Answers

1 The question asked candidates to explain the role and structure of the courts of arbitration, and to explain how the courts deal with a situation in which there is no directly applicable law to resolve a case.

(a) Article 127 of the Constitution of the Russian Federation states that the courts of arbitration have responsibility for resolving economic disputes. The article refers specifically to the role of the High Arbitration Court as being the highest authority in this field of law. The Federal Law on the Judicial System of the Russian Federation lays down more detailed provisions in respect of the structure and roles of the courts.

The courts of arbitration deal with cases in which at least one party to the case is involved in entrepreneurial activity. This differentiates the role of the courts of arbitration from that of other courts, such as the Constitutional Court and the courts of general jurisdiction. The courts therefore regulate and resolve disputes concerning companies, partnerships, cooperatives and semi-state bodies as well as individual entrepreneurs.

The courts of arbitration do not deal with entrepreneurial actions which may bring about penal liability, and they do not deal with economic activities of individuals not registered as individual entrepreneurs.

In deciding whether a case falls within the jurisdiction of the courts of arbitration, consideration is given to the substance of the case and not the position or occupation of the individual. Therefore, if the captain of a ship has an accident when sailing in his spare time, colliding with a pleasure yacht, the matter would be dealt with by the court of general jurisdiction, and not the court of arbitration.

The courts of arbitration deal with disputes relating to commercial contractual obligations, including those concerned with forming contracts, breaches of contract and variation of terms of contracts. They deal with most matters concerned with company administration, such as registration, refusal of the unified State body to register, the rights and obligations of shareholders, reorganisation, liquidation and non-contractual obligations such as negligence. The courts consider cases brought to enforce the judgements made by foreign courts.

The courts of arbitration are structured in a hierarchical manner.

The highest level is the High Arbitration Court, which has similar powers to those of the Supreme Court but only in relation to economic activities. The court supervises the lower courts and has the right of legislative initiative. It is a court of final appeal, and so can set aside decisions of lower courts on points of law.

The next most senior court is the federal arbitration circuit court. This deals with cases of first instance involving disputes relating to normative legal acts of the President, the government and federal governmental bodies relevant to business and economic activities. It hears cases concerning non-normative acts of the same bodies which claimants consider to be non-compliant with existing laws. It considers cases involving disputes between the Russian Federation and subjects of the Russian Federation and between subjects of the Russian Federation. The federal arbitration circuit court is also a court of second instance.

The appellate courts are courts of appeal whose role is to re-examine cases already dealt with by more junior courts.

The federal arbitration courts of the subjects of the Russian Federation are positioned at the lowest level of the hierarchy. They are courts of first instance and deal with the majority of cases.

(b) The legal system of the Russian Federation is built on the codified (or civil law) model. This is characterised by having in place a complete and comprehensive set of laws, arranged in a hierarchy, with the Constitution at the apex and more detailed legal codes, legislative acts and subordinate legislation enacted by competent legal authorities.

Despite the many layers of legislation, situations inevitably arise in which there is no directly applicable law to resolve a case in the courts. This situation is referred to as *law lacuna*, and in such instances the court may have to declare the matter *non liquet* (literally, ‘it is not clear’).

A *law lacuna* can be addressed most directly by the enactment of legislation. In Russia, the issue can also be resolved by the issuing of a decree by the President.

The *law lacuna* can also be eliminated by the application of analogy. Reference can be made to the provisions of a law governing similar matters, and in this way a common principle may be deduced.

Analogy can also be applied with reference to existing legislation by considering the meaning, intention and spirit of laws which are already in place.

2 The question tested the candidates’ knowledge of the law relating to damages. It asked candidates to define damages, to discuss the matters which will be considered by a court when deciding on the damages to be awarded, and to explain the duty of the injured party to mitigate losses.

(a) Damages may be defined as the monetary compensation paid by one party to another in order to provide legal remedy for a breach of contract.

The damages which are paid may be set out in the terms of the contract itself (sometimes referred to as ‘liquidated damages’), or may be awarded by a court.

(b) Article 393(1) of the Civil Code states that a party is obliged to compensate the other party for losses arising from a failure to perform the obligations in a contract, or from performing the contract improperly.

Article 393(4) goes on to state that losses may include missed profits.

