

Internal Assessment I

LRM Cohort 7

July 2022

Instructions:

You are a lawyer based in Jaipur, Rajasthan. You have been provided with a brief from a client as set out in the Problem Question below.

You are required to prepare a legal advice to the client, setting out:

1. the applicable law for the issues set out in the Problem Question
2. any recommendations or actions required by the client
3. any further information or documentation required from the client

You will be graded based on the substantive answers in your advice (40% of the mark), your presentation and writing style as discussed in module 2 (20% of your mark), your structure and format in the form of a legal advice (40%).

The assessment will be graded out of 20 marks. The total grade of this assessment is 20% of the overall grade for this course.

The legal advice should be less than 2,000 words, including any footnotes (if applicable). Exceeding this word limit will result in a deduction of marks.

Use Times New Roman Font size 12, 1.5 paragraph spacing. Use OSCOLA for any referencing, if applicable.

Failure to appropriately reference, or failure to comply with plagiarism guidelines (as discussed in module 2), will result in a deduction of marks.

The assessment is **due on 25 July 2022 at 11:59 pm**. All assessment must be uploaded on UMS. Please use a .doc or .docx or .pdf format only. Please ensure you upload a readable file. Marks will be deducted for late submissions as per the course guidelines.

Problem Question:

- 1) You have been approached by a new client, FerreroKosher Private Limited (FKPL), for legal advice on several issues. The CEO of FKPL, Ms. Praline Diaz, has provided you with some preliminary issues facing the company and asked you to prepare an advisory memo for her and the company.
- 2) Ms. Diaz informs you of the following:
 - a) FKPL is a family-run company that manufactures candies, chocolates and other confectionary products since 1962 and has a registered office in Jaipur, Rajasthan. The manufacturing facilities of FKPL are currently in Thane (Maharashtra) and Shimla (Himachal Pradesh).
 - b) Until 2010, FKPL was a relatively small business with relatively small turnover and low market visibility for its products. It sold its products mainly in the small towns in Rajasthan with the brand name 'FerreroKosher'. Since Ms. Diaz took over the role of CEO in 2011, FKPL has grown exponentially. Due to increasing demand for its products, it then began marketing expanding its manufacturing facilities.

- c) Ms. Diaz envisions FKPL to be a market leader in confectionary products by 2030 and wants the company to no longer be family run only. The promoters of the company generally agree that it would be in the best interest of the future company to take this approach. Accordingly, Ms Diaz is exploring the prospect of a completely new board of directors and would like to start the process of resignations and appointments of new directors. She would also like to understand what qualifications are required for a person to be on the Board of Directors. She is keen on appointing two of her MBA school friends, Rajat and Lara on the board. Rajat is currently serving as a director on the board of one other company while Lara is not a director anywhere.
 - d) FKPL has leased two stores to sell its products inside a mall in New Delhi and another small office in a commercial building in Delhi, with about 15 persons including staff, to manage operations. FKPL has recently faced some issues of sexual harassment of women at one of its factories where due to a noncompliance with the law on sexual harassment at workplace, Ms Diaz believes that FKPL risks potentially legal actions against it by government authorities. Ms. Diaz wants to avoid any such incident in the future with the new outlets and office in Delhi.
 - e) Now that FKPL has a stronger market presence and is advertising aggressively, it has received a legal notice from Ferrero International S.A., owner of the trademark chocolate 'Ferrero Rocher'. The notice is asking FKPL to change its brand name on grounds of trademark infringement, failing which Ferrero International SA will sue FKPL. FKPL currently has no registered trademark. Ms. Diaz wants to avoid any reputational risks to the fledgling brand of FKPL but would also like to register a trademark soon.
- 3) All registers that are required to be maintained under the Companies Act should be up to date and available, but Ms. Diaz will need some time to source this information. It is unlikely to be ready prior to due date of the legal advice and may require you to visit the head office in Jaipur for a review of the hard copies of the relevant documents, if required.
 - 4) Please note that Ms. Diaz has assured you that the AOA, MOA, audited accounts and board meeting minutes will be made available to you when you visit the head office, but they will not be made available to you prior to you preparing this preliminary legal advice.
 - 5) Please advise Ms. Diaz on:
 - a) The requirements for FKPL from a corporate governance perspective in India. In particular, the client would like to know, what is the process of resignation, how many directors are required to be on their board and what the composition of the board should be, particularly if Rajat and Lara can act as board members. She would also like to know what the process for appointment of directors is. She would also like to know of the penalties for non-compliance for these actions.
 - b) The compliances under the law on sexual harassment at workplace and what should FKPL do to be compliant with this law with respect to the new outlets and office in Delhi.
 - c) Potential issues with using 'Ferrero Kosher' as a brand name and registering this as a trademark before the Registrar, as well as likelihood of success of the application. Also advise on the potential litigation risks from Ferrero International SA, including any likely outcomes of a litigation.
 - 6) Please write a legal advice of no more than **2,000** words. In your advice, please note any potential legal issues that may arise (noting the applicable laws), what steps FKPL can take to ensure compliance and any penalties for non-compliance. If you need any additional information from Ms. Diaz in order to provide her with more comprehensive advice on these issues, please let her know in your letter to her.