



Examiner's report

F4 Corporate and Business law (CHN) December 2014

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the December 2014 examination. It identifies strengths and weaknesses demonstrated by candidates, and also highlights best practices that those presenting themselves for the examination in the future should consider in order to maximise their prospects of success.

The December examination for the first time introduced a new format through which candidates were asked to answer 45 questions, worth 1 or 2 marks each, and 5 further questions worth 6 marks each in 2 hours. All questions were compulsory. The question type in Section A was objective in that the correct answers had to be selected in order to earn marks. It was not possible to award marks when candidates offered more than the required number of answers or answered the same question more than once which often occurred in the paper-based version. The question type in Section B was 5 scenario questions, which required candidates to give a conclusion to each part and then explain some simple reasons to support such a conclusion. The overall performance was satisfactory, suggesting that the majority of candidates had prepared well for the examination.

Syllabus topics on which candidates performed very well included the registration of properties and the right to the use of construction land under the Property Law, the non-fixed term labour contract and the dissolution of a labour contract under the Labour Contract Law, the condition to be an effective offer under the Contract Law, the incorporation of a limited liability company under the Company Law, the bankruptcy expenses under the Enterprises Bankruptcy Law and the persons belonging to being a person who knows the inside information under the Securities Law. The majority of candidates were able to give a correct answer to questions in these topics.

Syllabus topics on which candidates performed inadequately included the voidable contract under Contract Law, the appointment of the chairman of a joint stock company under the Company Law and the fraudulent behaviour in management of corporation.

The questions in Section B included five major areas of the syllabus, which covers the property law, contract law, company law, enterprise bankruptcy law and fraudulent behaviours. With a few exceptions, the performance of most of candidates was satisfactory.

It must be emphasised to the paper based candidates, that candidates must select answers in the manner required. No credit is offered or given for narrative answers or written justifications of selections made, as the required answers are entirely objective. There is no requirement to write out words, sentences or paragraphs. Section A of this paper is not essay-based, and the appearance of new question types should not be taken to imply that candidates have to do any more than select the correct answers by writing down the letter representing their specific choice.

If attempting the examination in paper format, future candidates must be aware that their answers have to be clear and unambiguous.

While there is little evidence to suggest that the examination is time pressured, because all candidates attempted the 45 MCQ questions in Section A, and most of them attempted the 5 questions in Section B.

Sample questions for discussion

This section of the report discusses three questions with which candidates experienced difficulties.

Question 21

When Party X and Party Y conclude a contract, which of the following situations leads to a voidable contract?

- A The contract was concluded to evade tax levied by the State
- B The contract was concluded by serious misunderstanding
- C The contract was concluded to cheat Party M
- D The contract violated compulsory provisions of laws and administrative regulations.

The correct answer is B.

This question is to test the candidates of the knowledge of the void contract and voidable contract, which is a frequently met legal dispute in practice. Therefore candidates should understand the relevant provisions of the contract as to the difference between a null and void contract and the voidable contract, as well as the total different ways of treatment as well as their different legal consequences.

According to the Contract Law, a void contract refers to such a contract by the parties that violates mandatory norms of law or administration regulations, or public interests, so it is absolutely void *ab initio* (void before the fact). While a voidable contract refers to a contract by the parties that their intention expressed in concluding the contract was not genuine. The contract will be void *ab initio* (void before the fact) if the party with the right to cancel exercises this right, and the court or arbitration institution thereby alters the contents of the contract or cancels the contract. However, the avoidable contract will be valid one if the party with the right to cancel fails to exercise this right within the time- limit (one year). That's to say that the legal effect of a voidable depends on the party's acts. Where one of the parties to the voidable contract exercises the right to cancel within the time- limit and the court determines so, such a contract may become null and void, or changed. Otherwise, a voidable contract will become effective.

From the above definitions, one can understand the key difference is that a void contract violates mandatory norms of law or administrative regulation or public interests, while a voidable contract is merely relevant to the rights or interests of the parties themselves.

With the key difference between the two kinds of contract in mind, candidates can pick up the correct answer. With respect to answer A the parties intended to evade tax levied by the State which clearly violates the compulsory norm of law and should be deemed as void, not a voidable contract. As to answer C the parties to the contract was to cheat Party M. Therefore, the contract violates the public interests (the third party's interests) and should be deemed as a void contract. In terms of answer D, the contract violates compulsory provisions of laws and administrative regulations which naturally constitutes a void contract. The only correct answer to this question left is B in which the contract was concluded by the parties by serious misunderstanding, i.e. the intention expressed by the parties was not genuine. Therefore, the correct answer should be B.

However, only limited candidates selected the correct answer.

Question 31:

How is the chairman of the board of directors of a joint stock company appointed?

- A They are appointed by all the promoters of the company
- B They are appointed by the general meeting of the shareholders
- C They are appointed by the board of directors and approved by the general meeting of the shareholders
- D They are appointed by the board of directors

The correct answer is D.



Article 110 of the Company Law provides that the board of directors shall have one chairman and may have vice-chairmen. The chairman and vice-chairmen shall be elected by the affirmative votes of more than half of all the directors. Hence, the answer to this question is obviously D. All answers A, B and C indicated the shareholders (promoters of course is shareholders of the company) or shareholders' meeting which are obviously not conformity with the relevant provision of the Contract Law.

Only very limited number of candidates selected the correct answer.

Candidates might have had a misunderstanding by considering that the appointment the chairman of the board of director is an important matter of a company which should be approved by the shareholders' meeting. Although the chairman of the board of director generally is a legal representative of a company under the Chinese legal system and is recommended by the majority shareholders, the chairman is only one member of the board with the same voting right in board meeting. Therefore, the appointment of the chairman is not the same important as the matters relevant to the increase of capital, distribution of dividends, etc.

Part (a) of Question 1 one in Section B

As above mentioned, Section B included 5 scenario questions, candidates were required to give a correct conclusion to each part of a question. As a whole the performance in this section was satisfactory. On the other side, candidates should have obtained more marks in this section if they understood the key points of the relevant rules of law. Part (a) of Question 1 is an example.

Facts: Mr Ma and Ms Yang entered into a loan agreement and a security agreement, under which Mr Ma would provide his truck as the mortgage to Ms Yang for borrowing RMB 200,000 yuan. However, they failed to register the mortgage agreement.

Part (a) required candidates to explain whether the mortgage agreement between Mr Ma and Ms Yang came into effect.

The correct answer should be that the mortgage agreement between them came into effect. According to Article 188 and 189 of the Property Law, the means of transportation, such as truck, to be a mortgaged property does not need to have a compulsory registration for the creation of the right of mortgage. Only the subject matter for mortgage was real estate, such as buildings, the rights for the construction land and so on are subject to registration. The right of mortgage could not create without a registration. Hence the mortgage agreement should come into effect when it was signed by the both parties. Several candidates failed to write the correct answer to this part. They considered such a mortgage agreement should be registered with the relevant governmental authority. It seems they did not understand accurately the legal consequences of registration toward different subject matters of mortgage.

Summary

The F4 paper is broad-based, requiring a relatively fundamental knowledge of many theories, concepts and practical applications. In order to pass it is not necessary to know any individual topic in great depth.

The performance of candidates at the December 2014 session was quite encouraging in that the majority of those who attempted the paper were able to make creditable attempts at most of the questions.

As the paper now includes requirements, with five questions worth six marks each, it is vitally important that candidates read the questions carefully.

