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# Answers

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**1** The question tested the candidates' knowledge of the purposes and significance of the Constitution and of the different forms that legislation may take.

**(a)** The Constitution is the highest source of legal authority in Vietnam. Its purposes are to define the characteristics of the Vietnamese political, economic, socio-cultural, military and security system, to set down the rights and obligations of Vietnamese citizens, define the structure, organisation and operating systems of State offices and institutionalise the relationship between citizens and their leaders.

The legal force of the Constitution is defined in Chapter XII. Article 146 states that the Constitution is 'the fundamental law of the state and has supreme legal force'. All legal documents are subordinate to the Constitution and the content of the Constitution can only be amended by the National Assembly, with a requirement that at least two-thirds of deputies must vote in favour of such amendments.

Chapters I and II of the Constitution set out the essential characteristics of the political system and the economic system respectively. The main organs of power, including legislative authority, are defined.

Chapter III expresses the values of the State in respect of culture, education, science and technology.

Chapter IV is concerned with defence and includes the obligation of citizens to serve the interests of the State in order to preserve independence, sovereignty, unity and the territorial integrity of Vietnam.

Chapter V deals with the basic rights and obligations of citizens in general terms. Many of the rights and obligations are amplified in the Civil Code.

Chapters VI to IX set down the features of State decision-taking organs, including a description of the powers and duties of the National Assembly, the President, the Government, the People's Councils and People's Committees.

Chapter X deals with the roles and functions of the People's Court and the People's Inspectorate.

Chapter XI makes provisions in relation to the national flag, national emblem, national anthem, national capital and national labour day.

**(b)** The primary sources of law in Vietnam are legal codes and legislative acts.

Legal codes set down general principles of law in respect of their defined terms of reference. For example, the Penal Code provides the framework for criminal law, while the Civil Code deals with legal capacity, the rights and obligations of citizens and legal entities, the law of obligations, including contractual and non-contractual obligations, property and ownership.

Legislative acts are more specific in nature and provide detailed laws relating to specific fields of human activity. For example, the Law on Enterprises provides a comprehensive framework through which different types of entrepreneurial activity can take place, and determines limits within which individuals and legal entities must operate.

Together, legal codes and legislative acts provide a relatively comprehensive system of governance, but their development and implementation cannot keep pace with changes in society. Inevitably, the National Assembly can only generate a limited amount of primary legislation within any given time period. For this reason, there are various forms of secondary legislation, implemented through authority delegated to various bodies and individuals. The government and its representatives may therefore publish circulars and official letters to provide guidance on how laws should be interpreted and implemented in order to bring about outcomes consistent with the intentions of legislators.

To a very limited extent, international treaties are an indirect source of legislation in that the government will honour any commitments given, provided the content of such treaties are consistent with the provisions of the Constitution.

**2** The question asked candidates to explain the provisions of the Civil Code relating to offer and acceptance.

Offer and acceptance are the reciprocal actions of two or more parties that bring a legally binding contract into existence. The law relating to offer and acceptance is set down in Part 3, Chapter XVII of the Civil Code.

Article 390 defines an offer as a clear expression by the offeror of an intention to enter into a contract and to be bound by the offer made to the counterparty. The article refers to 'another specific party', which means that while an offer may be directed to more than one person, it cannot be a general invitation to do business, such as a public advertisement or a display of goods in a shop window. The same article states that an offer that specifies a time limit for acceptance is irrevocable: if the offeree suffers loss or damage as a result of the offeror entering into a transaction with a third party, he or she can claim damages from the offeror.

Article 391 states that an offer is deemed to be received if it is delivered to the place of residence of the offeree, or in the case of a legal entity, its head office. It is also considered to be received if it is placed on the official information system of the offeree, or where the offeree knows about the offer through some other means. The offer therefore has to be communicated in order to be effective.

An offer may be modified or withdrawn. Article 392 permits this if the notice of modification or withdrawal reaches the offeree before or at the same time as the original offer, or where the offeror had clearly signalled the circumstances under which such modification or withdrawal would arise.

An offer may be rescinded if the right to do so was set out in the offer. Article 393 requires the offeror to notify the offeree of the intention to do so, and this notice must reach the offeree before acceptance if it is to be effective.

