

## **Examiners' Comments on the 2012 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 coherent; 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 due diligence investigations, scope of warranties and relevant documentation in structuring a joint venture through a corporate vehicle. Rights and obligations of the joint venture parties were to be analysed. On the whole, this question was answered well. Weaker candidates, however, failed to identify the issues regarding the company's giving of financial assistance to acquire its own shares.

### **Question 2**

Generally candidates were able to cover issues related to the regulated activities under the Securities and Futures Ordinance, and identify the relevant offences concerning insider dealing and market manipulation. Weaker candidates were unable to apply the concept the false trading in the context of the facts.

### **Question 3**

Most candidates were able to analyse the Companies Registrar's powers and identify the possible course of action under the Companies Ordinance. Weaker candidates (who failed to identify the key legislative provisions and the necessary step involved) discussed the general principles related to passing-off and breach of fiduciary obligations, producing answers which were not directed towards the question as set.

### **Question 4**

The question concerned priority of charges, validity of floating and fixed charges in liquidation, and the law on unfair preference under the Companies Ordinance. Candidates who scored poorly failed to identify the consequences of various claw-back provisions under the Companies Ordinance and the positions of various secured and unsecured creditors in the receivership and liquidation proceedings.

### **Question 5**

The major issues of the question concerned the key listing criteria of the Main Board and Growth Enterprise Market, connected transactions, relevant waivers and exemptions, and the need to make disclosure in the prospectus. Most candidates identified the relevant regulations from the Listing Rules and discussed the principles competently in the context of the facts.