

Examiners' Comments on the 2016 Examination

Head III: Commercial and Company Law

The examination is comprised of 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:

Problems for the weaker candidates were: producing unequivocal answers to questions without stating the relevant legal principles and applying the principles 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 candidates to demonstrate an adequate understanding of the relevant doctrines and principles under the Listing Rules. Most candidates were able to identify the relevant issues from the facts. For instance, they applied the principles governing “connected transaction”, “connected person”, and explained the disclosure obligations under the Model Code. On the whole, this question was answered well. Weaker candidates, however, were unable to identify the relevant issues concerning unpublished price-sensitive information and the “blackout” period within which the directors must not deal in the listed issuer’s securities.

Question 2

This question required candidates to discuss the relevant provisions in the Companies Ordinance and the Model Articles concerning the shareholders’ right to convene general meetings, the methods of resolving deadlock within the board of directors, and the board’s discretion to refuse to register the transfer of shares. Most candidates dealt with this question reasonably well, and demonstrated a competent understanding of the legal framework and procedure.

Question 3

This question gave candidates the opportunity to demonstrate their knowledge of the applicable legal principles in relation to 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, weaker candidates were unable to invoke the claw-back provisions (such as s 267 and s 266B of Cap.32) in the context of the relevant dates covered by the relevant avoidance periods.

Question 4

This question required candidates to demonstrate their knowledge in conducting a due diligence exercise for the sale and purchase of shares in a private limited company. Candidates were expected to understand the differences among “warranties”, “undertakings” and “conditions precedent”, and appreciate the differing perspectives of the vendor and the purchaser in the transaction. Candidates were also required to identify and explain the documentation needed for the completion of the share transfer. Overall, this question was answered well.

Question 5

This question concerned market misconduct and the relevant criminal offences under the Securities and Futures Ordinance. Candidates were also required to show an understanding of how various types of activities are regulated under the Securities and Futures Ordinance, including asset management and trading in securities. Although most candidates answered this question reasonably well, weaker candidates failed to correctly apply the principles governing a “substantial shareholder”, and gave incomplete analysis.

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