

# Business and Company Law

Module Outline

MICPA Conversion Programme

## Syllabus

### **BUSINESS AND COMPANY LAW**

#### **AIM**

To ensure that students have a sound knowledge and understanding of the legal implications of business transactions as well as the statutory requirements applicable to the management and administration of companies.

#### **INTRODUCTION**

This paper covers Business Law (30%) and Company Law (70%).

The Business Law syllabus is designed with the aim that students should be able to understand the implications of business contracts. An understanding of the law of partnership and agency is essential particularly in relation to the legal environment within which businesses operate.

Company Law is an important area in the training of CPAs as it has direct impact on their work either as auditors, accountants, company secretaries or insolvency practitioners. The syllabus is thus designed to equip students with a strong knowledge of the statutory requirements pertaining to the formation, financing, management and administration of a company. In addition, corporate governance requires a sound knowledge of the duties and responsibilities of directors, company secretaries and managers. Students are expected to be familiar with the provisions of the Companies Act 2016 and other laws and regulations in the legal framework governing the operation of companies. They must also be aware of important recent developments in the legal framework affecting companies.

Students can expect some of the questions to be integrative, testing on the application of both parts of the syllabus.

#### **SYLLABUS WEIGHTING**

SYLLABUS CONTENT AREA		WEIGHTING
Business Law (30%)	Contract law	20%
	Agency and partnership law	10%
Company Law (70%)	Formation of company	10%
	Capital and financing of a company	20%
	Management and administration of a company	15%
	Company transformation, receivership, and winding up	20%
	Limited Liability Partnership	5%
Total:		100%

#### **EXAMINATION FORMAT**

A 3-hour written paper consisting of two parts:

Section A	2 compulsory questions	40%
Section B	Choice of 4 from 6 questions	60%

**SYLLABUS CONTENT**

**LEVEL**

**BUSINESS LAW**

**1. Contract Law**

- |   |   |          |
|---|---|----------|
| a | Essential elements of contract                      | <b>A</b> |
|   | i Proposal (Offer)                                  |          |
|   | ii Acceptance                                       |          |
|   | iii Consideration                                   |          |
|   | iv Intention to create legal relations              |          |
|   | v Capacity  |          |
|   | vi Certainty  |          |
| b | Terms of contract                                   | <b>A</b> |
|   | i Terms   |          |
|   | ii Exclusion clauses                                |          |
| c | Void, voidable and illegal agreements               | <b>B</b> |
|   | i Void, voidable and illegal contracts              |          |
|   | ii Contracts in restraint of trade                  |          |
|   | iii Unlawful Agreements                             |          |
|   | iv Consequences                                     |          |
| d | Factors vitiating a contract                        | <b>B</b> |
|   | i Coercion  |          |
|   | ii Undue influence                                  |          |
|   | iii Misrepresentation                               |          |
|   | iv Fraud  |          |
|   | v Mistake   |          |
| e | Discharge of contract                               | <b>B</b> |
|   | i Performance                                       |          |
|   | ii Agreement  |          |
|   | iii Impossibility or frustration                    |          |
|   | iv Consequences of a contract impossible to perform |          |
| f | Remedies for breach of contract                     | <b>B</b> |
|   | i Rescission of contract                            |          |
|   | ii Damages  |          |
|   | iii Specific performance                            |          |
|   | iv Injunction                                       |          |
|   | v Quantum meruit                                    |          |

**2. Agency and Partnership Law**

- |   |   |          |
|---|---|----------|
| a | Agency  | <b>B</b> |
|   | i Creation of agency                                      |          |
|   | ii Duties of agent and principal                          |          |
|   | iii Agent's authority                                     |          |
|   | iv Effects of agency contracts with third persons         |          |
|   | v Termination of agent                                    |          |
| b | Partnership   | <b>B</b> |
|   | i Nature and definition of partnership                    |          |
|   | ii Relation between partners to persons dealing with them |          |

## Syllabus

- iii Relation of partners to one another
- iv Partnership Property
- v Dissolution of partnership