Article 15 makes general provisions in respect of losses, referring to 'restoration of the violated right'. Therefore, the purpose of damages should be to put the injured party in a position which he or she would have been in had the contract been performed properly.

Although it is common business practice for Russian commercial contracts to make provision for liquidated damages (or legal forfeit), Article 394 enables the contracting parties to agree a sum which will be paid instead of, or in addition to, the losses suffered.

If the contract makes no reference to damages, or if the damages suffered are not envisaged in the contract, the court must estimate the loss which has arisen from the breach of contract in order to make an appropriate award.

Consistent with the provisions of Articles 15 and 393, the damages awarded by the court may be made up of *de facto* losses and missed profits.

De facto losses are the losses actually incurred. They may include an estimate of the damage to property, expenses incurred or costs which will arise directly from the breach of contract. For example, if a trader fails to complete a contracted task and the counterparty incurs greater overall expense due to the need to employ an alternative contractor, the losses would be the extra sum paid plus any associated expenses.

Missed profits are the earnings which would have been generated had the contract been performed properly and in full. The injured party may also make a claim if the counterparty has made a profit which would not have been made if the contract had not been breached.

Articles 330, 394 and 395 of the Civil Code make provisions in respect of forfeit. This is a payment which will be made in the event of a breach of contract, agreed by the parties in advance, and as such is a means of securing the obligation.

The parties to a contract will usually agree on the terms of their bargain before forming the contract. However, Article 395 protects those who fail to do so by stating that in the absence of an explicit agreement, the rate of forfeit will be the discount rate at the location of the creditor on the date of the breach of the contract.

(c) The term 'mitigation' means the action of reducing the severity, seriousness or painfulness of something.

The provisions of the Civil Code relevant to mitigation envisage that it is possible for losses arising from a breach of contract to be increased by the injured party.

For example, an individual who suffers loss due to the failure to deliver goods may turn to a more expensive supplier, caring little for the additional amount which has to be paid for substitute goods, as it is believed that any extra sum paid can be claimed back automatically from the party in breach of the contractual obligations. In extreme cases, this could result in an abusive deal in which the price agreed could be deliberately excessive in order for both parties to benefit from the original breach.

Articles 404 and 406 of the Civil Code lay down duties in relation to mitigation of losses.

Article 404 enables the court to reduce the amount of damages to be awarded if the injured party has not taken reasonable measures to mitigate them.

Article 406 deals with losses caused by the counterparty's delay in refusing proper discharge of the contract. The party who is in breach of the contract may claim for losses incurred by reason of the other party's delay.

The damages payable to the injured party may be reduced whether the actions of the injured party were intentional or a result of carelessness.

3 The question asked candidates to explain the provisions of the Labour Code relating to fixed term labour contracts.

(a) A fixed term labour agreement is a contract under which the employee works for the employer for a pre-determined period of time. It is necessary for such agreements to be regulated by law, as without doing so it would be possible to reduce employees' rights significantly by simply rolling over fixed term contracts each time they expired. Such contracts have, however, become more common for certain types of job, particularly executive appointments, and are indeed necessary for some types of work, including many jobs of a seasonal or temporary nature. Article 57 specifically forbids the formation of a fixed term contract which is intended to deny any rights of the employee under the Labour Code.

Articles 17 and 18 of the Labour Code specify the cases in which fixed term contracts may be executed.

Many senior executives are appointed under fixed term labour agreements, and these may be for periods as short as one year. The employer can then terminate the contract when it expires if the individual fails to meet the standards required for the job.

Fixed term contracts are also used when it is impossible to employ labour under an indefinite term contract due to the nature of the job or conditions applicable to it. These include temporary employees engaged for up to two months, seasonal workers, those seconded overseas or by mutual agreement.

A fixed term contract may be used if the employee has been appointed to carry out specific work within a set period of time.

Fixed term labour agreements may be concluded for a period not exceeding five years (Article 58). If the contract does not specify a fixed term, it is automatically considered to be an indefinite term labour contract. If the employee continues to work beyond the term specified in the fixed term labour agreement, it is then regarded as an indefinite term contract. If the employee is to be dismissed at the end of the fixed term, it is necessary for the employer to give three days' written notice of this.

