

## **Examiners' Comments on the 2011 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: merely stating the general principles without analysing them in the context of the facts; failing to reach any conclusion; failing to keep the answers organised; not supporting the answers with adequate reference to statutory provisions and case precedents. Specific comments regarding individual questions are set out below.

#### **Question 1**

This question required the candidates to demonstrate an adequate understanding of the Table A Articles of Association concerning the shareholders' rights and the powers of the board of directors. Issues such as the right to inspect minutes of the general meetings, minutes of board proceedings and the books of account arose in the context of the facts. On the whole, this question was answered well. Weaker candidates, however, failed to identify the most relevant articles in the Table A and gave an incomplete analysis.

#### **Question 2**

This question gave candidates the opportunity to demonstrate their knowledge of the applicable legal principles concerning fixed and floating charges, receivership, unfair preference and the priority of secured and unsecured creditors in the event of liquidation. Generally, candidates were able to cover issues concerning the validity and priority of various securities. However, some candidates were unable to explain the need to wind up the company before a certain statutory deadline in order to invoke the claw-back provisions, such as s 267 and s 266B of the Companies Ordinance.

#### **Question 3**

Generally candidates were able to cover issues related to share acquisition and business transfer, including due diligence, assets and liabilities, representations and warranties, disclosure letter and completion. Regarding business transfer, weaker candidates did not adequately analyze novation of contracts and the need to prepare notices under the Transfer of Business (Protection of Creditors) Ordinance.

#### **Question 4**

This question concerned the listed companies in Hong Kong, focusing on the application of the relevant principles in the Securities and Futures Ordinance, the Listing Rules, the Companies Ordinance and also common law. On the whole, this question was answered well. A small number of weak candidates were unable to identify the relevant provisions in the Listing Rules.

#### **Question 5**

The key issues of the question concerned allotment of shares, the protection of minority shareholders as reflected in the drafting of the shareholders' agreement, directors' fiduciary duties and also statutory derivative action in the name of the company against the directors. Most candidates discussed the relevant legal principles competently in the context of the facts.