

## **PCLL CONVERSION EXAMINATION JANUARY 2018**

Title of Paper : Business Associations  
Date : 9 January 2018  
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 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 January 2018

## Business Associations

**Part A** (answer BOTH Question 1 and Question 2)

**Question 1 (100 marks)**

In early 2015 Mark, Tom, Anthony and James established House-Dreaming Co (the Company), which specialises in the manufacturing of luxury furniture. The General Meeting of Shareholders appointed Mark and Tom as directors. Mark is a former financial analyst of Letterman Brothers and Tom, a practising accountant.

Due to his own busy schedule, Tom decided to ask his cousin, Amy, to help supervise the business given that she has been a marketing consultant at McKeely Consulting for 5 years. With the permission from both Mark and Tom, Amy invested HK\$3 million of the Company's asset in early 2016 to open a new production line in Shenzhen for the manufacturing of trendy coffee-tables for export to Europe, which she believes the company would make a return within 12 months. However, due to the appreciation of the Renminbi, demand dropped significantly and the Company has incurred a loss of more than HK\$2 million.

Mark is also a partner of Woodlog, a partnership business which he owns with his wife, and manufactures wood-cutting machines. As the demand for wood furniture has increased recently, the board of directors of the Company has decided to purchase the most modern wood-cutting machine and entered into a contract with Woodlog to supply it.

In July 2017, Mark engaged in a business negotiation on behalf of the Company with Olive Restaurant (the Restaurant) to supply furniture to its newly renovated shop at Causeway Bay. The Restaurant manager told Mark that he was not going to give this contract to the Company but was willing to offer it to Mark in his own personal capacity. Mark then set up another company with his brother to take up the contract with the Restaurant and earned a profit of HK\$500,000.

Anthony and James have become discontent with how the company is being managed. **Advise them.**

**Question 2 (100 marks)**

Debbie, Olivia and Angel are shareholders of a company established in 2014, specializing in the sale of all-natural cosmetics which they import from Europe. Debbie holds 25% of the shares, Olivia holds 35% and Angel holds 40%. Tony Chan, Olivia's boyfriend, an accountant, assisted in the setting up of the business. In order to safeguard their own interests, the following clauses were inserted into the articles of association:

- i) Tony Chan is to be the sole accountant of the company.
- ii) In the event of a shareholder wishing to leave the company, she should first offer those shares to the existing shareholders who would be bound to take them at an agreed price.

By early 2016, businesses started to deteriorate and disputes began to occur amongst the shareholders. Olivia has broken up with Tony, and she no longer wanted him to be the accountant of the company. All the other shareholders agreed and instructed someone else.

Angel feels that the business has no prospect and wants to sell her shares to Debbie and Olivia. However, Debbie and Olivia have declined.

Debbie has opened another retail outlet with her sister in Mong Kok, selling cosmetics to the increasing number of mainland Chinese tourists. Olivia believes this is the main reason why Debbie is no longer interested in the affairs of the company and blames the deterioration of the business on her. Olivia has since become frustrated with Debbie and intends to evict her from the company. Olivia attempts to incorporate into the articles, a clause that any shareholder who competes with the company could have her shares acquired by the majority.

**Advise the parties.**

**Part B** (answer EITHER Question 3 or Question 4)

**Question 3 (100 marks)**

“...A company’s decisions are made on the basis of majority rule and in most cases this democratic principle is sufficient to ensure that decisions are made fairly. The court will generally not interfere in the process...” (V. Stott, *Hong Kong Company Law*, 11<sup>th</sup> edition, p.166).

**Critically examine the above statement in relation to the protection of minority shareholders rights in Hong Kong.**

**Question 4 (100 marks)**

Honki Construction Engineering Co Ltd (Honki) is a Hong Kong based construction company. On 1 February 2016, Honki entered into a contract with Daida Property Development Co (Daida) whereby the former promised to carry out a construction project in Shatin for the latter. On 10 February 2016, Honki entered into an agreement with TA Construction Ltd (TA), whereby the Shatin project was subcontracted to the latter. On 15 February 2017, Honki made a full repayment of HK\$2,000,000 to Five Star Cement Co Ltd (Five Star), one of the former’s trade creditors. On the same day, Honki discharged an unsecured loan owed to David, one of Honki’s directors.

Generous Banking Co Ltd (the Bank) is one of Honki’s bankers from which overdraft facilities have been obtained. On 15 March 2017, when Honki’s current account with the Bank remained overdrawn, a disgruntled creditor presented a winding up petition against Honki. On 16 March 2017, upon TA’s completion of the Shatin project and the request of Honki, Daida made a direct payment to TA.

The petition against Honki was advertised on 17 March 2017 in a local newspaper and on 20 March 2017 it came to the notice of Bob, the manager of the Bank. The Bank, however, did not require Honki to operate a separate account but continued to accept payments into the company’s current account. The bank did not apply to the court for a prospective validation order. On 21 March 2017, the Bank advanced a loan of HK\$200,000 to Honki, which amount was used for making repayments to the latter’s other creditors.

**Advise Beatrice, the liquidator of Honki.**

**~ End of Examination Paper ~**