

Examiners' Comments on the 2014 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 was answered reasonably well. The question concerned collective investment schemes as defined in the Securities and Futures Ordinance ("SFO"), licensing of regulated activities (including asset management), and market misconduct. Candidates who scored poorly failed to identify the relevant provisions of the SFO.

Question 2

Candidates were expected to demonstrate adequate understanding of issues like whether various charges (fixed and floating) were valid, s 267 of Cap.32 concerning old monies granted under a floating charge, rights of the preferential creditors, and the concept of "associate" regarding an alleged unfair preference in company liquidation. On the whole, this question was answered well. Weaker candidates, however, were unable to state the conclusion on priorities of various creditors with a clear explanation.

Question 3

This question gave candidates the opportunity to demonstrate their knowledge of the Listing Rules, SFO and the Companies Ordinance in various aspects: independence of non-executive directors and their duties; directors' dealings in securities of their listed issuer; and the prospectus regime regulating public offerings of shares in Hong Kong. This question was generally answered well. Weaker candidates omitted to analyse the Model Code for Securities Transactions by Directors of Listed Issuers in the Listing Rules.

Question 4

This question invited analysis of the applicable legal principles in a share acquisition. This included carrying out due diligence and determining the structure of the deal. Generally, candidates were able to cover issues concerning the due diligence process and the drafting of the sale and purchaser agreement. However, some candidates were unable to differentiate a warranty from an undertaking or a condition precedent.

Question 5

This question invited application of various options available to the shareholders of a company who want to convene general meetings despite the board's reluctance to do so. Although most candidates correctly identified and explained the procedure under the Companies Ordinance, not many of them adequately analysed the Model Articles concerning various issues, such as the eligibility for demand of poll, quorum and adjournment.

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