

# Syllabus for Business Associations

## 1. Outline and comparison of different types of business associations

- sole proprietorship
- partnership
- registered company

## 2. Partnerships

- nature of partnerships – their legal status, powers and characteristics
- creation of partnerships
- rights and duties of the partners inter se – rights and obligations arising in contract; fiduciary duties of partners
- rights and duties of the partners vis-a-vis third parties – liabilities of partners to third parties in contract and tort; authority of partners to bind the partnership in transactions with third parties
- introduction to dissolution

## 3. Formation of a company

- incorporation and registration
- problems relating to incorporation
- types of companies

## 4. Nature of a company

- separate corporate personality
- limited liability doctrine – liability of members limited by shares or limited by guarantee
- doctrines of piercing or lifting the corporate veil

## 5. Corporate constitution, authority and attribution

- contractual effect of the company's constitution
- enforcement of the company's constitution
- ability of companies to alter the memorandum and articles, and restrictions under the general law and the Companies Ordinance; enforceability of shareholder agreements to alter the articles
- corporate liability
- corporate capacity
- corporate attribution

## 6. Membership

- subscribers to the memorandum
- registration of members
- membership in companies with share capital: issues and transfers of shares
- rights of members

## **7. Management and control**

- the board of directors
- the members' general meeting
- powers conferred by the Companies Ordinance
- powers conferred by the articles of association
- authority of directors to bind the company vis-a-vis third parties and agent authority and indoor management rule
- scope of control of the board by the members in general meeting

## **8. Duties of directors**

- directors as fiduciaries
- acting bona fide in the interests of the company
- exercising powers for proper purposes
- avoiding conflicts of interest – conflict rule, profit rule, misappropriation rule
- acting with due care, skill and diligence – duties in equity and under the common law
- forgiveness authorisation and enforcement
- requirements of the Companies Ordinance

## **9. Shareholders and shareholder rights and remedies· shareholders control over the running of the company**

- proper plaintiff and irregularity principles – rule in Foss v Harbottle
- derivative actions on behalf of the company – fraud on the company exception to the proper plaintiff principle; the statutory derivative action
- members' personal rights of action under the general law; equitable restrictions on the powers of the majority in general meeting
- statutory remedy in relation to unfairly prejudicial conduct
- winding up on the just and equitable grounds
- protection of class rights under the company's constitution and under the Companies Ordinance
- statutory injunctions

## **10. Corporate Insolvency and Liquidation**

- Types of winding up: compulsory winding up by the court and members' or creditors' voluntary winding up
- Insolvency and other grounds for winding up
- Effect of a winding up order
- Process of winding up
- Functions and powers of the liquidator
- Assets available for distribution; re-opening of antecedent transactions
- Distributions and priorities
- Unfair Preferences
- Dissolution

## Recommended Reading List for Business Associations

### Hong Kong Texts

Lo Stefan and Qu Charles, *Law of Companies in Hong Kong*, 2<sup>nd</sup> ed, Sweet & Maxwell, 2015

Leung Alice et al, *The (New) Companies Ordinance (Cap 622): Commentary and Annotations*, Sweet & Maxwell, 2014

Sihombing Judith, *Sihombing's Hong Kong company law: commentary on Caps 622 & 32*, Wolters Kluwer Hong Kong Limited.

### UK/General Texts

Davies Paul and Worthington Sarah, *Gower: Principles of Modern Company Law*, 10<sup>th</sup> ed, Sweet and Maxwell, London, 2016

Sealy Len and Worthington Sarah, *Sealy & Worthington's Cases and Materials in Company Law*, Sweet & Maxwell, 11<sup>th</sup> ed, 2016

Keay Andrew & Walton Peter, *Insolvency Law: corporate and personal*, Jordans, 2012

Morse G, *Partnership Law*, Oxford University Press, 2016

### Sources

Partnership Ordinance (Cap.38)

Companies Ordinance (Cap.622) & Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

Bankruptcy Ordinance (Cap. 6)

Hong Kong cases

UK cases