

THE LAW SOCIETY OF HONG KONG
OVERSEAS LAWYERS QUALIFICATION EXAMINATION
2024 SUPPLEMENTARY INFORMATION PACKAGE

HEAD III: Commercial and Company Law

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- 2. Examiners' Comments on the 2021, 2022 and 2023 Examinations**
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Important: The test paper for Head III Commercial and Company Law:

- 1. is open book. Candidates may bring in and refer to any book, document or other written material**
- 2. has a duration of 3½ hours**
- 3. has no specific reading time allocated**
- 4. contains FIVE questions. Candidates should answer any FOUR questions only.**

1. Standards, Syllabus and Materials

Overseas Lawyers Qualification Examination

HEAD III: COMMERCIAL AND COMPANY LAW

Standards, Syllabus and Materials

STANDARDS

General Notes to Candidates

The reading list attempts to be as extensive as possible but there is no one particular comprehensive text available. Students should therefore read as widely as possible over these topics. You cannot assume that by reading only a selection of the texts that you will have read in sufficient detail or depth, and it is recommended that you try to look at all the suggested readings.

Where the reading list consists of materials prepared or written not specifically for Hong Kong legislation, you should be aware of any differences in law and principles in such materials which may not be applicable to Hong Kong.

You should also familiarise yourself with the latest legislative changes and legal developments which may have occurred since the publication of those materials.

Candidates will be expected:

- (i) to have a working knowledge of the commercial and company law listed below;
- (ii) to be able to draft and analyze simple documents and forms; and,
- (iii) to be able to perform many of the tasks of a commercial lawyer, including
 - (a) incorporating a new company
 - (b) activating a shelf company

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

COMPANY LAW

1. Business Organizations

- (a) The basic elements of, and main differences between, the following types of business organizations
 - Sole proprietorships
 - Partnerships
 - Companies
 - Unincorporated associations
- (b) Business registration
- (c) A sound knowledge of the following Ordinances on business organizations:
 - *Business Registration Ordinance (Cap 310)*
 - *Companies Ordinance (Cap 622)*
 - *Partnership Ordinance (Cap 38)*

2. Companies

- (a) The types of companies
- (b) Incorporation procedures
- (c) Company articles
- (d) Capacity and powers of company
- (e) Execution of documents
 - Optional common seal
- (f) Share capital
 - No par/nominal value
 - Allotment of shares
 - Transfer and transmission of shares and debentures
 - Permitted methods of reduction of share capital
- (g) Directors and the “responsible person”
 - Directors’ powers and duties
 - Liability of officers, especially directors
 - *Limitation Ordinance (Cap 347)* and directors
- (h) Business Review in the directors’ report

- (i) Meetings, resolutions and availability of information
 - Directors' meetings and resolutions
 - Members' meetings and resolutions
 - Annual general meetings and general meetings
 - Procedures of calling meetings and procedure at meetings
 - Various forms of resolutions and their effect
 - Proxies
- (j) Dealing with offences
 - Civil or criminal
- (k) Members' rights and powers
 - Minority shareholders
 - Statutory derivative action
 - Common law action – *Foss v Harbottle*
 - Division of power between members and directors

3. Merger and Acquisition Transactions – Acquisition of a Company or a Business and Joint Ventures

- (a) The undertaking or assets being acquired
 - Share purchase
 - Asset purchase
- (b) Pre-contractual agreements and procedures
 - Formalizing preliminary negotiations
 - Due diligence
 - Confidentiality undertaking/letter
- (c) Structure and format of the sale and purchase contract
 - Seller-friendly vs. purchaser-friendly contract
 - The structure and basic provisions of the sale and purchase contract
 - Schedules
 - Assignment and novation and anti-assignment clauses
- (d) Disclosure letter
- (e) Completion and post-completion
- (f) Protection of creditors
 - *Transfer of Businesses (Protection of Creditors) Ordinance (Cap 49)*
- (g) Updating corporate records and registers (including significant controllers register)

- (h) Joint venture documentation
 - Basic provisions of a joint venture/shareholders' agreement
 - Minority protection
 - Joint venture articles of association

4. The Securities and Futures Commission

- (a) An overview of the system relating to individuals and companies licensed or registered with the Securities and Futures Commission
- (b) Offers of investments
 - Part IV of the *Securities and Futures Ordinance*
- (c) Licensing and registration
 - Part V of the *Securities and Futures Ordinance*
- (d) Business conduct, etc. of intermediaries
 - Part VII of the *Securities and Futures Ordinance*
 - Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission
- (e) Supervision and investigatory powers of the Securities and Futures Commission
 - Part VIII of the *Securities and Futures Ordinance*
- (f) Enforcement powers of the Securities and Futures Commission
 - Disciplinary powers: Part IX of the *Securities and Futures Ordinance*
 - General understanding of powers of intervention and proceedings: Part X of the *Securities and Futures Ordinance*
 - Section 213: Injunctions and Other Orders
- (g) Market Misconduct Tribunal
 - Part XIII of the *Securities and Futures Ordinance*
- (h) Offences relating to dealings in securities and futures contracts, etc.
 - Part XIV of the *Securities and Futures Ordinance*
- (i) Disclosure of inside information
 - Part XIVA of the *Securities and Futures Ordinance*
- (j) Disclosure of interests
 - Part XV of the *Securities and Futures Ordinance*

5. Dealings and Transactions with Listed Companies

- (a) Methods of listing (Chapter 7 of the HKEX Listing Rules)
- (b) Qualifications for listing (Chapter 8 of the HKEX Listing Rules)
 - Qualifications for listing with a weighted voting rights structure (Chapter 8A of the HKEX Rules)
- (c) Restrictions on purchase and subscription (Chapter 10 of the HKEX Listing Rules)
- (d) Continuing obligations of listed companies (Chapter 13 of the HKEX Listing Rules)
- (e) Notifiable transactions and consequences (Chapter 14 of the HKEX Listing Rules)
- (f) Connected transactions and consequences (Chapter 14A of the HKEX Listing Rules)

6. Company Liquidations

- (a) Liquidation of insolvent companies
 - Methods, grounds and procedure
- (b) Dissolution of solvent companies
 - Methods, grounds and procedure
- (c) The role of various parties
- (d) Avoidance powers of liquidators on antecedent transactions, including:
 - Transaction at an undervalue
 - Unfair preference
 - Effect of floating charge
 - Extortionate credit transactions
- (e) Creditors' rights and priorities
- (f) Costs
- (g) Subsequent events
- (h) A sound knowledge of the following Ordinances on company liquidations:
 - *Companies Ordinance (Cap 622)*
 - *Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)*

7. Receiverships

- Grounds for receiver
- Procedure for receivership
- Receiver's powers and duties
- Cessation of the receiver's appointment

COMMERCIAL LAW

8. Real Securities

(a) Assets

- Land
- Chose in possession
- Chose in action

(b) Secured loan agreements

- Form of agreement
 - Standard form agreement/the debenture
 - Standard form terms
 - Facility agreement
- Form of security
 - Mortgage
 - Charge
 - Pledge
- Perfection of security
- Consequences of default
- The charge back
 - Section 15A of the *Law Amendment and Reform(Consolidation) Ordinance (Cap 23)*
- Common terms in loan agreements and/or the security contracts
 - Negative pledge
 - Anti-assignment
 - Requirement for lender's consent for certain actions
 - Subrogation
 - Subordination
 - Suspense account

- ♦ Events of default
- ♦ Currency

9. Quasi-Securities

- Consideration of capacity to contract
- Effectiveness of quasi-securities
- Form of transaction
- Can the transaction be perfected to protect against other interest holders?
- Guarantee and indemnity
 - Traditional form of guarantee
 - Indemnity
 - Distinction between guarantee and indemnity
 - Combined guarantee/indemnity
 - Effect of material alteration of the debt contract
 - Discharge of guarantor's liability
 - Contractual relief on default
 - The *Civil Liability (Contribution) Ordinance (Cap 377)*
- Letter of comfort
- Performance bond
- Assignment of debts and choses in action
 - Benefit and burden of the chose in action
 - Legal/statutory assignment
 - Equitable assignment
 - Novation
 - Forms of security over the asset

