

Overseas Lawyers Qualification Examination

HEAD III: COMMERCIAL AND COMPANY LAW

Standards, Syllabus and Materials

STANDARDS

General Notes to Candidates

The reading list attempts to be as extensive as possible but there is no one particular comprehensive text available. Students should therefore read as widely as possible over these topics. You cannot assume that by reading only a selection of the texts that you will have read in sufficient detail or depth, and it is recommended that you try to look at all the suggested readings.

Where the reading list consists of materials prepared or written not specifically for Hong Kong legislation, you should be aware of any differences in law and principles in such materials which may not be applicable to Hong Kong.

You should also familiarise yourself with the latest legislative changes and legal developments which may have occurred since the publication of those materials.

Candidates will be expected:

- (i) to have a working knowledge of the commercial and company law listed below;
- (ii) to be able to draft and analyze simple documents and forms; and,
- (iii) to be able to perform many of the tasks of a commercial lawyer, including
 - (a) incorporating a new company
 - (b) activating a shelf company

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

COMPANY LAW

1. Business Organizations

- (a) The basic elements of, and main differences between, the following types of business organizations
 - Sole proprietorships
 - Partnerships
 - Companies
 - Unincorporated associations
- (b) Business registration
- (c) A sound knowledge of the following Ordinances on business organizations:
 - *Business Registration Ordinance (Cap 310)*
 - *Companies Ordinance (Cap 622)*
 - *Partnership Ordinance (Cap 38)*

2. Companies

- (a) The types of companies
- (b) Incorporation procedures
- (c) Company articles
- (d) Capacity and powers of company
- (e) Execution of documents
 - Optional common seal
- (f) Share capital
 - No par/nominal value
 - Allotment of shares
 - Transfer and transmission of shares and debentures
 - Permitted methods of reduction of share capital
- (g) Directors and the “responsible person”
 - Directors’ powers and duties
 - Liability of officers, especially directors
 - *Limitation Ordinance (Cap 347)* and directors
- (h) Business Review in the directors’ report

- (i) Meetings, resolutions and availability of information
 - Directors' meetings and resolutions
 - Members' meetings and resolutions
 - Annual general meetings and general meetings
 - Procedures of calling meetings and procedure at meetings
 - Various forms of resolutions and their effect
 - Proxies
- (j) Dealing with offences
 - Civil or criminal
- (k) Members' rights and powers
 - Minority shareholders
 - Statutory derivative action
 - Common law action – *Foss v Harbottle*
 - Division of power between members and directors

3. Merger and Acquisition Transactions – Acquisition of a Company or a Business and Joint Ventures

- (a) The undertaking or assets being acquired
 - Share purchase
 - Asset purchase
- (b) Pre-contractual agreements and procedures
 - Formalizing preliminary negotiations
 - Due diligence
 - Confidentiality undertaking/letter
- (c) Structure and format of the sale and purchase contract
 - Seller-friendly vs. purchaser-friendly contract
 - The structure and basic provisions of the sale and purchase contract
 - Schedules
 - Assignment and novation and anti-assignment clauses
- (d) Disclosure letter
- (e) Completion and post-completion
- (f) Protection of creditors
 - *Transfer of Businesses (Protection of Creditors) Ordinance (Cap49)*
- (g) Updating corporate records and registers (including significant controllers register)

- (h) Joint venture documentation
 - Basic provisions of a joint venture/shareholders' agreement
 - Minority protection
 - Joint venture articles of association

4. The Securities and Futures Commission

- (a) An overview of the system relating to individuals and companies licensed or registered with the Securities and Futures Commission
- (b) Offers of investments
 - Part IV of the *Securities and Futures Ordinance*
- (c) Licensing and registration
 - Part V of the *Securities and Futures Ordinance*
- (d) Business conduct, etc. of intermediaries
 - Part VII of the *Securities and Futures Ordinance*
 - Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission
- (e) Supervision and investigatory powers of the Securities and Futures Commission
 - Part VIII of the *Securities and Futures Ordinance*
- (f) Enforcement powers of the Securities and Futures Commission
 - Disciplinary powers: Part IX of the *Securities and Futures Ordinance*
 - General understanding of powers of intervention and proceedings: Part X of the *Securities and Futures Ordinance*
 - Section 213: Injunctions and Other Orders
- (g) Market Misconduct Tribunal
 - Part XIII of the *Securities and Futures Ordinance*
- (h) Offences relating to dealings in securities and futures contracts, etc.
 - Part XIV of the *Securities and Futures Ordinance*
- (i) Disclosure of inside information
 - Part XIVA of the *Securities and Futures Ordinance*
- (j) Disclosure of interests
 - Part XV of the *Securities and Futures Ordinance*

