

Examiners' Comments on the 2015 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 and application of the legal principles concerning fixed and floating charges, receivership, unfair preference and the priority of various types of creditors in the event of liquidation. While most candidates were able to discuss the priority of various securities, weaker candidates were unable to apply the relevant claw-back provisions (e.g. s 267 of Cap. 32).

Question 2

This question concerned the listed companies in Hong Kong, focusing on the application of various doctrines regarding “connected transactions” and “connected person” in the Listing Rules. On the whole, this question was answered well. Weaker candidates were unable to identify the relevant provisions in the Listing Rules in support of their analysis.

Question 3

Generally candidates were able to cover issues related to various criminal offences and civil market misconducts governed by the Securities and Futures Ordinance and the Listing Rules. Weaker candidates did not adequately discuss the licensing of various types of regulated activities in the context of the facts stated in the question.

Question 4

On the whole, candidates were able to cover issues related to share acquisition, including due diligence, assets and liabilities, conditions precedent, representations, warranties, undertakings and the documentation needed for completion. Overall, this question was answered well.

Question 5

The key issues of the question concerned the application of the Model Articles in convening an annual general meeting. Most candidates were able to explain the procedure, the timeframe (with reference to the “accounting reference period”) and the documentation (including the “reporting documents”) as defined in the Model Articles and the Companies Ordinance. Weaker candidates failed to explain the court’s statutory power in ordering the calling of an annual general meeting.