SUMMARY OF MATERIALS

1. Books and articles

Company law

Materials published by the Companies Registry at the following website:

www.cr.gov.hk : The new *Companies Ordinance*

Company Law in Hong Kong – Practice and Procedure, Sweet and Maxwell, latest edition

Commercial Law

Commercial Law in Hong Kong, LexisNexis, Judith Sihombing, latest edition

2. Legislation

- *Banking Ordinance, Cap 155*
- *Bankruptcy Ordinance, Cap 6*
- *Business Registration Ordinance, Cap 310*
- *Companies Ordinance, Cap 622*
- *The Model Articles set out in the Companies (Model Articles) Notice, Cap 622H*
- *Companies (Winding-Up and Miscellaneous Provisions) Ordinance, Cap 32*
- *Contracts (Rights of Third Parties) Ordinance, Cap 623*
- *Conveyancing and Property Ordinance, Cap 219*
- *Land Registration Ordinance, Cap 128*
- *Law Amendment and Reform (Consolidation) Ordinance, Cap 23*
- *Limited Partnerships Ordinance, Cap 37*
- *Partnership Ordinance, Cap 38*
- *Securities and Futures Ordinance, Cap 571*
- *Stamp Duty Ordinance, Cap 117*
- *Transfer of Businesses (Protection of Creditors) Ordinance, Cap 49*

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2. Examiners' Comments on the 2021, 2022 and 2023 Examinations

Examiners' Comments on the 2021 Examination

Head III: Commercial and Company Law

The examination consists 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:

The examination covered a range of questions from the syllabus which enabled candidates to illustrate their knowledge and practical understanding of Hong Kong commercial and company law. Some candidates still provided one unequivocal answer to questions that are designed to solicit an analytical discussion of the various legal issues raised by a set of facts. These “problem-type” questions are designed to solicit a discussion by candidates of the variable possible options available to the client to whom the candidate is required to provide advice. Problems for the weaker candidates include: not directing the answers towards the questions as set; not supporting the answers with adequate reference to legal authorities; and merely citing the rules without sufficient or any analysis. Candidates are expected to demonstrate an ability to analyse the legal issues raised by the questions.

Question 1

This question gave candidates the opportunity to demonstrate their knowledge of the applicable legal principles concerning charges, receivership, avoidance powers, and the priority of secured and unsecured creditors in the event of liquidation. Generally, candidates were able to apply the relevant principles concerning the validity and priority of various fixed and floating charges covered in the question. The rights of the preferential creditors were also canvassed. However, weaker candidates were unable to address the relevant issues of control concerning a fixed charge over book debts.

Question 2

The question called for an analysis of the legal principles and procedure regarding the convening of board meetings and general meetings, and the passing of resolutions. This question was answered well. Weaker candidates failed to discuss the issues in the context of the Model Articles and the Companies Ordinance. Also, not all the candidates identified the problems caused by non-compliance with quorum, and they failed to discuss adequately how to deal with the irregularity.

Question 3

This question concerned the listed companies in Hong Kong, focusing on the application of the relevant principles (in particular, Chapter 14 and Chapter 14A) in the Listing Rules. On the whole, this question was answered well. Most candidates identified the relevant regulations from the Listing Rules and discussed the principles competently in the context of the facts. Weaker candidates were unable to cope adequately with concepts such as “major transaction”, “connected person”, and “continuing connected transaction”. Not all the candidates clearly discussed the manner of obtaining the relevant shareholders’ approval, and the opinion from the independent board committee. Some candidates merely cited the relevant percentage ratios defined under the Listing Rules without any attempt to apply the ratios to the facts.

Question 4

This question concerned insider dealing as a criminal offence and a civil market misconduct under the Securities and Futures Ordinance. In addition, candidates were also required to show an understanding of how various types of activities are regulated under the Securities and Futures Ordinance, including securities trading and asset management. This question was answered reasonably well. Weaker candidates were unable to cope adequately with concepts relating to the financial resources rules, the need to lodge and maintain the security or be insured in accordance with the Ordinance, and the applicable liquid capital requirements. Some weaker candidates also failed to explain clearly the meaning of “substantial shareholder” and how the exercise of voting power at the general meetings may be controlled directly or indirectly with the “associates”.

Question 5

Generally candidates were able to cover issues related to a business transfer agreement and how certain listed liabilities can be excluded. Weaker candidates did not adequately analyse the need to prepare a prescribed notice under the Transfer of Business (Protection of Creditors) Ordinance, and the legal effects of the notice within the relevant time frame. Also, some candidates were unable to discuss how a third party may enforce the terms of a business transfer agreement under the Contracts (Rights of Third Parties) Ordinance.

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Examiners' Comments on the 2022 Examination

Head III: Commercial and Company Law

The examination consists 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:

The examination covered a range of questions from the syllabus which enabled candidates to illustrate their knowledge and practical understanding of Hong Kong commercial and company law. Some candidates still provide one unequivocal answer to questions that are designed to solicit an analytical discussion of the various legal issues raised by a set of facts. These “problem-type” questions are designed to solicit a discussion by candidates of the variable possible options available to the client to whom the candidate is required to provide advice. Problems for the weaker candidates include: not directing the answers towards the questions as set; not supporting the answers with adequate reference to legal authorities; and merely citing the rules without sufficient or any analysis. Candidates are expected to demonstrate an ability to analyse the legal issues raised by the questions.

Question 1

This question gave candidates the opportunity to demonstrate their knowledge of the applicable legal principles concerning charges, receivership, avoidance powers, and the priority of secured and unsecured creditors in the event of liquidation. Generally, candidates were able to apply the relevant principles concerning the validity and priority of various securities covered in the question. The rights of the preferential creditors were also canvassed. However, weaker candidates were unable to address the relevant issues regarding the blocked account for the collection of book debts.

Question 2

This question called for an analysis of the legal principles and procedure regarding the rights of the shareholders and directors to inspect certain corporate documents, including financial statements. Most candidates could explain how an application can be submitted to the court for a judicial order of inspection. However, weaker candidates failed to discuss the rights of the shareholders and directors under the Model Articles and the Companies Ordinance without judicial intervention.

Question 3

Generally candidates were able to cover issues regarding a business transfer agreement, the differences between loan financing and allotment of shares, and the key provisions to be included in a shareholders' agreement and the articles of association. Concerning business transfer, weaker candidates did not adequately analyse the need to prepare a prescribed notice under the Transfer of Business (Protection of Creditors) Ordinance, and the legal effects of the notice within the relevant time frame.

Question 4

This question concerned the listed companies in Hong Kong, focusing on the application of the relevant principles (in particular, Chapter 14 and Chapter 14A) in the Listing Rules. On the whole, this question was answered well. Most candidates identified the relevant regulations from the Listing Rules and discussed the principles competently in the context of the facts. Weaker candidates were unable to cope adequately with concepts such as "connected transaction", "connected person", and "disclosable transaction". Not all the candidates clearly discussed the manner of obtaining the independent shareholders' approval, and the need to appoint an independent financial adviser to advise the independent board committee.

Question 5

This question concerned the relevant offences under the Securities and Futures Ordinance (SFO) for creating a false market in the shares in a listed company. In addition, candidates were also required to show an understanding of how various types of activities are regulated under the SFO, including securities dealing and advising on securities. This question was answered reasonably well. Weaker candidates were unable to cope adequately with the disciplinary powers and powers of intervention that the Securities and Futures Commission can exercise under SFO.