Article 394 sets down the conditions under which an offer may be terminated. The offer may be rejected by the offeree, under which circumstances it cannot be subsequently revived. Therefore, if the offeree rejects the offer and subsequently changes his or her mind, this is a new offer and the original offeror becomes the offeree. The offer also expires by lapse of time if the deadline for acceptance stated in the offer passes. As mentioned above, the offer is terminated if the notice of modification or withdrawal reaches the offeree before or at the same time as the offer, or if the offer is rescinded. Lastly, the offer is terminated if the parties agree to termination.

In order for acceptance to be effective, it must be full and unconditional. Article 395 defines a counter-offer as a modification or the introduction of specific conditions of acceptance by the offeree. In such cases, the modified or conditional acceptance is regarded as a new offer proposed to the original offeror. Article 396 confirms that the acceptance must be in full in order to bring a contract into effect.

Acceptance must be received within the time-limit specified in the offer. Article 397 states that if an acceptance is received late, it is regarded as a new offer. However, if the reason for late acceptance is for objective reasons that the offeror knew or ought to have known about, the acceptance stands, unless the offeror immediately replies that he or she does not agree to this. For agreements concluded by direct communications, including by telephone conversations, the offeree must reply immediately on whether or not the offer is accepted, unless a time-limit is mutually agreed.

Articles 398 and 399 envisage cases where either the offeror or the offeree dies or loses civil capacity having made the offer or acceptance. In either case, the offer or acceptance remains valid.

Article 400 states that acceptance may be withdrawn if the notice of withdrawal reaches the offeror before or at the same time as the notice of acceptance.

Except for certain specific types of civil contract, the Civil Code is non-prescriptive on the form that offer and acceptance may take. Article 401 confirms that contracts may be made orally, in writing or by specific acts, provided other legislation does not require a specific form.

**3** The question required an explanation of the provisions of the Labour Code in respect of the creation of a labour contract and the provisions that apply to a probationary (trial) period.

**(a)** Chapter III, s.1 of the Labour Code set out the statutory requirements applicable to the creation of a labour contract.

The contract must be in written form and two copies must be produced and signed by both parties. Each party retains one copy of this. An exception to this requirement exists in respect of temporary work with a duration of less than three months. Such agreements may be in oral form, but must comply in other respects to the provisions of the Labour Code (Article 16).

The labour contract must be entered into directly between the employer and the employee. It is, however, possible for a representative of a group of employees to sign the contract and this is treated as having been signed by each individual employee (Article 21).

Article 23(1) sets down the minimum content of the labour contract:

1. Full name and address of the employer or its lawful representative.
2. Full name, date of birth, sex, residential address, ID number or other legal documents of the employee.
3. Job description and workplace.
4. Term of the labour contract.
5. Wage rate, method and time of payment, allowances or other additional payments.
6. Regimes for wage increases and promotion.
7. Working hours and holidays.
8. Personal protective equipment of the employee.
9. Social insurance and health insurance.
10. Training and skill improvement.

If the nature of the employee's work is sensitive, the employer has a right to include a confidentiality clause, which may include a right to claim compensation in the event of breach.

If the whole or part of the labour contract confers fewer rights than those contained in the Labour Code, a collective labour agreement or the existing internal labour relations, the employer is obliged to amend the contract or extend its provisions accordingly. A labour inspector who discovers such inconsistencies must provide guidelines for their amendment. The inspector has the right to compel the parties to implement such alterations if they refuse to do so. The rights and duties of labour inspectors are set out in Chapter XVI of the Labour Code.

The duties of the employee as set out in the labour contract must be performed personally and cannot be assigned by the employee to a different individual.

An employee may enter into more than one labour contract, provided he or she is capable of performing all of the required duties in full.

If an enterprise merges, is taken over, divides, consolidates, separates or transfers the rights of ownership, the succeeding employer is responsible for the continuation of existing labour contracts (Article 45). If the change in structure brings about the need to reduce the size of the workforce, there must be a plan for workforce usage in accordance with legal requirements.

- (b) Article 26 states that the employer and the employee shall decide on a probationary period, the duration of the probationary period and the rights and obligations of the parties during this period.

The wage of the employee cannot be less than 85% of the wage for the position, and no less than the regional minimum wage for the position.

Under Article 27, the probationary period cannot exceed:

- (1) 60 working days for jobs requiring specialised/technical qualification at advanced level or higher.
- (2) 30 working days for jobs requiring technical qualifications at intermediate level or vocational qualifications, or qualifications of technical workers/professional staff.
- (3) 6 days for other types of job.

