Answers

1 The question sought to test the candidates' knowledge and understanding of concepts relating to the implementation of law in the Russian Federation, and to give practical examples of these concepts.

(a) Accomplishment refers to individuals and legal entities availing themselves of the opportunities afforded by the law to take actions or fulfil their obligations. The law may be enabling or restrictive. The main source of law in Russia is legislation, and it is generally accepted that actions that do not cause harm to others and are not forbidden in law are permitted. Some laws prescribe the actions that individuals and juridical bodies may take and the manner of accomplishing them.

The right to sell personal possessions is an accepted feature of the law, though certain possessions may be sold or transferred only in a specified manner. Real estate, for example, has to be sold or transferred by means of a written contract and the ownership vested in the new proprietor by State registration before the transaction can be legally completed.

(b) Execution refers to the discharge of legal obligations of private citizens and legal entities as laid down in the various laws and regulations that are imposed by government and municipal bodies.

Examples of execution relevant to private individuals are declarations for the purposes of statutory records, such as registrations of births, marriages and deaths, and the payment of monies due, such as taxes and other mandatory payments.

Legal entities must make statutory returns to the government in respect of constitutional matters such as formation of companies, reorganisation, insolvency and dissolution. They also execute obligations by paying taxes and mandatory payments to their staff.

(c) Observance refers to compliance with the limits laid down in relation to the activities of individuals and organisations. It is a more negative concept in that it involves not taking certain actions that are forbidden by law.

The restrictions on the active capacity of young persons is an example of observance, especially in respect of activities that are prevented by the Civil Code before the individual reaches the age of 18 years. The Penal Code lays down instances in which specified actions are deemed to break the conventions of society, the intention being to prevent behaviour of which the State, acting vicariously on behalf of citizens, disapproves.

Individuals and legal entities must observe certain legal provisions when entering into most types of contract, and even outside the scope of contract law can be held accountable if by their actions they inflict loss or harm on others.

Legal entities are also constrained by their own constitutions (Charter and other documents), which under the provisions of the law must lay down specified parameters within which they may act.

(d) Enforcement refers to actions that ensure that individuals and legal entities comply with the law. Where this is not the case, the law specifies the manner in which penalties, other sanctions or other remedial actions may be taken against those whose behaviour is non-compliant.

The imposition of punishment or penalties against criminals is an example of enforcement. However, any competent body may take action to enforce the law within its specified terms of reference. The courts play the main role in enforcing the law, such as in matters requiring the resolution of contractual disputes and confirmation of the entitlements of citizens (such as payments from the State or from their employers).

Legal entities incur certain obligations in the course of economic activity. One example is the enforcement of the rights of creditors when the sums due to them become payable, such as on maturity of the debt, on default by the debtor, on reorganisation or on insolvency.

2 The question tested the candidates' knowledge of the rules relating to the proper discharge of obligations.

The law relating to the proper discharge of obligations is set out in Chapter 22 of the Civil Code.

Article 311 states that a debtor has the right to accept the discharge of obligations in parts, except where specified otherwise by specific laws.

Article 312 insists that the obligation be discharged by the proper person. This is derived from the concept of privity, which precludes anyone who is not a party to the contract from enforcing its provisions. There are exceptions to this rule, such as an heir deriving rights from the commitments of a deceased person. However, Article 313 permits a third party to discharge an obligation on behalf of a principal to the contract.

If the obligation stipulates a time limit for completion of the required actions, Article 314 requires the obligation to be discharged by that time limit or within it. If the agreement does not specify a time limit, then the obligation must be discharged within a reasonable time. Article 315 amplifies these provisions, setting down additional rules for satisfaction of obligations in advance of the time limit.

Article 316 requires the obligation to be discharged at the proper place. This place may be defined by the law, or otherwise stipulated in the contract. Alternatively, the proper place may relate to the substance of the obligation or general norms of business. If the subject matter is land, the proper place is the location of the land. If the subject matter is commodities that will be shipped, the proper place is where the goods are handed to the first carrier. If delivery of the commodity does not involve shipment, the proper place is the place of manufacture. For pecuniary (financial) obligations, it is the place of residence of the creditor at the time of the creation of the obligation. However, if the creditor has changed his or her place of residence since the obligation was created and has informed the debtor, the place of discharge is the new residence. For other obligations, the proper place is the residence or location of the debtor.

