

Examiners' Comments on the 2018 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 provide 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 concerned the listed companies in Hong Kong, focusing on the application of the relevant principles 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 “connected person”, “connected transaction”, “pro-rata” issue of securities and “continuing connected transaction”.

Question 2

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 charges over book debts.

Question 3

The question called for an analysis of the statutory and common law rights of the shareholders and directors to inspect corporate documentation, including the accounts, audited financial statements and minute books of general meetings. This question was answered reasonably well. Weaker candidates failed to discuss the mechanism and legal principles governing the court's judicial power to order an inspection of the corporate documents.

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 the business of asset management. This question was answered reasonably well. Weaker candidates were unable to cope adequately with concepts such as "relevant information", "dealing" in shares and "substantial shareholder".

Question 5

This question invited analysis of various doctrines under the Companies Ordinance such as financial assistance and declaration of dividend out of profits available for distribution. Candidates were also required to analyse issues related to share acquisition, including the need to fulfil the relevant conditions precedent prior to completion, and the need to produce the relevant documents in order to complete the sale and purchase of shares. This question was answered reasonably well. In discussing financial assistance, weaker candidates were unable to identify issues such as the limit capped by relevant proportion of the shareholders' funds, and the need to satisfy the solvency test.

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