

ASSOCIATE EXAMINATION PART II

SYLLABUS

Investment Regulation and Practice

This paper is primarily concerned with the law and practice relating to the securities industry of the United Kingdom. The focus of the paper is on regulatory issues. The aim of the paper is to ensure that candidates are able to demonstrate an understanding of the law, the regulations, and the theoretical and practical implications of those provisions for the securities industry. Although students will not be expected to refer to specific provisions they will be expected to apply the general principles and rules to specific problems.

Students will be expected to have a knowledge and understanding of the context and circumstances surrounding the legislation and regulations currently in force and will be expected to keep themselves up to date on current developments in the UK and with European Directives which have an impact on UK Securities Regulation.

The paper will be a three hour paper and will be divided into two parts:

SECTION A: (40% of marks)

This section will contain four compulsory questions, which will require answers which demonstrate knowledge of the general principles and regulations and an ability to apply that knowledge to specific problems.

SECTION B: (60% of marks)

This section will contain questions of a more discursive nature. Candidates will be expected to demonstrate an understanding of the Institutional, Regulatory and Legal framework within which analysts currently work.

The subjects below are intended as a general guide to the areas which will be examined. Candidates will be expected to be up to date with any amendments to the provisions.

A THE REGULATORY STRUCTURE

- The background and circumstances leading to the implementation of the Gower Report and the Financial Services Act 1986 and the current philosophy of regulation
*Thomas
L C B Gower, Parts 1 & 2
Large Report
Simon Morris, Ch. 1
Corporate Finance*
- The role of the various institutions within the regulatory structure, including: the DTI, the SIB, the Treasury, the Bank of England, the Stock Exchange, Tradepoint and the Recognised Investment Exchanges generally, the Recognised Clearing Houses, the Recognised Professional Bodies, the PIA, IMRO and the SROs generally, the Insurance Companies and Friendly Societies, the Building Societies, and other Institutional Investors
*Simon Morris, Ch. 2
Corporate Finance*

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B THE SCOPE OF REGULATION

- The definition of investment business and activities
- Obtaining authorisation, exemption and recognition
The status of the appointed representative
- Authorisation of collective investment schemes
- Consequences of the failure to obtain authorisation and recognition and the consequence of acting outside the scope of authorisation
- The role of the Financial Services Tribunal
- The role of the Central Register

Gore-Browne Ch. 12
The FSA
FSA Schedule
Simon Morris, Ch. 6-8
Simon Morris, Ch. 2

Simon Morris, Ch. 9

Simon Morris, Ch. 11

The Central Register;
pamphlet produced by the SIB, 1993

C THE REGULATION OF INVESTMENT BUSINESS ACTIVITIES

- The role of the General Principles and the Core Rules and Codes of Practice. The implications of the De-designation of Core Rules
- The Conduct of Business rules of IMRO and SFA. Client Money Regulations and the custody of shares and title documents. Capital Adequacy
The rules on the keeping of records
- Unsolicited Calls Regulations
- The rules and the controls on advertising and exemptions
- The rules on polarisation and single capacity
- The regulation of Collective Investment Schemes, Pensions, Investment Trusts and Unit Trusts.
The regulation of derivatives and their relation to principal markets

SIB Rules and Regulations
and IMRO and SFA Rules
Simon Morris, Ch. 3

Simon Morris, Ch. 3

FSA s 56 and regulations thereunder
Simon Morris, Ch. 17
FSA ss 57 and 58
Simon Morris, Ch. 13

Simon Morris, Ch. 17

FSA s 8 and related rules and regulations
Simon Morris, Ch. 9
Blackstone's Guide to the Pensions Act 1995

D CORPORATE FLOTATIONS RIGHTS ISSUES AND THE REGULATION OF PUBLIC ISSUES

- The rules governing the contents of prospectuses for shares listed on the Stock Exchange, unlisted shares and shares listed on the Alternative Investment Market (AIM)
- The duty of disclosure and liability for mis-statements and omissions. The common law and statutory remedies for misrepresentation

Simon Morris, Ch. 14

The Yellow Book

FSA Part IV
Public Offers of Securities Regulation
1995

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E THE MAINTENANCE OF COMPANY CAPITAL

- The acquisition by a company of its own shares. The market implications of corporate re-purchasing of issued capital. Financial Assistance by the company for the re-purchase of its own shares *Gower, Ch. 9*
Parts V and VI
Companies Act 1985
- The settlement of share transactions *CREST and the Stock Exchange Publications*

F CORPORATE GOVERNANCE

- The duties of Directors *Gower, Ch. 21*
The Cadbury Report
Corporate Finance
- The allotment of shares, pre-emption rights and one shareholder one vote
- Directors contracts of Employment and salary *Part IV Companies Act 1985*

G THE REGULATION OF TAKE-OVERS AND MERGERS AND SUBSTANTIAL ACQUISITION RULES

- The role and functions of the Panel on Take-Overs and Mergers *The City Code*
Gower, Ch. 27

Annual Reports of the Take Over Panel
Guide to the Take Over Panel
Endorsement of the Take Over Code
SIB CP No 81
- The City code, the General Principles and the Rules *Gower*
- Rules governing the substantial acquisition of shares *Weinberg & Blank*
- Directors' Responsibilities
- The position of the minority shareholder and the compulsory purchase of shares *Part X Companies Act 1985*
- Competition implications of Take-Overs and Mergers: the operation of the Fair Trading Act 1973, EC Competition Law and the role of the Monopolies and Mergers Commission *Weinberg & Blank*