Article 317 requires pecuniary obligations to be satisfied in roubles. If the obligation is defined with reference to another currency, the official exchange rate shall apply.

3 The question asked candidates to explain the rights of an employer to make significant changes to the conditions of a labour agreement.

Article 72 of the Labour Code sets down the law in relation to changing the job or location of the work of an employee.

The transfer of an employee to a different job or a different location within the organisation may be implemented with the written consent of the employee.

If an employee has to be transferred to a different job due to a confirmed medical condition, the employer must offer an alternative job to the employee. The alternative job must not endanger the health of the employee, and if appropriate this must be confirmed by a medical examination. The change in job is subject to the consent of the employee.

If the employee does not agree to the alternative job, or there is no alternative job available, the employer has the right to terminate the labour contract (Article 77, Labour Code).

The transfer of an employee to a different location without materially changing the nature of the job is not regarded as a change in the job as such. However, Article 73 of the Labour Code lays down additional provisions in respect of what may be regarded as a significant change in the job.

In the case of 'technical necessity', an employee may be transferred to a different job for a period not exceeding one month (Article 74). The Labour Code amplifies the definition of technical necessity as prevention of catastrophe or accident, elimination of the consequences of a catastrophe, accident or natural disaster, temporary stoppage of work, destruction or damage to property or filling in for a missing employee. The employee's remuneration must be commensurate with the new job and must not be less than the average remuneration in his or her previous position.

The right to make other significant changes to a labour agreement is governed by Article 73 of the Labour Code.

Significant changes to a labour agreement can be made with the written consent of both the employer and the employee. However, the Labour Code envisages certain situations where significant changes may be instigated unilaterally by the employer.

Significant changes may be made for reasons connected to the organisational or technical aspects of the business environment, provided the functions of the job itself do not change. The employee must be informed of the changes no less than two months before they are implemented.

If the employee does not agree to the required changes, he or she must be offered a different job. The nature of the alternative job must be consistent with the employee's qualifications and state of health, confirmed by medical examination if appropriate. If no such job exists, the employee must be offered a lower grade job. If there is no lower grade job available, the labour agreement may be terminated (Article 77, Labour Code).

Where the change in the business environment leads to mass dismissal of employees, the employer has the right to reduce the working hours of employees for a period not exceeding six months. This must be proposed in consultation with trade union representatives.

4 The question asked candidates to describe the characteristics of a general partnership that differentiate it from other types of business organisation.

(a) The characteristics of the various types of legal entity are set out in chapter 4 of the Civil Code, and those of a partnership are described in articles 69 to 81 of that chapter.

A partnership can only exist if there are two or more partners. This distinguishes the partnership from the individual entrepreneur, who by definition can only operate as a sole trader.

The partners in a general partnership bear unlimited liability and are therefore personally accountable on a joint and several basis for the obligations of the business (article 69). The Civil Code provides for the establishment of limited liability companies and companies limited by share, in which shareholders only bear obligations to the extent of their investments in shares.

Article 70 provides for governance of a partnership under a constituent agreement, which differs in content from the Charter of a company.

Article 71 states that a partner has one vote, unlike a limited company in which voting powers are determined by the number of shares held, or otherwise as stated in the Charter.

Article 72 provides a right of full participation by partners in the management and operation of the business. Although shareholders in companies have rights of participation in general meetings, it is impossible in larger companies for all shareholders to play as full a role in operative management.

The Civil Code makes distinctive provisions concerning the capital of a general partnership. This comprises contributions as opposed to shares. Contributions can be more freely withdrawn from a partnership than shares in a company (article 77).

(b) Article 78 of the Civil Code entitled a partner who withdraws from a partnership to have his or her capital in the partnership repaid. This repayment may be on a *pro rata* basis or as otherwise stipulated in the partnership agreement. Subject to the agreement of all partners, the repayment may be *in specie* or in cash. The repayment is due at the time the partner withdraws. Article 80 makes additional provisions that creditors may claim the withdrawing partner's obligations against his or her partnership capital if the individual's personal property is insufficient to cover outstanding obligations.

As explained in part (a), the remaining partners may hold the withdrawing partner to account for two years for obligations carried over from his or her involvement in the business.

(c) If a partner in a general partnership dies, the heir to the deceased is entitled to join the partnership subject to the consent of other partners. This applies to both individuals and legal entities. The partnership agreement may lay down specific additional provisions.