Examiners' Comments on the 2023 Examination

Head III: Commercial and Company Law

The examination consists 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:

The examination covered a range of questions from the syllabus which enabled candidates to illustrate their knowledge and practical understanding of Hong Kong commercial and company law. Some candidates still provide one unequivocal answer to questions that are designed to solicit an analytical discussion of the various legal issues raised by a set of facts. These “problem-type” questions are designed to solicit a discussion by candidates of the variable possible options available to the client to whom the candidate is required to provide advice. Problems for the weaker candidates include: not directing the answers towards the questions as set; not supporting the answers with adequate reference to legal authorities; and merely citing the rules without sufficient or any analysis. Candidates are expected to demonstrate an ability to analyse the legal issues raised by the questions.

Question 1

This question gave candidates the opportunity to demonstrate their knowledge of the applicable legal principles in relation to fixed and floating charges, security over book debts, unfair preferences, and the priority of various secured and unsecured creditors in the event of liquidation. Generally, candidates were able to cover issues concerning the validity and priority of various creditors, including the preferential creditors. However, weaker candidates were unable to invoke the claw-back provisions (such as s 267 of Cap.32) in the context of the relevant dates of the loans borrowed at different stages.

Question 2

This question called for an analysis of the legal principles and procedure regarding the statutory rights of shareholders to apply to the court for rectification of the register of members, and also the statutory rights to seek court orders directing the Companies Registrar to rectify any information on the Companies Register or to remove any information from it. Unfortunately, weaker candidates failed to identify the relevant provisions from the Companies Ordinance. They also failed to apply the principles in the context of the facts raised in the question.

Question 3

This question concerned the listed companies in Hong Kong, focusing on the application of the relevant principles (in particular, Chapter 14 and Chapter 14A) in the Listing Rules. On the whole, this question was answered well. Most candidates identified the relevant regulations from the Listing Rules and discussed the principles competently in the context of the facts. Weaker candidates were unable to cope adequately with concepts such as “asset ratio”, “consideration ratio”, “connected person”, and “major transaction”. Not all the candidates clearly discussed the manner of obtaining the shareholders’ approval of a major transaction either in a general meeting or by written approval in lieu of holding a general meeting.

Question 4

This question concerned the key elements of insider dealing under the Securities and Futures Ordinance (SFO), the applicable enforcement actions and sanctions (civil and criminal) that can be imposed. In addition, candidates were also required to show an understanding of how various types of activities are regulated under the SFO, including securities trading and asset management. This question was answered reasonably well. Weaker candidates were unable to cope adequately with the concepts concerning “counseling”, “procuring” or “dealing” in listed securities or their derivatives in the context of facts raised in the question.

Question 5

Generally, candidates were able to cover issues regarding the pre-emption rights for existing shareholders under a shareholders' agreement, the board's discretion to refuse to register a transfer of shares in a private company, and the key differences between share transfer and the assignment of the shareholder's loan. Concerning the share purchase agreement, weaker candidates did not adequately analyse the facts given in the question, and failed to point out the need to include various clauses (such as a condition precedent and an undertaking) to protect the purchaser's interests.

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3. Past Examination Papers from 2021 to 2023

**2021 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD III: COMMERCIAL
AND COMPANY LAW**

Thursday, 18 November 2021



2021 Overseas Lawyers Qualification Examination

Head III: Commercial and Company Law

Question 1 (25 marks)

Superb Music Limited ("Company"), a Hong Kong company, is a leading piano manufacturer in Asia. The Company has three directors who are also its only shareholders, Amy Chua ("Amy"), Mary Bong ("Mary") and Isaac Newman ("Isaac"). They provided shareholders' loans to the Company (Amy in the amount of HK\$10,000,000, Mary in the amount of HK\$5,000,000 and Isaac in the amount of HK\$7,000,000).

On 16 March 2020, Innovative Bank provided a HK\$50 million 5-year term loan facility to the Company secured by a charge over the Company's accounts receivables. The debenture contains a provision that prohibits the assignment of the Company's accounts receivables without the prior written consent of Innovative Bank. Proceeds of the collected accounts receivables must be paid into a separate designated bank account at Innovative Bank.

On 29 April 2020, the Company granted an "all-monies" floating charge over all of its assets, book debts and undertakings in favour of Amy to secure all personal loans provided by Amy to the Company. On the same day, the Company transferred a factory building in Tsuen Wan ("Factory") to Ronald Dunn ("Ronald"), Amy's husband, for HK\$7,000,000, which was HK\$31,000,000 lower than the market value of the Factory (independently valued in April 2020). Amy explained that Ronald had "supported the Company in many ways without pay for many years" and that "the sale was a nice gesture".

(See over the page for a continuation of Question 1)

Ocean Bank has for many years provided an overdraft (“OD”) facility to the Company with a pre-approved standby credit limit of up to HK\$40,000,000. Ocean Bank has agreed to provide a further OD facility to the Company (with pre-approved standby credit limit of up to HK\$30,000,000) if some form of security is given. On 4 March 2020, the Company granted an “all-monies” floating charge over all of its assets, book debts and undertakings in favour of Ocean Bank (“Ocean Bank Debenture”) to secure the previously unsecured loan of HK\$40,000,000 and the new HK\$30,000,000 OD facility that was provided to the Company at the same time as the execution of the Ocean Bank Debenture. The table below shows movements of funds in the Company’s OD facility account with Ocean Bank from 4 March 2020 onwards:

Date	Deposit (HK\$)	Withdrawal (HK\$)	Balance (HK\$)
4 March 2020			40,000,000 OD
12 March 2020	3,000,000		37,000,000 OD
4 April 2020		10,000,000	47,000,000 OD
27 April 2020		20,000,000	67,000,000 OD
9 June 2020	2,000,000		65,000,000 OD

Since early 2020, a competitor of the Company, Tony’s Piano, introduced a new product (“Piano Max”) that became extremely popular in Asia. The Company’s market shrank rapidly as many parents bought the Piano Max for their children. On 18 August 2020, Ocean Bank appointed a receiver in accordance with the terms of its debenture (an event that crystallized the Ocean Bank Debenture).

(See the next page for a continuation of Question 1)

On 27 August 2020, a trade creditor petitioned the court to wind up the Company.

The Company's liquidator, Felix Chau, was informed of the following:

- (i) The Company has the following assets: accounts receivables (worth HK\$10,000,000), inventory (worth HK\$25,000,000), factory machinery (worth HK\$5,000,000) and cash at bank (worth HK\$3,000,000).
- (ii) The Company has 5 unsecured trade creditors, who are owed HK\$20,000,000 in total.
- (iii) The Company owes 12 employees a total of HK\$8,000,000 for wages in arrears.
- (iv) Evidence shows that the Company was insolvent and unable to pay its debts during April 2020.

The Company made no early repayment to Innovative Bank in connection with the term loan facility.

Question:

You act for the Company's liquidator, Felix Chau, who has drawn your attention to all of the above points. **Prepare a letter of advice to the liquidator, addressing the rights and priorities of all the creditors of the Company.**

For the purpose of this question, assume that there is no negative pledge clause in any of the debentures or charges.

(25 marks)

[25 marks in total]

Question 2 (25 marks)

Fad & Trend Ltd. (the “Company”) is a private company incorporated in Hong Kong. Its main business is trading of high-end fashion imported from Italy.

The Company is owned by three shareholders, namely Peter Wong (“Peter”), David Chan (“David”) and Mary Ng (“Mary”). David is the husband of Mary. The share capital of the Company is HK\$1 million, comprising 100,000 shares. All shares were issued to the shareholders and were fully paid up. Peter is holding 70% of the issued shares and each of David and Mary is holding 15% of the issued shares. The three shareholders are also the only directors of the Company. The articles of association of the Company does not fix the maximum number of directors that the Company may appoint. There is no shareholders’ agreement between the shareholders.

Since April 2020, the business of the Company deteriorated sharply. Peter is not happy with the way that the Company is managed. Although he is the largest shareholder, he is always outvoted by David and Mary at board meetings. Peter intends to appoint his two sons to be additional directors of the Company, but he envisages that this idea will be opposed by David and Mary.

For the purpose of this Question, you should assume that the Company adopts the Model Articles for Private Companies Limited by Shares set out in Schedule 2 to the Companies (Model Articles) Notice (Cap. 622H) as its articles of association.