H THE REGULATION OF MARKET ABUSES

- Market Manipulation
Insider Dealing *FSA s 47*
The Criminal Justice Act 1993 ss 52 & 53 and Schedules
London Stock Exchange Pamphlet: Guidance on the Dissemination of Price Sensitive Information
Simon Morris, Ch. 14.7

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I ENFORCEMENT AND REMEDIES

The Financial Services Act 1986
Gore-Browne, Ch. 12
Simon Morris, Ch. 4, 11, 12

- The Compliance Officer and in-house procedures
- The roles and the responsibilities of the firm and the individual
- Market surveillance procedures and detection systems. Conflicts of interest and the operation of Chinese Walls
- The complaints system, the Compensation scheme and the role of the Ombudsman and the Regulatory bodies
- Investigations, the requisition and the seizure of books and papers. The role of Inspectors, the DTL, and the Treasury
- Civil remedies for breach and the reinforceability of transactions
- Powers of Intervention. Criminal sanctions
- Role of the Financial Services Tribunal
- Money Laundering Regime in the UK

FSA s 177
Criminal Justice Act 1993
Part XIV Companies Act 1985

FSA ss 4–7, & 59–62A

FSA Ch. VI

FSA Ch. IX

Simon Morris, Ch. 9, 17
Butterworth's International Guide to Money Laundering Law and Practice
Confiscation and Money Laundering

J INTEGRATION OF CAPITAL MARKETS

- The European and international aspects of regulation. Harmonisation by the European community. The role of IOSCO. The integration of international trading and market practices and the role of regulation in this process

Gore-Browne, Ch. 41
Simon Morris, Ch. 2, 10

K ISSUES FOR REFORM AND DEVELOPMENT

- Potential changes to the regulatory structure. The extent to which the regulatory structure may affect the efficiency of the markets

Bank of England Quarterly Bulletin; regular articles on the operation and regulation of the financial markets
The Professional Investor; recommendations and submissions made by the IIMR and technical developments reviewed.

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Readings

W A Thomas, *The Big Bang*, Philip Allen, 1986
L C B Gower, *Review of Investor Protection*, Cmnd 9125
Large Report, *Financial Services Regulation: Making the two tier system work*, SIB, 1993
Simon Morris, *Financial Services: Regulating Investment Business*, 2nd Edition FT Law & Tax, 1995
Gore-Browne on Companies, Ed: Boyle & Sykes, 44th Edition, Jordon, 1986
The FSA, *The Financial Services Act 1986*, as amended
The Yellow Book, *Admission of Securities to Listing*, The London Stock Exchange
Gower, *Gower's Principles of Modern Company Law*, 5th Edition, 1992
The City Code on Take-Overs and Mergers, Panel on Mergers and Take-Overs, 4th Edition, 1993
Weinberg & Blank on Take-Overs & Mergers, Ed: Dick, Underhill, Rabinowitz, Lasok, Sweet & Maxwell, 1990
Corporate Finance, Richard King and Scott Slovach, 1997

Additional Readings

Rider, Abrams and Ferran, *Guide to the Financial Services Act 1986*, CCH, 1989, 3rd Edition 1996
Alistair Alcock, *Dealing in UK Equities*, Jordon, 1992
The background to investor protection, pamphlet produced by SIB, March 1995
Retail Regulation Review: report of a study by Sir Kenneth Clucas on a new SRO for the Retail Sector, SIB, March 1992
Revocation of Recognition of FIMBRA and LAUTRO as Self Regulating Organisations, Report to SIB by Lord Oliver and Dame Margaret Booth, SIB, June 1994
Regulation of the United Kingdom Equity Markets, SIB, June 1995
Regulation of the United Kingdom Equity Markets, Market views – a digest of responses to SIB's discussion paper, SIB 1995
Andrew McGee, *SIB's Core Conduct of Business Rules 1991* (1992) 13 Co Law 129
SIB Consultative Papers 83, 94, 114 and 115
Dedesignation of the Core Conduct of Business Rules, The Client money Regulations and the Financial Supervision Rules, SIB CP No. 83, August 1994
The Financial Services (Dedesignation) Rules and Regulations 1994, SIB Release No 149, November 1994
The Financial Services (Statements and Principles) (Endorsement of Codes and Standards) Instrument 1995, January 1995, SIB Release No 154
The London Stock Exchange and London International Financial Futures Exchange, SIB, June 1992
The Financial Supervision (Amendment) Rules 1995: Implementation of the Capital Adequacy Directive, SIB, CP No 92, Oct. 1995
The Investment Services Rules 1995: Implementation of the Investment Services Directive, SIB CP No 94, Nov. 1995
The Company Lawyer: Damages for mis-statements in Company Prospectuses (1991) Co Law 209
Solicitors Law Journal: The 90% rule and the position of minority shareholders (1992) 10C and SLJ10
Blackstone's Guide to Pensions Act 1995, Meryl Thomas and Brian Solnick, 1995
Confiscation and Money Laundering: Law and Practice, A Guide for Enforcement Authorities, Home Office, Organised and International Crime Directorate, 1997
Butterworth's International Guide to Money Laundering Law and Practice, ed. Richard Parlour, Ch. 1, 2, 15, 17-21