Throughout the probationary period, either party has the right to terminate the labour contract without giving advance notice, and without incurring any liability to pay compensation if the work is not of the necessary standard.

Once the work produced by the probationer is satisfactory, the employer must formalise the appointment.

- 4 The question tested the candidates' knowledge of the differences between partnerships and limited companies.

Both types of business organisation are governed by the provisions of the Civil Code and the Law on Enterprises. Chapters III and IV of the latter set out the law in relation to limited liability companies and shareholding companies respectively. Chapter V deals with the law on partnerships.

The main differences between partnerships and limited companies are as follows.

**Number of participants or members:**

While it is possible to form a limited company with one or more shareholders, a partnership cannot be formed or operate with fewer than two partners.

**Separation of ownership and management:**

The shareholders of companies elect a members' council or board of management to direct the organisation and take decisions on their behalf. In a partnership, the partners themselves are responsible for the management of the business.

**Limited liability:**

The shareholders of companies are liable only to the extent of their commitment to invest in shares of the company, which may be monies already contributed or committed at some future date. The partners in an unlimited partnership have joint and several liability for the obligations of the business.

**Governance:**

While the Law on Enterprises is highly prescriptive in respect of the duties of members of the board of management or members' council of limited companies, partners are relatively free to run the business as they wish and are subject to fewer rights and obligations.

Likewise, the Law on Enterprises lays down detailed procedures to be followed in respect of shareholders' meetings. Less onerous requirements apply to partnerships. Partners are able to convene meetings as they desire (though there are rules relating to the conduct of business).

**Scrutiny:**

Some types of company are obliged to appoint an inspection committee. There is no requirement for partnerships to appoint an inspection committee.

**Capital:**

Both types of enterprise raise capital. However, in a partnership this is made up of a capital contribution invested by the partners, while in a company the capital contribution takes the form of shares, usually issued as transferable securities.

**Capital maintenance:**

Companies are obliged to comply with laws relating to their capital base, and must follow mandatory procedures if they wish to redeem shares. The capital of partnerships is unregulated.

**Distributions:**

Companies distribute earnings in the form of dividends. Partnerships do not declare dividends but may distribute profits in accordance with the wishes of the partners.

5 The question tested the candidates' knowledge of the provisions of the Law on Enterprises relating to the redemption of shares of shareholding companies (buybacks) and the limitations applicable to the payment of dividends.

(a) The redemption of shares of a shareholding company is governed by Articles 90 to 92 of the Law on Enterprises.

The redemption of shares may be at the initiative of the shareholder or following a resolution of the company.

Article 90 states that any shareholder who voted against the reorganisation of the company or against a change in the rights and obligations of shareholders may insist that the company redeem his or her shares. The demand to do so must be submitted in writing together with supporting information, including name and address, the number of shares of each class, the intended selling price and the reason for the request to redeem the shares. The demand must be submitted to the company within 10 days of the passing of the resolution by the general meeting of shareholders that passed the resolution that brought about the redemption request.

The company must redeem the shares at the market price, or the price determined with reference to provisions in the Charter, within 90 days of receipt of the demand. If there is disagreement on the price, the shareholder may sell the shares to a third party or a valuation may be requested from a professional valuation organisation. The company must recommend at least three professional valuation organisations, from which the shareholder can make a final decision.

A company may redeem no more than 30% of the total number of ordinary shares, and all or part of the dividend preference shares, subject to the provisions of Article 91 of the Law on Enterprises.

A decision to redeem 10% or fewer of the total number of shares of each class already allotted in any 12 month period may be decided by the board of management. All other redemptions fall within the exclusive competence of the general meeting of shareholders.

The price for redemption is decided by the board of management. For ordinary shares, this may generally be no greater than the market price at the time of redemption. For other classes of share, unless otherwise specified in the Charter of the company or agreed between the company and the shareholders, the price for redemption must be no lower than the market price.

The company may redeem shares on a *pro rata* basis with reference to the number of shares held by each shareholder. In such cases, a notice must be issued by the company to affected shareholders within 30 days of the passing of the resolution to redeem. Article 91 sets down the minimum information to be included in this notice: name and address of the company, total number and classes of shares to be redeemed, the redemption price or an explanation of how the price will be decided, procedures and the time limit for redemption.

