

# Corporate and Business Law (MYS) (F4) December 2009

This syllabus and study guide is designed to help with planning study and to provide detailed information on what could be assessed in any examination session.

## THE STRUCTURE OF THE SYLLABUS AND STUDY GUIDE

### Relational diagram of paper with other papers

This diagram shows direct and indirect links between this paper and other papers preceding or following it. Some papers are directly underpinned by other papers such as Advanced Performance Management by Performance Management. These links are shown as solid line arrows. Other papers only have indirect relationships with each other such as links existing between the accounting and auditing papers. The links between these are shown as dotted line arrows. This diagram indicates where you are expected to have underpinning knowledge and where it would be useful to review previous learning before undertaking study.

### Overall aim of the syllabus

This explains briefly the overall objective of the paper and indicates in the broadest sense the capabilities to be developed within the paper.

### Main capabilities

This paper's aim is broken down into several main capabilities which divide the syllabus and study guide into discrete sections.

### Relational diagram of the main capabilities

This diagram illustrates the flows and links between the main capabilities (sections) of the syllabus and should be used as an aid to planning teaching and learning in a structured way.

### Syllabus rationale

This is a narrative explaining how the syllabus is structured and how the main capabilities are linked. The rationale also explains in further detail what the examination intends to assess and why.

### Detailed syllabus

This shows the breakdown of the main capabilities (sections) of the syllabus into subject areas. This is the blueprint for the detailed study guide.

### Approach to examining the syllabus

This section briefly explains the structure of the examination and how it is assessed.

### Study Guide

This is the main document that students, tuition providers and publishers should use as the basis of their studies, instruction and materials. Examinations will be based on the detail of the study guide which comprehensively identifies what could be assessed in any examination session. The study guide is a precise reflection and breakdown of the syllabus. It is divided into sections based on the main capabilities identified in the syllabus. These sections are divided into subject areas which relate to the sub-capabilities included in the detailed syllabus. Subject areas are broken down into sub-headings which describe the detailed outcomes that could be assessed in examinations. These outcomes are described using verbs indicating what exams may require students to demonstrate, and the broad intellectual level at which these may need to be demonstrated (\*see intellectual levels below).

### Reading lists

ACCA examiners will recommend study texts and text books where these are available, which students may read as part of their preparation for the exam. Relevant articles will also be published in *student accountant*.

## INTELLECTUAL LEVELS

The syllabus is designed to progressively broaden and deepen the knowledge, skills and professional values demonstrated by the student on their way through the qualification.

The specific capabilities within the detailed syllabuses and study guides are assessed at one of three intellectual or cognitive levels:

Level 1: Knowledge and comprehension

Level 2: Application and analysis

Level 3: Synthesis and evaluation

Very broadly, these intellectual levels relate to the three cognitive levels at which the Knowledge module, the Skills module and the Professional level are assessed.

Each subject area in the detailed study guide included in this document is given a 1, 2, or 3 superscript, denoting intellectual level, marked at the end of each relevant line. This gives an indication of the intellectual depth at which an area could be assessed within the examination. However, while level 1 broadly equates with the Knowledge module, level 2 equates to the Skills module and level 3 to the Professional level, some lower level skills can continue to be assessed as the student progresses through each module and level. This reflects that at each stage of study there will be a requirement to broaden, as well as deepen capabilities. It is also possible that occasionally some higher level capabilities may be assessed at lower levels.

## LEARNING HOURS

The ACCA qualification does not prescribe or recommend any particular number of learning hours for examinations because study and learning patterns and styles vary greatly between people and organisations. This also recognises the wide diversity of personal, professional and educational circumstances in which ACCA students find themselves.

Each syllabus contains between 23 and 35 main subject area headings depending on the nature of the subject and how these areas have been broken down.

## GUIDE TO EXAM STRUCTURE

The structure of examinations varies within and between modules and levels.

The Fundamentals level examinations contain 100% compulsory questions to encourage candidates to study across the breadth of each syllabus.

