

# Examiners' Comments on the 2023 Examination

## HEAD IV: Accounts and Professional Conduct

### Part A - ACCOUNTS

#### Question 1

The question this year was split into 4 separate parts. The question was very straightforward and should not have caused any difficulties to any of the candidates.

- (A) The fundamental issue in respect of Part A was to ensure that the candidates were fully aware as to how to treat the cashier's order and the payment in. The main thrust of the question was directed as to interest due to the large sum of money. However, most candidates did not even touch or address the interest issue. Instead, many of them embarked upon irrelevant and uncalled for commentary as to the way to deal with payment to Counsel and investigators. Since the question did not particularise any information as to when or if payment was to be made, all those comments irrelevant and showed a lack of understanding, especially having regard to (D).
- (B) Again, this should have been very straightforward and very obvious to all candidates and in particular, many of them tried to come up with justification as to why Fifi, the girlfriend, who has no accounting experience could be employed! However, most candidates did set out the relevant rules and addressed the issues.
- (C) This question was in respect of client account reconciliation. Most candidates just copied the relevant extracts from manual and did not really go into any detail nor apply these. Many candidates did not discuss the rationale or reasons for the reconciliation.
- (D) This question asked for an analysis of the concept of disbursements and the various types and how the relevant book entries should be dealt with in respect of addressing these. Some of the candidates tried to go into question (A) and utilise the facts there to answer this part. However, they did not identify nor analyse the actual classification.

Overall, the pass rate was acceptable. Most candidates were able to answer and deal with the relevant points. However, those that failed did so due to lack of application, knowledge and relevance.

## **PART B - PROFESSIONAL CONDUCT**

### **Question 1**

The question this year was split into 2 separate parts. The question was very straightforward and should not have caused any difficulties to any of the candidates.

- (a) The fundamental issue in respect of Part (a) was to ensure that the candidates were fully aware of the Mandatory Requirements under Practice Direction P (PDP), particularly in relation to client identification and client verification. The candidate should have been able to assess whether client verification was required and list out the actions to take to conduct client identification and client verification and understand that law firms should adopt a risk-based approach in determining the level of information to be obtained. Many candidates did not set out the actions and approach that should be taken.

Candidates should also be able to recognise that ABC is asked to act for the company instead of Jane and to take the necessary actions to identify the beneficial owners. As a matter of practicality, candidates should have outlined what would be considered a beneficial owner, but not many specified the definition that persons holding over 25% of the shares should have been subject to client due diligence.

Candidates should also be aware of the situations which require enhanced Client Due Diligence to be conducted. Discussion of whether Jane is a “high risk” persons by reference being a politically exposed person (PEP) should have been made, particularly in respect of whether her husband calls into the definition of non-Hong Kong PEP. Many candidates were able to identify that Jane was a PEP.

- (b) Again, this should have been very straightforward and very obvious to all candidates. The question relates to a u-turn transaction with many indicators of a suspicious transaction. Candidate should have identified paragraph 126 of the PDP. Not all candidates were able to identify this. Candidates should then conclude that a Suspicious Transaction Report should be made. Many candidates were able to identify this need. Reference should have been made to the relevant Ordinances, the duty of Confidentiality under 8.01 and the exceptions to this duty. Not all candidates could identify the duty of confidentiality and the exemptions. Candidates should also be mindful of the obligations to pass on to his client and use all information which is material to the subject matter of the retainer, but also consider whether there is such a need under the ordinances, and the offence of tipping off. A good number of candidates noted that they had to avoid tipping off but not many identified the basis for this.

Some candidates were able to answer and deal with the relevant points. However, those that failed did so due to lack of application, knowledge, and relevance.

## Question 2

This question was concerned with solicitors' professional undertakings. It was based loosely on the facts of *Global Marine Drillships Ltd v William La Bella & Others* [2014] EWHC 2242 (Ch).

The question comprised two parts, the first part required the candidates to identify and discuss the relevant provisions of *The Hong Kong Solicitors' Guide to Professional Conduct* ('SG') as they pertained to the solicitors in the question scenario who had failed to abide by a professional undertaking. The second part required them to discuss the possible courses of action available to the recipients of the undertaking. It therefore resembled the typical circumstances of a broken professional undertaking which may be encountered in practice.

Unfortunately, only 40% of the candidates achieved a 'pass' mark of 12.5 or more. This is a better result than for Head IV examination questions relating to professional undertakings in recent years but is still lower than one would expect of experienced practitioners.

With respect to the first part of the question, many candidates failed to identify the crux of the question and, instead, discussed entirely irrelevant issues such as Practice Direction P or the need for solicitors to behave with 'good faith' towards their peers. Many of those candidates who recognised that the question concerned professional undertakings only discussed the provisions of *SG Chapter 14* in a superficial manner, albeit others did so with enough detail to achieve a pass mark. Some candidates gave the question more attention and achieved much better marks as a result.

With respect to the second part of the question, some candidates explained all the alternative courses of action available to the recipients of the undertaking but most mentioned just one or two e.g. making a complaint to the Law Society. Others failed to address the question at all.

In conclusion, most of the candidates failed to demonstrate an adequate familiarity with the professional conduct obligations relating to Hong Kong solicitors' undertakings.

## Question 3

The question is split into 3 parts covering various principles set out in *The Hong Kong Solicitors' Guide to Professional Conduct*. Overall, most of the candidates are able to identify the relevant principles. The difference between good and bad answers generally lies in the quality of the analysis and application.

### 3(a)(i)

This is a straight-forward question on the issue of competence. Most candidates are able to identify the relevant principles. However, quite a number of them have failed to discuss them by reference to the facts given adequately but instead wasted time on referring to irrelevant rules (e.g. the rules on fees).

### 3(a)(ii)

This is the part of Question 3 that is performed most poorly. Many candidates argued that Jason (i.e. the solicitor in question) should not take up the case. In reaching such conclusion, many of them only focused on the facts which are not favourable to Jason and failed to take into account the favourable facts. Marking was done strictly according to the Marking Scheme. One or two candidate (s) was / were able to point out that since Jason has only qualified for 5 years, there is scope for him to expand his practice area into litigation and he should be encouraged to do so because if he did not make a start, he would never have the experience. This point is not covered in the Marking Scheme but it demonstrates the talent of the candidate(s) who argued that Jason should take up the case.

If sufficient regard was paid to all relevant facts, it should not be difficult to reach the preferred conclusion that Jason could take up the case despite the initial shortcomings which he (i) openly and voluntarily discussed with the client and (ii) suggested good ways to overcome.

### 3(b)

This is a straight-forward question on gift and most candidates are able to identify the relevant principles. Many candidates simply identified and copied the relevant rules without any elaboration or discussion of the relevant facts. Better answers would (i) identify how the relevant rule extends to a solicitor's employees and/or (ii) discuss whether Jason was in fact "inviting a gift" from client with reference to the number of boxes of moon cakes and the manner in which Jason requested for them.

### 3(c)

This question canvasses various issues including confidentiality, exclusion of liability for professional misconduct and the duty to report misconduct.

Most candidates have no problem with identifying the breach of confidentiality. However, most of them have not discussed the relevant facts adequately. It is not difficult to pick up that Amy was a journalist and hence disclosure of confidential information to her would be particularly risky, but some candidates failed to highlight this and only a handful of candidates managed to go further and discuss whether the case information was / could have been in the public domain yet (The Facts suggested that no demand letter was issued).

As to the other issues namely the exclusion of liability for professional misconduct and the duty to report other solicitors' misconduct to The Law Society of Hong Kong, these should be very obvious and straight-forward to the candidates. Most candidates are able to identify them.