

Professional Stage Examination (PSE)

# 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

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%
	<i>Limited Liability Partnership</i>	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

	<b>LEVEL</b>
<b>BUSINESS LAW</b>	
<b>1. Contract Law</b>	
a Essential elements of a contract	<b>A</b>
i Proposal (Offer)	
ii Acceptance	
iii Consideration	
iv Intention to create legal relations	
v Certainty	
vi Capacity	
b Terms of contract	<b>A</b>
i Terms	
ii Exclusion clauses	
c Void, voidable and illegal agreements	<b>B</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>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 Breach	
f Remedies for breach of contract	<b>B</b>
i Rescission of contract	
ii Damages	
iii Specific performance	
iv Injunction	
v Quantum meruit	
<b>2. Agency and Partnership Law</b>	
a Agency	<b>B</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>B</b>
i Nature and definition of partnership	

- ii Relation between partners and persons dealing with them
- 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 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
  - i Objects of a company
  - ii Powers of a company

- iii The doctrine of *ultra vires*
- iv Alteration of objects clause

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

A

- 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

- 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
  - 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)
  - vii Voluntary arrangement
  - viii Judicial Management

**7. Receivership and Winding Up**

**B**

- 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

B

- i What is a Limited Liability Partnership (LLP)
- ii Registration for incorporation
- iii Post incorporation
- iv Partners
- v Conversion to Limited Liability Partnership
- vi Receivership, winding-up, dissolution and strike off
- vii Foreign Limited Liability Partnership

### RECOMMENDED BASIC TEXTS

MICPA	Business and Company Law Study Manual	MICPA
<b>Business Law</b>		
Adnan Trakic Vohrah & Wu Min Aun	Law for Business The Commercial Law of Malaysia	Sweet and Maxwell Longman
<b>Company Law</b>		
Aiman Nariman Mohd Sulaiman & Effendy Othman Chan Wai Meng	Malaysia Company Law: Principles and Practices Essential Company Law in Malaysia: Navigating the Malaysian Companies Act 2016	Wolters Kluwer  Sweet & Maxwell Asia
Cheah Foo Seong	Company Act 2016 (Overview)	Sweet & Maxwell Asia

### Relevant Statutes and Regulatory Guidelines

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