The Knowledge module is assessed by equivalent two-hour paper based and computer based examinations.

The Skills module examinations are all paper based three-hour papers. The structure of papers varies from ten questions in the *Corporate and Business Law* (F4) paper to four 25 mark questions in *Financial Management* (F9). Individual questions within all Skills module papers will attract between 10 and 30 marks.

The Professional level papers are all three-hour paper based examinations, all containing two sections. Section A is compulsory, but there will be some choice offered in Section B.

For all three hour examination papers, ACCA has introduced 15 minutes reading and planning time.

This additional time is allowed at the beginning of each three-hour examination to allow candidates to read the questions and to begin planning their answers before they start writing in their answer books. This time should be used to ensure that all the information and exam requirements are properly read and understood.

During reading and planning time candidates may only annotate their question paper. They may not write anything in their answer booklets until told to do so by the invigilator.

The Essentials module papers all have a Section A containing a major case study question with all requirements totalling 50 marks relating to this case. Section B gives students a choice of two from three 25 mark questions.

Section A of each of the Options papers contains 50-70 compulsory marks from two questions, each attracting between 25 and 40 marks. Section B will offer a choice of two from three questions totalling 30-50 marks, with each question attracting between 15 and 25 marks.

The pass mark for all ACCA Qualification examination papers is 50%.

## GUIDE TO EXAMINATION ASSESSMENT

ACCA reserves the right to examine anything contained within the study guide at any examination session. This includes knowledge, techniques, principles, theories, and concepts as specified.

For the financial accounting, audit and assurance, law and tax papers except where indicated otherwise, ACCA will publish *examinable documents* once a year to indicate exactly what regulations and legislation could potentially be assessed within identified examination sessions..

For paper based examinations regulation **issued** or legislation **passed** on or before 30<sup>th</sup> September annually, will be assessed from June 1<sup>st</sup> of the following year to May 31<sup>st</sup> of the year after. Therefore, paper based examinations in June 2009, December 2009 (and March 2010 where applicable) will be assessed on regulations issued and legislation passed on or before 30 September 2008.

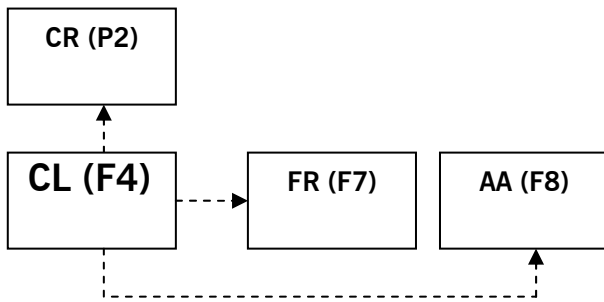
Regulation issued or legislation passed in accordance with the above dates may be examinable even if the **effective** date is in the future.

The term issued or passed relates to when regulation or legislation has been formally approved.

The term effective relates to when regulation or legislation must be applied to an entity transactions and business practices.