If the remaining partners do not agree to the heir's participation in the business, the partnership must make a settlement in money or in kind in a similar manner to the settlement with a partner who resigns or retires.

The heir of a deceased partner bears liability for obligations directly relating to the former involvement of the deceased.person in the partnership.

Article 78(3) states that on the death or withdrawal of a partner, the capital share of the other partners increases correspondingly.

5 The question asked candidates to explain the matters that lie within the exclusive competence of the board of directors, and to describe the legal constraints on the actions of the board of directors and the executive body.

(a) The general meeting of shareholders is the highest decision-taking organ of a company limited by shares. The phrase 'exclusive competence of the board of directors' refers to the right of the board of directors to deal with matters that fall outside the decision-taking capacity of the shareholders' meeting as set down in the Federal Law on Companies Limited by Shares, or matters that have been delegated to the board by the general meeting of shareholders. In addition, the Charter of the company may reserve certain rights of the board to take decisions, provided these are not prohibited by law.

Article 48 of the Federal Law on Companies Limited by Shares lists the matters than must be dealt with by the general meeting of shareholders. These may not be delegated.

Article 65 of the same law sets down the matters that fall within the exclusive competence of the board of directors. Some of these matters may be limited, if desired, by the shareholders or the Charter of the company.

Some matters can only be dealt with by the shareholders' meeting subject to a recommendation by the directors. These include the declaration of an interim or annual dividend, reorganisation of the company into another corporate form and confirmation of the annual balance sheet and profit and loss account.

Subject to the provisions of the Charter, the board appoints the executive body of the company limited by shares. If the Charter does not so provide, this task falls to the shareholders' meeting.

Major transactions of 25–50% of the book value of the company's assets can be approved by the board of directors, but only on a unanimous basis. If this cannot be achieved, the decision falls to the shareholders' meeting.

Other matters that would normally be within the exclusive competence of the directors are:

(1) Strategic direction of the company – agreeing the strategic plan and apportioning responsibilities for its execution.

(2) Meetings – dealing with the higher administrative matters relating to the constitutional rights of shareholders such as the list of voting shareholders, finalisation of documents, etc.

(3) Capital – implementing decisions on increases in statutory capital, issuing and purchasing securities, appropriation of the reserve and other funds.

(4) Other – dealing with matters charged to them by the shareholders or the Charter.

(b) The highest level of control is exerted by federal laws, the most directly relevant of which is the Federal Law on Companies Limited by Shares. This lays down the minimum requirements that must be fulfilled by the board and the executive body.

The Civil Code defines the obligations that individuals and businesses owe to others. Both the board and the executive body may bear civil responsibility for damage to the company brought about directly as a result of their actions, including moral harm. This responsibility is joint and several.

This principle extends to a sole executive body, so where an individual serves the company under a contract for service, he or she may bear a liability in tort and can therefore be sued for damages. Such relationships are regulated by the Civil Code.

The accountability of individual directors is not absolute in that any director who voted against or abstained on a matter may be absolved from responsibility.

Executives will normally have a contract of service in the form of a labour agreement. This is often of a fixed term nature. The contract is in itself a form of control as it enables the board to limit the power and authority, and hence the actions, of the relevant persons.

The laws of the Russian Federation impose a prescriptive approach to control of the company. The next level of control, therefore, is the Charter and the internal rules of the company. These are binding on all officers and employees of the company and on the actions of the company as a separate legal entity. The Charter may only be changed by the shareholders' meeting, and only then if the change is consistent with federal law.

External audit (where the law requires this) represents a further layer of control. Companies will also be controlled through the activities of internal bodies such as the internal audit commission and the tabulation commission.

6 The question asked candidates to describe the role of the tabulation commission and to explain the terms 'absentee voting', 'cumulative voting' and 'quorum'.

(a) Article 56 of the Federal Law on Companies Limited by Shares provides for the establishment of a tabulation commission and sets out its duties and powers.

The tabulation commission has an oversight role in respect of the administration of general meetings of shareholders. Its role extends to both the routine annual meetings and one-off meetings convened by the company or the shareholders themselves.

The commission is elected by the shareholders in the general meeting, after being proposed by the board of directors, and must comprise at least three persons. Although members of the commission are employees of the company, the legislation insists that it acts as an independent body. Members of the board of directors, the audit commission, the collegial executive organ of the company, a one-man executive organ of the company and also persons nominated for such offices, may not serve on the commission.

