

Fundamentals Level – Skills Module

# Corporate and Business Law (China)

Tuesday 7 June 2011

**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 rectangular background.

ALL TEN questions are compulsory and MUST be attempted

1 In relation to the basic legal system of China:

- (a) (i) explain the term *judicial interpretation*; (3 marks)
- (ii) explain the legal basis for the Supreme People's Court to issue a *judicial interpretation*. (3 marks)
- (b) Article 428 of the Contract Law of China provides that upon the implementation of this law, the previous contract laws shall be simultaneously abolished. Based on this provision, the Supreme People's Court has issued a Judicial Interpretation on the Application of the Contract Law.

In relation to this Judicial Interpretation, state the rule of the applicable law to deal with a contractual dispute brought to the people's court after the date of implementation of the Contract Law but the contract was concluded before that date. (4 marks)

(10 marks)

2 In relation to the Property Law of China:

- (a) explain the legal basis for creating legitimate possession, and the rules for determining the matters arising from possession; (3 marks)
- (b) state the right of claim of a LEGITIMATE POSSESSOR against various tortuous activities that infringe upon or impair the possession, or damage the immovable or movable property under a legitimate possession; (4 marks)
- (c) state the rules of compensation to a RIGHT HOLDER for any immovable or movable damaged, destroyed or lost by a possessor. (3 marks)

(10 marks)

3 In relation to the Labour Contract Law of China:

- (a) explain the circumstances in which a labour contract is not allowed to incorporate a provision of probation. (4 marks)
- (b) explain the relevant restrictions on the PERIOD of probation in a labour contract. (6 marks)

(10 marks)

4 In relation to the Contract Law of China:

- (a) explain the term *withdrawal of an offer*; (2 marks)
- (b) explain the term *revocation of an offer*; (2 marks)
- (c) distinguish between withdrawal of an offer and revocation of an offer; (4 marks)
- (d) state whether a contract is formed where an offer and a notice of withdrawal of the offer reach the offeree simultaneously. (2 marks)

(10 marks)

5 In relation to the Company Law of China, explain the major rights of a shareholder of a limited liability company. (10 marks)

6 In relation to the Enterprise Bankruptcy Law of China:

(a) state the various circumstances under which a creditors' meeting shall be held; (4 marks)

(b) state the major functions and duties of the creditors' committee. (6 marks)

(10 marks)

7 In relation to corporate behaviour and legal liabilities:

(a) explain the term *controlling shareholder* under the Company Law of China; (3 marks)

(b) explain how the creditors may take legal action against the shareholder of a company for abusing the independent legal entity, and the doctrine of law for such legal action; (3 marks)

(c) explain the civil liabilities of the controlling shareholder for the damage of the company through affiliate trading. (4 marks)

(10 marks)

8 Yado Steel Co Ltd (Yado Steel) entered into a loan agreement with Industry Bank to borrow RMB 20 million yuan for its expansion programme. Yado Steel provided its office building as property mortgaged for the debt, and made the registration as required. Mr Ding, one of the shareholders of Yado Steel, placed a guarantee letter of general liability in favour of Industry Bank.

Due to poor performance, Yado Steel failed to repay the debt when it came to maturity. Meanwhile, Industry Bank, under a restructuring plan, transferred the credit of RMB 20 million yuan together with the right of pledge to Oriental Assets Management Co (OAM). It also made a written notice to Yado Steel and Mr Ding, but failed to transfer the right of mortgage to OAM. On the contrary, Industry Bank concluded an agreement with Yado Steel before it went bankrupt, and settled other debts owed by the latter through the sale of the office building as mortgaged for the loan. Having found this fact, OAM, as a transferee of the credit, requested the court to order Mr Ding to bear its guarantor's liability for the debt. Mr Ding asserted that he was a pledger with a general liability and would be responsible for the debt only if the things mortgaged could not satisfy the debt.

**Required:**

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

(a) State whether the defence of Mr Ding should be supported by the court. (6 marks)

(b) State what was the cause of this dispute between OAM and Industry Bank. (4 marks)

(10 marks)

- 9 In October 2008 Ronger Properties Joint Stock Co successfully issued corporate bonds of RMB 12 million yuan for three years. By the end of 2010 the net assets of Ronger Properties Joint Stock Co were RMB 80 million yuan. During the past two years it has been able to repay the interests due for the corporate bonds.

In order to expand its business, the board of directors of Ronger Properties Joint Stock Co adopted a resolution intending to issue another set of corporate bonds to the public investors.

**Required:**

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

- (a) **State the maximum amount of corporate bonds Ronger Properties Joint Stock Co could issue for the proposed issuance.** (5 marks)
- (b) **State whether the proposed issuance of corporate bonds should be underwritten by an underwriting syndicate.** (4 marks)
- (c) **State the statutory period of underwriting for the proposed issuance.** (1 mark)

**(10 marks)**

- 10 Due to the failure to settle the debts due, Jianshe Garment Trading Co Ltd (Jianshe Co) was declared bankrupt by its creditors. In October 2010 the court rendered an order to accept the application of bankruptcy and designated a bankruptcy administrator. During the process of bankruptcy liquidation the bankruptcy administrator found that Jianshe Co had given up a credit of RMB 200,000 yuan owed by its affiliate enterprise in August 2009.

The bankruptcy administrator also found that some shareholders of Jianshe Co failed to made full capital contributions as prescribed in the agreement of incorporation.

**Required:**

**Answer the following questions in accordance with the Enterprise Bankruptcy Law of China, and give your reasons for your answer:**

- (a) (i) **State whether the action of giving up credit can be revoked during the process of liquidation;** (4 marks)
- (ii) **State whether the court should grant an order to revoke the act of giving up credit.** (3 marks)
- (b) **State how to deal with the matter of the lack of full capital contributions by some of the shareholders of Jianshe Co.** (3 marks)

**(10 marks)**

**End of Question Paper**