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

# Syllabus



## AIM

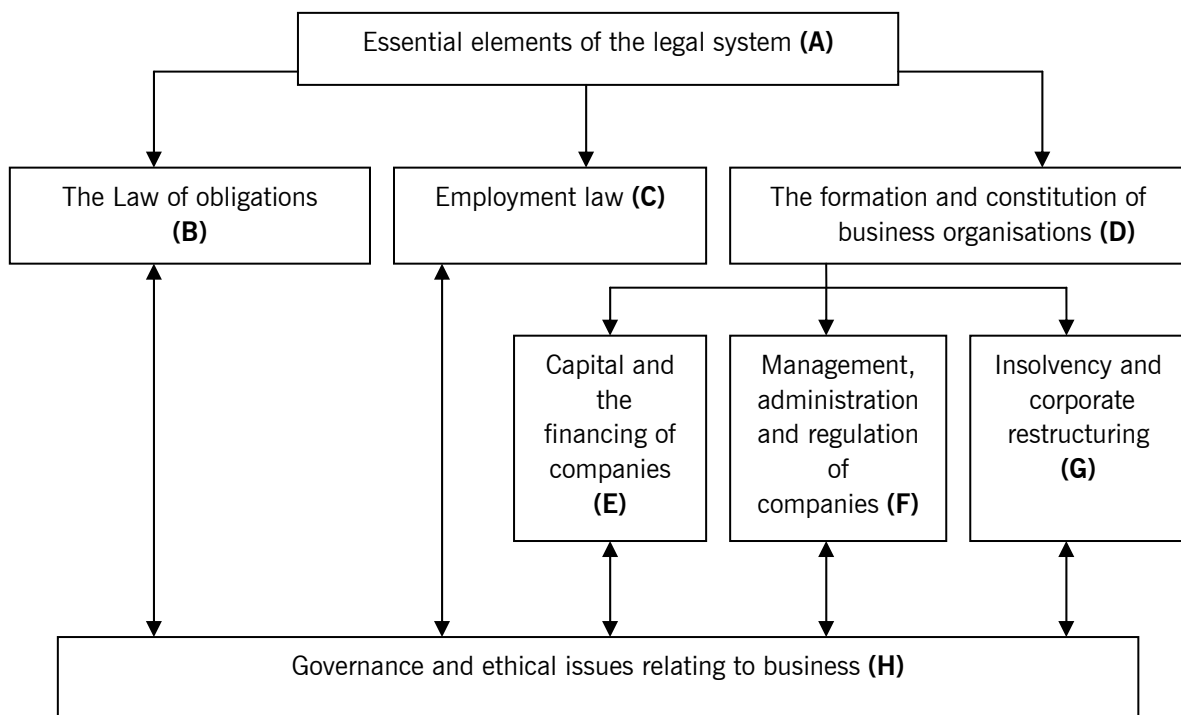
To develop knowledge and skills in the understanding of the general legal framework, and of specific legal areas relating to business, recognising the need to seek further specialist legal advice where necessary.

## MAIN CAPABILITIES

On successful completion of this paper candidates should be able to :

- A** Identify the essential elements of the Malaysian legal system including the main sources of law
- B** Recognise and apply the appropriate legal rules relating to the law of obligations
- C** Explain and apply the law relating to employment relationships
- D** Distinguish between alternative forms and constitutions of business organisations
- E** Recognise and compare types of capital and the financing of companies
- F** Describe and explain how companies are managed, administered and regulated
- G** Recognise the legal implications relating to insolvency and corporate restructuring
- H** Demonstrate an understanding of governance and ethical issues relating to business.

## RELATIONAL DIAGRAM OF MAIN CAPABILITIES



## **RATIONALE**

*Corporate and Business Law* is essentially divided into eight areas. The syllabus starts with an introduction to the overall Malaysian legal system such as the court system and sources of law, including human rights legislation. It then leads into the area of the law of obligations including contract and tort, which underpin business transactions generally.

The syllabus then covers a range of specific legal areas relating to various aspects of business of most concern to finance professionals. These are the law relating to employment and the law relating to companies. These laws include the formation and constitution of companies, the financing of companies and types of capital, and the day to day management, the administration and regulation of companies and legal aspects of insolvency and corporate restructuring.

The final section links back to all the previous areas. This section deals with corporate governance, ethics and ethical behaviour relating to business including criminal law.

## **DETAILED SYLLABUS**

### **A Essential elements of the Malaysian legal system**

1. Court structure
2. Sources of law
3. Human rights

### **B The law of obligations**

1. Formation of a contract
2. Content of contracts
3. Breach of contract and remedies
4. The law of torts
5. Professional negligence

### **C Employment law**

1. Contract of employment
2. Dismissal and redundancy

### **D The formation and constitution of business organisations**

1. Law of agency
2. Partnerships
3. Corporations and legal personality
4. Company formation
5. The company constitution

### **E Capital and the financing of companies**

1. Share capital
2. Loan capital
3. Capital maintenance rules

### **F Management, administration and regulation of companies**

1. Company directors
2. Other company officers
3. Company meetings and resolutions

### **G Insolvency and corporate restructuring**

1. Liquidation of companies
2. Corporate restructuring

### **H Governance and ethical issues relating to business**

1. Corporate governance
2. Fraudulent behaviour

## **APPROACH TO EXAMINING THE SYLLABUS**

The syllabus is assessed by a three hour paper-based examination.

