

COMMERCIAL AND CORPORATE PRACTICE

This information has been taken from Schedule 3 of the Legal Profession (Admission) Rules 2008. Each applicant for admission to the legal profession is required to provide evidence that the applicant has achieved the requisite competence in each element.

Descriptor:

An entry level lawyer should be able to conduct standard commercial transactions such as the sale or purchase of a small business. The lawyer should be able to set up standard business structures using entities such as companies, trusts and partnerships; provide basic advice on finance and securities and the obligations of companies and their officers; and appreciate the type of advice needed to assess the revenue implications of standard commercial transactions.

Element: 1. Conducting commercial transactions

Performance criteria

The lawyer has competently:

- identified the nature of the transaction properly.
- undertaken sufficient searches and inquiries to investigate any relevant issues of title to real or personal property.
- drafted documents, had them executed, and (if necessary) certified, stamped and registered them, according to law and good practice.
- obtained or given any necessary consents to, or notifications of, the transaction required by law.

Element: 2. Setting up commercial structures

Performance criteria

The lawyer has competently:

- selected a structure that will achieve the client's objectives.
- drafted all documents required to set up the structure (including establishing any discrete entities that will form part of the structure) had them executed and (if necessary) certified, stamped and registered them, according to law and good practice.
- informed the client of any continuing obligations in relation to the structure, and where the structure involves a corporation, the continuing obligations of the company and its officers.

Element: 3. Dealing with loans and securities

Performance criteria

The lawyer has competently:

- identified the various appropriate types of financial arrangements and securities available to the borrower and lender.
- informed the borrower and lender of their immediate, continuing, and potential liabilities under any proposed financing and security arrangements.
- drafted loan or security documents which reflect the agreement between lender and borrower.

- had the loan or security documents executed and (if necessary) stamped and registered them according to law.

Element: 4. Advising on revenue law and practice

Performance criteria

The lawyer has competently:

- identified the possible general revenue implications of the client's proposed commercial venture or arrangement.
- referred the client to experts for more comprehensive or detailed advice, where appropriate.

Explanatory Note

This competency standard applies to commercial and corporate practice. It includes:

- some common commercial transactions, such as the sale or purchase of a small business;
- setting up standard business structures and entities, including companies;
- advising on the legal obligations of corporations and their officers;
- advising on due diligence investigations;
- identifying in a general way the possible revenue implications of standard commercial dealings and structures;
- drafting standard loan agreements and securities.

Business structures include:

- trusts;
- private companies;
- partnerships;
- joint ventures;
- franchise arrangements.

Securities include:

- bills of sale;
- chattel leases;
- loans agreements;
- guarantees, including guarantees from spouses.

Revenue implications include:

- stamp duties;
- income tax;
- capital gains tax;
- GST;
- fringe benefits tax;
- land and property taxes.