

Fundamentals Level – Skills Module

# Corporate and Business Law (China)

Tuesday 2 December 2008

**Time allowed**

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

**Do NOT open this paper until instructed by the supervisor.**

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

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

The Association of Chartered Certified Accountants

# Paper F4 (CHN)

The ACCA logo consists of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black square.

ALL TEN questions are compulsory and MUST be attempted

- 1 In relation to the jurisdiction rules under the Civil Procedures Law of China:
- (a) Explain the term *jurisdiction by forum level*, and general rules under jurisdiction by forum level. (3 marks)
  - (b) Explain the jurisdictional rule concerning forum level in major cases involving foreign elements. (1 mark)
  - (c) Explain the different categories of court jurisdiction, other than the *jurisdiction by forum level*, over civil and commercial disputes. (6 marks)
- (10 marks)**
- 2 In relation to the Property Law of China:
- (a) State the legal effects of immovable registration on contracts involving the disposal of immovables. (4 marks)
  - (b) State the various legal remedies for an interest holder or stakeholder where the information on the immovable registry is incorrect. (6 marks)
- (10 marks)**
- 3 In relation to the Securities Law of China:
- (a) Explain *takeover of a listed company by offer*. (3 marks)
  - (b) State the report requirements for a purchaser who intends to take over a listed company by offer. (3 marks)
  - (c) State the various restrictions on the purchaser when he commences procedures for taking over a listed company by offer. (4 marks)
- (10 marks)**
- 4 In relation to the Company Law and the Criminal Law of China:
- (a) State the fraudulent behaviour that may be deemed as a crime in the course of incorporating a company, and the various elements to be proven for such a crime, in terms of the subjects of a crime and the activities. (5 marks)
  - (b) State the fraudulent behaviour that may be deemed as a crime in the operation of a company in relation to corporate financing, and the various elements to be proven for such a crime. (5 marks)
- (10 marks)**
- 5 In relation to the Contract Law of China:
- (a) Explain the term *expected profit* in terms of damages. (3 marks)
  - (b) State the conditions to be met for a party to claim damages in a breach of contract. (4 marks)
  - (c) State the statutory obligations upon the party who claims damages in a breach of contract. (3 marks)
- (10 marks)**

**6 In relation to the Enterprise Bankruptcy Law of China:**

- (a) Explain the term *bankruptcy administrator* and how one can be appointed. (4 marks)
- (b) State the qualifications of a *bankruptcy administrator*. (3 marks)
- (c) State the persons who are NOT permitted to be appointed as a *bankruptcy administrator*. (3 marks)

**(10 marks)**

**7 In relation to the Labour Contract Law of China:**

- (a) Explain the term and the purpose of a *non-competition clause* in a labour contract. (4 marks)
- (b) State the precondition for a *non-competition clause* in a labour contract to be effective. (3 marks)
- (c) State the restriction on the duration of time for a *non-competition clause* in a labour contract. (3 marks)

**(10 marks)**

**8** Guanghua Company (Guanghua) and Dongda Company (Dongda) entered into a cooperation agreement to build a building jointly. They agreed that Guanghua would provide all the funds for the construction and hold half of the building, while Dongda would provide the land-use right for construction and also hold half of the building after construction; the ownership of the building would be held jointly by the two parties, but would be registered under the name of Dongda. They also stated in the agreement that any disposal of the building must only be decided with the written consent of both parties.

Having completed the construction of the building and the registration of real estate, the two companies divided and held their parts of the building in light of the agreement. Several months later, in order to expand its business Dongda mortgaged the whole building to an Investment Co for RMB 10 million yuan. The mortgage agreement, registered by the parties, stipulated that if Dongda failed to pay off the principal and interest, the building would be automatically transferred to Investment Co. In doing so Dongda did not notify this transaction to Guanghua.

Due to its unsuccessful new business, Dongda was unable to repay the principal and interest, Investment Co requested the transfer of the ownership of the building in light of the mortgage agreement but was refused by Dongda. Investment Co filed a lawsuit requesting the court to support this transfer. Having heard this information Guanghua also took a legal action based on the cooperation agreement, requesting the court to confirm its ownership to the building.

**Required:**

**Answer the following questions in accordance with the relevant provisions of the Property Law of China and give your reasons for your answers:**

- (a) State whether Investment Co was a lawful mortgagee to the building. (3 marks)
- (b) State whether Guanghua should have ownership over half of the building as a co-owner to the building. (3 marks)
- (c) State whether the building should be transferred to Investment Co because of the failure by Dongda to repay the principal and interest. (4 marks)

**(10 marks)**

9 Mr Zhang, Mr Liu, Mr Guan, Ms Zhao and Ms Wang were the shareholders of a limited liability company with a registered capital of RMB 200,000 yuan, and each one held 20% of the equity of the company.

Mr Liu was intending to transfer his equity to a private enterprise and sent a written notice to the other four shareholders to ask for their consent. Mr Zhang and Ms Zhao agreed with the transaction and also expressed their willingness to buy Mr Liu's equity if the price were reasonable. However, they could not reach an agreement as to the proportion of equity to buy.

Mr Guan was against the transaction and claimed his right of priority to buy the equity of Mr Liu. Ms Wang did not respond immediately upon receiving the notice. Then, two months later, she expressed her disagreement with the transaction between Mr Liu and the private enterprise.

Since the price offered by Mr Guan was lower than that of the private enterprise, Mr Liu finally signed the equity transfer agreement with the private enterprise. This transaction caused disputes among the shareholders of the company. Under such circumstances Mr Guan decided to leave the company and requested the company to purchase his equity.

**Required:**

**Answer the following questions in accordance with the relevant provisions of the Company Law of China and give your reasons for your answers:**

- (a) **State how to deal with the situation if Mr Zhang and Ms Zhao were against the transfer, and if they claimed the right of priority but failed to reach an agreement on the proportion to purchase.** (3 marks)
- (b) **State whether the request of Mr Guan to purchase his equity by the company should be supported if the dispute was brought to court.** (3 marks)
- (c) **State whether Mr Liu was entitled to transfer his equity to the private enterprise.** (4 marks)

**(10 marks)**

**10** A department store made an announcement in the local newspaper to launch a bonus sale promotion in July 2008. Under this promotion plan any consumer who bought commodities for RMB 200 yuan would be granted one bonus coupon with a particular number for a lucky-draw. The lucky-draw would be made publicly on 31 July 2008. During July Mr Zhou received five coupons for buying commodities totalling more than RMB 1,000 yuan in the department store.

On 31 July 2008 the department store made the lucky-draw in public and announced all the numbers of coupons in winning the bonus.

On 2 August 2008 the department store put a written notice on the notice board in the front of its premises, stating that the winners should come to cash the bonus before 10 August 2008, otherwise they should be regarded as automatically giving up the bonus.

On 12 August 2008 Mr Zhou got to know the lucky number on one of his coupons was the same as the lucky number for the first class bonus of RMB 5,000 yuan. He went to the department store to cash the bonus but was refused by the department store on the grounds that he was too late to take the bonus.

**Required:**

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

- (a) **State the legal nature of the announcement for the bonus sale promotion by the department store.** (2 marks)
- (b) **State whether Mr Zhou was entitled to receive the bonus when he went to the department store two days later than the time limit as fixed by the department store in the notice of 2 August 2008.** (4 marks)
- (c) **State the legal nature of the department store's public notice indicating the time limit for cashing the bonus after the lucky-draw and whether the notice was in accordance with the law.** (4 marks)

**(10 marks)**

**End of Question Paper**