5. Dealings and Transactions with Listed Companies

- (a) Methods of listing (Chapter 7 of the HKEX Listing Rules)
- (b) Qualifications for listing (Chapter 8 of the HKEX Listing Rules)
 - Qualifications for listing with a weighted voting rights structure (Chapter 8A of the HKEX Rules)
- (c) Restrictions on purchase and subscription (Chapter 10 of the HKEX Listing Rules)
- (d) Continuing obligations of listed companies (Chapter 13 of the HKEX Listing Rules)
- (e) Notifiable transactions and consequences (Chapter 14 of the HKEX Listing Rules)
- (f) Connected transactions and consequences (Chapter 14A of the HKEX Listing Rules)

6. Company Liquidations

- (a) Liquidation of insolvent companies
 - Methods, grounds and procedure
- (b) Dissolution of solvent companies
 - Methods, grounds and procedure
- (c) The role of various parties
- (d) Avoidance powers of liquidators on antecedent transactions, including:
 - Transaction at an undervalue
 - Unfair preference
 - Effect of floating charge
 - Extortionate credit transactions
- (e) Creditors' rights and priorities
- (f) Costs
- (g) Subsequent events
- (h) A sound knowledge of the following Ordinances on company liquidations:
 - *Companies Ordinance (Cap 622)*
 - *Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)*

7. Receiverships

- Grounds for receiver
- Procedure for receivership
- Receiver's powers and duties
- Cessation of the receiver's appointment

COMMERCIAL LAW

8. Real Securities

(a) Assets

- Land
- Chose in possession
- Chose in action

(b) Secured loan agreements

- Form of agreement
 - Standard form agreement/the debenture
 - Standard form terms
 - Facility agreement
- Form of security
 - Mortgage
 - Charge
 - Pledge
- Perfection of security
- Consequences of default
- The charge back
 - Section 15A of the *Law Amendment and Reform(Consolidation) Ordinance (Cap 23)*
- Common terms in loan agreements and/or the security contracts
 - Negative pledge
 - Anti-assignment
 - Requirement for lender's consent for certain actions
 - Subrogation
 - Subordination
 - Suspense account

- ♦ Events of default
- ♦ Currency

9. Quasi-Securities

- Consideration of capacity to contract
- Effectiveness of quasi-securities
- Form of transaction
- Can the transaction be perfected to protect against other interest holders?
- Guarantee and indemnity
 - Traditional form of guarantee
 - Indemnity
 - Distinction between guarantee and indemnity
 - Combined guarantee/indemnity
 - Effect of material alteration of the debt contract
 - Discharge of guarantor's liability
 - Contractual relief on default
 - *The Civil Liability (Contribution) Ordinance (Cap 377)*
- Letter of comfort
- Performance bond
- Assignment of debts and choses in action
 - Benefit and burden of the chose in action
 - Legal/statutory assignment
 - Equitable assignment
 - Novation
 - Forms of security over the asset

SUMMARY OF MATERIALS

1. Books and articles

Company law

Materials published by the Companies Registry at the following website:

www.cr.gov.hk : The new *Companies Ordinance*

Company Law in Hong Kong – Practice and Procedure, Sweet and Maxwell, latest edition

Commercial Law

Commercial Law in Hong Kong, LexisNexis, Judith Sihombing, latest edition

2. Legislation

- *Banking Ordinance, Cap 155*
- *Bankruptcy Ordinance, Cap 6*
- *Business Registration Ordinance, Cap 310*
- *Companies Ordinance, Cap 622*
- *The Model Articles set out in the Companies (Model Articles) Notice, Cap 622H*
- *Companies (Winding-Up and Miscellaneous Provisions) Ordinance, Cap 32*
- *Contracts (Rights of Third Parties) Ordinance, Cap 623*
- *Conveyancing and Property Ordinance, Cap 219*
- *Land Registration Ordinance, Cap 128*
- *Law Amendment and Reform (Consolidation) Ordinance, Cap 23*
- *Limited Partnerships Ordinance, Cap 37*
- *Partnership Ordinance, Cap 38*
- *Securities and Futures Ordinance, Cap 571*
- *Stamp Duty Ordinance, Cap 117*
- *Transfer of Businesses (Protection of Creditors) Ordinance, Cap 49*

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