The tabulation commission must ensure the proper conduct of shareholders' meetings from the preparation stage through to the recording and reporting of proceedings. This serves as an assurance to the shareholders that appropriate processes have been followed and that their rights have been protected.

The tabulation commission is responsible for determining the quorum of the general meeting, registering participants in general meetings, ascertaining the order of voting, ensuring compliance with procedures, validating vote counts in the general meeting and formalising the minutes of voting outcomes.

The commission also explains the procedures for voting and deals with questions raised by shareholders.

The commission is responsible for the filing of the records of the meeting in the company archive.

(b) **(i)** Absentee voting:

All holders of ordinary shares in a company limited by shares are entitled to vote, usually on the basis of one vote per share held in the company. Voting may be carried out in person and *in absentia*, though some matters are restricted to voting in person. The statutory provisions relating to absentee voting are set out in Article 50 of the Federal Law on Companies Limited by Shares, with related provisions set down in Article 47(1).

Absentee voting is effected by shareholders who cannot attend the general meeting. This must be done in writing by completing a ballot form.

Absentee voting is permitted on all matters except those expressly forbidden in the federal law, which include most of the ordinary, routine business of all general meetings:

- election of members of the board of directors;
- election of the internal audit commission;
- appointment of the external auditor;
- approval of the annual report and financial accounts;
- distribution of profit/loss.

It therefore follows that absentee voting is confined to extraordinary meetings of the company.

(ii) Cumulative voting:

Cumulative voting is relevant to the election of candidates to positions on the board of directors of companies limited by shares. The statutory provisions relating to cumulative voting, and indeed other aspects of voting at general meetings, are laid down in Article 66 of the Federal Law on Companies Limited by Shares as amended.

Cumulative voting enables the shareholder 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.

If the company has eight directors each share carries eight votes. These may be allocated entirely at the discretion of the shareholder, who may choose to cast all votes for just one candidate, or spread the votes across a number of candidates in whatever proportion he or she desires.

Cumulative voting is a form of minority protection as it enables the shareholder to vote tactically to maximise the prospect of his or her chosen candidate being elected to the board of directors.

(iii) Quorum:

The term 'quorum' refers to the minimum number of persons who must attend the meeting if the decisions and other actions of the meeting are to be legally valid. Article 58 of the Federal Law on Companies Limited by Shares sets down the law in relation to the quorum for general meetings. In addition, the company Charter may make additional and alternative provisions.

The quorum is set by the tabulation commission with reference to the register of equity shareholders entitled to vote.

The normal quorum for a general meeting is shareholders possessing in total 50% of voting shares. If the meeting attracts fewer shareholders any decisions taken are invalid and the meeting has to be called again.

When a new meeting is required due to the original meeting being inquorate, a lower minimum threshold of 30% of holders of voting shares is set. The reconstituted meeting must have the same agenda as the original meeting.

For open companies limited by shares with in excess of 500.000 shareholders the Charter may set a lower quorum.

7 The question asked candidates to explain the purposes of observation in respect of an insolvent company and to describe the observation process.

Observation is the first stage of the insolvency process following the acceptance of the court of arbitration of an application for insolvency. The process is governed by the Law on Insolvency.

The purpose of observation is to protect the assets of the company by freezing any claims by those who are owed money by the company for the immediate future. The observation period effectively serves as a moratorium in which the financial state of the company may be assessed.

An interim manager is appointed with the responsibility of analysing the true financial position of the company. The interim manager gathers information on the balances payable by the company to third parties and accounts receivable from third parties. A complete list of creditors' demands is then compiled and a creditors' meeting is convened. The company is obliged to provide the interim manager with all documents necessary to obtain and verify the financial and other information necessary for him to perform his duties.

The Court of Arbitration places a company under observation if there is a prospect that a company will be unable to meet its obligations or if there are 'signs of insolvency'. The observation stage commences with the appointment of an interim manager by the court. The first task of this official is to prepare and publish a formal notice of observation.

The decision to commence observation does not mean that liquidation of the company is inevitable. In most cases, the company does not survive. However, the laws of insolvency have been progressively modified in order to maximise the prospects of recovery of companies experiencing financial difficulties.

