

# **Examiners' Comments on the 2013 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 legal principles and procedure in respect of increase of share capital, and allotment of shares on a non-pro-rata basis. On the whole, this question was answered well. Weaker candidates, however, were unable to identify the relevant sections from the Companies Ordinance and the Table A Articles.

### **Question 2**

The question concerned the differences between voluntary and compulsory liquidations, priority of charges, effectiveness of a fixed charge over book debts, and the validity of the charges under the Companies Ordinance in the event of liquidation. Candidates who scored poorly failed to identify the positions and priority of various secured and unsecured creditors (including the preferential creditors) in the receivership and liquidation proceedings.

### **Question 3**

Generally, candidates were able to cover the objectives and functions of the Securities and Future Commission, and the regulated activities under the Securities and Futures Ordinance. Most of them were able to identify the relevant offences concerning the issuance of advertisements inviting the public in HK to enter into agreements to acquire securities. Weaker candidates were unable to apply the concept the false trading in the context of the facts, and failed to explain the relevant proceedings which could be instituted against the defendant before the Market Misconduct Tribunal.

#### **Question 4**

Most candidates were able to analyse comparatively the powers of the directors in the board meetings *vis-à-vis* the shareholders in the general meetings, on the basis of the Companies Ordinance and the Table A Articles. They were asked to apply the principles in the context of various issues e.g. removal of a director from the board, and declaration of dividends out of the company's distributable profits ... etc. This question was answered well. In particular, most candidates were able to identify the legal issues relating to the protection of the minority shareholders' interests through the drafting of a shareholders' agreement.

#### **Question 5**

The major issues of the question concerned the concept of "notifiable transactions" under the Listing Rules. Apart from analysing the legal principles and discussing the relevant procedure, candidates were required to apply the relevant tests and ratios in the context of the facts and actual figures provided in the question. Most candidates accurately identified the relevant regulations from the Listing Rules, and performed the calculation competently in the context of the facts and figures.