Examiners' Comments on the 2019 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. The majority of 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 charges over book debts and the concept of "new moneys" and "old moneys" in the context of a floating charge.

Question 2

This question concerned the operation of listed companies in Hong Kong, focusing on the application of the relevant principles in the Listing Rules and practical issues related to an acquisition between related parties. Most candidates were able to identify the relevant regulations from the Listing Rules and discussed the principles in the context of the facts. Weaker candidates were unable to cope adequately with concepts such as "connected person", "connected transaction", and failed to identify the relevant condition precedents required in a sale and purchase agreement.

Question 3

The question invited the candidates to explain the mechanism of transfer of shares in a private company and the statutory procedures concerning removal of directors. This question was answered reasonably well. Weaker candidates failed to identify and discuss the operation and effect of s 462 of the Companies Ordinance, procedures for convening a general meeting and a director's right to be heard.

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 the business of asset management. This question was well answered by most candidates. A few weaker candidates were unable to cope adequately with concepts such as "relevant information", "dealing" in shares and "substantial shareholder".

Question 5

This question invited analysis of various doctrines under the Contracts (Rights of Third Parties) Ordinance and Companies Ordinance (on register of significant controllers and financial assistance). Candidates were also required to explain how the common law doctrine of privity of contract is affected by legislation, identify the "registrable person" and "registrable legal entity", and discuss "declaration of dividend out of profits available for distribution" as an alternative to financial assistance. Weaker candidates were unable to identify the relevant issues and follow the required procedures.

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