

## **PCLL CONVERSION EXAMINATION JANUARY 2019**

Title of Paper : Business Associations  
Date : 8 January 2019  
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 3 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 2019

## Business Associations

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

**Question 1 (100 marks)**

In early 2015 Mark, Tom, Anthony and James established HK & Overseas Property Co. (the Company), which specialises in the investment of Hong Kong and overseas real estate. The General Meeting of Shareholders appointed Mark and Tom as directors. Mark is a former financial analyst of VB Investment Bank and Tom, a practising accountant.

Due to his own busy schedule, Tom decided to ask his cousin, Peter, to help supervise the business given that he has been a property consultant at Lang Property Consulting for 5 years. With the permission from both Mark and Tom, Peter invested HK\$10 million of the Company's asset in early 2016 and bought two one-bedroom apartments in central London, in the belief that their values will increase by 15% within 12 months. However, due to Brexit, property prices in London have dropped significantly and the two apartments are currently valued at HK\$7.5 million.

Mark is also a partner of Rica Agent, a partnership business which he owns with his wife, and specializes in buying retail shop premises at low value and then selling them at higher value after renovation. As the demand for retail spaces has increased recently, the board of directors of the Company has decided to purchase retail shops for the purpose of letting them to retailers. The Company bought two retail shop premises in Kowloon City from Rica Agent, valued at HK\$8 million each.

In early 2017, Mark engaged in a business negotiation on behalf of the Company with City Property to purchase a commercial building at Causeway Bay. The manager of City Property told Mark that he was not going to sell the commercial building to the Company but was willing to offer it to Mark in his own personal capacity. Mark then set up another company with his wife and bought the commercial building. The property was then re-sold one year later and Mark earned a profit of HK\$20 million.

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

**Question 2 (100 marks)**

Debbie, Isabella and Angel are shareholders of a company established in 2015, specializing in the sale of prestigious wines which they import from Europe. Debbie holds 25% of the shares, Isabella holds 35% and Angel holds 40%. Wesley Yuen, Isabella'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) Wesley Yuen 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 2017, businesses started to deteriorate and disputes began to occur amongst the shareholders. Isabella has broken up with Wesley, 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 Isabella. However, Debbie and Isabella have declined.

Debbie has opened another winery with her mother in Tsim Sha Tsui, selling imported South African wines to the increasing number of mainland Chinese tourists. Isabella 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. Isabella has since become frustrated with Debbie and intends to evict her from the company. Isabella 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)**

Red Star Ltd (Red Star) is a wholly owned subsidiary of XYZ. Red Star has few, if any, assets of its own. In June 2017, an employee of Red Star knocked down a pedestrian while making delivery for the company. As a result of the accident, the pedestrian became semi-paralyzed. Assuming the pedestrian has a claim in tort, can he recover from Red Star? From XYZ? In what circumstances might a court be willing to ‘pierce the corporate veil’ and make a parent company liable for damages caused by a subsidiary?

**Question 4 (100 marks)**

“The principal objective of shareholders’ remedies is to control divergences of interest between managers and shareholders. Shareholders’ remedies are one of several mechanisms which attempt to control the severity of the divergence of interest between managers and shareholders”.

**Critically examine the above statement in relation to the law on minority shareholders’ protection in Hong Kong.**

~ End of Examination Paper ~