

PCLL CONVERSION EXAMINATION JUNE 2025

Title of Paper : Business Associations
Date : 16 June 2025
Time : 9:30 a.m. – 9:45 a.m. (Reading Time)
9:45 a.m. – 12:45 p.m.

Instructions

1. This is an open book examination.
2. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
3. Start each answer on a separate page of the answer book.
4. Write your answers only in the answer books provided.
5. This is a three-hour 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 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**

PCLL Conversion Examination June 2025
Business Associations

Part A - Must answer BOTH Questions 1 and 2

Question 1 (100 marks)

Won was a successful rancher in Jeju, South Korea, raising and breeding black pigs. These pigs produced pork that tasted legendarily good but was not sold abroad generally.

Won met Chan, a Hong Kong restaurateur, when Chan spent his holiday in Jeju. They quickly became good friends. After tasting the legendary pork at Won's farm, Chan convinced Won to start a restaurant chain in Hong Kong that specialized in the Jeju pork BBQ.

They agreed that each of them would contribute HK\$2 million to a newly incorporated Hong Kong company, with Won holding 51% of the shares and Chan holding 49% of the shares. Since Won could not come to Hong Kong very often, they agreed that Chan would be the sole director of the board. While they did not put everything down in a contract, there was a gentleman agreement that Chan would consult Won on any important matter.

Before Chan could incorporate the company, he came across a really good lease offer at a prime location in Causeway Bay. Knowing that the place could be rented out quickly, he entered into a lease under the name of the proposed company, WC Ltd., on 1 May 2024, with the lease coming into effect on 1 September 2024. He did not notify Won about the lease.

In July 2024, WC Ltd. was properly incorporated as a Hong Kong private company limited by shares. The company adopted the Model Articles of Association for Private Companies Limited by Shares.

Unfortunately, since it was the first time that the Jeju pork was imported into Hong Kong, the import was heavily scrutinized by the Hong Kong Customs and Excise Department. In August 2024, it was still uncertain if the Jeju pork could be imported legally to Hong Kong. Chan therefore called the landlord one day wanting to back out of the lease.

- (a) Advise the landlord regarding the enforceability of the lease against Won, Chan and/or WC Ltd. under Hong Kong company law. **(50 marks)**
- (b) Luckily, the landlord subsequently found a new leasee for his place for a much higher rent and decided not to pursue any action against Won, Chan and/or WC Ltd. Meanwhile, the Hong Kong Customs and Excise Department also approved the import of the Jeju pork. WC Ltd. thus quickly found another prime location in Tin Hau and opened a pilot restaurant for business by 1 December 2024.

In January 2025, Chan suggested to add the following new article:

Article 25

Daisy is to serve as the Accounting Manager until her retirement.

Daisy had served as the Accounting Manager of WC Ltd. since its incorporation and it was widely known in the company that Daisy was Chan's girlfriend. Won knew full well about their relationship and Daisy's influence in the financial affairs of the company, but did not want to ruin his cooperation with Chan. His main concern was whether he would ever be able to remove Daisy in the future after agreeing to the addition of Article 25. Note however there is no employment contract between WC Ltd. and Daisy.

Advise Won.

(50 marks)

Question 2 (100 marks)

Just when Won was pondering his legal options, a swine flu hit Won's ranch in Jeju. Before Won and Chan could react to this, 50 Hong Kong persons were reported sick after eating at their restaurant, with one of them died three days after the incident. While the restaurant was under investigation by the relevant authorities in Hong Kong, WC Ltd. passed a shareholders' resolution to lend HK\$20 million, which represented substantially all the money in the bank account of WC Ltd., to Big Success Ltd., another company jointly owned by Won and Chan. Big Success' registered address is at the office of WC Ltd. and pays no rent to WC Ltd. The transfer of money was made on the same date of the loan.

Advise the 50 victims and their families.

(100 marks)

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

Question 3 (100 marks)

Best Bed Company Limited ("BBC") is a Hong Kong incorporated private company that manufactures and sells mattresses. It was established by three friends Myles, Tyrese and Jones. Myles is the largest shareholder (40%), CEO and one of the three directors of BBC. Tyrese and Jones are the other two directors, each owning 30% of BBC's shares.

Myles also owns another Hong Kong company, Myles' Noble Company Limited ("MNC"). Last month, MNC entered into a HK\$200 million loan with SHCB, a bank in Hong Kong, to finance the purchase of a piece of land in Tai Wai (the "Loan"). Myles executed a guarantee on behalf of BBC to secure the repayment of the Loan. This guarantee is the biggest transaction in BBC's history. Advise SHCB in each of the following independent scenarios:

- (a) After the execution of the guarantee, it is found that Tyrese and Jones never approve the guarantee. **(50 marks)**
- (b) Despite there being a board meeting approving the guarantee, BBC's Articles of Association ("AoA") contain the following article:

"Article 50 The company may only borrow money (including the guarantee of debts) if the amount of moneys borrowed shall not at any time exceed HK\$10 million."

(50 marks)

Question 4 (100 marks)

“It is argued that legal capital is no longer an appropriate means of safeguarding creditors’ interests. This is most clearly the case as regards mandatory rules.” John Armour, *Legal Capital: An Outdated Concept?* 7 Eur. Bus. Org. L. Rev. 5, 5 (2006).

Critically assess this statement from the perspective of Hong Kong company law.

(100 marks)

~ End of Examination Paper ~