Whilst under observation the company's assets are protected, thereby preparing for the alternative outcomes of eventual recovery of the company or liquidation. The Federal Law on Insolvency establishes a strict order of priority of claims in the event of insolvency. The interim manager prevents the company from subordinating the rights of higher-ranking creditors to the benefit of other creditors. It also prevents those who own and/or manage the company from benefiting financially if their motive is to liquidate the company for their own personal gain.

While the observation process is under way, the existing management of the company may remain in place. However, if appropriate steps are not taken by them to protect the property, or if the interim manager is impeded in his duties, the arbitration court may remove all powers of the management and transfer them to the temporary administrator.

The creditors have 30 days to file their claims against the company from the date of the official notice. In turn, the company has a right to challenge these claims.

The interim manager convenes a creditors' meeting which considers the appropriate course of action. This may involve one of several courses of action, including a financial recovery programme, appointment of an external manager, signing of a composition or initiating an insolvency action.

The creditor's meeting may be inconclusive, in which case it falls to the arbitration court to decide whether to appoint an external manager, initiate financial recovery or proceed to insolvency.

During observation, it may become apparent that the company will be able to discharge its financial obligations. In this event, the company can continue as a going concern. The insolvency process is then terminated.

After completion of observation, the company may be placed under the control of a licensed external manager, usually an economist, jurist or other individual with appropriate experience. This individual is responsible for preparing a plan within one month of appointment and submit it to creditors.

Alternatively, the enterprise may be recuperated through a financial recovery programme, or 'pre-judicial sanation', through which interested parties (usually the founders or other stakeholders) may provide financial assistance for recuperation of the enterprise.

If the company is to be liquidated, an insolvency practitioner is appointed to realise the assets of the company in a manner consistent with the priority of their claims under the law.

8 The question tested the candidates' ability to apply their knowledge of contract law to a case study scenario.

(a) The rights and obligations of parties to a civil contract are set out extensively in Part 1, s.III of the Civil Code.

The group originally booked to perform at the event would be able to escape liability under certain circumstances.

Firstly, OOO Festival could explicitly agree to the substitution of one group of performers for another, accepting that the only other option is to run the event with one less act. If such agreement is forthcoming, the contract may be discharged by engaging the services of the other act.

Secondly, many civil contracts have *force majeure* clauses that enable a party to terminate the contract without penalty on the occurrence of specified events. Such clauses may include unanticipated emergencies such as the sudden illness that has befallen one of the musicians. If such a clause was included in the contract, the organiser is fortunate that the group originally booked to perform has arranged a replacement act. However, any losses of receipts from customers who cancelled or did not book because the main attraction did not perform could not be claimed.

Thirdly, in the unlikely event that the original contract stipulated that the group would be able to substitute another act, this too would be regarded as due fulfilment of the contract.

In the absence of *force majeure* or a clause permitting the group to sub-contract its obligation, the unilateral substitution of replacement performers would represent undue fulfilment of the contract. Every music act is different, so performance by a person or persons other than the party to the contract is improper discharge of the contract (Article 312, Civil Code). This would enable OOO Festival to claim losses suffered as a result of the substitution, such as reduced income from the event, as well as any forfeit stipulated in the contract (Articles 393 and 394, Civil Code).

(b) If the contract made specific provisions for either a refund or forfeit of the deposit, these provisions would apply in respect of the 50% of the fee paid in advance by OOO Festival to the group.

In the absence of such provisions, the group would be liable to refund the 50% advance payment to OOO Festival if the company declined the services of the replacement act. The payment represented a payment for services that were not provided, so the deposit could be claimed back, alongside reimbursement of losses and forfeit as described above.

However, if OOO Festival explicitly accepted the replacement act, the effect of this would be that the original group booked by the company would become a subcontractor. The subcontractor would retain primary responsibility for the contract, but would have a second contract with the replacement act. OOO Festival would pay the fee to the original group, who in turn would pay the group who eventually performed at the event.

(c) If the contract provided for discharge of the obligation specifically by OOO Sweep, there is no right to subcontract the cleaning duties to a third party. Therefore, OOO Sweep would have to perform the contract.

Conversely, if the contract enabled OOO Sweep to subcontract, it would be entitled to engage the services of another company to carry out the work on its behalf. In this case, OOO Sweep would retain primary responsibility for the obligation before OOO Festival, and would incur separate obligations to the company that carried out the work.

