

## **Examiners' Comments on the 2021 Examination**

### **Head III: Commercial and Company Law**

The examination consists of five questions. Candidates were required to answer any four questions only. The questions focused on corporate and commercial problems that solicitors in Hong Kong encounter in practice.

#### **Overall Comments:**

The examination covered a range of questions from the syllabus which enabled candidates to illustrate their knowledge and practical understanding of Hong Kong commercial and company law. Some candidates still provided one unequivocal answer to questions that are designed to solicit an analytical discussion of the various legal issues raised by a set of facts. These “problem-type” questions are designed to solicit a discussion by candidates of the variable possible options available to the client to whom the candidate is required to provide advice. Problems for the weaker candidates include: not directing the answers towards the questions as set; not supporting the answers with adequate reference to legal authorities; and merely citing the rules without sufficient or any analysis. Candidates are expected to demonstrate an ability to analyse the legal issues raised by the questions.

#### **Question 1**

This question gave candidates the opportunity to demonstrate their knowledge of the applicable legal principles concerning charges, receivership, avoidance powers, and the priority of secured and unsecured creditors in the event of liquidation. Generally, candidates were able to apply the relevant principles concerning the validity and priority of various fixed and floating charges covered in the question. The rights of the preferential creditors were also canvassed. However, weaker candidates were unable to address the relevant issues of control concerning a fixed charge over book debts.

#### **Question 2**

The question called for an analysis of the legal principles and procedure regarding the convening of board meetings and general meetings, and the passing of resolutions. This question was answered well. Weaker candidates failed to discuss the issues in the context of the Model Articles and the Companies Ordinance. Also, not all the candidates identified the problems caused by non-compliance with quorum, and they failed to discuss adequately how to deal with the irregularity.

### **Question 3**

This question concerned the listed companies in Hong Kong, focusing on the application of the relevant principles (in particular, Chapter 14 and Chapter 14A) in the Listing Rules. On the whole, this question was answered well. Most candidates identified the relevant regulations from the Listing Rules and discussed the principles competently in the context of the facts. Weaker candidates were unable to cope adequately with concepts such as “major transaction”, “connected person”, and “continuing connected transaction”. Not all the candidates clearly discussed the manner of obtaining the relevant shareholders’ approval, and the opinion from the independent board committee. Some candidates merely cited the relevant percentage ratios defined under the Listing Rules without any attempt to apply the ratios to the facts.

### **Question 4**

This question concerned insider dealing as a criminal offence and a civil market misconduct under the Securities and Futures Ordinance. In addition, candidates were also required to show an understanding of how various types of activities are regulated under the Securities and Futures Ordinance, including securities trading and asset management. This question was answered reasonably well. Weaker candidates were unable to cope adequately with concepts relating to the financial resources rules, the need to lodge and maintain the security or be insured in accordance with the Ordinance, and the applicable liquid capital requirements. Some weaker candidates also failed to explain clearly the meaning of “substantial shareholder” and how the exercise of voting power at the general meetings may be controlled directly or indirectly with the “associates”.

### **Question 5**

Generally candidates were able to cover issues related to a business transfer agreement and how certain listed liabilities can be excluded. Weaker candidates did not adequately analyse the need to prepare a prescribed notice under the Transfer of Business (Protection of Creditors) Ordinance, and the legal effects of the notice within the relevant time frame. Also, some candidates were unable to discuss how a third party may enforce the terms of a business transfer agreement under the Contracts (Rights of Third Parties) Ordinance.

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