



# Examiner's report

## F4 (CHN) Corporate & Business Law For Paper Variant exams December 2015

### General Comments

The December examination was the third time of the changed format through which candidates were asked to answer 45 questions, worth 1 or 2 marks each, and 5 further questions worth 6 marks each in 2 hours. All questions were compulsory. The overall standard of scripts was satisfactory indicating that the majority of candidates had prepared well for the examination.

### Comments about Section A performance

In terms of syllabus coverage, 45 questions in this Section include most parts of the Study Guide outcomes, which means that candidates need to have a comprehensive understanding of the examinable topics and the detailed rules. Therefore, it is not easy for candidates to make a correct choice to the relevant question. However, candidates performed well.

### Sample questions for discussion

In this section of the report discusses two questions which are important under the business laws of China or which were difficult for candidates to answer.

**Question 33 Which of the following statements in relation to a shareholder who requests to examine the accounts of a company is NOT correct?**

- A The relevant shareholder shall explain the objective of the request to the company
- B The company has the right to refuse the request
- C The relevant shareholder may petition to the people's court if the company refuses to let the shareholder examine the accounts
- D The company must reply to the request of the shareholder within one month upon the receipt of the request

**The correct answer is D.**

To examine the company's accounts is one of the essential rights of a shareholder of a limited liability company (Article 34 of the Company Law). However, some conditions shall be satisfied if a shareholder wants to examine the company's accounts, which includes the written form of request and explanation of the purposes of examination. Therefore the Choice A is correct under the Company Law but not a correct Answer to this question, As candidates are required to determine which statements is **NOT** correct.

As to the Choice B, it is also correct under the Company Law but not a correct Answer to the question. Since the company is entitled to refuse if it considers the examination of the company's accounts is to damage the legitimate interests of the company. In accordance with Article 34 of the Company Law, the company has such a right to refuse and reply the request raised by the shareholders.

With respect to the Choice C, it is also an incorrect answer based on the same reason as the above mentioned.

The correct answer is the Choice D. Although it correctly states that the company must reply to the request of the shareholder, it states a period of one month for the company to do so. However, according to the law, the company is under a duty to reply within 15 days. Therefore, it is an incorrect statement under the Company Law but a correct answer to the question.

**Question 35** Which of the following statements in relation to the rectification of a debtor during the period of bankruptcy liquidation is correct?

- A The bankruptcy administrator may hire outside managers to operate the business of the debtor
- B A guarantor may exercise the right of guarantee towards the properties of the debtor
- C A debtor may still carry out business operations under the supervision of the bankruptcy administrator

**The correct answer is C.**

According to the Enterprises Bankruptcy Law of China rectification of a debtor is a way to save the debtor, under certain conditions, during the period of bankruptcy liquidation. Where the rectification plan approved by the competent court and the creditors' committee, it shall be implemented by the debtor itself under the supervision of the bankruptcy administrator. During the period of rectification, the bankruptcy administrator shall transfer the assets and business operations to the debtor, and the latter may manage the company and carries business operations as usually, subject to terms and conditions of the rectification plan. Therefore, the Choice C is the correct answer.

As to the Choice A, it is against the nature of rectification and non-conformity with the relevant provisions of the Enterprises Bankruptcy Law. Rectification means the suspension of the liquidation process, so as to let the debtor to have opportunity to obtain the earnings to settle debts. If rectification successes the debtor can be recovered as a normal enterprise and avoid the bankruptcy.

According to Article 75 of the Enterprises Bankruptcy Law, in the duration of rectification, in the case of possible damage or significant depreciation of value, which may injure the guarantor's right, the guarantor may apply with the people's court for recovering the right to guaranty. This means that they could not excises the general rights of the guarantor, without the particular conditions. Therefore, the Choice B is an incorrect answer.

### **Comments about Section B performance**

In Section B, 5 scenario questions in relation to the Property Law, Contract Law, Company Law, Enterprises Bankruptcy Law as well as the fraudulent behaviour in corporate management and securities transactions are the examinable topics. As a whole the performances in this Section were satisfactory. Most of candidates were able to understand the questions clearly and give correct answers.

Syllabus topics on which candidates performed very well included the system as to the obligation of mortgagor to the debts, the rights of a party to retain the cash deposit and to claim liquidated damages as well the damages, and the transfer of shares for the shareholders of a limited liability company.

Syllabus topics on which candidates performed comparatively inadequately was rights of the shareholders of a stock company in relation to the inside trading by its director.

In question 5 the scenario states the facts that Mr Wu obtained a profit from the securities market, as a director holding 5% shares of the listed company, through the undisclosed information. In terms of the nature of such behaviour, it is obviously the illegal insider trading under the Securities Law. Most of candidates were able to correctly state the legal nature of Mr Wu's trading in Part (a).

Part (b) of this question required candidates to State how the earnings of RMB 1 million obtained through the trading of the shares by Mr Wu should be dealt with. In accordance with Article 47 of the Securities Law, the earnings obtained by a director through the aforesaid illegal transactions shall belong to the company. The board of directors of the company is responsible for the recovery of such earnings. Some candidates could state that the earnings shall belong to the company, but failed to further state that the board of directors is responsible for the recovery of such earnings.

Part (c) required candidates to state what rights the shareholders should have towards the gains of RMB 1 million and what actions could be taken. Most of candidates were unable to give full and correct answers to this part. Although many candidates gave correct answers to Part (a) that Mr Wu committed the insider trading and such earnings should belong to the company in Part (b), they did not point out what actions could be taken if the director refused to return the earnings to the company. According to the relevant provisions of the Securities Law the shareholders shall have the right to request the board of directors to take actions within 30 days. If the board of directors still fails to comply, then the shareholders shall have the right, for the company's benefits, to bring a lawsuit in their own names. These actions are very important for a company to maintain the interests of it and constitute the essential rights of the shareholders.