(See the next page for a continuation of Question 2)

Questions:

- (a) Explain to Peter whether there is any mechanism by which the Company can appoint the additional directors. In light of the facts set out above, can Peter rely on such mechanisms? If so, are there any steps that he needs to take in order to give effect to such mechanisms?

(12 marks)

- (b) Peter (in the capacity as a shareholder) wishes to convene a general meeting of the Company to appoint the additional directors. Is there any mechanism to empower Peter to do so?

(8 marks)

- (c) Peter eventually proceeded to convene the general meeting himself (in the capacity of a shareholder). He sent a notice of the meeting to all shareholders of the Company and the meeting was supposed to take place on 23 August 2021. To his disappointment, David and Mary did not attend the general meeting as scheduled. Peter responded by adjourning the general meeting to 30 September 2021 at the same time and in the same place. David and Mary did not attend the adjourned general meeting either. The adjourned meeting was only attended by Peter and he passed an ordinary resolution purportedly in accordance with the articles of the Company to appoint the two additional directors.

Can David and Mary challenge the validity of the ordinary resolution?

(5 marks)

[25 marks in total]

Question 3 (25 marks)

Laurel Properties Limited (“Listco”) is a company listed on the main board of The Stock Exchange of Hong Kong Limited. Mega Grand Limited (“MGL”) is a substantial shareholder of Listco. Each of ABC Property Management Limited (“ABC”) and Brick House Limited (“Target”) is a wholly-owned subsidiary of MGL.

Target owns a building in Hong Kong. ABC is a property management company. MGL is selling 100% of the shares in Target to Listco (the “Acquisition”). ABC is currently providing property management services (the “Services”) to Target and will continue to provide the Services from completion of the Acquisition. All consideration in respect of the Acquisition and provision of the Services will be settled in cash.

The applicable percentage ratio in respect of the Acquisition under the Listing Rules is above 25%, but below 100%.

Questions:

- (a) Identify the numerator and denominator to be used to calculate the size tests under the Listing Rules.**

(10 marks)

- (b) Identify classifications of the transactions relating to the Acquisition and the provision of the Services under the Listing Rules and explain the applicable compliance requirements for those transactions under the Listing Rules.**

(15 marks)

[25 marks in total]

Question 4 (25 marks)

Part A

John is the chief financial controller of Gold Ltd. (the “Company”), a company listed on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited. The Company’s principal business is operating restaurants under a franchise granted by a global well-known catering company. The franchise is vital to the operations of the business for the Company. The franchise is about to expire in December 2021 and negotiations for the renewal of franchise between the management of the Company and the franchisor have been ongoing. John was also involved in the negotiation process. After rounds of negotiations, the management of the Company confirmed that they could not renew the franchise with the franchisor. The failure to renew the franchise would have a material adverse impact to the operations of the business. Considering this, John sold all shares in the Company before such information is announced to the public and he made a small gain from the sale. He also disclosed such confidential information to his close friend, Maggie. Maggie also sold the shares in the Company immediately after John disclosed such confidential information to her. When the announcement about failure to renew the franchise is published by the Company, the share price of the Company dropped by 20%.

Question:

- (a) **Are John and Maggie liable under Part XIII of the Securities and Futures Ordinance, Cap. 571? Give reasons.**

(13 marks)

(See over the page for a continuation of Question 4)

Part B

Alicia and Wayne are colleagues in the same asset management company. Seeing the potential in asset management industry, they intend to set up their own asset management company (the “Company”) in Hong Kong to carry out the business of asset management. Both of them will be the shareholders of the Company holding 50:50 equity. The day-to-day management and operations of the Company will be jointly managed by both of them. The Company intends to serve professional clients in and outside Hong Kong.

Alicia and Wayne need you to advise them on the legislation, procedure and licensing requirements involved in setting up an asset management company.

Question:

- (b) Prepare a memorandum of advice for Alicia and Wayne to advise on the legislation requirement, procedures and licensing requirements involved.**

(12 marks)

[25 marks in total]

Question 5 (25 marks)

Part A

You attend a meeting together with your supervising partner. You meet with Sally who is a new client. Sally briefs you on an acquisition which is currently under discussion. Sally has had preliminary discussions and is looking to instruct your firm to negotiate and complete the acquisition.

The business Sally intends to acquire is a small boutique retail grocery store. This is currently run by David. David is the current owner of Quality French Products Limited (“QFP”). QFP has two lines of business. The first line of business is the importation of fine French foods for supply to supermarkets and other grocery stores in Hong Kong (“Wholesale Business”). The second line of business is running a boutique grocery store in Sai Kung, New Territories, Hong Kong (“Retail Business”).

Sally has read a preliminary due diligence report prepared by David’s accountants. QFP has recently come under some financial pressure and David wants the Retail Business to be sold to raise some further funds. This will also help with some concerns that the Retail Business is in competition with customers of the Wholesale Business. The due diligence report reveals that there is an ongoing dispute between QFP and the Inland Revenue Department of the Government of the Hong Kong Special Administrative Region (“Inland Revenue”). The Inland Revenue is claiming that QFP has under paid tax of approximately HK\$2,000,000. The due diligence report also contains details of another dispute which involves allegations raised by a customer of the Retail Business that the product she bought resulted in her getting food poisoning and being hospitalised. Sally has said that the transaction will be subject to her doing

(See over the page for a continuation of Question 5)

her own financial, commercial and legal due diligence. However, in principle, she has agreed that she will buy all of the assets and known liabilities in connection with the Retail Business, but she is not prepared to take over any liabilities in connection with the disputes referred to above or any other unknown liabilities.

David has said that QFP has incorporated a new wholly-owned subsidiary called French Retail Mart Limited (“FRM”). QFP will transfer all assets and trading liabilities in connection with the Retail Business to FRM (except for the liabilities in connection with the disputes and unknown liabilities). QFP will then sell the entire issued share capital of FRM to Sally. It is anticipated that completion of the share sale will occur in approximately three months, by which time QFP will have completed the transfer of the Retail Business to FRM.

Question:

- (a) Following the meeting, your supervising partner asks you to prepare a memorandum outlining contractual provisions and statutory procedures to be recommended to reduce the risk of Sally and FRM taking on liabilities in connection with the disputes and other unknown liabilities. **Prepare the memorandum, assuming that the transaction will proceed based on the structure outlined above.**

(14 marks)

Part B

Three months later, the sale of the entire issued shares in FRM from QFP to Sally has just completed.

(See the next page for a continuation of Question 5)

Question:

- (b) Prepare a list of post-completion matters which need to be dealt with following completion of the share sale.**

(6 marks)

Part C

It is now two months after completion.

Patrick has been an employee at the Retail Business for two years. His employment agreement was transferred from QFP to FRM before completion of the share sale. The sale and purchase agreement contained a provision whereby Sally guaranteed that Patrick would receive his discretionary bonus which is now payable. Sally has some concerns about Patrick's working practices and intends to terminate his employment. Sally has discussed these concerns with David confidentially and David agrees to vary the terms of the sale and purchase agreement to delete this obligation.

Bernie has been supplying French wines to the Retail Business for at least five years before completion of the share sale. The sale and purchase agreement contained a warranty which states that Bernie would not increase his prices in the 12-month period after completion. Bernie has issued a notice to FRM with a revised price list showing an increase of 20% of all prices.

(See over the page for a continuation of Question 5)

Questions:

- (c) **Can Patrick enforce the sale and purchase agreement against Sally?
Give reasons.**

(3 marks)

- (d) **Can Sally enforce the sale and purchase agreement against Bernie?
Does Sally have any other remedy? Give reasons.**

(2 marks)

[25 marks in total]

END OF TEST PAPER

**2022 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD III: COMMERCIAL
AND COMPANY LAW**

Tuesday, 15 November 2022



2022 Overseas Lawyers Qualification Examination

Head III: Commercial and Company Law

Question 1 (25 marks)

Solar Panel Supreme Limited (“Company”), a Hong Kong private company, manufactures solar panels. The Company’s main clients are based in the United States, Europe and India. Sun God Incorporated and Sun Ray Incorporated, operators of solar power plants in the United States, are major clients of the Company.

