

## **PCLL CONVERSION EXAMINATION JANUARY 2010**

Title of Paper : Business Associations  
Date : 8 January 2010  
Time : 9:30 a.m. – 9.45 a.m. (Reading Time)  
9:45 a.m. – 12:45 p.m.

### **Instructions**

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a three-hour examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 5 pages, including five questions. Candidates are required to answer **THREE** questions out of five. Where a question is in two parts, all parts must be answered. A total of 300 marks may be awarded.
8. Each question is worth 100 marks.
9. The passing mark for this paper is 150 marks.

**DO NOT OPEN THIS QUESTION BOOK  
UNTIL YOU ARE TOLD TO DO SO**

# PCLL Conversion Examination January 2010

## Business Associations

### **Question 1 (100 marks)**

Your client, Alice, a computer software engineer at a publicly listed company, came across a business opportunity proposed by her long-time friend Roger. Roger has been employed for 5 years at a firm which collects/purchases used printer cartridges for onward sale/supply to factories in the field of recycling used cartridges. He had been in charge of making contacts with businesses in the collection of printer cartridges to be discarded by the businesses. Roger wishes to establish a business as his present employer, and had approached Alice seeking her participation in the intended business.

Since Alice owns a village house in Sai Kung, Roger proposes to use the vacant rooms in Alice's flat for the time being as the temporary storage of the collected cartridges. They are aware that if the business were to become successful, they would have to eventually lease bigger storage space. Roger indicated that he would be able to persuade some friends/relatives to lend them money as start-up capital for the business. They could also try to obtain a loan from a bank secured by a floating charge on the book debts and inventories. At least 5 employees would have to be hired at the beginning.

Alice wants to keep her present job, at least until such time as the new business becomes successful. Some time in the future, following the growth of the new business, they anticipate the need for more storage locations and additional people to participate in the business and share its profits. Such people will have to contribute capital required for the growth of the business. Nevertheless Alice and Roger wish to retain overall control of the business established by them.

(A) What options are available to Alice and Roger in structuring the intended business venture and which option is most appropriate under the specific facts in this case?

(50 marks)

(B) Generally, what are the comparative advantages and disadvantages of the various forms of business vehicle or structure?

(50 marks)

**Question 2 (100 marks)**

Identify and discuss the various common law and statutory remedies/relief available to minority shareholders or shareholders in a deadlock company. Your discussion should include your views on which of the available reliefs offers the most effective protection to minority shareholders.

**Question 3 (100 marks)**

- (A) XYZ Ltd owes ABC \$500,000 for goods sold and delivered. The goods involved are electric fans. Despite repeated demands from ABC, XYZ failed to repay the debt, claiming that due to the economic downturn it had cashflow problem and that part of the goods were defective. ABC intends to commence winding up proceedings against XYZ and seeks your advice as to the proper procedure to be taken and the likely defences/grounds of opposition XYZ may raise. (70 marks)
- (B) After commencement of the winding up proceedings, SC, another supplier of XYZ of electrical products, intends to institute action against XYZ for price of goods supplied in the sum of \$5m. ABC seeks your advice on the potential impact on its winding up petition, if any, arising from SC's intended action. (30 marks)

**Question 4 (100 marks)**

Plus Lucky Ltd has 3 shareholders, A (40%), B (30%) and C (30%) who is also the only directors in the company. Table A is not adopted, and the company's articles do not contain any preemption clause. The following provisions in the Articles are relevant to this question:

- (1) The directors may, in their absolute discretion and without assigning any reason therefore, approve or refuse to approve any transfer of any share, whether or not it is a fully paid share.
- (2) No business shall be transacted at any general meeting unless a quorum of members is present. 3 members present in person or by proxy shall be quorum.
- (3) The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

- (4) The Company may, by ordinary resolution, increase the number of directors.
- (5) Subject to Reg. (6) below, the quorum necessary for the meetings of the board of directors shall be 3.
- (6) If within 30 minutes of the time appointed for a meeting of the board of directors a quorum is not present, the meeting shall stand adjourned until the same time and place on the same day in the next week. At the adjourned meeting if a quorum is not present within 30 minutes from the time appointed for the meeting any 2 directors present in person or by their alternates shall constitute a quorum for that meeting.

Disputes arose between the shareholders, with A and B on one camp while C on the other. A and B, in a recent board meeting, passed a resolution for an EGM to pass the ordinary resolutions to (i) increase the share capital from HK1m to HK5m; and (ii) to authorize the allotment of the new shares to all existing shareholders on a pro rata basis, failing which, the allotment shall be made to those existing shareholders who are willing to subscribe for all the new shares (“1<sup>st</sup> EGM”).

C (who cannot afford subscribing any new shares) voted against the resolution. He was outvoted by A and B. However, it turned out that the notice for the 1<sup>st</sup> EGM was insufficiently given (less than 14 days for the notice period).

A and B intend to convene another EGM to pass an ordinary resolution to increase the number of directors from 3 to 5. The number of directors is not fixed in the Articles. A and B expected that C will refuse to attend the EGM to inquorate the meeting (the 2<sup>nd</sup> EGM”).

Advise A and B as to the validity of the resolutions passed at the 1<sup>st</sup> EGM and how they can validly convene the 2<sup>nd</sup> EGM and pass the proposed resolution without the presence of C.

**Question 5 (100 marks)**

- (A) Patrick is one of the 3 directors in Envirotech Ltd, a company specializing in purification of drinking water. Envirotech's average annual revenue has been about HK3m. Each of the directors currently spends substantial time in overseeing the business of the company.

Patrick had been approached by Alken Ltd to consult with them on water purification of private swimming pools, ponds and fountains, a rapidly growing field with a great deal of potential ("the New Sector"). However, Envirotech itself had never considered expanding into the New Sector, and the topic had never been raised in any of its board meeting. Alken had not indicated whether it will consider having Envirotech as its consultant, instead of Patrick personally.

Patrick seeks your advice as to whether or not he can personally enter into the consultancy agreement with Alken, valued at about HK1m per year in the coming few years. When giving advice to Patrick, assume that Table A had been adopted by Envirotech (80 marks)

- (B) (a) What is a reserve director and the purpose of having one? (5 marks)
- (b) What is an alternate director and what role does he/she play? (5 marks)
- (c) What are the grounds leading to disqualification of directors? (10 marks)

**~ End of Examination Paper ~**