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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<tr>
<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><strong>Total:</strong></td>
<td><strong>100%</strong></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 a contract A
      i Proposal (Offer)
      ii Acceptance
      iii Consideration
      iv Intention to create legal relations
      v Certainty
      vi Capacity
   b Terms of contract A
      i Terms
      ii Exclusion clauses
   c Void, voidable and illegal agreements B
      i Void and voidable contracts
      ii Contracts in restraint of trade
      iii Contracts in restraint of legal proceedings
      iv Unlawful agreements
      v Consequences
   d Factors vitiating a contract B
      i Coercion
      ii Undue influence
      iii Misrepresentation
      iv Fraud
      v Mistake
   e Discharge of contract B
      i Performance
      ii Agreement
      iii Impossibility or frustration
      iv Breach
   f Remedies for breach of contract B
      i Rescission of contract
      ii Damages
      iii Specific performance
      iv Injunction
      v Quantum meruit

2. Agency and Partnership Law
   a Agency B
      i Creation of agency
      ii Duties of agent and principal
      iii Agent's authority
      iv Effects of agency on contract with third persons
      v Termination of agency
   b Partnership B
      i Nature and definition of partnership
      ii Relation between partners and persons dealing with them
COMPANY LAW

3. Formation of a Company

aTypes of companies
   i Types of companies
   ii Company limited by shares
   iii Company limited by guarantee
   iv Unlimited liability company
   v Private Company
   vi Public Company
   vii Exempt private company
   viii Holding and subsidiary companies
   ix Wholly-owned subsidiary
   x Related company
   xi Foreign company
   xii 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 The company name
   iii The registered office
   iv Commencement of business
   v Promoters
   vi Pre-incorporation contracts
   vii Form of contract
   viii Common seal of a company

d Constitution
   i Purpose and contents of the constitution
   ii Transitional provision of section 619(3) of Companies Act 2016
   iii Adoption of a constitution
   iv Constitution as contract
   v Alteration of the constitution
   vi Shareholders’ agreement

e Capacity of a company and the doctrine of Ultra Vires
   i Capacity of a company
   ii Objects of a company
   iii Powers of a company
   iii The doctrine of ultra vires
iv Alteration of objects clause

4. **Capital and Financing of a Company**
   a **Share capital**
      i The nature of shares
      ii The meaning of 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 Allotment of shares by a public company
      v Return of allotment
      vi Share certificates
      vii Procedure for transfer of shares
      viii Issues of interest other than shares or debentures
   c **Capital maintenance, change of capital, reduction of capital**
      i Reduction of share capital
      ii Redemption and purchase by a company of its own shares
      iii Financial assistance for purchase of own shares
      iv 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
   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 trading under Capital Markets & Services Act 2007
d  Directors’ Powers
   i  The extent of directors’ powers: Section 211
   ii  Board meetings: Third Schedule
   iii  Managing directors (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
ii The board of directors
iii Independent directors
iv The Audit Committee
v The relationship between the board and shareholders
vi Directors’ training
vii Shareholder activism
viii 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)
      vii Voluntary arrangement
      viii Judicial Management

7. **Receivership and Winding Up**
   a Receivers and Receivership
      i Receivers and receivers & managers
      ii Retention of Title (Romalpa) clauses
   b Liquidation
      i Methods of dissolution
      ii Compulsory liquidation
      iii Voluntary liquidation
      iv Contributories of present and past members
      v Liquidators
      vi Receivers and liquidators
   c Transactions arising in a winding up
      i Treatment of assets
      ii Proof of debts
      iii Secured creditors
      iv Order of application of assets in a liquidation
      v Fraudulent trading

8. **Limited Liability Partnership**
   a What is a Limited Liability Partnership (LLP)
   b Registration for incorporation
   c Post incorporation
   d Partners
   e Conversion to Limited Liability Partnership
   f Receivership, winding-up, dissolution and strike off
   g Foreign Limited Liability Partnership
RECOMMENDED BASIC TEXTS

**MICPA**
- Business and Company Law Study Manual

**Business Law**
- Vohrah & Wu Min Aun: The Commercial Law of Malaysia

**Company Law**
- Cheah Foo Seong: Company Act 2016 (Overview)

**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