Shareholders who agree to the redemption of their shares must send an offer to sell the shares through a medium guaranteeing that their reply will reach the company within 30 days of the notice. The reply must include name, address, number of passport or other form of identity (for a corporate shareholder, these details must include the number of the decision on business establishment and the business registration number), the number of shares owned and offered, payment methods and signature of the shareholder or representative.

Article 92 states that shareholders may only be paid the redemption price if the shares are paid up and the company remains able to satisfy its debts and other property obligations. Shares thus redeemed must be treated as shares that have not yet been sold and may be offered for sale.

Share certificates that were issued for the redeemed shares must be destroyed.

After the redeemed shares have been paid for, if the total value of assets is reduced by more than 10%, the company must notify the creditors within 15 days from the date of payment for the redeemed shares.

(b) The law relating to dividends paid by shareholding companies is set out in Article 93 of the Law on Enterprises.

Dividends paid to preference shareholders must be consistent with the conditions applicable to each type of preference share.

Consistent with the principles of capital maintenance, dividends must be funded from net profits and/or profits retained by the company.

Dividends may only be paid to shareholders if the company has fully discharged its tax obligations and other financial obligations in accordance with the law. The company must also have covered all previous losses fully and be certain that it can satisfy its debts and other property obligations that become due.

Dividends may be paid by bank transfer if the company has the bank details for shareholders.

6 (a) The rights and duties of the board of management of a shareholding company are set out in Article 108(2) of the Law on Enterprises.

**Strategy:**

The board of management is responsible for making decisions on the medium-term development strategy and plans of the company. Such decisions include investment plans and projects, solutions for market expansion, marketing and technology, and approval of contracts for borrowing, lending and other contracts valued at 50% or more of the total value of assets recorded in the last set of final accounts. The Charter of the company may limit the powers of the board of management in respect of these activities.

The board must make recommendations for the reorganisation or dissolution of the company if appropriate, or to file for bankruptcy.

**Capital:**

The board of management recommends the classes of shares, the number of shares in each class to be offered to investors and the price of these shares. It makes decisions on offering new shares of each class. Similar rules apply to the issue of other forms of capital, including bonds.

The board of management makes decisions on the redemption of shares, subject to the provisions of Article 91 of the Law on Enterprises.

**Contracts:**

The board of management executes or arranges for the execution of contracts with third parties, subject to the limitations imposed by Article 120 of the Law on Enterprises, which defines contracts falling within the exclusive authority of the general meeting of shareholders.

**Organisational structure and human resources:**

The board of management makes decisions on the organisational structure and internal management policies of the company, the formation of subsidiary companies and the establishment of branches and representative offices. It decides the capital contribution and purchase of shares in other enterprises.

Matters relating to the appointment or dismissal of the general director and other key managers are taken by the board. It also decides salaries and other benefits applicable to these positions, as well as the remuneration of authorised representatives who exercise ownership rights or other capital contributed to other companies.

The board of management has a supervisory role over the work of the general director and may direct this individual and other key personnel in conducting their daily work.

**Shareholder relations:**

Prior to each general meeting of shareholders, the board of management must agree the agenda and contents of documents to be placed before the meeting. It must formally convene the meeting and obtain written opinions in order for the meeting to pass resolutions.

The board of management must submit the final financial accounts and associated reports before the shareholders. It also recommends the dividend to be paid to shareholders, and makes decisions on time limits and procedures for payment of dividends and for dealing with losses incurred in the course of business operations.

- (b) The appointment and removal of members of the board of management are governed by Articles 104 and 115 of the Law on Enterprises.

The board of management of a newly formed company is appointed by the founders.

Article 104(2)(d) of the Law on Enterprises states that members of the board of management are appointed by resolution of the general meeting of shareholders. The same article also empowers the general meeting of shareholders to remove members of the board of management.

Article 115 states that a member of the board of management must be removed and dismissed if he or she does not meet the criteria for membership as set out in Article 110, has not participated in the board's activities for six consecutive months (except in the case of *force majeure*), has submitted a notice of resignation in writing, or under any other conditions stipulated in the Charter of the company.

Notwithstanding the above requirements, any member of the board of management may be dismissed by a resolution of the shareholders to this effect.

- 7 The question asked candidates to describe any five purposes of a company putting effective corporate governance practices into place.

Corporate governance is the system through which an organisation is directed and controlled. Corporate governance best practices address issues such as shareholders' rights, fair practices towards shareholders as well as stakeholders, such as customers, employees and suppliers, proper formulation of strategy in order to secure the long-term future of the company, and transparency.