(b) Article 59 specifies the situations in which fixed term labour agreements are mandatory:

(1) Those substituting for absent employees, such as those on maternity leave.

(2) Employees engaged for jobs with a duration of two months or less, and those employed for a specific job.

(3) Seasonal employees.

(4) Employees elected for a specified term for paid employment.

(5) Persons sent by employment services bodies to carry out temporary or communal work.

Article 59 also states the circumstances under which a fixed term labour agreement may be concluded:

(1) Replacement of a temporarily absent employee for whom the job is retained in accordance with the law (Article 79 goes on to state that the labour agreement terminates on the return of the absent employee).

(2) For performing temporary work (up to two months) as well as seasonal work when due to natural conditions the work can be performed only during a certain season (Article 79 states that the labour agreement terminates at the end of the relevant season).

(3) Employees working in the Polar North areas or in the localities equated with them, if this is brought about by relocation of the job venue.

(4) For those performing urgent work to prevent accidents, incidents, catastrophes, epidemics, epizootics as well as for dealing with the consequences of these.

(5) With persons enrolling in small business organisations which employ up to 40 persons (up to 25 persons in the trading and consumer services organisations) as well as working for individual employers.

(6) With persons being transferred to a job abroad.

(7) For performing work outside the regular operational scope of the organisation as well for performing work in connection with the knowingly temporary (up to one year) expansion of production or volume of the services rendered.

(8) With persons joining organisations formed for a predetermined term or in performing a predetermined work.

(9) With persons hired for performing predetermined work in cases when its completion cannot be determined by a specific date.

(10) For jobs directly connected with practical training and professional training of the employee.

(11) With persons attending day schools.

(12) With part-time employees.

(13) With old-age pensioners as well as with persons to whom temporary work is only allowed due to their health in accordance with a medical opinion.

(14) With creative personnel in mass media, movie industry, theatre and concert organisations, circuses, and with other persons participating in creation and/or performance of art works, professional sportsmen in accordance with the lists of professions approved by the Russian Federation government.

(15) With researchers, teachers and lecturers, with other personnel concluding labour contracts for a definite term as a result of competition held in the manner set by the law or another normative legal act of a state authority or a local self-government body.

(16) In cases where the employee is elected for a predetermined term to an elective body or to an elective position as a paid job, as well as in the case of

  (a) enrolling in the work directly connected with the supporting activities of elective body members or officials in state authority; and

  (b) local self-government bodies as well as in political parties and other public associations.

(17) With heads, deputy heads and chief accountants of organisations irrespective of their organisational and legal status and form of ownership.

(18) With persons assigned to temporary jobs by official employment agencies, including public works.

(19) In other cases stipulated by federal laws.

4 The question asked candidates to explain the procedure for forming a new joint stock company, the purposes of the charter, the minimum statutory capital requirements, the procedure for changing the provisions contained in the charter, and any limitations which apply to this.

(a) Article 8 of the Federal Law on Joint Stock Companies states that a new company may be formed as a new legal entity or by way of the reorganisation of an existing legal entity. This article also states that the company is deemed to be formed upon State registration.

Article 9 requires a founding meeting to be held, at which the founder or founders must agree to form the company, approve its charter, elect the managerial bodies and appoint the Internal Audit Commission. They must also decide on the monetary value of securities to be allotted, or other items or property rights to be contributed to form the capital of the company, and appoint the company auditor. The voting on these matters must be unanimous, except for appointment of the auditor, which requires a majority of three-quarters of the founders. The founding members may be individuals or legal entities (Article 10).

Minimum capital requirements apply to the formation of both open and closed joint stock companies.

A written contract must be executed between the founders specifying the procedures for their involvement in the company, the charter capital and classes of securities to be issued, and the rights and obligations of the founders.

Article 10 states that there is no limit to the number of founders of an open company, but the maximum number of founders of a closed company is 50 persons. Article 7 makes identical provisions in respect of the number of shareholders.

Article 11 prescribes the minimum information which must be included in the charter. This includes the name, which itself must be compliant with the provisions of Article 4.

Joint stock companies must register the issue of shares so that they can be traded generally, or for a closed company, among a limited number of persons.

