

Examiners' Comments on the 2010 Examination

Head III: Commercial and Company Law

The examination paper comprised 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:

Major weaknesses were: producing unequivocal answers to questions without stating the relevant general legal principles; not providing any analysis of the various legal options available to the clients; failing to reach any conclusion; failing to keep the answers organised and coherent; not directing the answers towards the questions as set; not supporting the answers with adequate reference to statutory provisions and case authority. Specific comments regarding individual questions are set out below.

Question 1

The first part of the question required candidates to demonstrate an adequate understanding of issues relating to the powers of the shareholders in general meetings, the powers of the board of directors, and the protection of minority shareholders' interests. Some weaker candidates failed to discuss s 168A as regards unfairly prejudicial conduct.

The second part of the question concerned loans and similar transactions in favour of directors and certain connected persons. On the whole, this question was answered well.

Question 2

Part of this question required candidates to discuss the company's statutory right to increase its share capital, in the light of contradictory provision within the company's articles of association, which stipulated that an increase in share capital would require the unanimous consent of all shareholders. Some candidates identified the key issues and produced a logical analysis but others failed to identify and reconcile the differences between the articles and the Companies legislation. The second part of this question required candidates to analyze the efficacy of a notice convening an AGM. Most candidates dealt with this question reasonably well.

Question 3

The first part of the question invited an analysis of the various options available to a shareholder to recover her loan and equity investment in a joint-venture company. The second part of the question required candidates to address issues regarding unfair preference (s 266B CO). This question was answered reasonably well, although weaker candidates failed to identify the possibility of serving a statutory demand on the company under s 177(1)(d) CO.

Question 4

This question sought to require candidates to demonstrate their knowledge of the principles concerning the issue, content, dating, and registration and vetting of prospectuses. Some candidates, however, omitted to identify and analyse relevant civil and criminal liabilities concerning untrue statements made in a prospectus. Also, not many candidates identified the relevant exceptions regarding the vetting and registration of a prospectus.

Question 5

The first part of the question concerned the creation of fixed and floating charges over book debts. In the second part of the question, candidates were required to highlight the key differences between a creditors' voluntary liquidation and other applicable modes of liquidation, and to apply the principles to the facts of the question. This question was answered well.