There are many purposes of a company pursuing best practices in corporate governance. These include the following:

**The agency relationship:**

For all except the very smallest companies, there is a separation of ownership and management, as those who take decisions act as agents for the owners of the company. This inevitably results in information asymmetry, as shareholders seldom have access to detailed information on the current position of the company and its future prospects. Best practices in corporate governance should narrow the information gap, as directors will be more disposed towards making appropriate disclosures.

**Leadership:**

A best practice in this respect is to ensure that the company is led by directors and managers who have the necessary levels of knowledge, skills and experience to take the company forward successfully.

**Scrutiny and oversight:**

The powers of those who take executive decisions should be balanced by independent directors who bring an external perspective, thereby providing checks and balances in order to avoid the domination of a company by a few powerful individuals.

**Investor confidence:**

If a company is seen to adopt best practices in corporate governance, existing investors may be more willing to retain their stakes in the company, or even increase their shareholdings. Likewise, potential shareholders may be more prepared to invest.

**Market confidence:**

Corporate governance is especially important to companies whose securities are listed on the stock exchange. Just as failure in governance can erode the confidence of markets, the promotion of good practices can give confidence to those making transactions in capital markets, including both personal and institutional investors.

**Ethical decision-taking:**

Sound systems of internal control and accountability through proper disclosures provide greater assurance that those responsible for directing the organisation will take account of their ethical responsibilities and avoid decisions that may denigrate its reputation.

**Management of risk:**

Best practice in corporate governance is to ensure that a company manages risk in a manner that fits the risk appetite or risk adversity of the shareholders.

**Compliance with legal requirements:**

Companies which adopt good practices in corporate governance put mechanisms in place to minimise the risk of compliance failures. For example, many large companies appoint an Audit Committee to oversee internal controls and provide a channel for communication with external auditors.

**Note: Candidates were only required to describe any FIVE purposes.**

- 8** The question asked candidates to apply their knowledge of contract law to a case study scenario in which two contracts between a college and its lecturers had been breached.

Trang withdrew his lecturing services for Fastlearn College because he stated that he was too exhausted to continue with the programme, having delivered half the lectures that were required.

Article 377 of the Civil Code states that a civil obligation may be terminated with the agreement of both parties, provided the interests of other parties are not compromised. Therefore, if the college is able to engage the services of a substitute lecturer and is willing to release Trang from the commitments in the contract, this may be the most convenient way forward for both parties. However, Fastlearn College has to satisfy itself that it will not compromise the interests of other parties (such as the students), to ensure that no new obligations are created.

Article 375 states that an obligation is considered to be fulfilled when it has been performed in its entirety. This is supported by Article 412, which refers to 'agreed subject matter, quality, quantity, type, time limit...'. Trang's completion of only half of the lectures cannot be regarded as fulfilment of the obligation, and so he is therefore in breach of the contract. This contrasts with the position of an employee, whose contract would be regarded as divisible and partial performance more acceptable. As a consequence, the college may refuse to pay Trang. If the college adopts a more understanding position on Trang's predicament, it could agree to pay for the work already delivered.

Article 379 permits a contract to be fulfilled by substitution. Trang could possibly avoid any adverse consequences of his withdrawal by arranging for an alternative lecturer to deliver the remaining lectures. This would, of course, be subject to the agreement of Fastlearn College.

If there is no agreement or substitution, Trang would be liable to compensate the college for any missed profits or losses incurred by paying damages.

Fastlearn College would have to replace Trang for the remaining lectures. If this is the case, and the college has to pay a substitute lecturer a higher fee to deliver similar services, it could hold Trang responsible for *de facto* losses brought about by his withdrawal (Article 425, Civil Code).

Trang's claim that he is exhausted and cannot continue could be regarded as a *force majeure* if it is a direct result of a genuine medical condition that was not envisaged when the contract was signed. If this is the case, the contract would be terminated without further consequence to Trang.

Mai has been informed by Fastlearn College that her programme of five revision courses has been reduced to only two courses due to the lack of numbers of students.

A similar principle applies to this situation as discussed above. For a contract to be regarded as performed, the provisions of Articles 375 and 412 envisage that full performance is necessary, so Mai is able to claim payment for all of the revision courses that she was asked to deliver, including those cancelled by Fastlearn College.

