

PCLL CONVERSION EXAMINATION JUNE 2010

Title of Paper : Business Associations
Date : 25 June 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 4 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 June 2010

Business Associations

Question 1 (100 marks)

ABC is a Hong Kong limited company. It has 2 shareholders X and Y. X owns 60% of the outstanding shares while Y owns 40%. There are 3 directors in the Board, 2 (John and Mary) appointed by X and 1 (David) by Y.

ABC has a subsidiary incorporated in the PRC. David was appointed by the Board of ABC as the Legal Representative of the subsidiary. On 12th May 2009, John called for a Board meeting, giving notice of the meeting to David and Mary at 2pm by fax on the same day to his office in Shenzhen, and reached David at about that time since he was in his Shenzhen office. The proposed Board meeting was to be held the next day, i.e. 13th May 2009, at 9am in Hong Kong (at X's solicitors' office), and the only agenda on the Board meeting was to remove David as the Legal Representative of the PRC subsidiary. There had been ongoing disagreements between X and Y over certain management issues in the past 6 months.

David failed to attend the Board meeting, and resolution was passed by John and Mary removing David as the Legal Representative of the PRC subsidiary.

David came to seek advice from you as to the validity of the Board meeting and the resolution passed. Table A has been adopted by ABC.

- (1) Advise David of his rights. (80 marks)
- (2) Would your answer be different if the proposed agenda for the Board meeting was to discuss a loan granted by Big Bank (vital for and in the interest of ABC's business) which must be accepted on or before 14th May 2009? (20 marks)

Question 2 (100 marks)

(A) Please state the type of meeting (i.e. Board or shareholders meeting) and resolution, as well as the notice time, required for the following businesses of a limited company. In your answers, assume Table A has been adopted, please include the relevant sections/rules/regulations in the Companies Ordinance Cap. 32.

- (1) Change of name of the company. (5 marks)
- (2) Alteration of Articles of Incorporation. (5 marks)
- (3) Approving interim dividend. (5 marks)

- (4) Approving removal of a director. (5 marks)
- (5) Change of number of directors for a quorum for a Board meeting. (5 marks)
- (6) Increasing the authorized capital of the company. (5 marks)
- (7) Reducing the authorized capital of the company. (5 marks)
- (B) What requirements must be met before a court will be satisfied that an order approving a reduction of capital under Section 58 of the Companies Ordinance Cap.32 should be made? Please cite relevant case authorities. (65 marks)

Question 3 (100 marks)

XYZ Limited is a Hong Kong limited company. One of its creditors, Unity Trading Limited, presented a winding up petition against it about one week ago. Another creditor, Idea Mountain Ltd (“IML”), which had earlier obtained a judgment against XYZ, has partially completed execution of the judgment against XYZ at the time of the winding up petition. IML came to you for advice on:

- (1) A brief outline of the company winding up procedure. (50 marks)
- (2) IML, itself not a party to the winding up proceedings, is concerned whether its position on the judgment and execution is being affected by the winding up petition. (25 marks)
- (3) Would your advice to (2) be different if the winding up order has already been made against XYZ when IML came for your advice (i.e. it has completed partial execution on the judgment at the time of the winding up order). (25 marks)

Give reasons for and fully explain your answer.

Question 4 (100 marks)

A statutory demand was served on Top Dragon Ltd 2 weeks ago by one of its trade creditors and suppliers, LMN Ltd. Prior to that, there had been exchange of correspondences between the parties on the quantum of the LMN’s claims and statement of account sent and received. Top Dragon also believes that it may be able to challenge LMN’s claim on the basis that the goods supplied by LMN were defective. Top Dragon is also of the view that LMN is trying to pressure Top Dragon into paying LMN’s claims by serving the statutory demand.

Top Dragon also informed you that it probably will receive a large payment from a customer in about 4 months.

Advise and explain to Top Dragon as to the general grounds of opposition in such a winding up petition, and the specific action or grounds, if any, that it may take or rely on under the given facts.

Question 5 (100 marks)

Jarvis Ltd (“JL”) is a limited company incorporated in Hong Kong. It has 5 directors. A, a director, holds 55% of the company’s shares. B, the managing director, holds 15%. C, D and E, the remaining directors, each holds 10% of the company’s shares.

In order to obtain a distributorship for a new product from the USA, JL has to come up with HK\$3 million to pay the USA company. As JL’s banks would not lend the HK\$3 million, A has proposed to put up the sum in exchange for new shares in the company to be issued and allotted to him. B did not like the proposal, thinking it was merely an excuse by A to dilute his shareholding.

A board meeting was called. A persuaded the directors, except B, to accept his proposal notwithstanding B’s objection. The resolution was passed and A’s shareholding was increased to 75% while the shareholdings of B and other shareholders were diluted as a result.

B then called a subsequent shareholders’ meeting on short notice and the meeting duly took place. At the meeting B’s proposal to block the allotment of new shares to A was defeated by A exercising his majority votes. A also passed a resolution to ratify the allotment and another resolution removing B from the Board, without allowing B the opportunity to be heard.

Advise B. Table A has been adopted by JL.

~ End of Examination Paper ~