

## **Examiners' Comments on the 2022 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 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 securities covered in the question. The rights of the preferential creditors were also canvassed. However, weaker candidates were unable to address the relevant issues regarding the blocked account for the collection of book debts.

#### **Question 2**

This question called for an analysis of the legal principles and procedure regarding the rights of the shareholders and directors to inspect certain corporate documents, including financial statements. Most candidates could explain how an application can be submitted to the court for a judicial order of inspection. However, weaker candidates failed to discuss the rights of the shareholders and directors under the Model Articles and the Companies Ordinance without judicial intervention.

### **Question 3**

Generally candidates were able to cover issues regarding a business transfer agreement, the differences between loan financing and allotment of shares, and the key provisions to be included in a shareholders' agreement and the articles of association. Concerning business transfer, 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.

### **Question 4**

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 "connected transaction", "connected person", and "disclosable transaction". Not all the candidates clearly discussed the manner of obtaining the independent shareholders' approval, and the need to appoint an independent financial adviser to advise the independent board committee.

### **Question 5**

This question concerned the relevant offences under the Securities and Futures Ordinance (SFO) for creating a false market in the shares in a listed company. In addition, candidates were also required to show an understanding of how various types of activities are regulated under the SFO, including securities dealing and advising on securities. This question was answered reasonably well. Weaker candidates were unable to cope adequately with the disciplinary powers and powers of intervention that the Securities and Futures Commission can exercise under SFO.