

Examiners' Comments on the 2025 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 insider dealing as a criminal offence and 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 dealing in securities and advising on securities. This question was answered reasonably well. Weaker candidates failed to appreciate that dealing in shares not only involve buying and subscribing for securities but also extending to using the relevant information to counsel or procure others to deal in the securities.

Question 2

This question concerned the listed companies in Hong Kong, focusing on the application of the relevant principles in the Listing Rules. Overall, 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 “controller”, “substantial shareholder” and “very substantial acquisition”. Also, some candidates produced a weak analysis of the relevant factors in determining whether the acquisition constitutes a “reverse takeover”.

Question 3

The question called for an analysis of the relevant statutory provisions governing unlawful distribution of a company’s assets to its members, transaction at an undervalue, and the legal effects of a notice of business transfer duly published. Weaker candidates failed to identify the possibility that the scheme of restructuring might constitute a “vertical amalgamation” and consequently missed the relevant issues.

Question 4

This question invited analysis of a subscription agreement for allotment of shares. Key issues include non-pro-rata allotment, updating the register of members, and the need to maintain a record of “significant controllers”. The feasibility of executing a share certificate without common seal also needs to be examined. Weaker candidates were unable to discuss the relevant principles concerning share transfer under the grant of probate.

Question 5

The question called for an analysis of the key terms of a share sale and purchase agreement. The terms of a shareholders’ agreement, including pre-emption rights and transfer restrictions, also need to be analysed. Weaker candidates fail to examine the stamp duty implications and the statutory provisions concerning “financial assistance”.