### COMPANY LAW

#### 3. Formation of a Company

B

- a Types of companies
  - i Type of companies
  - ii Company limited by shares
  - iii Company limited by guarantee
  - iv Company limited by shares and guarantee
  - v Unlimited liability company
  - vi private Company
  - vii public Company
  - viii Exempt private company
  - ix Holding and subsidiary companies
  - x Wholly-owned subsidiary
  - xi Foreign company
  - xii Related company
  - xiii Unregistered companies
- b The principle of corporate personality and the effect of incorporation
  - i Companies, partnerships and sole traders
  - ii The principle of corporate personality
  - iii Lifting the veil of incorporation
  - iv A company's liability for torts and crimes
- c Company incorporation
  - i Registration procedure
  - ii Commencement of business for public company
  - iii Promoters
  - iv Pre-incorporation contracts
  - v Form of contract
  - vi Common seal of a company
- d Constitution to replace memorandum of association
  - i Purpose and contents of the constitution
  - ii The name clause
  - iii The registered office clause
  - iv Other clauses in the constitution
  - v Alteration of the constitution
  - vi Transitional provision of section 619(3) of Companies Act 2016
  - vii Adoption of constitution
- e Powers of a company and the doctrine of *Ultra Vires*
  - i Objects of a company
  - ii Powers of a company
  - iii The doctrine of *ultra vires*
- f Articles of Association now replaced by constitution

- i The purpose and scope of the articles
- ii The constitution (memorandum and articles) as contracts
- iii Alteration of the articles
- iv Shareholder's agreements

**4. Capital and Financing of a Company**

**A**

- a Share capital
  - i The nature of shares
  - ii The meaning of share capital
  - iii Classes of shares
  - iv Variation of class rights
- b Issue and transfer of shares
  - i Allotment and issue of shares
  - ii Methods of allotment and issue of shares
  - iii Rights issues and bonus issues
  - iv Treatment of share premium
  - v Issue and allotment of shares at a discount
  - vi Restrictions on allotment for a public company
  - vii Return of allotment
  - viii Share certificates
  - ix Procedure for transfer of shares
  - x Issues of interest other than shares or debentures
- c Capital maintenance, change of capital, reduction of capital
  - i Reduction of share capital
  - ii Treatment of share premium account under Companies Act 2016
  - iii Redemption and purchase by a company of its own shares
  - iv Financial assistance for purchase of own shares
  - v Change or alter company's share capital
- d Dividends
  - i Distribution and payment of dividends
  - ii Declaration of dividends
  - iii Distributable profits and solvency test
  - iv Infringement of dividend rules
  - v Penalties for contravention in dividend distribution
- e Loan capital
  - i Borrowing powers
  - ii Debentures for different business models
  - iii Charges
  - iv Registration of charges
  - v Debenture holders' remedies
- f The regulation of companies with publicly traded securities
  - i Issues of securities under the CMSA
  - ii Listing on the Main Market, ACE Market and LEAP Market
  - iii Continuing listing obligation
  - iv False and misleading statements under CMSA
  - v Provisions applicable to Listed Corporations under the CMSA
  - vi Directors training for Listed Corporations

## Syllabus

vii Audit Oversight Board (AOB) for public interest entities

### **5. Management and Administration of a Company**

**A**

- a Directors
  - i Definition of director
  - ii Appointment of directors
  - iii Qualification and disqualification of directors
  - iv Vacation of office
  - v Removal of directors
  - vi Payments to directorship
- b Directors' duties
  - i Fiduciary duties
  - ii Duty of care, skill and diligence
  - iii Remedies for breach of duty
  - iv Relief for breach of duty
- c Directors' transactions with the company
  - i Loans to directors
  - ii Substantial property transactions – Sections 223 & 228
  - iii Disclosure of interests in contracts – Section 221
  - iv Insider dealing under Capital Markets & Services Act 2007
- d Directors' Power
  - i The extent of directors' powers
  - ii Board meetings – Third Schedule
  - iii Managing directors (in the Third Schedule or Constitution)
  - iv The chairman – Third Schedule
  - v Members' control of directors
  - vi Liability of the company for unauthorized acts of directors
  - vii The 'indoor management' rule
  - viii Agency by holding out
- e Company Secretary
  - i Qualifications for appointment as a company secretary
  - ii Duties of a company secretary
  - iii Status and liabilities of a company secretary
- f Shareholders
  - i Becoming a member
  - ii Register of members
  - iii Particulars of shareholding
  - iv Rights of shareholders of different classes
  - v Majority control and the protection of minority shareholders
  - vi Other statutory rights
  - vii Cessation of membership
- g Meetings and proceedings
  - i The importance of meetings
  - ii Types of meetings
  - iii Board meetings
  - iv Class meetings
  - v General meetings of a company
  - vi Convening a meeting
  - vii Quorum