On 18 May 2021, the Company entered into a five-year term loan facility (HK\$20,000,000) with Great Bank secured by a floating charge over all assets, book debts and undertakings of the Company (“Great Bank Debenture”). The Great Bank Debenture was duly registered under the Companies Ordinance (Cap. 622) (“Ordinance”).

On 20 May 2021, Mrs. Rain Kwan (“Rain”), a shareholder and director of the Company, lent HK\$5,000,000 to the Company.

Towards the end of May 2021, Sun God Incorporated decided to change its supplier to another solar panel company. As a result, the Company’s revenue dropped significantly.

On 18 June 2021, the Company borrowed HK\$6,000,000 (a four-year term loan facility) from Careless Bank secured by a fixed charge over all machinery owned by the Company (“Careless Bank Fixed Charge”). Due to an administrative error, the Careless Bank Fixed Charge was not registered under the Ordinance. Nothing was done to rectify the error.

(See over the page for a continuation of Question 1)

On 21 June 2021, Cheerful Bank provided a HK\$9,000,000 6-year term loan facility to the Company secured by a charge over the Company's book debts ("Cheerful Bank Debenture"), which was duly registered under the Ordinance. According to the terms of the Cheerful Bank Debenture, any assignment or disposal of the book debts requires Cheerful Bank's consent and the proceeds of the collected book debts must be paid into a designated account maintained with Cheerful Bank.

On 6 August 2021, the Company granted an "all-monies" floating charge over all of its assets, book debts and undertakings in favour of Rain to secure all personal loans provided by Rain to the Company. This charge was duly registered under the Ordinance.

On 27 August 2021, the Company sold its factory in Tsuen Wan, Hong Kong ("Factory") to Mr. Raymond Kwan ("Raymond"), the husband of Rain. The consideration was HK\$6,000,000, which was HK\$5,000,000 lower than the market value of the Factory (as valued by an independent valuation in July 2021). Rain explained that Raymond had contributed a lot to the Company and it is only right that "he gets something in return".

The Company suffered another financial hit in September 2021 when Sun Ray Incorporated decided not to buy from the Company anymore.

On 6 September 2021, Great Bank appointed a receiver upon an event of default, which is also an event that crystallized the floating charge pursuant to the terms of the Great Bank Debenture.

(See the next page for a continuation of Question 1)

On 14 September 2021, an unsecured creditor presented a winding-up petition against the Company.

The liquidator, Ron Kwok, has learned the following information:

- (i) The Company's main assets are its book debts (HK\$12,000,000), machinery (HK\$8,000,000), inventory (HK\$3,000,000) and cash (HK\$6,000,000).
- (ii) The Company owes 20 of its employees a total of HK\$800,000 for wages in arrears. It was also revealed that the Company has failed to pay profits tax (HK\$4,000,000) in the immediately previous year.
- (iii) The Company has 9 unsecured trade creditors, who are owed HK\$12,000,000 in total.
- (iv) On 3 September 2021, the Company used the proceeds of sale of the Factory to fully discharge the shareholder's loan (with interest) owed to Rain.
- (v) A trading partner of the Company, Sunburn Limited, initiated proceedings against the Company for breach of contract resulting in a loss amounting to HK\$8,000,000. The Court of First Instance gave judgment in favour of Sunburn Limited to the full extent of the claim. Sunburn Limited commenced enforcement action on 17 September 2021.
- (vi) Evidence shows that the Company was insolvent since early August 2021.

(See over the page for a continuation of Question 1)

The Company made no early repayment to any of the banks in connection with the term loan facilities.

For the purpose of this question, assume that there is no negative pledge clause in any of the debentures or charges.

Question:

You act for the Company's liquidator, Ron Kwok, who has drawn your attention to all of the above points. **Prepare a letter of advice to the liquidator, addressing the rights and priorities of all the creditors of the Company.**

(25 marks)

[25 marks in total]

Question 2 (25 marks)

Background information

Rich Resources Limited (the “Company”) is a private company incorporated in Hong Kong in 2016. Its shares are held by 5 shareholders, namely, Patrick Wong (“Patrick”) (60%), Kingston Cheung (“Kingston”) (20%), Eric Au (“Eric”) (10%), Wilson Chow (“Wilson”) (5%) and Fred Chan (“Fred”) (5%). The directors are Patrick, Kingston and Wilson.

Kingston plays a limited role in the management of the Company as he is busy with his family business. Day-to-day management and important decisions of the Company are mainly carried out by Patrick and Wilson. Wilson is the cousin of Patrick and usually agrees with Patrick on important issues in board meetings. Eric is a passive investor in the Company and never attends any general meetings of the Company.

The Company has not made any profit since its incorporation. By October 2022, it has accumulated huge trading losses. Kingston and Fred are not happy with the way that the Company was run under the stewardship of Patrick and Wilson. They are also dissatisfied with the fact that important information concerning the affairs of the Company has not been disclosed to all shareholders.

(See over the page for a continuation of Question 2)

Kingston and Fred decided to engage a firm of chartered accountants to conduct an independent review of the accounts and books of the Company. In order to have a full picture of the affairs of the Company, the accountants required to see all the relevant documents of the Company including books of accounts, audited financial statements, bank statements, written contracts, annual tax returns, minutes of all general meetings and board meetings (the “Relevant Documents”). Fred approached Patrick with a written request to inspect and make copies of the Relevant Documents. Fred’s request was denied by Patrick on the ground that Fred is not a director of the Company and therefore is not entitled to inspect any of the Relevant Documents.

For the purposes of this Question, you should assume that the Company adopts the Model Articles for Private Companies Limited by Shares set out in Schedule 2 to the Companies (Model Articles) Notice (Cap. 622H) as its articles of association.

Questions:

Answer the following questions:

(a) Is there any legal basis for Patrick to deny Fred’s request on the ground that Fred is not a director of the Company and therefore is not entitled to inspect any of the Relevant Documents?

(7 marks)

(b) Under what circumstances will Fred be entitled to inspect all the Relevant Documents?

(8 marks)

(See the next page for a continuation of Question 2)

- (c) Fred no longer wants to be involved in the Company's affairs and he asks Kingston to follow up. Kingston is now considering making an application to the court for an order under the Companies Ordinance (Cap. 622) to allow him (as a shareholder but not as a director) to inspect the Relevant Documents. **Would you advise him to do so? Why?**

(10 marks)

[25 marks in total]

Question 3 (25 marks)

Tina previously worked as a junior associate for a reputable Hong Kong law firm. During the coronavirus pandemic, work was scarce for Tina's firm and the partners decided that they needed to let some people go. Unfortunately, Tina was made redundant.

Tina decided that she didn't want to work as a lawyer any more, and wanted instead to pursue her dream of running a bakery with a focus on South American baked goods.

She rented a small property in Sai Ying Pun (a pleasant location on the west of Hong Kong island), signed contracts with suppliers to provide her ingredients, and purchased some second-hand freestanding baking ovens and equipment. She even hired an assistant, Turner, to help her run the bakery's front-of-house whilst she was busy baking in the kitchen, and signed a contract with a friend to supply her baked goods to the friend's hotel for their daily breakfast buffet. Tina called her bakery "Mexims Bakery".

On 1 December 2021, Mexims Bakery opened its doors to paying customers for the first time. Tina was ecstatic. All of her dreams were coming true.

Questions:

- (a) **When Tina started her business, what form of business organisation was she using? What steps should she take to register the business and in what timeframe?**

(2 marks)

(See the next page for a continuation of Question 3)

- (b) On 1 April 2022, Tina had decided she should set up a Hong Kong company to run the Mexims Bakery business. Tina bought an off-the-shelf company and changed its name to “The Mexims Bake Company Limited” (“MeximsCo”).

