

**PCLL Conversion Examination**  
**August 2022**  
**Examiner's Comments**  
**Business Associations**

**General comments**

The standard of papers in this sitting of the Business Associations Conversion Examination was average overall.

The questions are designed to test the abilities of the candidates to identify legal issues that practitioners encounter in practice and to apply relevant company law principles to these issues. With this being an open book exam, they are not aimed at testing candidates' ability in reciting the blackletter law.

The majority of the candidates have finished the paper. However, some candidates just wrote about general principles without applying them properly to the legal issues. In general, candidates could also be more familiar with Hong Kong precedents.

The comments on how candidates answered each question are set out below:

**Question 1**

This question tests the candidates' knowledge on the relationship among the following principles: (1) separate legal personality, (2) limited liability and (3) piercing the corporate veil. Most candidates managed to analyse the most basic ideas of separate legal personality. This is to be expected. However, many candidates failed to distinguish between the concepts of separate legal personality and limited liability. They are certainly related but remain separate concepts. Performance on piercing the corporate veil is mixed. Some candidates show knowledge of the basic principle, but struggled to apply it to the facts of the case.

**Question 2**

This question relates to the authority of company's agents. Candidates generally did not perform well for this question. Some of them failed to display a basic understanding of authority (both actual and apparent), the relevant statutory provisions, and the relationship between them. Some candidates also misunderstood the question as one dealing with director's duties. This is most unfortunate as it shows a lack of fundamental concept on the internal and external relationships of a company.

**Question 3**

This question requires candidates to discuss director's duties, including both duty of care and fiduciary duty. Candidates performed decently in this question. They managed to identify the issue of the potential breach, cited the relevant authorities, and applied to the facts reasonably. One common problem, however, is the lack of substantive discussion on remedies for the respective breaches of fiduciary duty and duty of care. In addition, few candidates discussed the more advanced issues in the question.

#### **Question 4**

Not many candidates chose to answer this essay question. While candidates who did appeared to have identified the question as relating to the agency problem between directors and shareholders, few were capable of discussing this problem explicitly and systematically. They usually just recited some relevant corporate principles at length without discussing any critical aspects. As a result, very few performed well in answering this question.