The examination consists of seven 10 mark questions assessing knowledge of the law, and three 10 mark application questions.

## **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. Further it is not necessary to quote section numbers of Acts.

# Study Guide

## A. ESSENTIAL ELEMENTS OF THE MALAYSIAN LEGAL SYSTEM

### 1. Court structure

- a) Explain the structure and operation of the courts.<sup>[1]</sup>

### 2. Sources of law

- a) Define law and distinguish types of law.<sup>[1]</sup>
- b) Explain what is meant by case law and precedent in the context of the hierarchy of the courts.<sup>[2]</sup>
- c) Explain legislation and delegated legislation and its importance.<sup>[2]</sup>
- d) Explain the rules and presumptions used by the courts in interpreting statutes.<sup>[1]</sup>

### 3. Human rights

- a) Identify the concept of human rights with reference to the Federal Constitution, Universal Declaration of Human Rights and the Human Rights Commission of Malaysia Act 1999.<sup>[2]</sup>
- b) Explain the impact of human rights law on statutory interpretation.<sup>[2]</sup>
- c) Explain the impact of human rights on the common law.<sup>[2]</sup>

## B THE LAW OF OBLIGATIONS

### 1. Formation of a contract

- a) Analyse the nature of a simple contract.<sup>[2]</sup>
- b) Explain the fundamental rules governing an offer, including the distinction between offer and invitation to treat.<sup>[2]</sup>
- c) Explain the fundamental rules governing acceptance.<sup>[2]</sup>
- d) Explain the meaning and the need for consideration.<sup>[2]</sup>

- e) Analyse the doctrine of privity and its application in Malaysia.<sup>[2]</sup>
- f) Explain the concept of intention to create legal relations and the relevant presumptions that apply.<sup>[2]</sup>
- g) Explain who has the capacity to contract.<sup>[2]</sup>
- h) Distinguish between void and voidable contracts and state the main circumstances when a contract may become void or voidable.<sup>[2]</sup>

### 2. Content of contracts

- a) Distinguish terms from mere representations.<sup>[2]</sup>
- b) Define the various contractual terms.<sup>[1]</sup>
- c) Explain the nature and effect of exclusion clauses and evaluate their control.<sup>[2]</sup>

### 3. Breach of contract and remedies

- a) Explain the meaning and effect of breach of contract.<sup>[2]</sup>
- b) Explain the rules relating to the award of damages.<sup>[2]</sup>
- c) Analyse the equitable remedies for breach of contract under the Specific Relief Act 1950.<sup>[2]</sup>

### 4. The law of torts

- a) Explain the meaning of tort.<sup>[2]</sup>
- b) Identify the major torts, with emphasis to the tort of negligence.<sup>[2]</sup>
- c) Explain the duty of care and its breach.<sup>[2]</sup>
- d) Explain the meaning and importance of causation and remoteness of damage.<sup>[2]</sup>
- e) Discuss defences to an action in negligence.<sup>[2]</sup>

### 5. Professional negligence

- a) Explain and analyse the duty of care of accountants and auditors.<sup>[2]</sup>

## **C EMPLOYMENT LAW**

### **1. Contract of employment**

- a) Distinguish between employees and the self-employed.<sup>[2]</sup>
- b) Explain the nature of the contract of employment and give examples of the main duties placed on the parties to such a contract under the Employment Act 1955.<sup>[2]</sup>