(b) Under Article 9, every joint stock company must have a charter. This is the most important constitutional document of the company. It sets out the basic features of the company, such as its name, registered location, type of company and statutory capital.

The charter also defines the manner in which the company will be managed, including the authority of governing bodies, the rights and obligations of shareholders, matters concerning the exercising of shareholders' rights through general meetings, and any limitations applicable.

The charter may contain specific provisions agreed by the founders, or subsequently by shareholders, which are not set out in law, provided they do not conflict with the statutory provisions applicable to the charter or operation of the company.

(c) The minimum statutory capital requirement for a closed joint stock company is 10.000 roubles.

The minimum statutory capital requirement for an open joint stock company is 100.000 roubles.

(d) Under Article 12(1), changes to the charter of a company are brought into effect through decisions of the general meeting of shareholders. However, Article 12(2)-(6) makes provisions through which certain decisions on changing the capital structure of the company may be taken by the board of directors, if permitted by the charter itself. When a board resolution is passed to this effect, the charter must then be changed to reflect the new capital structure.

Except for the above, changes to the charter, and replacement of the charter, require at least 75% of shareholders voting in favour.

The directors may also take decisions in respect of branches and representative offices.

The content of the charter is governed by the provisions of the Federal Law on Joint Stock Companies and by other legislation, so it is not possible to include any right or obligation which would infringe the law.

5 The question asked candidates to distinguish between share capital and loan capital, and to state the circumstances under which preference shareholders may vote.

(a) Share capital is the owners' equity in the business.

Article 2 of the Federal Law on Joint Stock Companies states that a joint stock company is 'a commercial organisation whose charter capital is divided into a definite number of shares of stock certifying the rights and obligations of the participants in the company.'

This definition encapsulates the nature of share capital as representing a set of rights and obligations, underpinned by ownership of transferable securities. By purchasing shares in a company, the parties to the transaction enter into a contract of membership. The shareholder is obliged to invest capital once a commitment has been made to purchase shares, and in return has certain rights.

The shareholder has a right to participate in the constitutional affairs of the company. As well as having the right to receive notices of general meetings, the shareholder can vote and, subject to minimum shareholding thresholds, place matters on the agenda of a general meeting or call a general meeting.

The shareholder has a right to information, and must be provided with the financial statements of the company each year, as well as other information sought from the company. For example, shareholders may check the personal information relating to them personally which is held in the register of shareholders.

The shareholder has a right to dividends if declared. Dividends must be funded from distributable earnings, so this is not a guaranteed right.

If the company is dissolved, the shareholder has a right to the return of capital invested. However, this is a qualified right, as creditors and all other payables rank ahead of shareholders, and if the company is insolvent not all capital will be returned.

Article 25 *et seq* set down provisions in relation to share capital. A company must have ordinary shares but is also entitled to issue preference shares.

By contrast, loan capital is created by the company and a provider of long-term finance entering into a civil contract, thereby establishing a debtor–creditor relationship. Article 33 provides for the issuing of bonds.

Providers of loan finance are not owners of the company, and therefore they have no constitutional rights to participate in the company's affairs. They may reserve certain rights by including covenants in the loan agreement, such as access to annual or other periodic financial statements.

The return to providers of loan capital is interest and not dividends. As the relationship is contractual, the interest must be paid, irrespective of whether the company is profitable or not, and failure to pay interest may result in the provider of finance resorting to legal remedies in the courts.

If the company is insolvent, those providing loan capital can assert their rights through the creditors' meeting, and on liquidation of the company, they rank ahead of the shareholders for the return of their capital.

(b) Holders of preference shares are entitled to a fixed dividend, but this advantage is offset to some extent by their more limited right to participate in the constitutional affairs of the company. However, under certain circumstances, preference shareholders have the right to vote at a general meeting of shareholders. These rights are set down in Article 32 of the Federal Law on Joint Stock Companies:

(1) On resolutions to liquidate the company or reorganise the company.

(2) On resolutions to restrict the rights of preference shareholders or grant privileges in respect of priority of dividends or liquidation costs.

(3) On all matters put before the meeting if the dividend to preference shareholders has not been paid in full.

(4) On all matters put before the meeting if it was meant to take a decision on payment of accrued dividends and did not do so.

