2009 onwards. In particular, candidates should have knowledge of the amendments affecting directors' duties. Candidates are also advised to read the article on the amendments, which has been forwarded for publication in the *student accountant*.

Further, it must be noted that the Securities Industry Act 1983 has been repealed and replaced by the Capital Markets and Services Act 2007.

Candidates are also reminded to refer to the latest updated Study Guide to be able to focus on examinable areas.

PAPER F4 PKN

The examinable legislation for F4 PKN consists of the following :

- The Constitution of Islamic Republic of Pakistan, 1973

- Contract Act, 1872
- Partnership Act, 1932
- Industrial Relations Ordinance, 2002
- West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance, 1968
- Workmen's Compensation Act, 1932
- Companies Ordinances, 1984
- Code of Corporate Governance.

PAPER F4 RUS

The new syllabus is effective for candidates preparing for the examination. These notes provide an introduction to the syllabus, the structure of the examination they will take and some guidelines on policies in relation to reading and support material. They also give a brief comparison between the old syllabus and the new syllabus for those who have prepared for or taken paper 2.2(RUS).

The syllabus and study guide for F4 can be downloaded from the accaglobal.com website. This is the primary source document for those preparing for the examination, as it determines the scope of study and gives an important indication of what must be dealt with in preparation for the examination.

Candidates will be expected to have a broad knowledge of the Russian legal system and the main elements of the Civil Code relating to obligations and representation. The corporate law sections focus on the main types of partnership and company, but do not require a detailed understanding of other types of business. There are further sections of the syllabus on employment law and corporate governance.

The company law sections include formation and constitution, management and administration, capital and financing and corporate insolvency.

Employment law focuses on the relationship between the employer and the employee, including the legal nature of the relationship, the respective rights and obligations of the parties to a labour contract and how the relationship may be brought to an end.

Corporate governance is concerned with how businesses are directed and controlled. Candidates will be expected to understand the nature of corporate governance, why it is important and the consequences of having deficient standards of corporate governance, as well as knowing how the law promotes appropriate standards.

In common with all variants of F4, the paper will not require knowledge of any legislation or other legal act enacted six months or less before the examination date.

The paper requires candidates to answer ten questions in three hours. The first seven questions test the candidate's knowledge of the syllabus areas. The last three questions are short scenarios and test the candidates' ability to apply their knowledge to given sets of circumstances.

For candidates who have studied under the old syllabus it is useful to consider the similarities and differences between paper 2.2 (RUS) and paper F4 (RUS). Common areas to each include the Russian legal system, the law of obligations (contractual and non-contractual), representation and company law. However, the F4 syllabus narrows the range of organisations to be studied to concentrate on partnerships and companies.

Unitary enterprises and cooperatives are now excluded. The breadth of the section on employment law has been narrowed down, with a focus on legal principles governing employment relationships. Candidates no longer have to study movable and immovable property.

The final section of the syllabus on corporate governance and ethics is entirely new. Candidates should observe that in addition to studying the principles of corporate governance it is also necessary to be familiar with laws specific to insider dealing and money laundering.

The examinable legislation for F4 RUS consists of the following :

- The Civil Code of the Russian Federation
- The Federal Law on Companies Limited by Shares
- The Federal Law on Limited Liability Companies
- The Federal Law on Insolvency
- The Labour Code of the Russian Federation.
- The Federal Law on Securities (in relation to transactions that destabilise markets only).

PAPER F4 SGP

Candidates should note that the Limited Liability Partnership Act 2005 and the Companies (Amendment) Act 2005 are examinable.

The Limited Liability Partnership Act 2005 ('LLP Act') commenced operation on 11 April 2005. The limited liability partnership is a new form of business vehicle available in Singapore modeled after similar business structures found in the United Kingdom and the United States. It combines features of both a partnership and a company. The following areas regarding the limited liability partnership should be looked into:

- Nature of limited liability partnership; see Part II and First Schedule;
- Registration; see Part III;
- Conversion to limited liability partnership; see Part IV and Second and Third Schedules;
- Management and administration; see Part V;
- Receivership and winding up; see Part VI and Fourth and Fifth Schedules;
- Qualifications and disqualifications of managers for limited liability partnerships, offences and penalties; see Part VII.

