

**PCLL Conversion Examination
June 2024 Examiner's Comments
Business Associations**

Overall Comments

The PCLL Conversion Examination Business Association was conducted in June 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. two out of three questions.

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 the difference between the following two types of business associations in Hong Kong: partnership and limited liability company and to examine the advantages and disadvantages of forming a partnership and a limited liability company to run a business in Hong Kong. Question 1 was a popular question and generally well answered. Advantages of forming a partnership to run a business was discussed (greater simplicity in forming and running a partnership; privacy; tax advantage; flexibility); Disadvantages of forming a partnership was discussed (commercial risk – joint and several liability; restriction on business expansion; lack of continuity; difficult to dispose of interest; difficult to raise finance). Advantages of forming a company to run the business (limited liability; ability to raise finance through share and loan capital; separate legal entity; perpetual succession; transfer of ownership; expansion for business; management and control; agency). Disadvantages (Formation cost and formalities expenses; tax; difficulties and expenses in winding up; difficulty in reduction of capital; greater publicity). Candidates are expected to give sufficient details to show understanding of concepts.

Question 2

For Question 2, candidates are expected to discuss whether floating charge can be set aside. Most candidates correctly identified that the floating charge can be set aside under Cap 32 s. 267 and s. 267A. The effect of s.267 and s.267A is that if a company creates a floating charge at a relevant time, the charge is invalid unless the floating charge is created to secure “new consideration” and related interest. This means the charge holder (Brandon) had to provide loan to the Company at the same time as or after creation of the floating charge. In this case, the Loan was advanced on 3 October 2023 but the floating charge was created on 31 October 2023. Thus, there was no new “consideration”. Candidates are also expected to discuss whether Brandon is regarded as a person connected with the Company by virtue of Cap 32 ss 265 A (3) and s.265B. Marks are awarded for identifying the relevant legal principles and applying the law to the facts.

Part B

Question 3

Students are expected to explain to him whether Mr. Chan, as a minority shareholder, is entitled to have access to any corporate information of ABC under the Companies Ordinance and the articles of ABC and why Clause 8 is necessary. This question tests candidates' knowledge of a member's right to have access to the information of the company. CO s 620 provides that a member is entitled to inspect the minute books of all general meetings of the company. Under CO s 429, a member has access to the reporting documents of the company (which consists of the financial statements, directors' report and the auditor's report on the financial statements). Students are expected to discuss Art 82 Model Articles and what is the implication without Clause 8. Exceptional students mention CO s.740.

Question 4

Question 4 test candidates' knowledge on the difference between loan and share capital. Most candidates did well on this question. Most students discuss the two key distinctions between debt and equity, namely at insolvency and control of the company (vote at shareholder's meetings). Exceptional students also discuss the possibility of the company issuing different class of shares with different rights (preference or redeemable shares with non-voting rights) for John to retain control over business.