6 The question tested the candidates' knowledge of the procedure for convening a general meeting of shareholders of a joint stock company, and of absentee and cumulative voting.

(a) Chapter VII of the Federal Law on Joint Stock Companies sets down provisions in relation to general meetings of shareholders, and Article 54 specifically deals with matters concerning preparations which must be made for meetings.

The annual general meeting is convened according to provisions set out in the company's charter, but must be held at least once each calendar year. The responsibility for calling the meeting falls to the board of directors, who must decide on the time, date and agenda for the meeting, the information to be provided for shareholders eligible to attend and the manner in which shareholders will be advised of the meeting. The meeting must take place no earlier than two months and no later than six months after the end of the financial year.

The board of directors may compile the list of shareholders entitled to attend the meeting no later than 85 days before the meeting if the meeting is to consider the election of directors by cumulative voting, or no later than 50 days before the meeting if this is not the case.

The board of directors must issue the notice of the meeting to eligible shareholders by registered mail, written notice with receipt, or publication in the mass media. If the charter makes specific provision for the method of notification, the company must comply with this.

Article 52 lays down the minimum information which must be included in the notice of the meeting:

(1) Name and location of the company.

(2) Form of meeting (by attendance or absentee voting).

(3) The date, time and venue, and the postal address to which ballot forms should be despatched.

(4) Deadline for ballot forms.

(5) Cut-off date of the list of shareholders.

(6) The agenda.

(7) How information may be accessed.

Generally, shareholders are entitled to 20 days' notice of the meeting, but this is extended to 30 days if the meeting is to consider reorganisation of the company and 70 days if there is to be an election by cumulative voting.

Persons holding no less than 2% of the voting shares may propose candidates for the board of directors, and may also place up to two items on the agenda of the meeting.

Specific time limits apply to convening extraordinary general meetings of shareholders. If the meeting is to consider the election of directors by cumulative voting, the maximum notice is 70 days. If the meeting is called by the internal audit commission, the external auditor or by shareholders, it must be held within 40 days. The charter of the company may provide for shorter time limits.

(b) (i) The law relating to absentee voting is set out in Article 50 of the Federal Law on Joint Stock Companies, with further provisions set down in Article 47(1).

Absentee voting is permitted for shareholders who cannot attend the general meeting of shareholders. This must be done in writing by completing a ballot form, issued by the company with the notice of the meeting.

Absentee voting is allowed on all matters except those expressly excluded by the law. However, the exclusions relate to most of the regular business of the annual general meeting:

(1) Election of members of the board of directors.

(2) Election of the internal audit commission.

(3) Appointment of the external auditor.

(4) Approval of the annual report and financial statements.

(5) Distribution of the profit or loss.

(ii) Cumulative voting is carried out in respect of the election of candidates to the board of directors of joint stock companies. The relevant legal provisions relating to cumulative voting are set out in Article 66 of the Federal Law on Joint Stock Companies.

Under the cumulative voting system, the shareholder is permitted to cast a number of votes equivalent to the number of positions on the board of directors multiplied by the number of shares held by that person.

For example, if the company has 10 directors then each share has 10 votes. These may be cast according to the preference of the shareholder, who may use all of the votes for one candidate, or spread them between candidates.

In this way, shareholders can vote in a manner which will maximise the chance of their preferred candidate or candidates being elected to the board of directors.

7 The question asked candidates to explain the role of the internal audit commission, and to describe how its role differs from that of the external auditor.

(a) The internal audit commission is an independent oversight body within the company. Provisions relating to its composition, appointment, powers and duties are set out in Chapter XII of the Federal Law on Joint Stock Companies.

Article 85(1) states that the commission is elected by the general meeting of shareholders to exercise control over the financial and economic activity of the company. Although members of the commission are remunerated by the company, they must operate independently of the company's management and as such are positioned outside the conventional line and staff relationships depicted on an organisation chart.

The primary role of the internal audit commission is to exercise control over the actions of management bodies and to ensure that systems of internal control and review are sound. In doing so, the commission seeks to provide reasonable assurance that the company can meet its objectives.

In supervising and monitoring the activities of the company, the internal audit commission should safeguard the assets of the company, ensure that information systems are adequate to support the provision of timely and accurate information, and oversee the company's systems to minimise the risks arising from fraud and other criminal activities.

