Business and Company Law

Module Outline
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

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

BUSINESS LAW

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

2. Agency and Partnership Law
   a. Agency
      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
      i. Nature and definition of partnership
      ii. Relation between partners to persons dealing with them
3. **Formation of a Company**

**a** Types of companies
- Type of companies
- Company limited by shares
- Company limited by guarantee
- Company limited by shares and guarantee
- Unlimited liability company
- Private Company
- Public Company
- Exempt private company
- Holding and subsidiary companies
- Wholly-owned subsidiary
- Foreign company
- Related company
- Unregistered companies

**b** The principle of corporate personality and the effect of incorporation
- Companies, partnerships and sole traders
- The principle of corporate personality
- Lifting the veil of incorporation
- A company’s liability for torts and crimes

**c** Company incorporation
- Registration procedure
- Commencement of business for public company
- Promoters
- Pre-incorporation contracts
- Form of contract
- Common seal of a company

**d** Constitution to replace memorandum of association
- Purpose and contents of the constitution
- The name clause
- The registered office clause
- Other clauses in the constitution
- Alteration of the constitution
- Transitional provision of section 619(3) of Companies Act 2016
- Adoption of constitution

**e** Powers of a company and the doctrine of *Ultra Vires*
- Objects of a company
- Powers of a company
- The doctrine of *ultra vires*

**f** Articles of Association now replaced by constitution
4. **Capital and Financing of a Company**

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
vii Audit Oversight Board (AOB) for public interest entities

5. Management and Administration of a Company

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
vii 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
   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
   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
8. **Limited Liability Partnership**

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

Business Law
Vohrah & Wu Min Aun The Commercial Law of Malaysia Longman

Company Law
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