

## **Examiners' Comments on the 2024 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**

Generally, candidates were able to cover issues regarding a shareholders' agreement and a share sale and purchase agreement. The topics covered included pre-emptive rights, directors' right to refuse a proposed share sale, deed of adherence, conditions precedent, warranties, indemnity and various provisions limiting the liabilities of the vendor. Weaker candidates did not adequately analyse the need, based on the factual scenario, to retain part of the purchase price to be paid on a later date after completion, or deposit part of the purchase price into an escrow account for an agreed period.

#### **Question 2**

This question concerned the key elements of insider dealing under the Securities and Futures Ordinance (SFO), the applicable enforcement actions and sanctions (civil and criminal) that can be imposed. In addition, candidates were also required to show an understanding of how various types of activities

are regulated under the SFO, including leveraged foreign exchange dealing. This question was answered reasonably well. Weaker candidates were unable to explain clearly the concept of “dealing” in shares, as dealing in shares not only involve buying and subscribing for securities, but also extend to using the relevant information to “counsel” or “procure” others to deal with the securities.

### **Question 3**

This question concerned the listed companies in Hong Kong, focusing on the application of the relevant principles in the Listing Rules governing a proposed private placing. Only a small number of candidates correctly 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 “general mandate”, placing of securities for “cash consideration”, “serious financial position” and “benchmarked price”. Some candidates also failed to clearly discuss how a “connected transaction” can be fully exempt from shareholders’ approval and disclosure if certain prescribed conditions are met.

### **Question 4**

Generally, candidates were able to cover issues regarding non-pro-rata allotment of shares to existing shareholders, and how the rights for the existing shareholders concerning voting and dividend can be affected. Weaker candidates failed to identify the need to obtain prior approval by the shareholders in a general meeting. Most candidates were able to explain how a written resolution can be effectively passed by all the eligible shareholders without a general meeting, and without any previous notice to convene the meeting.

### **Question 5**

This question required candidates to demonstrate an adequate understanding of the legal principles and procedure in respect of financial assistance, reduction of share capital, and company deregistration. Some candidates were unable to identify the relevant provisions from the Companies Ordinance. Weaker candidates failed to discuss the need to provide the requisite board resolutions, shareholders’ resolutions and the solvency statement.