As it is elected by the shareholders, the internal audit commission must report to the shareholders, and its opinion must be sought on the financial statements submitted to the meeting before they are accepted. Article 87 elaborates on the requirements in relation to the opinion of the commission, which must confirm (or otherwise) the reliability of the financial data upon which the accounts are drawn up, and indicate any violations of procedures for keeping books of accounts or relevant laws.

Article 85 empowers the internal audit commission to convene an extraordinary general meeting of shareholders if deemed appropriate.

The federal law is relatively non-prescriptive in respect of how the internal audit commission discharges its duties. Its terms of reference may be determined by the internal documents of the company or in provisions contained in the charter.

(b) Article 103(5) of the Civil Code provides for the appointment of a professional auditor, not connected with the company or its property, to check and confirm the correctness of the company's financial accounts. This is amplified by Article 86 of the

Federal Law on Joint Stock Companies, which states that the auditor, who may be a citizen or a professional accountancy firm, shall exercise the verification of the financial and economic activity of the company.

In common with the internal audit commission, the external auditor is appointed by the general meeting of shareholders and must give a professional opinion to the general meeting. Likewise, the external auditor must be independent of the company.

The primary duty of the external auditor is to the shareholders of the company, giving a professional opinion on whether the financial statements provide a true and fair view of the company's operations in the financial year.

In discharging these duties, the external auditor must carry out appropriate checks, and in doing so has the right to access any documentation on request, and to seek explanations where required.

While the internal audit commission is an internal management body, the external auditor is appointed under a civil contract.

Despite some overlap between the duties of the internal audit commission and the external auditor, the work of the latter is generally more externally focused, and the professional opinion of the external auditor may be viewed not only by existing shareholders but also potential investors as material to their future investment decisions.

8 The question tested the candidates' ability to apply their knowledge of offer and acceptance to a scenario in which an art dealer made prints of paintings available to two customers.

(a) The law relating to an offer is set down in Article 435 of the Civil Code. This defines an offer as a proposal, addressed to one or more specific persons, which is sufficiently comprehensive, and which expresses the intent of the person to conclude a contract with another person.

Article 437 distinguishes other forms of representation from an offer. These could include advertisements or other general statements that goods are for sale, but unless they meet the criteria set out in Article 435, they are regarded as invitations to others to make an offer ('invitations to treat').

In the case study scenario, it is clear that Olga has directed her communication to two specific customers, namely Alexei and Boris.

Olga's letter has referred to the subject matter of the deal, the price sought and the quantity of prints which are available. She has also specified a time limit by which the deal must be concluded if the customers intend to avail themselves of the prints. By including this information in her letter, Olga has made an unambiguous statement of what is available at a stated price and what has to be done by the counterparty to accept the offer.

Article 435 also refers to 'intent' to enter into a contract. As Olga is an art dealer and has written to customers with details of prints for sale, it must be assumed that her letter would be typical of a communication entered into in the ordinary course of her business.

It should be concluded, therefore, that Olga's letters to Alexei and Boris were offers, both of which would bring a contract into effect if accepted by the due date.

(b) Alexei's initial response stated that he could obtain a print from another source at a lower price, and so declined the offer. Having failed to obtain the print at the lower price, he then wrote again, within the deadline set down in Olga's letter, to accept the print at the full price.

Alexei's first communication was a rejection of the offer, which frees Olga from any obligation to hold the offer open until the deadline specified in her offer. Once the rejection has been received, the offer is effectively cancelled.

By writing again to state that he was prepared to pay the full price for the print, Alexei has made a new offer to Olga, reversing the offeror–offeree relationship. Olga would then be able to either accept or reject Alexei's offer, depending on whether she has secured a sale to another customer.

Boris accepted the offer but with one modification of the terms set out in Olga's offer. The offer stated that the offer was limited to only one print per customer, but Boris included a condition that he would pay the price on condition that he could purchase two prints. Article 438 of the Civil Code states that to be a valid acceptance it must be full and unconditional.

This modification of the terms of the offer was a counter-offer, which had two effects. First, it cancelled the original offer, serving as a rejection. Second, it created a new offer through which Olga became the offeree. Olga would be entitled to either accept or reject the counter-offer made by Boris.