In Mai's case, Fastlearn College is unable to claim *force majeure*, as anticipated student enrolments are a matter for commercial judgement.

- 9** The question asked candidates to discuss the obligations of the founding directors of a limited liability company, and the company itself, for contracts to purchase land and inventory. It also asked candidates to discuss the extent to which a founding director may insist that a shop transferred to the company by way of capital contribution be deployed to sell specified products.

- (a)** Once the company has been formed, all of the transactions that it enters into are its own responsibility as it has a legal personality, separate from those who own it and those who manage it. Article 86(2) of the Civil Code states that this identity is created when the company is formed and ceases when it is terminated. However, transactions entered into before the company is formed remain the responsibility of those who create the contracts, until the company is established.

As the capital contribution of the shops by Ba and Cam would be made at the time of the company's formation, the premises would be transferred from those who purchased them to the company. The company then becomes the owner of the shops. At this point, the contributors no longer hold any title to the shops, though they would have an indirect claim to their value in the event of liquidation of the company.

Linh was involved in the negotiations to purchase the shops and made a payment to a public official to smooth the way for the transactions to be completed. If this transaction was instrumental in bringing about a decision which would not have been made had the payment not been offered, this could be regarded as a bribe. Both Linh and the public official could be subject to criminal proceedings for bribery, depending on the nature of the payment and the amount of money involved.

Linh's purchase of inventory has to be considered in relation to obligations imposed by Article 14 of the Law on Enterprises, which governs contracts entered into prior to business registration. Articles 14(1) and (2) state that a member, founding member or authorised representative may sign contracts for the purpose of the establishment and operation of the enterprise prior to business registration, and that once the enterprise is founded, it assumes the rights and obligations created under those contracts. Under these provisions, it would be difficult for the company to avoid the responsibilities into which Linh entered.

It appears that Linh was too trusting in accepting the seller's view that the clothes were fashionable. This was a matter for commercial judgement, and unless the clothes were of defective quality, it would not be possible to set aside the contract on the rather subjective ground of consumer taste. Failure to pay would therefore be a breach of contract.

Ba and Cam would probably have to demonstrate that Linh's dealings prior to the incorporation of the company were explicitly against their wishes in order for the company to avoid responsibility.

- (b)** It is Cam's belief that she should be able to dictate the type of inventory held by the shops on the grounds that it was she who contributed one of the shops to the company. The inference here is that a contributor of an asset to the enterprise on formation should have some control over the use of that asset.

Unless the founders had made some agreement to the contrary, no such control remains with the original owner once the asset has been transferred to the company.

Applying these principles to the scenario, it is the responsibility of the founders of the business to decide its business lines, which will then be reflected in the provisions of the Charter. In this case, the founders have become directors and they can change their business plan if they choose to do so, but only with the majority of the members' agreeing to do so.

Although she was a founder and is now a director of Garment Co, Cam has some influence but only one voice in determining the future direction of the business. As Ba and Linh seem to disagree with her view of the future business model, it is unlikely that she will be able to make the changes she proposes.

- 10** The question described the outstanding obligations of an insolvent company and asked candidates to explain the ranking of claims against the company by the various parties. It also asked candidates to examine the potential obligations of directors, and whether a supplier could recover goods that were in transit but had not been paid for.

- (a)** The priority of claims against an insolvent company is governed by Articles 35 to 42 of the Law on Bankruptcy.

Article 35 states that those who have claims supported by mortgage or pledge are secured to the extent of the value of the asset, with any surplus value being returnable to the company. In this case, the debt of 2,000 million dong is only half the value of the property, so the mortgagee will recover all of the debt on realisation of the collateral.

Article 37 gives priority to the claims of employees, subordinate only to the liquidator's fees and other bankruptcy charges. The same article states that unsecured payables may be met.



- (b)** The directors of Flop Co gave a personal guarantee to support the unsecured borrowings of the company. A personal guarantee is a collateral contract that overcomes the obstacle of limited liability through which shareholders (who may also be directors) can limit their obligation to the value of their contributions to share capital. If the lender cannot recover the debt from the company, the guarantee contract ensures that the lender may hold the guarantor accountable up to the limit of the personal guarantee.

Some of the directors also hold partly paid shares in Flop Co. A share is a commitment to invest capital in the company, and any sum unpaid on the shares may be called up by the company while it remains a going concern, and by the liquidator thereafter. Accordingly, the directors could be called upon to remit the unpaid sum to the liquidation fund of Flop Co.

