PCLL Conversion Examination
January 2024 Examiner's Comments
Business Associations

Overall Comments

The PCLL Conversion Examination Business Association was conducted in January 2024. This is an open book examination in which candidates must answer both questions in Part A and one out of two questions in Part B.

Candidate chose questions to answer relatively evenly, with perhaps the third question the least popular. The general standard of answers was quite good with a few excellent papers. There were a few very poor papers evidenced by lack of preparation.

Part A

Question 1

Question 1 required candidates to discuss whether Johnny would be in breach of the restrictive provision of the employment contract with Morer. Relevant cases where the corporate veil has been lifted should be discussed and applied: *Salomon v Salomon [1897], Toptrans Ltd v Delta Resources Co Inc [2005] 1 HKLRD 635; Winland Enterprises Group Inc v Wex Pharmaceuticals Inc [2012] 2 HKLRD 757; Prest v Petrodel Resources Ltd [2013] 2 AC 415, [35], [62]*. In particular, the facts in the question is very similar to *Gilford Motor Co Ltd v Horne [1933] Ch 935*. It is most likely that the Court will follow Gilford Motor with a finding that Quick was formed and used as an instrument of fraud to conceal Johnny's illegitimate actions and to evade existing liability. Courts can "pierce the corporate veil" if a company is simply a mere device to evade legal obligations, though this would be applied only in limited and discrete circumstances and only when all other remedies have proved to be of no assistance. Candidates are expected to analyse and apply the facts of the current case to applicant law and discuss the recent trends in the area.

Question 2

For Question 2, candidates are expected to analyse whether the contract between Company A and Company B in furniture manufacturing would be void on the ground of ultra vires. Candidates are expected to discuss the common law principles, the "Ultra Vires rules" and relevant legislative provisions. Marks awarded for identifying the relevant case law and legislative provisions and application of the law to the facts.

Part B

Question 3

Question 3 tests candidates' knowledge on the ways to convene a general meeting. A shareholder has no direct right to convene a general meeting. He can only convene a general meeting upon the default of the directors. Under the Companies Ordinance (ss 566 to 568), shareholders holding at least 5% of the total voting rights at general meetings can request the

directors to call a general meeting of the company. Candidates should point out that C as a 51% majority shareholder of the Company can request the directors to convene the general meeting. If the directors fail to call the general meeting, C can call the general meeting itself by sending a notice of the general meeting to all shareholders of the Company.

It is also possible for C to make an application for a court-ordered meeting pursuant to Companies Ordinance s 570. S. 570 CO is intended to allow a shareholder to exercise his legal rights that he cannot otherwise enjoy by the impracticality of conducting a general meeting of the company. C needs to satisfy the court that it is impracticable to call or conduct a general meeting of the Company in accordance with the Companies Ordinance and the articles of the Company. Candidates should analyse where C can prove the "impracticability" element and whether the court will make an order in favour of C if the deadlock persist *(Mandarin Capital Advisory Ltd [2011] 2 HKLRD 1003)*.

Question 4

Question 4 test candidates' knowledge on pre-incorporation contract. Candidates are expected to discuss common law principles and Companies Ordinance s.122, which allows the proposed company, once incorporated, to ratify the pre-incorporation contract so that the pre-incorporation contract can bind the company. Candidates are also expected to discuss what happens if the company fails to ratify the pre-incorporation contract under CO s.122. A few candidates also discussed novation of pre-incorporation contracts and the implication of novation.