9 The question tested the candidates' ability to apply their knowledge of partnership law to a case study in which a partner sought to terminate the partnership and escape from her obligations.

(a) The case study stated Rosa had informed Sergei that she no longer wished to continue in partnership with him, and that she would not accept any further obligations in respect of the business.

The law relating to partnerships is set out in Articles 69 to 81 of the Civil Code.

Article 70 states that the partnership is governed by a constituent document, the minimum content of which is set out in Article 52(2). The mandatory information includes the terms on which partners may withdraw from the partnership, so Rosa's right to walk away from the business would be subject to any conditions imposed by the constituent document.

Article 73 compels all partners to participate in the business in conformity with the constituent document.

Article 77 states that any partner has the right to withdraw from the partnership after having declared a refusal to take part in it, but that six months' advance notice is required. The same article goes on to say that exceptions are admitted only on valid grounds.

From the facts of the case, it would appear that Rosa is seeking to leave the partnership immediately. However, she can only do so without incurring further obligations if exceptional circumstances exist, as envisaged by Article 77.

Depending on the size and scope of the partnership, it would be unlikely that Rosa would be free to withdraw without accepting responsibility for known ongoing costs, such as rent or mortgage payments due on premises if applicable, utility bills, and so on. Article 75 states that any partner withdrawing from a partnership is answerable for obligations incurred prior to the withdrawal for a period of two years.

(b) Rosa decided to leave the partnership when it was involved in a major project for their most important client, and one consequence of this was that Sergei had to engage the services of Maria in order to finish the work on time.

The major project would almost certainly have been a contractual obligation, entered into by the partnership. Article 75 of the Civil Code confers joint and several liability on all partners, so failure to discharge their obligations under the contract would result in both Rosa and Sergei being liable to their customer, irrespective of circumstances or blame. In turn, Sergei could hold Rosa accountable for her failure to act in the best interests of the partnership due to her refusal to meet her obligations to the customer.

Rosa could argue that Sergei's decision to engage the services of Maria to complete the project without the approval of both partners fell outside his authority, but in turn Sergei could claim that he had little choice if this was the only way that the project could be completed on time. Were he to argue this successfully before a court, he would potentially be able to claim for the additional costs incurred in hiring Maria, as well as for any incidental losses brought about by Rosa's departure.

Rosa's claim would be stronger if the cost of hiring Maria was excessive and disproportionate to the size of the project.

If the work carried out for the customer was divisible (for example, delivered in phases), Rosa could have a claim for a proportion of the income generated by the work, though this would almost certainly be offset to some extent by any compensation which she would have to pay due to the violation of her obligations to the partnership.

10 The purpose of this question was to test the candidates' understanding of the law relating to transactions carried out before a company was declared bankrupt.

The relevant laws are FZ-127 (Federal Law on Bankruptcy) and FZ-228, which introduced additional provisions in relation to suspicious transactions and unfair preferences.

The scenario described two transactions carried out before –ZAO- Flop entered bankruptcy. The first of these was the sale of a warehouse for a price substantially below its market value, and the second was the repayment of a loan in the month before the bankruptcy petition was granted by the court.

The sale of the warehouse was made to a company whose managing director married the finance director of –ZAO- Flop the following year. The inference here is that the finance director of –ZAO- Flop may have been an interested person within the meaning of Chapter XI of the Federal Law on Joint Stock Companies. This would be difficult to prove, as the parties concerned could simply state that their personal relationship was formed subsequent to the transaction taking place. However, the finance director could be liable on two legal grounds.

First, it is the duty of all directors to act in good faith, in the best interests of the company, as laid down in Article 71(1) of the Federal Law on Joint Stock Companies. Even if the personal connection between the parties could not be proven, a case could be built against the board collectively on this ground.

Second, the sale of the warehouse could be regarded as a suspicious transaction. A transaction may be regarded as suspicious if it took place up to three years before the granting of the insolvency petition. To prove culpability, it has to be demonstrated that the transaction was aimed at damaging the claims of creditors, that their claims were actually jeopardised and that the other party was aware of this.