### **2. Dismissal and redundancy**

- a) Explain the concepts of termination, dismissal, redundancy and lay-off, including constructive dismissal.<sup>[2]</sup>
- b) Discuss the remedies available to those who have been unjustifiably dismissed.<sup>[2]</sup>

## **D THE FORMATION AND CONSTITUTION OF BUSINESS ORGANISATIONS**

### **1. Law of agency**

- a) Define the role of the agent and give examples of such relationships paying particular regard to partners and company directors.<sup>[2]</sup>
- b) Explain how the agency relationship is established as well as how it may be terminated.<sup>[2]</sup>
- c) Discuss the authority of an agent.<sup>[2]</sup>
- d) Discuss the rights, duties and liabilities of a principal and an agent.<sup>[2]</sup>

### **2. Partnerships**

- a) Demonstrate a knowledge of the legislation governing a partnership.<sup>[1]</sup>
- b) Discuss how partnerships are established.<sup>[2]</sup>
- c) Explain the authority of partners in relation to partnership activity.<sup>[2]</sup>
- d) Analyse the liability of various partners for partnership debts.<sup>[2]</sup>

- e) Explain the way in which partnerships may be brought to an end.<sup>[2]</sup>

### **3. Corporations and legal personality**

- a) Distinguish companies from partnerships and sole proprietorships.<sup>[2]</sup>
- b) Explain the meaning and effect of limited liability.<sup>[2]</sup>
- c) Identify and distinguish different types of companies, especially public and private companies.<sup>[2]</sup>
- d) Illustrate the effect of separate personality.<sup>[2]</sup>
- e) Recognise instances where separate personality will be ignored.<sup>[2]</sup>

### **4. Company formation**

- a) Describe the procedure for registering companies, both public and private.<sup>[2]</sup>
- b) Explain the role and duties of company promoters.<sup>[2]</sup>
- c) Describe the statutory books, records and returns that companies must keep or make.<sup>[1]</sup>

### **5. The company constitution**

- a) Explain the content and effect of the memorandum of association.<sup>[2]</sup>
- b) Describe the contents of Table A of the fourth schedule to the Companies Act 1965 and explain their relevance.<sup>[1]</sup>
- c) Analyse the effect of a company's constitutional documents.<sup>[2]</sup>
- d) Explain how the memorandum and articles of association may be changed.<sup>[2]</sup>

## **E CAPITAL AND THE FINANCING OF COMPANIES**

### **1. Share capital**

- a) Examine the different meanings of capital.<sup>[2]</sup>

- b) Illustrate the difference between various classes of shares.<sup>[2]</sup>
- c) Explain the procedure for altering class rights.<sup>[2]</sup>

## **2. Loan capital**

- a) State how a company's borrowing powers are regulated under the Companies Act 1965.<sup>[1]</sup>
- b) Explain the meaning of debenture.<sup>[2]</sup>
- c) Distinguish loan capital from share capital.<sup>[2]</sup>
- d) Explain the concept of a company charge and distinguish between fixed and floating charges.<sup>[2]</sup>
- e) Describe the need and procedure for registering company charges.<sup>[2]</sup>

## **3. Capital maintenance rules**

- a) Explain the doctrine of maintenance of capital.<sup>[2]</sup>
- b) Explain the main rules relating to the issue of shares at a discount or a premium.<sup>[2]</sup>
- c) Discuss how a company may effect a reduction of capital.<sup>[2]</sup>
- d) Discuss the prohibition on the power of companies to give financial assistance for the purchase of their own shares and the exceptions to it.<sup>[2]</sup>
- e) Examine the power of a public company to purchase its own shares.<sup>[2]</sup>
- f) Explain the rules governing the distribution of dividends in both public and private companies.<sup>[2]</sup>

## **F MANAGEMENT, ADMINISTRATION AND REGULATION OF COMPANIES**

### **1. Company directors**

- a) Explain the role of the directors in the operation of a company.<sup>[2]</sup>