What documents does she need, who should sign and what steps should Tina take to complete the transfer of the Mexims Bakery business to MeximsCo? Assume that Tina’s lease contains a prohibition on transfer/sharing use, and that no public notices will be made.

(5 marks)

- (c) Tina completed the transfer in April 2022. All was going well for MeximsCo until June 2022, when Tina had a major argument with one of her suppliers. The supplier was upset because he had not been paid for a large order she had made in December 2021 shortly after Mexims Bakery opened. Tina thought she didn’t need to pay the supplier because she had ordered the wrong products by mistake. She had tried to return the supplies, but by that time, they had already spoiled.

The supplier was aware that Tina had no cash in hand, so he initiated legal proceedings against MeximsCo instead. Tina tried to argue that the supply contract was not with MeximsCo, and MeximsCo was not even in existence when she purchased the supplies, but her arguments failed and the court found in favour of the supplier.

Explain how this claim is possible and give details.

(3 marks)

(See over the page for a continuation of Question 3)

(d) Would the court’s judgment in (c) have been different if the supplier had waited until 2023 before commencing proceedings against MeximsCo?

(2 marks)

(e) What could Tina have done to prevent the supplier’s claim against MeximsCo?

(3 marks)

(f) Despite the dispute with its supplier, MeximsCo went from strength to strength, but there came a day when MeximsCo needed more funds in order to buy bigger ovens and expand the business. Tina now had some cash in hand, and wanted to use this to fund MeximsCo’s business.

What options does Tina have in order to inject funding into MeximsCo? Briefly outline the procedures for properly documenting and implementing each option.

(5 marks)

During the 5th coronavirus wave, many businesses went bust, but MeximsCo was a local favourite and came to be known for its extremely tasty egg tarts. Tina met a master baker named Tom at a culinary convention. Tom had also recently been made redundant but had some savings and was looking to start his own bakery too. Tina and Tom decided they wanted to go into business together. They reasoned that with Tom’s additional funds, they could open several more bakeries across Hong Kong Island and Kowloon.

(See the next page for a continuation of Question 3)

Tina and Tom signed a simple non-binding letter saying that Tom should be the 70% owner of MeximsCo, on the basis that he was putting in a lot of money for the expansion, and that funding should be provided to MeximsCo in exchange for new shares. Both Tina and Tom would be directors and agreed that they would try to make the business work for at least 3 years, and after that, either party could sell its shares to the other for whatever they were worth. Tom wanted to keep the terms of their agreement private to avoid competing bakeries in the cut-throat industry knowing the terms of their deal. Tina is excited, but unsure how to document Tom's investment in MeximsCo.

- (g) Advise Tina on the documentation and procedures required in a way that protects her interests and addresses Tom's concern.**

(5 marks)

[25 marks in total]

Question 4 (25 marks)

Meimei Group Holdings Limited (the “Company”) is an exempted company incorporated in the Cayman Islands whose shares are listed and traded on the Main Board of The Stock Exchange of Hong Kong Limited.

Mr. A holds 75% of the issued shares in the Company. On 30 June 2022, he sold 15% of the issued shares in the Company to Mr. B. The sale and purchase of shares was completed on the same day.

In July 2022, Company G, a company wholly-owned by Mr. B, entered into a sale and purchase agreement with a wholly-owned subsidiary of the Company in relation to the acquisition by the wholly-owned subsidiary of a property located in Hong Kong at a consideration of HK\$150,000,000.

As regards the acquisition, the highest applicable percentage ratio under Rule 14.07 of the Listing Rules is more than 5% but less than 25%.

Questions:

- (a) **Briefly explain the purpose of so-called connected transaction rules.**
(5 marks)
- (b) **Advise whether or not the sale and purchase of shares between Mr. A and Mr. B is a connected transaction under the Listing Rules.**
(2 marks)

(See the next page for a continuation of Question 4)

- (c) Advise whether or not Mr. B is a connected person under the Listing Rules upon completion of the sale and purchase of shares in the Company.**

(3 marks)

- (d) Advise the Listing Rules' implications regarding the acquisition of the property by the wholly-owned subsidiary of the Company from Company G.**

How should the sale and purchase agreement be drafted taking into account the Listing Rules' implications?

(15 marks)

[25 marks in total]

Question 5 (25 marks)

Jack and Jill are employed as brokers in a brokerage firm licensed by the Securities and Futures Commission in Hong Kong (“SFC”). They have been paying close attention to Balinese Resorts Limited (“BRL”) which is a relatively small company listed on The Stock Exchange of Hong Kong Limited. Trading in the shares of BRL is very light. The shares currently trade at around HK\$1.3.

Jack and Jill together incorporate five companies in the British Virgin Islands. In turn, each of these five companies owns a wholly-owned subsidiary company incorporated in Hong Kong.

Jack and Jill decide to use the Hong Kong companies to buy shares in BRL. They contact some clients of the brokerage firm saying they have some “hot tips” relating to BRL and also use the trading accounts of those clients to buy shares in BRL. Jack and Jill also arrange for the Hong Kong companies to buy and sell shares among themselves to drive up trading volume.

Jack and Jill then anonymously start to spread rumours on various social media platforms relating to the activities of BRL, and also suggest that the price of shares in BRL is undervalued and that buying shares would be a good investment. Among these rumours is one that BRL has recently acquired a plot of land in Bali at a price of US\$1,500,000. The rumour further goes on to say that at this time, planning restrictions are such that the land cannot be developed. However, based on inside information and connections at the relevant planning authorities in Bali, the planning restrictions are soon to be lifted and this would allow the land to be developed as a luxury resort. The enhanced value of the land with the permission to develop a luxury resort would be in the region of US\$20,000,000. There is no truth whatsoever to these rumours and BRL does not even own a plot of land which is the subject of the rumour.

(See the next page for a continuation of Question 5)

The rumours begin to attract some attention on the relevant social media platforms, but are not reported in any mainstream media. As a result, trading in the shares in BRL begins to gather pace and the share price starts increasing. As the share price increases, Jack and Jill use the trading accounts of clients to sell shares in BRL, realising a profit for these clients. The share price reaches a peak of HK\$115. At this time, Jack and Jill decide to sell all of the shares in BRL held by the Hong Kong companies and all remaining shares in BRL held in the trading accounts of clients. This realises further profit, but causes the share price in BRL to collapse to HK\$0.8.

The rapid rise and fall in the share price of BRL attracts the attention of the SFC who commence an immediate investigation. Following a tip off during this investigation, they are able to track the source of the anonymous rumours back to Jack and Jill and manage to uncover the ownership structure of the Hong Kong companies.

Questions:

(a) What compliance actions should have been taken by Jack and Jill for the Hong Kong companies to undertake the activities described above?

(4 marks)

(b) Describe, with reference to the facts outlined above, what offences Jack and Jill have committed.

(15 marks)

(c) What enforcement action might the SFC take against Jack and Jill and the brokerage firm for which Jack and Jill work?

(6 marks)

[25 marks in total]

END OF TEST PAPER

**2023 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD III: COMMERCIAL
AND COMPANY LAW**

Friday, 17 November 2023



2023 Overseas Lawyers Qualification Examination

Head III: Commercial and Company Law

Question 1 (25 marks)

Prime Coffee Limited (“Company”) is a coffee wholesaler based in Hong Kong. It is a Hong Kong private company limited by shares. The Company has four shareholders and directors, Titus Chiu (“Titus”) (holding 40% of the shares), Peter Chiu (“Peter”) (holding 20% of the shares), Rob Chiu (“Rob”) (holding 20% of the shares) and Maggie Chiu (“Maggie”) (holding 20% of the shares). The Company began business on 13 March 2020. Titus provided a personal loan of HK\$3,000,000 to the Company on 18 June 2020. About one month afterwards, Peter provided a personal loan of HK\$2,000,000 to the Company. On 18 August 2020, Rob and Maggie provided personal loans to the Company in the amount of HK\$1,000,000 and HK\$500,000 respectively.

