

Overseas Lawyers Qualification Examination
HEAD III: COMMERCIAL AND COMPANY LAW

Standards, Syllabus and Materials

STANDARDS

General Notes to Candidates

The reading list attempts to be as extensive as possible but there is no one particular comprehensive text available. Students should therefore read as widely as possible over these topics. You cannot assume that by reading only a selection of the texts that you will have read in sufficient detail or depth, and it is recommended that you try to look at all the suggested readings.

Where the reading list consists of materials prepared or written not specifically for Hong Kong legislation, you should be aware of any differences in law and principles in such materials which may not be applicable to Hong Kong.

You should also familiarise yourself with the latest legislative changes and legal developments which may have occurred since the publication of those materials.

Candidates will be expected:

- (i) to have a working knowledge of the commercial and company law listed below;
- (ii) to be able to draft and analyze simple documents and forms; and,
- (iii) to be able to perform many of the tasks of a commercial lawyer, including
 - (a) incorporating a new company
 - (b) activating a shelf company

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

1. Introduction to Business Organizations

- (a) Sole Proprietorship
 - establishment, management, disposal and/or dissolution of business
- (b) Partnership
 - types of partner
 - limited partnerships
 - establishment, management, disposal and/or dissolution of business
- (c) Company
 - newly incorporated or shelf company
- (d) Choice of Business Vehicle
- (e) Business Registration

READING LIST

- *Stott, Hong Kong Company Law* (latest edition)

SYLLABUS

2. Company Practice

- types of company
- incorporation of private company limited by shares
- preparation of memorandum and articles of association
- activation of a company
- registration of an overseas company
- continuing registration requirements for Hong Kong and non-Hong Kong companies
- division of power between members and directors
- members, meetings, resolutions
- directors, procedures, (including meetings and resolutions), fiduciary, common law and statutory duties
- minority protection
- disqualification of directors
- finance, share capital and loan capital, dividends and profits, accounts
- company's repurchase of its own shares
- company's financing the purchase of its own shares
- changing a company's memorandum and articles of association

- disposing of an interest in a company
- transfer and transmission of shares
- sale of company's assets
- voluntary winding-up and distributions in specie

READING LIST

- *Lawton, P., Meetings in Hong Kong: Their Law and Practice (Pitman Publishing latest edition), pp135-294*
- *Stott, Hong Kong Company Law (latest edition)*
- *Tomasic & Tyler, Hong Kong Company Law Legislation and Commentary (Butterworths latest edition)*
- *Hong Kong Company Secretarial Practice Manual (Sweet and Maxwell latest edition), Chapters 1, 2, 4, 5, 6, 7 and 12 (pp 12031-12035)*

SYLLABUS

3. Hong Kong Joint Ventures

- joint venture documentation
- basic provisions of main joint venture agreement
- joint venture articles of association
- minority protection

READING LIST

- Preliminary Note and Precedents on Joint Ventures, Volume 19, The Encyclopaedia of Forms and Precedents (5th ed)

SYLLABUS

4. Acquisition of a Private Company

- (a) **overview of business entities**
- (b) **private company share sale**
 - what the company owns
 - what the shareholders own
 - the difference between legal and beneficial ownership of shares, assets and liabilities

- (c) **taking instructions from the purchaser**
 - what the purchaser wants to buy
 - what the purchaser plans for the company
 - due diligence and investigations of the worth of the company

- (d) **due diligence**
 - the purpose of conducting due diligence and the type of issues to be covered by the due diligence investigation

- (e) **investigations of the company**
 - what to do with the information collected; the nature of the discrepancies and confirmatory information
 - the need for further instructions
 - the effect on the structure and content of the acquisition documents
 - where the information is reflected in the acquisition documents

- (f) **identifying the issues**
 - what to do with the information collected; the nature of the discrepancies and confirmatory information
 - the need for further instructions
 - the effect on the structure and content of the acquisition documents
 - the effect on the purchaser
 - intellectual property issues
 - non-competition and restrictive covenants

- (g) **drafting the acquisition documents**
 - the Share Purchase Agreement
 - the Deed of Indemnity for Tax Liability
 - the Disclosure Letter

- (h) **warranties and representations from seller**

- (i) **information exchange and negotiation**
 - the process of negotiation and settling of the acquisition documents

- (j) **exchange of contracts and completion**
 - which documents are signed
 - the ancillary documents to be prepared
 - the exchange of documents
 - the type of completion: immediate or after conditions precedent satisfied

- (k) **post-completion**
- attention to post completion tasks: corporate restructurings; filings; stamping; time limits; penalties and consequences of non-compliance
 - the survival of warranties and representations
 - completion agenda
- (l) **cf. sale of business/assets as opposed to share sale**
- **Transfer of Businesses (Protection of Creditors) Ordinance Cap 49**