In the absence of any provision on the right or otherwise to subcontract, OOO Sweep could be regarded as a general contractor and could unilaterally hire a third party to carry out the cleaning duties. If these duties were carried out to the required standard, the substance of the obligation would have been performed.

9 The question asked candidates to apply their knowledge of the law relating to the rights of shareholders to a case scenario. It also asked candidates to explain the potential consequences of guaranteeing a dividend to a new investing shareholder.

(a) If Vera acquires 10% of the voting shares, as agreed with the existing shareholders, she will obtain a minority stake in the company that will not, in itself, be sufficient to influence the strategic decision-taking or other management issues of the company. However, she will be able, acting alone or in concert with other shareholders, to influence any discussions in general meetings of shareholders.

Vera is entitled, like any other shareholder, to receive information on general meetings convened by the company and to put questions in relation to the meetings to the company to the tabulation commission.

As she will own over 2% of the voting shares, she will be able to propose no more than two items to be placed on the agenda for a general meeting for consideration by the shareholders (Article 53(1), Federal Law on Companies Limited by Shares). Article 51 of the same law would permit her to request a list of persons entitled to participate in the meeting. These rights are conditional on acquiring the shareholding threshold required by no later than 30 days after the financial year end of the company, or an alternative deadline set down in the Charter of the company.

As Vera will hold 10% of the voting shares, Article 55 of the Federal Law on Companies Limited by Shares would entitle Vera to convene an extraordinary general meeting of the company.

Vera would of course have greater powers to influence the decisions of general meetings if supported by other shareholders. The degree of support necessary to do so depends on whether her proposals require a simple majority or a super-majority of shareholders to act in concert with her.

(b) Article 42(2) of the Federal Law on Companies Limited by Shares states that the dividends of a company can only be paid out of net profit.

Although the case study suggests that the company is profitable at the moment, there is no guarantee that it will remain so while Vera retains her shares in the company. If the company makes insufficient profit in any future year to fund the minimum dividend demanded by Vera, it would be acting illegally in making such a payment.

The company can guarantee a return of 10% to Vera in two ways.

Firstly, it may issue preference shares with a fixed dividend. However, this would preclude Vera from voting on matters other than those directly relevant to her rights as a preference shareholder.

The payment of the fixed dividend to preference shareholders is contingent on the company making sufficient profit to fund such dividends, so even if Vera invests in preference shares, her return is not actually guaranteed. Her claim would, however, rank ahead of ordinary shareholders in any year where the net profit would be sufficient to pay dividends to preference shareholders wholly or in part.

Secondly, the company could issue bonds to Vera. A bond is not equity in the company. It is a loan based on a civil contract between the two parties. The return on the bond is interest, which could be specified at the agreed rate. The payment of interest would be contractually binding on the company and would enable Vera to pursue monies payable in the event of default. However, by investing in bonds Vera would obtain no right to participate in decisions of the company at all, except in the event that the company became insolvent.

Vera should therefore be advised that it is not possible to guarantee a return of 10% on her proposed equity investment in the company.

10 The question tested the ability of candidates to apply the provisions of the Federal Law on Companies Limited by Shares relating to major transactions and interested party transactions to a case study scenario.

Andrei, the general director, has proposed that the OAO Trade should sell its prestigious Moscow offices in order to raise cash that is urgently required to ensure the survival of the company. The offices represent a substantial proportion of the company's assets. Furthermore, Andrei's family owns shares in a company that is interested in purchasing the offices, and the prospective purchaser has indicated that it expects to pay less than the market value of the premises.

The shareholders of OAO Trade are protected by two provisions of the Federal Law on Companies Limited by Shares. Firstly, as the proposed disposal of the offices represents a substantial proportion of the asets of the company, this may be a major transaction as defined by articles 78 and 79 of the Federal Law on Companies Limited by Shares. Secondly, as the prospective purchaser is a company in which Andrei's family has shares, the disposal would be a transaction in which there is an interest, as defined by articles 81 to 84 of the same law.

A major transaction is one in which the relevant asset exceeds 25% of the total assets of the company as at the last accounting date, provided that the transaction is not related to the ordinary economic activity of the company or placement of certain securities. If the value of the offices is between 25% and 50% of the value of total assets, it requires the unanimous consent of the directors. If the value exceeds the 50% threshold, it requires the approval of at least 75% of the shareholders voting in a general meeting.

