

HONG KONG LAW

Aims

This paper aims at testing candidates' awareness of the overall legal framework in which business in Hong Kong operates and their ability to apply the relevant legal rules and practices to business problems and practical situations.

Contents

Competence Required	Activity to Develop and Demonstrate Competence	Indicative Level
1. Hong Kong legal system		
Knowledge of:	* Describe the different categories of law	1
- the historical and formal sources of Hong Kong law;	* Demonstrate an awareness of why it is essential for business people to have a knowledge of law	1
- the system of courts and administration of justice;	* Describe the origin and development of the Hong Kong SAR legal system	1
- legislation and statutory interpretation;	* Describe the relationship between the constitution of the PRC, Basic Law and Hong Kong SAR law	1
- the work of solicitors and barristers.	* Describe the main provisions of the Hong Kong SAR Basic Law	1
	* Distinguish between common law rules and rules of equity	1
	* Outline the main sources of law and show how each operate	1
	* Explain the doctrine of precedent and the role of the courts in the development of the common law	2
	* Identify the unique nature of case law	2
	* Describe the structure and jurisdiction of the courts and tribunals and explain the way disputes are resolved through the courts and through alternative means	1
	* Outline how appeals may progress from one court to another	1
	* Explain how the principles of interpretation apply to statutes	2
	* Describe the main rules of statutory interpretation	2
2. Legal personality and the nature of limited company		
Understanding of:	* Define partnership	2
- the differences between a limited company and a partnership;	* Describe the nature and characteristics of partnership	2
- the consequences of separate legal personality;	* Explain the advantages and disadvantages of forming a partnership	3
- the relationship of legal personality to limited liability and its implications in the business world	* Compare a partnership with a company	3
	* Explain the advantages and disadvantages of incorporation	3
	* Recognise the different types of registered company	2
and ability to apply the above principles to problem situations.	* Explain veil of incorporation and the circumstances when the veil will be lifted	3
	* Explain the concept and the purpose of limited liability	3
3. Company law		
Knowledge of:	* Describe the procedures in the formation of a registered company	2
- the formation of a company and its constitution;	* Describe a promoter and list his duties	2
- the formalities and the role of the Registrar;	* Describe what is meant by a pre-incorporation contract and explain the problems of such a contract	2
- the registration of shares, charges, directors and their shareholdings;	* Describe the memorandum of association and articles of association and explain their effects	2
- the contractual capacity of a company;	* List the typical contents of the memorandum of association and articles of association	2
- the statutory books, records and returns.	* Identify the restriction on its articles which a company can choose	2
	* Explain what is meant by Table A	2
	* State how articles and memorandum may be changed	2

Understand the functions and responsibilities of the Registrar of Companies	1
State the requirements for the registration of shares, charges, directors and their shareholdings	2
Explain the contractual capacity of a company	2
State the requirements for statutory books, records and annual return	2

4. Capital and financing of companies

Knowledge of:		
- share capital of companies;	Explain the meaning and purpose of capital and the nature of shares	2
- loan capital of companies	Differentiate between the different classes of share capital	3
and ability to apply the above knowledge to problem situations.	Explain class rights and explain how a company can change its class rights	3
	Distinguish between the transfer and transmission of shares	1
	Explain how shares might be transferred from one person to another and state how a company can restrict the free transferability of shares	2
	Explain the nature of dividends and the rules on their distribution	3
	Describe how a company can alter its share capital	2
	Define a debenture and describe different types of debenture	1
	Explain the company's power to borrow	2
	Contrast the position of a shareholder with the position of a debenture holder	3
	Contrast the position of a secured creditor with that of an unsecured creditor	3
	Distinguish between a fixed and a floating charge	2
	Explain the registration requirement for company charges	2
	Outline the effect of a failure to register a charge	2
	Explain the priority of different types of charges on a winding up of a company	2
	List the remedies available to loan creditors	2

5. Management and administration of a company

Knowledge of:		
- company directors;	Identify a director and explain what a shadow director is	2
- company secretary;	Describe how directors are appointed and removed	3
- auditors;	Explain the powers and duties of directors	3
- companies meetings	Explain conflict of interests and the rules applicable when directors deal with their own company	3
and ability to apply the above knowledge to problem situations.	Explain how directors may avoid liability for breach of duty and outline the remedies available when a director breaches his duty	2
	Explain the various forms of protection available to minority shareholders	3
	Explain the role and duties of a company secretary and describe how a company secretary is appointed and how his contract may be terminated	3
	Explain the role and duties of an auditor and describe how an auditor is appointed and re-appointed and how his contract may be terminated	3
	Explain the differences between an annual general meeting and an extraordinary general meeting	2
	Distinguish between an ordinary resolution and a special resolution	3
	State the rules and procedures as to the voting rights of members including proxy voting	3
	State the quorum requirements in general meetings	2

