

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

The basic elements of, and main differences between, the following

- Sole proprietorship
- Partnership
- Companies
- Unincorporated Associations
- Business Registration

Business Registration Ordinance (Cap 310)

Companies Ordinance (Cap 622)

Partnership Ordinance (Cap 38)

2. COMPANIES

- The types of companies
- No memorandum – only Articles
- Incorporation procedures
- Optional common seal
 - Execution of documents
- The “responsible person”
 - Liability of officers, especially directors
 - *Limitation Ordinance* and directors
 - Attribution and anti-derivation
- Business Rule in the directors’ annual report
- Share capital
 - No par/nominal value
 - Permitted methods of reduction
- Meetings, resolutions, and availability of information
 - Various forms of resolutions and their effect
 - Manner of abolition of meetings
 - Proxies
- Dealing with offences
 - Civil or criminal

- Members' rights and powers
 - Minority shareholders
 - The statutory derivative action
 - Division of power between members and directors
- Transfer and transmission of shares, and debentures
- The common law action – *Foss v Harbottle*

3. ACQUISITION OF A COMPANY OR A BUSINESS AND JOINT VENTURES THE MERGER AND ACQUISITION TRANSACTION

- The undertaking or assets being acquired
 - Share purchase or asset purchase
- Pre-contractual agreements
 - Formalising preliminary negotiations
- Due diligence
- Disclosure letter
- The format of the contract
 - Seller-friendly or purchaser-friendly contract
 - The structure of the formal contract
 - Schedules
 - Anti-assignment clauses affecting the seller in the asset-purchase transaction
 - Assignment and novation where necessary
- Side letters
- Completion and post-completion
- Protection of creditors
 - The *Transfer of Businesses (Protection of Creditors) Ordinance* (Cap 49)
- Records
- Joint venture documentation
 - Basic provisions of a joint ventures/shareholders' agreement
 - Joint venture articles of associations
 - Minority protection

4. THE SECURITIES AND FUTURES COMMISSION

- An overview of the system relating to individuals and companies licensed or registered with the Securities & Futures Commission
- Review of relevant parts of the *Securities and Futures Ordinance*
 - Part IV: Offers of Investments
 - Part V: Licensing and Registration
 - Part VII: Business Conduct, etc. of Intermediaries
 - Part VIII: SFC's Supervision and Investigatory Power
 - Part IX: SFC's Disciplinary Power
 - Section 213: Injunctions and Other Orders
 - Part XIII: Market Misconduct Tribunal
 - Part XIV: Offences Relating to Dealings in Securities and Futures Contracts, etc.
 - Part XV: Disclosure of Interests

5. DEALINGS/TRANSACTIONS WITH LISTED COMPANIES

- Methods of listing (Chapter 7 of the Listing Rules)
- Qualifications for listing (Chapter 8 of the Listing Rules)
- Restrictions on purchase and subscription (Chapter 10 of the Listing Rules)
- Continuing obligations of listed companies (Chapter 13 of the Listing Rules)
- Notifiable transactions and consequences (Chapter 14 of the Listing Rules)
- Connected transactions and consequences (Chapter 14A of the Listing Rules)

6. COMPANY LIQUIDATIONS

The *Companies (Winding-Up and Miscellaneous Provisions) Ordinance* (Cap 32)

- Liquidation
- Dissolution of companies
- The role of various parties
- Avoidance powers
- Grounds for, and procedure of
- Creditors' rights and their priorities
- Costs
- Subsequent events

COMMERCIAL LAW

7. REAL SECURITIES

- Assets
 - Land
 - Chose in possession
 - Chose in action
- The underlying loan agreement to which the security is collateral
 - Standard form agreement
 - ♦ The Debenture
 - Standard form terms
 - A Facility agreement
 - The form of the security
 - ♦ Mortgage
 - ♦ Charge
 - ♦ Pledge
 - Perfection of the security
 - Consequences of default
 - The charge back
 - ♦ Section 15A of the *Law Amendment and Reform (Consolidation) Ordinance*
 - Common terms in the loan agreement and/or the security contract
 - ♦ Negative pledge
 - ♦ Anti-assignment
 - ♦ Pre-consent
 - ♦ Subrogation
 - ♦ Subordination
 - ♦ Suspense account
 - ♦ Restrictions on proving in insolvency
 - ♦ Currency

8. QUASI-SECURITIES

- Consideration of capacity to contract
- Effectiveness of these types of securities
- The form of the transaction

- Can the transaction be perfected to protect against other interest holders?
- The Guarantee – the Indemnity
 - The traditional form, independent of the indemnity
 - The combined guarantee/indemnity
 - Effect of the material alteration of the debt contract
 - Contractual relief on default
 - The *Civil Liability (Contribution) Ordinance* (Cap 377)
- The Performance Bond
 - Who issues?
 - Effect of the document
 - Remedies on default
 - The Performance Bond v the Guarantee/Indemnity/Letter of comfort
- Assignment
 - The benefit and the burden of the chose in action
 - Legal/statutory assignment
 - Equitable
 - Novation and the burden
 - Forms of security over the asset

9. RECEIVERSHIPS

- Grounds for, and procedure of the receiver and his powers
- Cessation of the receiver's appointment
- *Companies Ordinance*
- *Conveyancing and Property Ordinance*

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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