The proposal to sell the offices for less than their market value is material to the decision. The shareholders and the directors would have to consider the extent to which the company's financial difficulties are sufficiently severe to justify a sale for less than the value as formally appraised.

Even if the transaction is not a major transaction, the directors must act in the best interests of the company and are responsible for damage inflicted on the company, including any moral harm sustained.

An interested party transaction is one in which a member of the board of directors or a person performing the functions of a sole executive body has a personal interest. As Andrei's family owns 30% of the shares in the company that wishes to purchase the property, the proposed sale falls within this definition (the threshold in the Federal Law on Companies Limited by Shares is 20%). If the company has more than 1.000 holders of voting shares, the transaction cannot proceed without the approval of a general meeting of shareholders. If the company has less than 1.000 holders of voting shares, it can be approved by the board of directors, though Andrei himself would not be permitted to vote on the matter.

It should be noted that the Charter of the company may impose more restrictive requirements in respect of sanctioning the transaction.

Fundamentals Level – Skills Module, Paper F4 (RUS)
Corporate and Business Law (Russia) **June 2010 Marking Scheme**

1	**(a)**	Explanation of accomplishment.	Up to 3 marks
	(b)	Explanation of execution.	Up to 2 marks
	(c)	Explanation of observance.	Up to 2 marks
	(d)	Explanation of enforcement.	Up to 3 marks **(Total 10 marks)**

2 Explanation of discharge of obligation:

In parts	1 mark
Proper person	Up to 3 marks
Proper time	Up to 2 marks
Proper place	Up to 3 marks
Proper currency	1 mark
	(Total 10 marks)

3

Right to transfer with consent	1 mark
Transfer due to medical condition	Up to 2 marks
Transfer due to technical necessity	Up to 3 marks
	(6 marks)
Right to change with consent	1 mark
Changes in business/technical environment	1 mark
Requirements relating to new job specification	1 mark
Changes due to redundancy	1 mark
	(4 marks)
	(Total 10 marks)

4	**(a)**	Per distinctive characteristic of a partnership	1 mark, maximum 4 marks (4 marks)
	(b)	Capital repayment	1 mark
		Liabilities for obligations	1 mark
		Limitation period of two years	1 mark
			(3 marks)
	(c)	Right of heir	1 mark
		Obligations of heir	1 mark
		Capital implications for remaining partners	1 mark
			(3 marks)
			(Total 10 marks)
5	**(a)**	Per matter within exclusive competence of board	1 mark, maximum 5 marks (5 marks)
	(b)	Federal laws	1 mark
		Civil Code	1 mark
		Personal contracts of service	1 mark
		Company Charter	1 mark
		Auditors	1 mark
			(5 marks)
			(Total 10 marks)

6	**(a)**	Role of tabulation commission in oversight	1 mark
		Administrative duties	Up to 3 marks
			(4 marks)
	(b)	Explanation of:	
		(i) Absentee voting	Up to 2 marks
		(ii) Cumulative voting	Up to 2 marks
		(iii) Quorum	Up to 2 marks
			(6 marks)
			(Total 10 marks)
7		Explanation of purposes of observation	Up to 4 marks
			(4 marks)
		Role and duties of interim manager	Up to 2 marks
		Matters relating to creditors	Up to 2 marks
		Outcomes of observation	Up to 2 marks
			(6 marks)
			(Total 10 marks)
8	**(a)**	Right to substitute with consent	1 mark
		Force majeure	1 mark
		Restriction on right to substitute	1 mark
		Consequences of breach of contract	1 mark
			(4 marks)
	(b)	Explanation of right to claim refund	Up to 3 marks
			(3 marks)
	(c)	Right and limitation of right to subcontract	1 mark
		Explanation of alternative outcomes	Up to 2 marks
			(3 marks)
			(Total 10 marks)
9	**(a)**	Right to information	1 mark
		Right to attend and vote	1 mark
		Right to place items on agenda	1 mark
		Right to call general meeting	1 mark
			(4 marks)
	(b)	Legal limitation on dividend payments	Up to 2 marks
		Implications of investing in ordinary shares	Up to 2 marks
		Implications of investing in preference shares/bonds	Up to 2 marks
			(6 marks)
			(Total 10 marks)
10		Matters relating to major transaction	4 marks
		Matters relating to interested party transaction	4 marks
		General responsibilities of directors	2 marks
			(Total 10 marks)