6. Company liquidation

Knowledge of:	• Describes types of liquidation	2
- Compulsory winding up by the Court;	• Explain the role of liquidators	3
- Members' voluntary winding-up;	• Explain the procedures for liquidation	3
- Creditors' voluntary winding-up;	• Explain avoidance powers, including unfair preference, extortionate transactions, fraudulent trading, etc	3
- Appointment, powers, duties, liabilities, removal and resignation of liquidator;	• Explain actions against delinquent officer	3
- Avoidance powers;	• Describe proof of debt and priority	3
- Actions against delinquent officer;	• Describe appointment, powers, rights, duties, resignation and removal of receivers	3
- Proof of debt and priority;		
- Appointment, powers, rights and duties of receivers		

7. External regulatory bodies

Knowledge of:	• Identify important external regulatory bodies in relation to the work of an accountant	2
The role, structure, duties, powers and procedures of important regulatory bodies, such as:	• Explain the role, structure, duties, powers and procedures of the Hong Kong Monetary Authority	3
- The Hong Kong Monetary Authority;	• Explain the role, structure, duties, powers and procedures of the Securities and Futures Commission	3
- The Securities and Futures Commission;	• Explain the role, structure, duties, powers and procedures of the Stock Exchange	3
- The Stock Exchange;	• Explain the role, structure, duties, powers and procedures of the Insurance Authority	3
- The Insurance Authority		
and ability to apply the statutory and non-statutory regulations administered by regulatory bodies to problem situations.		

8. Takeover

Knowledge of:	• Explain the application of the Code on Takeovers and Mergers	3
- Code on Takeovers and Mergers;	• Explain takeover by way of a scheme of arrangement or general offer	3
- Takeover by way of scheme of arrangement;	• Explain the provisions on compulsory acquisition in Companies Ordinance	3
- General Offer;	• Explain the role of directors in a takeover	3
- Provisions on compulsory acquisition in Companies Ordinance;		
- Role of directors and accountants		

and ability to apply the above knowledge to problem situations.

Essential reading:

<u>Author</u>	<u>Title</u>	<u>Publisher</u>
Cheng, P. W., Clementson I., Saunders J. R. and Scott, P.	Hong Kong Business Law	HKAAT
Stott, V.	Hong Kong Company Law	Longman
Sealy, L. S. and Worthington, S.	Cases and Materials in Company Law	Oxford University Press

Additional reading:

<u>Author</u>	<u>Title</u>	<u>Publisher</u>
Stott, V.	An Introduction to Hong Kong Business Law	Longman
Dobinson, I. and Roebuck, D.	Introduction to Law of HKSAR	Sweet & Maxwell
Shum, C.	General Principles of Hong Kong Law	Longman
Srivastava, D. K. (e.d.)	Business Law in Hong Kong	Sweet & Maxwell Asia
E. Tyler	Hong Kong Company Law Handbook	LexisNexis
Arjunan, K. and Majid, A.	Business Law in Hong Kong	LexisNexis
Kwan, Paul	Hong Kong Corporate Law	LexisNexis

Chan, S.	Hong Kong Banking Law and Practice	Hong Kong Institute of Bankers
Goo, S.	Insurance Law and Practice in Hong Kong	Sweet & Maxwell Asia
Kwan, Y. K.	A Guide to the Securities and Futures Ordinance	Hong Kong Stockbrokers Association Ltd.
Hsu, B.	Financial Markets in Hong Kong : Law and Practice	Oxford University Press

Legislation in various areas:

HKSAR

- The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China
- Companies Ordinance
- Partnership Ordinance
- Securities and Futures Ordinance
- Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited
- Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited
- The Codes on Takeovers and Mergers and Share Repurchases
- Banking Ordinance
- Insurance Companies Ordinance

Note: *The above publications are subject to editorial amendments.*

INDICATIVE LEVEL

The levels of competence that have been indicated are as follows:

Level 1 – Awareness

The candidate demonstrates familiarity with the concept in question, can define it in overview terms and can relate the importance or relevance of the concept to the activities of a certified public accountant.

Level 2 – Knowledge

This builds upon awareness. The candidate is able to explain the concept; describe and discriminate between its component parts and describe their inter-relationships; recognise instances of the concept; describe processes, theories and judgement issues; without necessarily being able to perform in those areas with professional skill.

Level 3 – Skill

This builds upon knowledge. The candidate is able to execute or implement knowledge; apply the knowledge to real world problems in real world situations. In so doing, the candidate can display to a satisfactory degree the level of competence reasonably to be expected of a certified public accountant at career entrance level.