The implication of repaying a loan just one month before the company entered insolvency was of suspicious intent because the loan was secured by a personal guarantee given by an interested party. This would be considered an unfair preference and as such could be challenged by the external manager of –ZAO- Flop. Effectively, this could result in the transaction being reversed, thereby protecting the claims of the creditors.

1	**(a)**	Structure of the courts of arbitration	Up to 3 marks
		Role of the courts of arbitration	Up to 3 marks
			(6 marks)
	(b)	Reference to codified system	1 mark
		Resolution by law making	1 mark
		Use of analogy	Up to 2 marks
			(4 marks)
			(Total 10 marks)
2	**(a)**	Definition of damages	Up to 2 marks
			(2 marks)
	(b)	Monetary compensation	1 mark
		Losses	1 mark
		Missed profits	1 mark
		Set out in contract or decided by court	Up to 2 marks
			(5 marks)
	(c)	Meaning of mitigation	1 mark
		Effects of mitigation	Up to 2 marks
			(3 marks)
			(Total 10 marks)
3	**(a)**	Definition of fixed term contract	1 mark
		Maximum five year rule	1 mark
		Options at the end of term	Up to 2 marks
			(4 marks)
	(b)	Mandatory cases	Up to 3 marks
		Non-mandatory cases	Up to 3 marks
			(6 marks)
			(Total 10 marks)
4	**(a)**	Agreement between founders	1 mark
		Name, location, content of charter	1 mark
		Decision on capital structure	1 mark
		State registration	1 mark
			(4 marks)
	(b)	Purposes of charter	Up to 2 marks
			(2 marks)
	(c)	Minimum capital for closed company	1 mark
		Minimum capital for open company	1 mark
			(2 marks)
	(d)	Resolution of members	1 mark
		Changes must be compliant with law	1 mark
			(2 marks)
			(Total 10 marks)

5	**(a)**	Contractual distinction	1 mark
		Dividend/interest	1 mark
		Constitutional rights	1 mark
		Right to information	1 mark
		Right to return of capital	1 mark
		Legal remedies of creditors	1 mark
			(6 marks)
	(b)	Per criterion to vote	1 mark, maximum 4 marks
			(4 marks)
			(Total 10 marks)
6	**(a)**	Responsibility of board	1 mark
		Notice and agenda	1 mark
		Content of notice and agenda	Up to 2 marks
		List of shareholders	1 mark
		Time limits	1 mark
			(6 marks)
	(b)	Absentee voting	Up to 2 marks
		Cumulative voting	Up to 2 marks
			(4 marks)
			(Total 10 marks)
7	**(a)**	Internal but independent body	1 mark
		Responsible for oversight	1 mark
		Duties in relation to controls	Up to 2 marks
		Duty to report to shareholders	Up to 2 marks
			(6 marks)
	(b)	Auditor is professional individual/firm	1 mark
		Professional opinion – true and fair view	1 mark
		Duty to report to shareholders	1 mark
		External focus	1 mark
			(4 marks)
			(Total 10 marks)
8	**(a)**	Offer addressed to specific person(s)	1 mark
		Sufficiently definite	1 mark
		Intent to bind parties	1 mark
		Correct conclusion	1 mark
			(4 marks)
	(b)	Rejection terminates offer	1 mark
		Subsequent acceptance is new offer	1 mark
		Modified acceptance is counter-offer	1 mark
		Effects of counter-offer	1 mark
		Correct conclusion – Alexei	1 mark
		Correct conclusion – Boris	1 mark
			(6 marks)
			(Total 10 marks)

9	**(a)**	Effect of constituent agreement	1 mark
		Notice requirement	1 mark
		Two year rule on obligations	Up to 2 marks
			(4 marks)
	(b)	Contractual commitment to project	1 mark
		Joint and several liability	1 mark
		Customer's rights against both partners	1 mark
		Right to engage Maria	1 mark
		Application/correct conclusions	Up to 2 marks
			(6 marks)
			(Total 10 marks)

10	Directors' duties to act in good faith	Up to 2 marks
	Discussion of interested party	1 mark
	Suspicious transaction	Up to 2 marks
	Unfair preference to creditor	Up to 2 marks
	Applications to the case	Up to 3 marks
		(Total 10 marks)