

Fundamentals Level – Skills Module

# Corporate and Business Law (China)

Monday 9 June 2014



**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, consisting 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 essential legal system of China:**

- (a) explain the conditions under which the people's congresses of provinces, autonomous regions and municipalities (provincial level people's congresses) may enact local laws; (3 marks)
- (b) (i) explain the conditions under which Ministries and Commissions under the State Council may issue rules and regulations; (4 marks)
- (ii) state which shall prevail where there is a conflict between rules and regulations issued by Ministries and Commissions under the State Council and the local people's congresses at provincial level. (3 marks)

**(10 marks)**

**2 In relation to the Property Law of China:**

- (a) explain the term registration of the right of real property; (2 marks)
- (b) explain the special provision of the Property Law on the registration of the state-owned natural resources; (2 marks)
- (c) explain the jurisdiction of the registration for real property; (2 marks)
- (d) explain the functions of the certificate of real property ownership, and state which shall prevail if the contents of the certificate are inconsistent with those recorded in the real property register. (4 marks)

**(10 marks)**

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

- (a) state the various circumstances under which a labour contract is NOT permitted to contain a probation clause; (2 marks)
- (b) state THREE conditions under which an employer may dissolve a labour contract during the period of probation; (6 marks)
- (c) state what an employer should do if it dissolves a labour contract during the period of probation. (2 marks)

**(10 marks)**

**4 In relation to the Contract Law of China:**

- (a) explain what is 'a contract by unauthorised agent'; (3 marks)
- (b) state the legal effect of a contract by unauthorised agent; (3 marks)
- (c) state what measures can be taken by the counterparty to a contract by unauthorised agent in dealing with the effect of such a contract. (4 marks)

**(10 marks)**

**5 In relation to the Company Law of China:**

- (a) explain the term actual controller; (3 marks)
- (b) state the statutory voting requirement for a limited liability company to provide a guarantee to its shareholders or actual controller; (5 marks)
- (c) state the legal consequences when the relevant provision of the articles of association is inconsistent with the statutory voting requirements to provide a guarantee to its shareholders or actual controller. (2 marks)

**(10 marks)**

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

- (a) explain under what circumstances and when the community liabilities will take place; (3 marks)
- (b) state when the community liabilities can be cleared in the process of bankruptcy liquidation; (2 marks)
- (c) state at least TWO items which should be regarded as community liabilities. (5 marks)

**(10 marks)**

**7 In relation to corporate behaviour and legal liabilities:**

- (a) explain the doctrine of independent legal entity of a company; (4 marks)
- (b) state the system of disregard of corporate personality; (3 marks)
- (c) state the liabilities of a shareholder for abusing the doctrine of independent legal entity of a company. (3 marks)

**(10 marks)**

**8** Mr Ding picked up a handbag lost by somebody when he was walking in the park. There was lots of cash, some bills of exchange and a set of commercial documents in the handbag. Mr Ding found, from the information on the documents, the owner of this handbag was Ms Liang and contacted her.

On the day, as fixed by Mr Ding and Ms Liang via exchange of communications, Ms Liang went to Mr Ding's home to take back the handbag. Before handing over the handbag to Ms Liang, however, Mr Ding requested a sum of cash as a reward for his kindness and efforts to return the lost handbag. Ms Liang refused to give the reward.

**Required:**

**Answer the following questions in accordance with the Property Law, and give your reasons for your answer:**

- (a) state whether Mr Ding was entitled to request a reward for returning the lost handbag; (3 marks)
- (b) if Ms Liang had put up an advertisement offering a reward for the successful find of the lost property, state whether she could refuse to grant the reward if she learnt that Mr Ding did not see the advertisement; (4 marks)
- (c) assuming Mr Ding could not find the owner and turned the handbag over to the police who then published an announcement of finding of the lost property in the newspaper, state how to deal with the handbag where nobody claimed it. (3 marks)

**(10 marks)**

- 9 Shenhua Company Ltd (Shenhua) has been buying products from Kangyi Chemicals Company (Kangyi Chemicals) for more than one year. By the end of 2013, the two parties negotiated to settle the previous business transactions and confirmed that Shenhua owed an outstanding amount of RMB 800,000 yuan to Kangyi Chemicals.

Several days later, Shenhua entered into an agreement with its holding company, namely Shenhua Holdings, to transfer all its debts of RMB 800,000 yuan due. In doing so, Shenhua neither notified Kangyi Chemicals, nor got a consent from Kangyi Chemicals.

Having discovered this information, Kangyi Chemicals sent an email to Shenhua Holdings to inquire whether Shenhua's debts had been transferred to Shenhua Holdings. Shenhua Holdings acknowledged the transfer but did not promise to settle the debts as a new debtor.

Kangyi Chemicals filed a lawsuit against Shenhua Holdings for the unsettled RMB 800,000 yuan. Shenhua Holdings submitted the following defences: First, the transfer agreement between Shenhua and Shenhua Holdings was an invalid one as Shenhua failed to get prior consent, as required by the law, from Kangyi Chemicals before the completion of transfer. Second, the goods delivered by Kangyi Chemicals in the last six months contained material defects which caused loss and damage to Shenhua as the original counterparty.

**Required:**

**Answer the following questions in accordance with the Contract Law, and give your reasons for your answers:**

- (a) **state whether the transfer agreement between Shenhua and Shenhua Holdings was a valid one;** (6 marks)
- (b) **state whether Shenhua Holdings was entitled to submit its defence on the ground of the defects in the goods delivered by Kangyi Chemicals to Shenhua.** (4 marks)

**(10 marks)**

- 10 The board of directors of Harvest Technology Joint Stock Company Ltd (Harvest Stock), a listed company, formulated a plan to issue corporate bonds through the securities market. Among other things, the plan included the following items:

- (i) A securities company would be entrusted to be the sole underwriter to issue corporate bonds for RMB 70 million yuan;
- (ii) The entire period of the public issue would be 100 days;
- (iii) The interest rate of the bonds would be 5%, same as the annual fixed interest rate of saving deposit for one year;
- (iv) The funds collected by the issue of corporate bonds would be used to make up the losses of the last year.

**Required:**

**Answer the following questions in accordance with the Securities Law, and give your reasons for your answers:**

- (a) **state whether the form of issue of corporate bonds was in conformity with the relevant provision of the law;** (4 marks)
- (b) **state whether the duration of the issue was in conformity with the relevant provision of the law;** (2 marks)
- (c) **state whether the proposed interest rate of the corporate bonds was in conformity with the relevant provision of the law;** (2 marks)
- (d) **state whether the purpose of use of the funds was in conformity with the relevant provision of the law.** (2 marks)

**(10 marks)**

**End of Question Paper**