- (c)** Sell Co has sent goods to Flop Co but these are currently in transit. As the goods have not yet been paid for by Flop Co, Sell Co can rely on Article 42 of the Law on Bankruptcy, which states that goods in transit that have not been paid for can be reclaimed by the seller.

**Fundamentals Level – Skills Module, Paper F4 (VNM)  
Corporate and Business Law (Vietnam)**

**December 2013 Marking Scheme**

- 1 (a)** General statement of purpose of Constitution  
Political and economic system  
Values of the State  
Rights and obligations of citizens  
Legislature, administration and judiciary  
Other relevant points  
1 mark  
1 mark  
1 mark  
1 mark  
Up to 3 marks  
1 mark  
(maximum 5 marks)
- (b)** Legal codes  
Legislation  
Sources of secondary legislation  
1 mark  
Up to 2 marks  
Up to 3 marks  
(maximum 5 marks)  
**(Total 10 marks)**
- 2** Sufficiently definite  
Communication of offer  
Form of offer  
Distinction from representation  
Counter-offer  
Time limits  
Full acceptance  
Communication of acceptance  
Form of acceptance  
Right to withdraw or revoke offer or acceptance  
1 mark  
1 mark  
1 mark  
1 mark  
1 mark  
1 mark  
1 mark  
1 mark  
1 mark  
1 mark  
**(Total 10 marks)**
- 3 (a)** Written form  
Exception to written form  
Two copies  
Content of labour contract  
Compliance with Labour Code  
1 mark  
1 mark  
1 mark  
Up to 3 marks  
1 mark  
(7 marks)
- (b)** Time limits for probationary employment  
Provisions on minimum wages  
Hiring or termination during/on completion of trial  
1 mark  
1 mark  
1 mark  
(3 marks)  
**(Total 10 marks)**
- 4** Number of participants  
Separation of ownership and management  
Limited liability  
Governance  
Scrutiny  
Capital and capital maintenance  
Distributions  
1 mark  
Up to 2 marks  
Up to 2 marks  
1 mark  
1 mark  
Up to 2 marks  
1 mark  
**(Total 10 marks)**
- 5 (a)** Redemption of shares by resolution of shareholders  
Redemption of shares on initiative of the company  
Process and limitations  
Up to 2 marks  
Up to 2 marks  
Up to 3 marks  
(7 marks)
- (b)** Dividends funded by profits or retained earnings  
Limitations  
1 mark  
Up to 2 marks  
(3 marks)  
**(Total 10 marks)**

6	<p>(a) Per right/duty of board of management</p> <p>(b) Appointment of members of board of management Removal of members of board of management</p>	<p>1 mark (maximum 6 marks)</p> <p>Up to 2 marks Up to 2 marks (4 marks) <b>(Total 10 marks)</b></p>
7	<p>Resolve agency issues Leadership by effective board Scrutiny and oversight Investor confidence Market confidence Encourage ethical decision-taking Management of risk Compliance</p>	<p>1 mark Up to 2 marks Up to 2 marks 1 mark 1 mark 1 mark 1 mark 1 mark 1 mark <b>(Total 10 marks)</b></p>
8	<p>Identification of breach of contract Damages Measure of damages Substitution <i>Force majeure</i> Consequences for college Consequences for each individual</p>	<p>1 mark 1 mark Up to 2 marks 1 mark 1 mark Up to 2 marks Up to 2 marks <b>(Total 10 marks)</b></p>
9	<p>(a) Assets transferred from purchaser to company on registration Pre-incorporation contract and implications Bribery</p> <p>(b) Right of members' council to decide business lines Possible restrictions in Charter Limitation of right of individual and conclusion</p>	<p>Up to 2 marks Up to 3 marks 1 mark (6 marks)</p> <p>1 mark 1 mark Up to 2 marks (4 marks) <b>(Total 10 marks)</b></p>
10	<p>(a) Priority of secured debts Rights of employees Correct ranking of other claims</p> <p>(b) Significance of personal guarantee Significance of partly paid shares</p> <p>(c) Right of seller to reclaim goods Goods in transit and not paid for</p>	<p>1 mark 1 mark Up to 2 marks (4 marks)</p> <p>Up to 2 marks Up to 2 marks (4 marks)</p> <p>1 mark 1 mark (2 marks) <b>(Total 10 marks)</b></p>