

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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