

Fundamentals Level – Skills Module

Corporate and Business Law (China)

Tuesday 2 June 2009

Time allowed

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

Do NOT open this paper until instructed by the supervisor.

During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (CHN)

ACCA

ALL TEN questions are compulsory and MUST be attempted

1 In relation to the Civil Procedures Law of China:

- (a) explain what is meant by *the transfer of jurisdiction* by the Chinese courts in dealing with civil disputes; (3 marks)
- (b) explain *the designation of jurisdiction* by the Chinese courts in dealing with civil disputes; (4 marks)
- (c) state how a court should deal with the situation if, upon receipt of the transfer of jurisdiction, a particular case is not under its jurisdiction. (3 marks)

(10 marks)

2 In relation to the Property Law of China:

- (a) explain the term *the confirmation of property*; (3 marks)
- (b) state the various measures that can be taken by a holder to protect the property if his property rights are infringed by others; (3 marks)
- (c) distinguish between the confirmation of property and the protection of property in terms of the nature of the dispute; (2 marks)
- (d) state for what a property holder is entitled to claim if his immovables or movables are possessed by a party without legitimate reason. (2 marks)

(10 marks)

3 In relation to the Labour Contract Law of China:

- (a) explain the term *labour service despatching*; (3 marks)
- (b) state the legal relations between the entity despatching labour services and the persons despatched to the labour service purchaser; (2 marks)
- (c) state the statutory terms and wages of the labour contract, as stipulated in the Labour Contract Law, between the entity despatching labour services and the person despatched. (5 marks)

(10 marks)

4 In relation to the Contract Law of China:

- (a) explain the term *subrogate right (right of subrogation)*; (3 marks)
- (b) state the conditions to be met for a party to claim the right of subrogation in the course of performing a contract. (7 marks)

(10 marks)

5 In relation to the Company Law of China:

- (a) state the pre-condition for a shareholder to request a limited liability company to purchase his equity;
(2 marks)
- (b) state the circumstances under which a shareholder may request a limited liability company to purchase his equity at a reasonable price;
(6 marks)
- (c) state the legal remedy for a shareholder if he and the company fail to reach an agreement for the purchase of equity.
(2 marks)

(10 marks)

6 In relation to the Company Law of China,

- (a) state the circumstances under which an extraordinary general shareholders' meeting shall be held by a joint stock company;
(8 marks)
- (b) state the time limit for such an extraordinary general shareholders' meeting to be held.
(2 marks)

(10 marks)

7 In relation to the Enterprise Bankruptcy Law of China:

- (a) explain the coverage of community liabilities that occur after the filing of an application for bankruptcy is accepted by the court;
(6 marks)
- (b) state the rule of settlement of bankrupt expenses and the community liabilities during the liquidation process.
(4 marks)

(10 marks)

- 8** Four private Enterprises A, B, C and D incorporated as a limited liability company, Yuanda Co Ltd, with a registered capital of RMB 40 million yuan. After three years' successful business operations from 2005–2008, Yuanda Co Ltd made profits and the net assets of the company increased to RMB 60 million yuan.

In January 2009, at the annual shareholders' meeting of the company, Yuanda Co Ltd adopted a resolution for the following three items:

- (a)** On the issue of the replacement of supervisors – Mr Zhang, as appointed by Enterprise B, should replace Mr Wang (who had been appointed by Enterprise D) and Mr Lee, as the vice manager of Yuanda Co Ltd, should replace Mr Ding who was an employee of the company. (4 marks)
- (b)** On the issue of issuance of corporate bonds – The company should issue corporate bonds of RMB 8 million yuan to expand its business. (3 marks)
- (c)** On the issue of the use of the statutory common reserve fund – With a vote by the shareholders representing two thirds of the equity, the shareholders' meeting decided to convert RMB 2·50 million yuan out of RMB 10 million yuan of the statutory common reserve fund to the registered capital. (3 marks)

Required:

Explain whether the above resolutions (a), (b) and (c) were in conformity with the relevant provisions of the Company Law and Securities Law.

NOTE: The mark allocation is shown against each resolution.

(10 marks)

- 9 Due to the failure to pay the price of construction materials at a value of RMB 3 million yuan by Singen Construction Co, City Materials Co applied to the local people's court to declare for its bankruptcy. The court approved the application after necessary review of the facts.

At the end of the liquidation process, the liquidation committee listed the assets, debts and the various expenses of Singen Construction Co as follows.

- (i) It had total assets of RMB 19 million yuan.
- (ii) It had total debts and other liabilities in the amount of RMB 29 million yuan, including:
 - (1) wages and insurance premiums payable of RMB 3.5 million yuan
 - (2) VAT due of RMB 3.2 million yuan
 - (3) the expenses of liquidation of RMB 300,000 yuan
 - (4) the various debts due of RMB 22 million yuan.
- (iii) Among the bankruptcy assets, Singen Construction Co held five buildings which were duly registered with the local Registry Centre of Real Estate. The Certificate of Real Estate indicated that *Buildings No. 1, 2 and 3* had been detained by the order of the local court for a dispute with a third party before the liquidation process started. However, Singen Construction Co had put these three buildings as things mortgaged to Steel Company for the debts payable at RMB 2 million yuan, without registration of the mortgage agreement with the Registration Centre of Real Estate. The current assessed price of the three buildings was RMB 2 million yuan.
- (iv) *Buildings No. 4 and 5* had been mortgaged to Financial Company for a loan of RMB 3 million yuan and been duly registered with the Registry Centre of Real Estate. The current assessed price of the two buildings was RMB 2 million yuan.

Required:

Answer the following questions in accordance with the relevant provisions of the Enterprise Bankruptcy Law and the Property Law of China, and give your reasons for your answer:

- (a) **state how to deal with the mortgage agreement between Singen Construction Co and Steel Company and the order of priority for Steel Company in allocation of the insolvent assets;** (3 marks)
- (b) **state the order of priority for City Materials Co in allocation of the insolvent assets;** (3 marks)
- (c) **state the particular amount of assets to be allocated to City Materials Co.** (4 marks)

(10 marks)

- 10** Buyer and Seller entered into a sales contract which stipulated that Seller should, on or before 10 January 2009, sell a shipment of personal computers (PCs) at a price of 300,000 yuan to Buyer, who should arrange transportation and pay the full price upon taking delivery.

For the purpose of launching a market promotion plan at the end of 2008, Buyer asked Seller to provide the goods 20 days before the due date. Seller disagreed with the request since its capacity to process the PC was unable to meet the needs of Buyer. Under such a circumstance, Buyer made efforts to find PCs from other sources, and then transferred the original sales contract to a third party – Company X – with discount. Buyer did not inform Seller of this.

On 8 January 2009 Company X despatched a truck to Seller to pick up the PCs under the sales contract. However, Seller refused to provide the PCs on the grounds that there was no contract between Company X and Seller.

Required:

Answer the following questions in accordance with the relevant provisions of the Contract Law of China, and give your reasons for your answer:

- (a) **State whether Seller was entitled to refuse to provide the goods.** (5 marks)
- (b) **State whether the transfer of the sales contract by Buyer to Company X was valid.** (5 marks)

(10 marks)

End of Question Paper