READING LIST

- *Tolley*, "Acquisition of Private Companies and Business," in Tolley's Company Law (latest edition)
- Preliminary Note and Precedents on "Part 2: Share Sale Agreements," Volume 11, The Encyclopaedia of Forms and Precedents (5th ed)

SYLLABUS

5. Charges, Other Forms of Security, and Guarantees

- company's power to borrow and create security
- debentures
- fixed and floating charges
- charges over book debts
- crystallisation
- practical differences between fixed charges and floating charges
- charges over various types of assets
- registration of charges
- remedies of debenture-holder
- retention of title
- legal nature of guarantees/indemnities
- the types of guarantee
- letters of comfort
- the rights of the guarantor against the principal debtor or borrower
- the rights of the guarantor against the creditor/bank
- discharge of the guarantor's liability
- determination of the guarantee
- other common clauses in a guarantee
- enforcement of the guarantee
- practical tips on the drafting and use of a guarantee

READING LIST

- Please note:
Section 56 A(1) of the Conveyancing and Property Ordinance Cap 219; Section 2(A) of the Land Registration Ordinance Cap 128.
- *Stott, Hong Kong Company Law* (latest edition)
- Precedents - Debenture, Volume 10, The Encyclopaedia of Forms and Precedents (5th ed)
- Continuing Guarantee, Volume 17(2), The Encyclopaedia of Forms and Precedents (5th ed)

SYLLABUS

6. Securities and Investor Protection

- licensing of intermediaries and regulation of their activities and operations
- protection of investors
- regulation of public offering of securities and other investment arrangements, and prospectus requirements, including liability for misrepresentation and non-disclosure about securities
- disclosure of interests
- role of the Securities and Futures Commission
- transitional arrangements under the Securities and Futures Ordinance
- corporate governance

READING LIST

- *Stott, Hong Kong Company Law* (latest edition)
- Chapters 1, 2, 3, 6, 7, 8, 14 and 14A, Practice Notes 5, 11 and 21 and Appendix 14 of the Rules Governing The Listing of Securities on The Stock Exchange of Hong Kong Limited
- The following Parts of the Securities and Futures Ordinance:
 - Part I
 - Part II
 - Part IV
 - Part V
 - Part VIII
 - Part XIII
 - Part XIV
 - Part XV and all Schedules relevant to the aforesaid Parts
- Securities and Futures (Stock Market Listing) Rules

SYLLABUS

7. Receiverships

- receiver/receiver & manager
- appointment
- position of receiver
- disqualification for appointment
- effect of appointment
- duties of receiver
- receiver's rights and powers

READING LIST

- *Stott, Hong Kong Company Law* (latest edition)
- *Tomasic and Tyler, Hong Kong Company Law Legislation and Commentary* (Butterworths latest edition)
- *Hong Kong Company Secretarial Practice Manual* (Sweet and Maxwell latest edition) Chapter 12 pp 12011-12021

SYLLABUS

8. Company Liquidations

- how liquidations differ from and are related to receiverships
- types of winding up
 - compulsory liquidation
 - voluntary liquidation (members' voluntary liquidation and creditors' voluntary liquidation)
- differences between various forms of winding up / liquidation
- grounds for winding up
- commencement
- court's powers
- the consequences of commencement
- the consequences of the winding up order
- the stay
- powers and duties of liquidator
- avoidance powers
- effect of winding up on antecedent and other transactions
- directors' disqualification

READING LIST

- *Sherrington*, "Insolvency," Chapter 12 in Trade and Investment Law in Hong Kong (Smart & Halkyard (eds), 1993)
- *Stott*, Hong Kong Company Law (latest edition)

SUMMARY OF MATERIALS

1. Books and articles

As set out in the Reading Lists above

2. Ordinances of Hong Kong

- Business Registration Ordinance, Cap 310
- Companies Ordinance, Cap 32 (including Table A of the First Schedule to the Companies Ordinance) and the Winding Up Rules
- Conveyancing and Property Ordinance Cap 219 s 56A(1)
- Land Registration Ordinance Cap 128 s 2A
- Law Amendment and Reform (Consolidation) Ordinance, Cap 23, ss 9, 13, 14, 15 & 15A
- Limited Partnership Ordinance, Cap 37
- Partnership Ordinance, Cap 38
- Securities and Futures Ordinance, Cap 571
- Stamp Duty Ordinance, Cap 117
- Transfer of Businesses (Protection of Creditors) Ordinance, Cap 49

3. Precedents

- Debenture
- Continuing Guarantee
- Joint Venture/Shareholders' Agreement
- Memorandum and Articles of Association
- Share Sale Agreement
- Business (asset) Sale Agreement

4. Further reading

- Hong Kong Company Law Handbook (Butterworths latest edition)