The Company faced financial difficulties when Big Bucks and Atlantic Coffee (two of the leading coffee retailers in Hong Kong) stopped buying from the Company. On 6 May 2021, Titus provided a further personal loan (HK\$2,000,000) to the Company. Titus hoped that by providing further funds, the Company could reach out to small and medium coffee retailers in Hong Kong. The plan did not work out. The Company’s rival, Challenger Coffee Limited, had monopolized the market for small and medium coffee retailers. The Company was late in paying the rent for its office in Tsuen Wan, Hong Kong in October 2021.

On 8 November 2021, Bulldozer Bank advanced HK\$20,000,000 (a five-year term loan facility) to the Company secured by a fixed charge over the Company’s warehouse in Fanling, Hong Kong (“First Bulldozer Bank Fixed Charge”).

(See over the page for a continuation of Question 1)

On 3 December 2021, a further five-year term loan (HK\$15,000,000) was provided by Bulldozer Bank to the Company secured by a charge over the book debts of the Company. At the top of the charge instrument, it is stated that the charge is a “Fixed Charge over Book Debts” (“Second Bulldozer Bank Fixed Charge”). Under the terms of the charge instrument, the proceeds of collected book debts must be paid into a designated account maintained with Bulldozer Bank. Bulldozer Bank explained that this is a “blocked account”. However, the Company is at liberty to withdraw and use the proceeds of the collected book debts without Bulldozer Bank’s consent. The Second Bulldozer Bank Fixed Charge was duly registered under the Companies Ordinance, Cap. 622.

On 21 February 2022, the Company entered into a two-year term loan facility (HK\$4,000,000) with Titanic Bank secured by a floating charge over all assets, book debts and undertakings of the Company (“Titanic Bank Debenture”). The Titanic Bank Debenture was duly registered under the Companies Ordinance, Cap. 622.

In April 2022, the Company suffered financially as one of its major suppliers ended the contract with the Company. On 23 April 2022, Titanic Bank appointed a receiver in accordance with its debenture (an event that crystallized the floating charge pursuant to the terms of the Titanic Bank Debenture).

On 17 June 2022, a trade creditor filed for the compulsory winding-up of the Company.

(See the next page for a continuation of Question 1)

The liquidator, Jonathan Kwan, has learned the following information:

- (i) The Company has the following assets: account receivables (worth HK\$3,000,000), machinery used for packaging (worth HK\$2,000,000), the warehouse in Fanling (worth HK\$25,000,000), and cash at bank (worth HK\$500,000).
- (ii) The Company owes 8 of its employees a total of HK\$1,600,000 for wages in arrears.
- (iii) The Company has 7 unsecured trade creditors, who are owed HK\$2,000,000 in total.
- (iv) On 28 January 2022, the Company transferred HK\$3,000,000 to Titus' personal bank account.
- (v) On 8 June 2020, Techno Coffee Limited (a wholly-owned subsidiary of the Company) ("TCL") provided a term loan of HK\$500,000 to the Company repayable in full on 10 July 2023 ("TCL Loan"). The Company made an early repayment of the TCL Loan (with interest) in full to TCL on 3 May 2021.
- (vi) A competitor of the Company, Bad Coffee Limited ("BCL"), initiated proceedings against the Company for breach of contract, claiming HK\$8,000,000 in damages. The Court of First Instance gave judgment in favour of BCL to the full extent of the claim. No enforcement actions were taken by BCL until 20 June 2022.

(See over the page for a continuation of Question 1)

(vii) First Bulldozer Bank Fixed Charge was not duly registered under the Companies Ordinance.

(viii) Evidence shows that the Company was insolvent during January 2022.

The Company made no early payment to Bulldozer Bank and Titanic Bank in connection with the term loan facilities.

For the purpose of this question, please assume there is no negative pledge clause in any of the debentures or charges.

Question:

Prepare a letter of advice to the Company's liquidator, Jonathan Kwan, addressing the rights and priorities of all the creditors of the Company.

(25 marks)

[25 marks in total]

Question 2 (25 marks)

Part A

Big Profit Ltd. (the “Company”) is a private company founded in Hong Kong in 2013 by Mr. Wong (“Wong”) and Mr. Chan (“Chan”). The Company is engaged in trading business. It has 10,000 issued shares which were held by Wong and Chan in equal numbers and the two founders were also the only directors of the Company.

In September 2018, Wong decided to emigrate to the U.S. with his family. Before Wong’s departure, Wong and Chan reached an agreement whereby Wong would continue to hold 50% interest in the Company but Wong would no longer be involved in the management of the Company. To enable Chan to run the Company smoothly in the absence of Wong, Wong transferred his 5,000 shares in the Company (the “Shares”) to Chan on 18 September 2018 and cancelled the original share certificate in respect of the Shares issued in his name. On the same day, Wong also resigned as a director of the Company. In return, Chan executed a declaration of trust in favour of Wong on 19 September 2018 (the “Declaration of Trust”) which contains the following terms:

- Chan was holding the Shares as a trustee only;
- Wong was the beneficial owner of the Shares;
- Chan would, whenever called upon to do so by Wong, transfer the Shares to Wong or such other person as Wong directs.

(See over the page for a continuation of Question 2)

As a result of the above arrangements, Chan became, on record, the sole shareholder and sole director of the Company since 19 September 2018 although in reality, the Company is still 50:50 beneficially owned by Wong and Chan.

Over the past three years, the Company has suffered huge losses due to the Covid-19 pandemic. The relationship between Wong and Chan turned sour. Shortly after his return to Hong Kong from the U.S. in September 2023, Wong contacted Chan and demanded the latter to return the Shares. When this demand was not answered, Wong instructed his solicitor to issue a letter to Chan on 16 October 2023 demanding Chan to execute the instrument of transfer (enclosed in the same letter) to transfer the Shares back to Wong. On 20 October 2023, Wong's solicitor also wrote to the Company and demanded the Company to register Wong's name in its register of members. Neither Chan nor the Company respond to these letters.

Question:

- (a) **Advise Wong if there is any course of action that he can take against Chan and the Company to recover the Shares and to ensure that his title to the Shares is properly recorded.**

(12 marks)

Part B

Springfield Properties Ltd. (the "Company") is a private company incorporated in Hong Kong in 2020 with an issued share capital of HK\$1 million (comprising 100 shares). It has two shareholders, namely Red Sun Ltd. ("Red Sun") and Blue Sky Ltd. ("Blue Sky"). Red Sun is holding 51 shares and Blue Sky is holding the remaining 49 shares.

(See the next page for a continuation of Question 2)

The Company was set up as a joint venture to develop certain properties in Guangzhou, China. It has two directors, namely Mr. Red (appointed by Red Sun) and Mr. Blue (appointed by Blue Sky).

Since mid-2023, the relationship between Red Sun and Blue Sky has broken down due to disagreement on the business strategies of the Company. To avoid further disputes, Red Sun offered to buy out Blue Sky's interest in the Company. However, after several rounds of negotiation, the parties are still unable to agree on the main terms of the sale and purchase agreement. To exert some pressure on Blue Sky, Red Sun unilaterally filed a ND2A form (the Notice of Change of Company Secretary and Director (Appointment/Cessation)) on 4 September 2023 which indicated that Mr. Blue ceased to be a director of the Company as at 1 September 2023 and Mr. Red became the sole director of the Company. The ND2A form was purported to be signed by Mr. Red as a director of the Company. After Mr. Blue found out the filing of the form, he immediately wrote to Mr. Red and the Company in protest and insisted that he had never filed such a form to the Companies Registry and that he was still a director of the Company.

Questions:

Answer the following questions:

- (b) Mr. Blue is considering taking legal proceedings against the Registrar of the Companies for the registration of the unauthorised ND2A form. Will he succeed?**

(3 marks)

(See over the page for a continuation of Question 2)

- (c) In light of the registration of the unauthorised ND2A form, is there any mechanism under the Companies Ordinance, Cap. 622 that will possibly enable Mr. Blue to remove this document from the register of the Companies Registry?