Only the general framework of the limited liability partnership will be examined. The corresponding changes in the Companies Act should also be noted. Students should refer to the website of the Accounting and Corporate Regulatory Authority, Singapore ('ACRA') for the latest legislative development. In particular, students can refer to the May 2005, Issue No. 8 of the ACRA Legal Digest for a brief overview of the LLP Act.

PAPER F4 VNM

Candidates will be expected to have a broad knowledge of the Vietnamese legal system and the main elements of the Civil Code relating to obligations and representation. The corporate law sections focus on the main types of partnership and company, but do not require a detailed understanding of other types of business. There are further sections of the syllabus on employment law and corporate governance.

The company law sections include formation and constitution, management and administration, capital and financing and corporate insolvency.

Employment law focuses on the relationship between the employer and the employee, including the legal nature of the relationship, the respective rights and obligations of the parties to a labour contract and how the relationship may be brought to an end.

Corporate governance is concerned with how businesses are directed and controlled. Candidates will be expected to understand the nature of corporate governance, why it is important and the consequences of having deficient standards of corporate governance, as well as knowing how the law promotes appropriate standards.

In common with all variants of F4, the paper will not require knowledge of any legislation or other legal act enacted six months or less before the examination date. In addition to the syllabus and study guide, the ACCA has prepared a list of examinable documents, which for most candidates will form the basis of their preparation.

The paper requires candidates to answer ten questions in three hours. The first seven questions test the candidate's knowledge of the syllabus areas. The last three questions are short scenarios and test the candidates' ability to apply their knowledge to given sets of circumstances.

For candidates who have studied under the old syllabus it is useful to consider the similarities and differences between paper 2.2 (VNM) and paper F4 (VNM). Common areas to each include the Vietnamese legal system, the law of obligations (contractual and non-contractual), representation and company law. However, the F4 syllabus narrows the range of organisations to be studied to concentrate on partnerships and companies.

Several areas of the paper 2.2(VNM) syllabus relevant to exchange controls and specific laws on exporting and importing goods and services are now excluded from the syllabus. Different models through which foreign individuals and enterprises may participate in entrepreneurial activity in Vietnam remain relevant in the context of formation of companies.

The breadth of the section on employment law has been narrowed down, with a focus on legal principles governing employment relationships. Candidates do not have to study the laws on movable and immovable property.

The final section of the syllabus on corporate governance and ethics is entirely new. Candidates should observe that in addition to studying the principles of corporate governance it is also necessary to be familiar with laws specific to insider dealing and money laundering.

Details of examinable legislation for F4 VNM can be found under the examinable documents section for this paper on the ACCA website at www.accaglobal.com.

PAPER F4 ZAF

Insider Trading Act

The Insider Trading Act 135 of 1998 has been repealed by the Securities Services Act 36 of 2004. Chapter 8 of this Act now regulates insider trading. The provisions of Chapter 8 closely resemble the provisions of the repealed Insider Trading Act.

You are expected to answer questions in accordance with the Securities Services Act of 2004.

Candidates should note that the Corporate Laws Amendment Act 24 of 2006 is examinable.

PAPER F4 ZWE

The examinable legislation for F4 ZWE consists of the following :

- The Constitution of Zimbabwe (1980) Part 3 – Declaration of Rights

- Labour Act (Chapter 28:01)
- The Companies Act (Chapter 24:03)
- The Insolvency Act (Chapter 6:04)
- The Zimbabwe Stock Exchange Act (Chapter 24:18)
- Public Accountants and Auditors Act (Chapter 27:13)
- Bank Use Promotion and Suppression of Money Laundering Act (Chapter 24:24).
- The Serious Offences Act Chapter 7:19.