

PCLL CONVERSION EXAMINATION JANUARY 2024

Title of Paper : Business Associations
Date : 5 January 2024
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 3 pages, including Part A and Part B. A total of 300 marks may be awarded.
8. Part A contains two compulsory questions. Candidates must answer **ALL** questions. There is **NO** element of choice. Part A is worth 200 marks.
9. Part B contains two questions. Candidates are only required to answer **ONE** question out of two. Part B is worth 100 marks.
10. The passing mark for this paper is 150 marks.

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

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Business Associations

Part A - Must answer BOTH Questions 1 and 2

Question 1 (100 marks)

Johnny had been working as the managing director in Morer Investment Ltd (“Morer”), a securities investment firm for almost twenty years. He resigned from Morer two weeks ago, and then immediately formed a new Hong Kong company named Quick Invest Limited (“Quick”) with his wife Mary. Their respective shareholdings in Quick are: Johnny (60%) and Mary (40%) and they are appointed as the only directors of Quick.

The employment contract of Johnny in Morer included a restrictive covenant that prohibited him from engaging in the same business and soliciting clients away from Morer within one year after he leaves his employment with Morer.

Johnny asked his wife Mary to contact his old clients regarding his new business Quick. Johnny later received positive interest from David, a former client of Morer. Johnny proposed to David that a new contract would be executed by his newly formed company, but not himself, so it would not violate the restrictive provision imposed on him from his previous employment. A contract between David and Quick was soon executed.

Advise whether Johnny would be in breach of the restrictive provision of the employment contract with Morer. Assume the restrictive provision in the employment contract is valid and legally enforceable.

Question 2 (100 marks)

The articles of Company A contain an objects clause stating that the company shall only engage in the business of garment manufacturing. The Board of Directors of Company A then decided to diversify the business of the company and recently entered into a contract with Company B in the business of furniture manufacturing.

Advise whether the contract with Company B in furniture manufacturing would be void.

Part B - Must answer ONE question only - Question 3 OR 4

Question 3 (100 marks)

Mega Bridge Limited (the “Company”) is a private company incorporated in Hong Kong. The Company has two shareholders, who are also the two directors of the Company, namely Carlson Chan (“C”) and Declan Chan (“D”). C holds 51 shares and D holds the remaining 49 shares.

Since last year, the relationship between C and D has turned sour due to the disagreement on the financing strategies of the Company. C proposed to the Board of Directors (the “Board”) to convene a general meeting to increase the share capital of the Company. However, this is rejected by D. As a result, the Board is unable to convene the general meeting due to the deadlock at the board meeting.

If the Board is unable to convene the general meeting, can C proceed to convene the general meeting in his capacity as a shareholder of the Company under the Companies Ordinance?

Question 4 (100 marks)

Amy and Ben were the founder members and directors of Appleby Company Limited.

They incurred costs and expenses of \$10,000 in the incorporation of the company, such as legal fees and accounting fees. Amy and Ben agreed with their professional advisers (i.e. company secretaries, accountants and lawyers) that the legal fees and accounting fees will be paid by the proposed company as soon as it is up and running.

Advise if it is possible for the founder members of company to anticipate the existence of the company and make contracts in the company’s name before it is incorporated. Advise how this is achieved and whether Amy and Ben will be personally liable for such contracts.

~ End of Examination Paper ~