

Fundamentals Level – Skills Module

Corporate and Business Law (China)

Monday 18 June 2012



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)

ACCA

ALL TEN questions are compulsory and MUST be attempted

1 In relation to the basic legal system of China:

- (a) explain the rule of *exclusive jurisdiction* by the people's court in dealing with civil or commercial cases; (2 marks)
- (b) state the disputes that shall be subject to exclusive jurisdiction, including the relevant courts that shall have jurisdiction; (4 marks)
- (c) state the relationship between the exclusive jurisdiction and the territorial jurisdiction in dealing with civil or commercial cases. (4 marks)

(10 marks)

2 In relation to the Property Law of China:

- (a) explain *divided co-ownership interest in buildings*; (4 marks)
- (b) state any parts within a building or community that shall be owned by owners on the basis of co-ownership; (4 marks)
- (c) state the rules on the transfer of the privately owned residential or commercial properties in a co-owned building by the owner. (2 marks)

(10 marks)

3 In relation to the Labour Contract Law of China:

- (a) state the remedial measures an employee is entitled to take if an employer delays in paying, or fails to pay, wages or salaries; (4 marks)
- (b) explain what changes can be made to a labour contract by an employer and what is the legal effect of these changes. (6 marks)

(10 marks)

4 In relation to the Contract Law of China:

- (a) state which provisions concerning exemptions contained in a contract shall be deemed as invalid; (4 marks)
- (b) state the rules that deal with the consequences where a contract is decided to be invalid. (6 marks)

(10 marks)

5 In relation to the Company Law of China:

- (a) state the matters for a listed company to be decided at the general shareholders' meeting, and the special voting requirements to be passed; (4 marks)
- (b) state the special voting requirements for a listed company, if a director of the company is affiliated with another enterprise, and related matters to be voted by the board of directors. (6 marks)

(10 marks)

6 In relation to the Enterprise Bankruptcy Law of China:

(a) state the duty and function of a bankruptcy administrator with respect to conversion; (4 marks)

(b) state the rules as to the conversion of insolvent assets during the process of bankruptcy liquidation. (6 marks)

(10 marks)

7 In relation to the Securities Law of China, state the statutory conditions to be met to list the stocks of a joint stock company and the relevant organisation that may adopt stricter conditions for such listing.

(10 marks)

8 In January 2011 Mr Fang, the owner of a private enterprise, entered into a loan agreement and a mortgage agreement with a local credit association (Credit Association) to borrow RMB 2 million yuan for one year to meet the needs of his business operation, and provided his own house as the subject matter under the mortgage agreement. After the conclusion of the mortgage agreement, Mr Fang and Credit Association went to register the mortgage agreement with the local real estate registration centre.

In June 2011 Mr Fang leased the same house to Ms Lee for a period of two years.

Due to the sudden change of the market and poor operation of his enterprise, Mr Fang was unable to repay the principal and interest as agreed when the loan matured at the end of January 2012. Credit Association filed a lawsuit in the people's court and obtained a judgement in favour of its claim for the principal RMB 2 million yuan plus interest.

Credit Association then advised Ms Lee to leave the house, as it has been authorised by the people's court to organise a public auction to sell the house for the enforcement of the judgement. Ms Lee refused to leave the house on the grounds that the lease agreement was an effective one between Mr Fang and herself and would last until the end of June 2013. In addition, Credit Association's right of mortgagee should not affect her right under the lease agreement.

Required:

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

(a) state whether Ms Lee's grounds for refusal to leave the house can be established. (5 marks)

(b) state how Ms Lee should deal with the current situation. (5 marks)

(10 marks)

- 9 Buyer and Seller entered into a sales contract to buy 10,000 kg chemical products at a price of RMB 200 yuan/kg, totalling RMB 2 million yuan. Among other things, the sales contract stipulated the following terms and conditions: within 10 days after the conclusion of the contract Buyer would make the advance payment of RMB 500,000 yuan and Seller was to deliver all the goods to the place of Buyer; the remaining price of RMB 1.5 million yuan should be paid within five days upon the delivery of goods; any breach of contract should be subject to the liquidated damages equivalent to 20% of the total price.

Buyer made the advance payment, but Seller did not deliver any goods. Buyer urged Seller to deliver the goods immediately, as its production would be seriously affected by the short supply of the goods. However, Seller declared *force majeure* as the reason for non-delivery. Seller insisted that it was only a trading company, not a producer of the chemical products. Seller alleged that upon the conclusion of the contract, it entered into a purchase agreement with a producer to buy the goods from the latter. Due to a fire accident, the producer could not supply the goods under the purchase agreement; Seller therefore could not deliver the goods to Buyer. Non-delivery of goods was due to *force majeure* that caused the failure to supply the goods by the producer to Seller.

Buyer refused to accept Seller's argument and bought 10,000 kg of the same products for replacement at a price of RMB 220 yuan/kg, resulting in a total extra cost of RMB 200,000 yuan. Meanwhile it filed a lawsuit against Seller in the court, requesting liquidated damages of RMB 400,000 yuan (20% of the total price) and the damages of RMB 200,000 yuan for extra price caused for the urgent purchase.

Required:

Answer the following questions in accordance with the relevant provisions of the Contract Law, and give your reasons for your answer:

(a) state whether Seller's argument of *force majeure* can be established; (5 marks)

(b) state whether Buyer's claims for liquidated damages and damages should be supported by the court. (5 marks)

(10 marks)

- 10 Mr Ding and his friends intended to establish a joint stock company in international trade business and drafted a business proposal for further discussions with potential investors. Among other things the proposal contained the following items:

(a) The proposed joint stock company would be invested by nine sponsors, four sponsors from China and five sponsors from other Asian countries. Such arrangements would be of benefit to expand the Asian market. (3 marks)

(b) The registered capital of the company would be RMB 100 million yuan, among which RMB 30 million yuan would be subscribed by nine sponsors and the remaining RMB 70 million yuan would be subscribed through an initial public offering (IPO). (4 marks)

(c) All capital contributions by sponsors must be made in the form of currency, as the joint stock company is to be incorporated through IPO. (3 marks)

Required:

Explain whether the above items (a), (b) and (c) are in conformity with the relevant provisions of the Company Law.

Note: The mark allocation is shown against each item.

(10 marks)

End of Question Paper