(10 marks)

[25 marks in total]

Question 3 (25 marks)

Perseus Limited (“Perseus”) is a company incorporated in the Cayman Islands whose shares are listed and traded on the Main Board of The Stock Exchange of Hong Kong Limited, principally engaged in wastewater treatment. Perseus is contemplating the acquisition of certain fixed assets, namely equipment and machinery for its own use in its ordinary and usual course of business, from Angelos Limited (“Angelos”) (the “Acquisition”). Mr. A holds 65% of the issued shares of Perseus. Additionally, he serves as a director of Perseus. Furthermore, Mr. A is one of the five directors comprising the board of Angelos.

Perseus and Angelos have agreed upon a price of HK\$5,000,000,000 for the equipment and machinery. Perseus will make the payment in cash. Angelos is satisfied with this price, considering that the equipment and machinery were valued at HK\$4,000,000,000 in the most recent audited accounts. Perseus is also content with the price, as they have engaged a specialized valuer who has determined the fair market value of the equipment and machinery to be HK\$6,000,000,000.

The following figures are extracted from Perseus’ most recent audited financial statements:

	HK\$ Million
Revenue	3,000
Profit before tax	500
Taxation	(50)

(See over the page for a continuation of Question 3)

	HK\$ Million
Non-current assets	10,000
Current assets	10,000
Current liabilities	(5,000)
Net current assets	5,000
Total assets less current liabilities	15,000

Perseus currently has a market capitalization of HK\$20,000,000,000.

Questions:

Based on the given information above, advise Perseus on the following:

- (a) **Perform a size tests calculation for the Acquisition. No adjustment or modification is required for the purpose of assets ratio.**
(10 marks)
- (b) **Determine the classification of the Acquisition under Chapter 14 and Chapter 14A of the Listing Rules.**
(3 marks)
- (c) **Explain the applicable compliance requirements and manner of approval for the Acquisition under the Listing Rules.**
(5 marks)

(See the next page for a continuation of Question 3)

Mr. B, who is the son of Mr. A, holds 20% of the issued shares of Heleus Limited (“Heleus”). Ms. C, who is Mr. B’s wife, holds 60% of the issued shares of Heleus. Two months after the completion of the Acquisition, Heleus acquired 15% of the issued shares of Angelos from an independent third party (the “Heleus Share Purchase”).

Question:

(d) Explain whether Heleus is a connected person of Perseus.

(3 marks)

At the Annual General Meeting of Perseus, held two months after the completion of the Heleus Share Purchase, Mr. A retired as a director of Perseus, and Mr. B was elected as a director of Perseus. Currently, Perseus is contemplating the purchase of 5% of the issued shares of Angelos from an independent third party (the “Angelos Share Purchase”).

Question:

(e) Explain whether the Angelos Share Purchase constitutes a connected transaction for Perseus.

(2 marks)

The Angelos Share Purchase has been successfully completed. Perseus is now deliberating the possibility of granting a loan to Angelos.

Question:

(f) Explain whether the granting of the loan will constitute a connected transaction for Perseus.

(2 marks)

[25 marks in total]

Question 4 (25 marks)

Part A

Horace is the company secretary of CC Financial Holding Ltd. (the “Company”), a company listed on the Main Board of The Stock Exchange of Hong Kong Limited.

The controlling shareholders of the Company are in the course of negotiating with a potential purchaser about the proposal to sell their controlling stake, representing 60% of the issued shares in the Company. If the potential purchaser enters into an agreement to acquire all the shares held by the controlling shareholders of the Company, the potential purchaser is required to extend a general offer to acquire the shares of all other shareholders pursuant to The Code on Takeovers and Mergers and Share Buy-backs.

The Chairman of the board of directors of the Company instructed Horace to prepare an application to suspend trading of shares in the Company in relation to a possible general offer.

Having possessed this material information, Horace informed his brother, Charles, of such information who then purchased a total of 100,000 shares in the Company through his own securities account before the trading suspension took place. Charles subsequently sold some of the shares after resumption of trading and made a profit of approximately HK\$20,000. The notional profit of the remaining unsold shares was approximately HK\$40,000.

(See the next page for a continuation of Question 4)

Question:

- (a) **Are Horace and Charles liable under Part XIII of the Securities and Futures Ordinance, Cap. 571?**

(13 marks)

Part B

Alicia works in an asset management company. One day, she met her university classmate, Ruby, who works in a securities trading company. They are interested in establishing their own asset management company (the “Company”) in Hong Kong to carry out the business of asset management and securities trading regulated activities mainly for professional investors in and outside Hong Kong. Both of them will own 50% of the issued shares in the Company. The day-to-day management and operations of the Company will be jointly managed by both of them.

Alicia and Ruby need you to advise them on the legislation, procedure and licensing requirements involved in setting up the Company and applying for the licence to become a licensed corporation.

Question:

- (b) **Prepare a memorandum of advice for Alicia and Ruby to advise on the legislation requirement, procedures and licensing requirements involved.**

(12 marks)

[25 marks in total]

Question 5 (25 marks)

Part A

Mud Studio Limited (“MSL”) is a Hong Kong private limited company which operates a very popular ceramic studio in Hong Kong called “Mud Studio”. Mud Studio conducts ceramic workshops and regular classes for both adults and children in its ceramic studios located in Mongkok and Wanchai, Hong Kong. Toby is the sole director of MSL, and MSL is currently 90% owned by Toby and 10% owned by Toby’s friend, Justin. Toby will emigrate to Canada and has agreed to sell his shareholding in MSL to Janet. Janet is trying to persuade Justin to sell his 10% shareholding in MSL as well, but Justin seems reluctant as he would like to keep his investment in MSL, seeing its growth in the past few years. Toby would like to sign the share purchase agreement with Janet in 4 weeks’ time. You act for Janet.

Question:

- (a) **Advise Janet if there is anything that she should check, be aware of or concerned about at this stage if she is only going to buy the 90% shareholding in MSL from Toby. If there is anything she should check further, state what it is and how it would affect your advice.**

(7 marks)

(See the next page for a continuation of Question 5)

Part B

After your advice given in part (a) above, Janet continued to negotiate with Toby and Justin. Assume for Part B that it was finally decided by the parties that Justin would sell his 10% shareholding in MSL to Toby first, and then Toby will sell the 100% shareholding in MSL to Janet for a consideration of HK\$5,000,000.

During the negotiation between the parties and due diligence, the following matters and instructions were brought to your attention.

- Toby has lent a shareholder's loan to MSL in the amount of HK\$1,000,000 last year to finance the general working capital of MSL. Janet would like to acquire the shareholder's loan on a dollar-for-dollar basis from Toby (at the same time when she purchases the 100% share capital in MSL from Toby); and
- "Mud Studio" has an in-house ceramic artist, Priscilla Chin, who is a primary school friend of Toby and has been working in MSL for over five years. Priscilla is the most popular ceramic teacher at "Mud Studio" and she would also help to organize ceramic exhibitions at the studio from time to time. Priscilla has not signed any formal contract with MSL, all her remuneration over the years has been based on oral agreements with Toby. Janet finds Priscilla a key person of MSL and would like to make sure that Priscilla will continue to work at "Mud Studio". Toby said Priscilla had agreed to stay with MSL after Janet takes over the company.

(See over the page for a continuation of Question 5)

Questions:

- (b) Advise Janet on the stamp duty implications (under the Stamp Duty Ordinance (Cap. 117)) of the share purchase transaction based on the above information. Briefly explain your advice, but you do NOT need to calculate the exact amount of stamp duty payable by the parties.

(5 marks)

- (c) Advise Janet what should be done in order to carry out her instructions above and to protect her interest, including provisions that can be included in the share purchase agreement and documents and/or mechanisms that should be put in place.

(8 marks)

- (d) Which internal registers of MSL will need to be updated upon/after completion of the share purchase transaction? Briefly explain your answer.

(5 marks)

[25 marks in total]

END OF TEST PAPER