

Fundamentals Level – Skills Module

Corporate and Business Law (China)

Monday 10 June 2013



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 Judicial Interpretations (III) on the Company Law by the Supreme People's Court, explain the rule to be followed by the people's courts in dealing with the circumstances under which the counterparty to a contract for the purpose of setting up the company:**
- (a) signed by a sponsor in their name, requests the sponsor to be responsible for the contract; (3 marks)
 - (b) signed by the sponsor in their name, requests the company to be responsible for the contract; (4 marks)
 - (c) signed by the sponsor in the name of the company, requests the company to be responsible for the contract. (3 marks)
- (10 marks)**
- 2 In relation to the Property Law of China:**
- (a) state the rules relating to the transfer of mortgaged property during the period of mortgage; (7 marks)
 - (b) state the rules relating to the transfer of credit which is secured by a mortgage. (3 marks)
- (10 marks)**
- 3 In relation to the Labour Contract Law of China, explain FOUR circumstances under which a labour contract terminates.**
- (10 marks)**
- 4 In relation to the Contract Law of China:**
- (a) explain the term of specific performance; (2 marks)
 - (b) state TWO examples of subject matter of a contract that are deemed to be a form of non-monetary obligation; (2 marks)
 - (c) state THREE circumstances under which a party's request for specific performance as a legal remedy will NOT be supported, even if the other party has breached the contract. (6 marks)
- (10 marks)**
- 5 In relation to the Company Law of China:**
- (a) explain TWO forms of company merger; (4 marks)
 - (b) state the necessary steps to be taken by the parties involved in a company merger before the successful completion of the deal. (6 marks)
- (10 marks)**

6 In relation to the Enterprise Bankruptcy Law of China:

- (a) state and explain the legal effect of the settlement of debts by the debtor against individual creditors after a people's court has accepted the application for bankruptcy; (3 marks)
- (b) In relation to the debtors of the debtor against whom the application for bankruptcy is brought, or the property holders of such debtor:
- (i) state their obligations once the people's court accepts the application; (4 marks)
- (ii) state the legal consequences for breaching their obligation. (3 marks)

(10 marks)

7 In relation to the Securities Law of China:

- (a) explain the administrative penalty of banning access to the securities market; (4 marks)
- (b) state the circumstances under which the relevant persons may be penalised in the form of banning access to the securities market by the securities supervisory authority; (4 marks)
- (c) state what activities committed by a sponsor may be subject to the administrative penalty of banning access to the securities market. (2 marks)

(10 marks)

- 8** For the purpose of expanding its business, Drinking Co intended to get a loan of RMB 30 million yuan for two years from City Bank and was willing to provide shares of TCL, a listed company, as a guarantee. On 15 June 2012, the two parties entered into a loan agreement and pledge agreement, which stipulated that Drinking Co should provide 10 million TCL shares as the pledge of rights. On 16 June 2012, they went to the relevant statutory institution and jointly applied for a pledge registration of TCL shares. On the date of registration, the price of TCL shares held by Drinking Co was RMB 5.00/share, total market value of the shares was 50 million yuan.

Six months after the registration of the pledge agreement, the price of TCL shares rose to RMB 6.00/share because of the substantive good news for the securities market. Having analysed the latest market situation, Drinking Co intended to sell the shares under the pledge and make an early repayment with the gains from such transactions. City Bank, however, disagreed with the proposal on the grounds that the debt under the loan agreement did not mature and this would cause liquidated damages to City Bank if Drinking Co insisted on the proposal. A dispute emerged between the two parties.

Required:

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

- (a) state the date on which the right to pledge was established and the institution the pledge should be registered with; (4 marks)
- (b) state the institution which the pledge should be registered with if TCL were a limited liability company; (2 marks)
- (c) state whether City Bank was entitled to refuse the proposal of Drinking Co to sell the shares and make an early repayment. (4 marks)

(10 marks)

- 9 Trading Co issued an offer to Textile Company to sell 1,000 tons of imported cotton. Among other things, the offer contained the terms and conditions as follows:
- (i) price of cotton – RMB 20,000 yuan/ton;
 - (ii) payment – 30% of total price payment in advance, remaining 70% payment at the time of delivery of the goods;
 - (iii) transport of goods – cost to be borne by Textile Company, delivery within seven days after the conclusion of the contract.

Upon receipt of the offer, Textile Company replied via a fax to Trading Co which stated: ‘We accept all the terms and conditions of your offer and will take delivery of the goods within seven days upon the conclusion of this contract. Please keep the cotton in good condition and with sound package.’ Trading Co received the fax but did not respond to it.

Textile Company hired a logistics company, five days after sending the fax, to take delivery of the cotton from Trading Co but failed to take any goods from Trading Co. Trading Co insisted that it was not under a contractual obligation to sell the goods to Textile Company, as there was no contract between the two parties. Trading Co stated further that the fax sent by Textile Company added the term ‘keep the cotton in good condition and with sound package’, which should be regarded as additions to the offer and constituted a counter-offer by Textile Company, rather than an acceptance. Therefore, the two parties did not reach an agreement on the terms and conditions for the sale of the cotton.

Required:

In accordance with the Contract Law of China, analyse the scenario and discuss:

- (a) whether there was a contract between Trading Co and Textile Co, and explain your reasoning;** (8 marks)
- (b) the legal nature of Textile Company’s fax to Trading Co.** (2 marks)

(10 marks)

- 10 Mr Lee, Mr Wang and Mr Chan drafted a sponsor agreement to set up a limited liability company with a total registered capital of RMB 600,000 yuan. Among other things, the agreement also stipulated the following terms:

- (i) Mr Lee would subscribe RMB 70,000 yuan in cash and RMB 110,000 yuan in the form of computer software. He should make the first payment of RMB 20,000 yuan in cash to the special account of the certified public accountant firm, and the remaining RMB 50,000 yuan plus the computer software would be contributed within one year upon the incorporation of the company.
- (ii) Mr Wang would subscribe RMB 150,000 yuan in the form of equipment and land use right and make all the capital contributions within six months upon the incorporation of the company.
- (iii) Mr Chan would subscribe RMB 270,000 yuan in cash. The first payment of RMB 90,000 yuan should be made before the incorporation, the remaining RMB 180,000 yuan should be made in the third year upon the incorporation of the company.

Required:

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

- (a) discuss whether the initial capital contributions made by the sponsors were in conformity with relevant provisions of law;** (3 marks)
- (b) discuss the total amount of capital contributions in currency;** (3 marks)
- (c) state whether the time arrangement of making capital contributions by the three sponsors respectively was in conformity with the relevant provisions of law.** (4 marks)

(10 marks)

End of Question Paper