- b) Discuss the ways in which directors are appointed, the restrictions on appointment of directors, the circumstances in which they may be disqualified to act as directors, and the procedure for removal of directors from office.<sup>[2]</sup>

- c) Distinguish between the powers of the board of directors, the managing director and individual directors to bind their company.<sup>[2]</sup>

- d) Explain the duties that directors owe to their companies under common law and the Companies Act 1965 (including the latest amendments in the Companies (Amendment) Act 2007) <sup>[2]</sup>

### **2. Other company officers**

- a) Discuss the appointment procedure relating to, and the duties and powers of a company secretary.<sup>[2]</sup>

- b) Discuss the appointment procedure relating to and the duties and powers of, company auditors.<sup>[2]</sup>

### **3. Company meetings and resolutions**

- a) Distinguish between types of meetings; ordinary and extraordinary general meetings and class meetings.<sup>[1]</sup>

- b) Explain the procedure for calling such meetings.<sup>[2]</sup>

- c) Detail the procedure for conducting company meetings.<sup>[2]</sup>

- d) Distinguish between the different types of company resolutions.<sup>[2]</sup>

## **G INSOLVENCY AND CORPORATE RESTRUCTURING**

### **1. Liquidation of companies**

- a) Explain the meaning of and procedure involved in voluntary liquidation.<sup>[2]</sup>

- b) Explain the meaning of and procedure involved in compulsory liquidation.<sup>[2]</sup>

## 2. Corporate restructuring

- a) Examine the importance and application of schemes of arrangement and reconstructions under sections 176 to 180 of the Companies Act 1965 as an alternative to winding up.<sup>[2]</sup>
- b) Discuss the role, duties and liabilities of receivers and managers.<sup>[2]</sup>

E R Ivamy, Vincent Powell Smith Malaysian Law of Partnership- Cases and Materials, Butterworths Asia

Syed Ahmad Alsagoff Principles of the Law of Contract in Malaysia, MLJ

Abdul Majid bin Nabi Baksh, Krishnan Arjunan Business Law in Malaysia, MLJ

## H GOVERNANCE AND ETHICAL ISSUES RELATING TO BUSINESS

Dunstan Ayadurai The Employer, Employee and the Law in Malaysia, Butterworths

### 1. Corporate governance

Dunstan Ayadurai Industrial Relations in Malaysia, Law and Practice, MLJ

- a) Explain the concept of corporate governance.<sup>[2]</sup>
- b) Recognize the extra-legal codes of corporate governance.<sup>[2]</sup>
- c) Identify and explain the regulation of corporate governance.<sup>[2]</sup>

Wu Min Aun The Industrial Relations Law in Malaysia Heinemann

Aiman Nariman, Aishah Bidin Commercial Applications of Company Law in Malaysia, CCH Asia Pte Ltd

### 2. Fraudulent behaviour

Shanthy Rachagan, Anil Joshi, Janine Pascoe Concise Principles of Company Law in Malaysia, MLJ

- a) Recognize the nature of and legal control over insider trading taking into account the relevant provisions in the Companies Act 1965 as well as the Securities Industry Act 1983.<sup>[2]</sup>
- b) Recognize the nature of and legal control over money laundering.<sup>[2]</sup>
- c) Discuss potential criminal activity in the operation, management and winding up of companies.<sup>[2]</sup>
- d) Distinguish between fraudulent and wrongful trading.<sup>[2]</sup>

Chan and Koh's Company Law Sweet and Maxwell Asia

Malaysian and Singapore Company Law and Practice CCH Asia Pte Ltd

Walter Woon's Company Law Sweet and Maxwell Asia

## READING LIST

Wu Min Aun The Malaysian Legal System, Longman

Beatrix Vohrah, Wu Min Aun The Commercial Law of Malaysia, Pearson Education Malaysia Sdn Bhd

Lee Mei Pheng General Principles of Malaysian Law, Penerbit Fajar Bakti Sdn Bhd

Samsar Kamar Latif Partnership Law in Malaysia, ILBS