- viii Proxies
- ix Types of resolutions
- x Conducting meetings of members
- xi The assent principle
- xii Irregularities in meetings
- h Related party transactions
  - i Definitions
  - ii Related party transactions
  - iii Recurrent related party transactions of a revenue nature
- i The Malaysian Code on Corporate Governance
  - i The board of directors
  - ii Independent directors
  - iii The Audit Committee
  - iv The relationship between the board and shareholders
  - v Directors' training
  - vi Shareholder activism
  - vii Reshaping the Malaysian Code on Corporate Governance 2017

**6. Company Transformation**

**B**

- a Reconstructions, mergers, takeovers and corporate rescue
  - i Concept of reconstruction
  - ii Schemes of arrangement or compromise
  - iii Reconstruction and amalgamation
  - iv Rights of offeror to buy out under the Companies Act 2016
  - v Takeovers under the Takeovers and Mergers Code 2016
  - vi Corporate Rescue (Division 8) – Voluntary arrangement and rules
  - vii Judicial Management and Rules
  - viii Summary of schedules, forms
  - ix Practice Directive No. 4/2018 on lodgement of documents under Division 8 Part III of Companies Act 2016

**7. Receivership and Winding Up**

**B**

- a Receivers and Receivership
  - i Receivers and receivers & managers
  - ii Retention of Title (Romalpa) clauses
- b Cessation of Companies
  - i Modes of winding up
  - ii Voluntary winding up
  - iii Compulsory winding up
  - iv Contributories
  - v Liquidators
  - vi Receivers and liquidators
  - vii Strike off from register by Registrar of the companies
- c Transactions arising in a winding up
  - i Treatment of assets
  - ii Proof of debts
  - iii Rights and duties of secured creditors
  - iv Order of application of assets in winding up
  - v Fraudulent trading

## Syllabus

### **8. Limited Liability Partnership**

**B**

- i What is a Limited Liability Partnership (LLP)
- ii Registration for incorporation
- iii Post incorporation
- iv Limited liability of partners
- v Power of partners to bind Limited Liability Partnership
- vi Cessation & bankruptcy of a partner
- vii Appointment of compliance officer
- viii Disqualification to act as compliance officer
- ix Conversion to Limited Liability Partnership
- x Effect of registration
- xi Notice of conversion in invoices and correspondence
- xii Existing statutory books, registers, records, etc.
- xiii Foreign Limited Liability Partnership
- xiv Receivership, winding-up, dissolution and strike off
- xv General statutory requirements of LLP
- xvi Powers of Registrar
- xvii Offences and penalties



**RECOMMENDED BASIC TEXTS**

MICPA	Business and Company Law Study Manual	MICPA
<b>Business Law</b>		
Vohrah & Wu Min Aun	The Commercial Law of Malaysia	Longman
<b>Company Law</b>		
Cheah Foo Seong	Company Act 2016 (Overview)	Sweet & Maxwell Asia

**Relevant Statutes and Regulatory Guidelines**

Contracts Act, 1950  
Partnership Act, 1961  
Companies Act 2016  
Companies Commission of Malaysia Act 2001  
Limited Liability Partnership Act 2012  
Interest Schemes Act 2016  
Securities Commission Act 1993  
Capital Markets and Services Act 2007  
Securities Industry (Central Depositories) Act 1991  
Malaysian Code on Take-Overs and Mergers 2016  
Income Tax Act 1967  
Financial Reporting Act 1997  
Bankruptcy Act 1967  
Mental Health Act 2001  
Limitation Act 1953