

Fundamentals Level – Skills Module

# Corporate and Business Law (China)

Monday 10 December 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)  
H&S

**ACCA**

**ALL TEN questions are compulsory and MUST be attempted**

- 1 In relation to the Judicial Interpretation on the Application of the Contract Law by the Supreme People's Court:**
  - (a) state the procedural way to deal with the situation when an obligee has assigned his rights to a third party and a dispute, between the obligor and the assignee, is brought to the people's court; (3 marks)
  - (b) state the procedural way to deal with the situation when an obligor has assigned his obligations to a third party and a dispute, between the assignee and obligee, is brought to the people's court; (3 marks)
  - (c) state the procedural way to deal with the situation when a party has assigned his rights and obligations to an assignee and a dispute, between the other party and the assignee, is brought to the people's court. (4 marks)

(10 marks)
- 2 In relation to the Labour Contract Law of China:**
  - (a) explain a non-competition clause in a labour contract; (4 marks)
  - (b) state the various persons who are subject to non-competition obligations in their labour contracts with their employer; (2 marks)
  - (c) state the conditions and term of duration for a non-competition clause contained in a labour contract. (4 marks)

(10 marks)
- 3 In relation to the Contract Law of China:**
  - (a) explain a pre-contractual liability, and distinguish between this kind of liability and the liability for breach of contract; (6 marks)
  - (b) state various conducts of a party that will result in a pre-contractual liability. (4 marks)

(10 marks)
- 4 In relation to the Company Law of China:**
  - (a) state the composition of the board of directors of a general limited liability company; (3 marks)
  - (b) state the composition of the board of directors of a limited liability company that is incorporated by two or more state-owned enterprises; (4 marks)
  - (c) state the way to deal with the situation where the number of directors is less than a quorum due to various causes and the re-election has not been completed. (3 marks)

(10 marks)

- 5 In relation to the Enterprise Bankruptcy Law of China:**
- (a) explain the term rectification; (4 marks)
- (b) state the legal effect of rectification on the right of guarantee during the period of rectification. (6 marks)
- (10 marks)
- 6 In relation to the Securities Law of China:**
- (a) explain a takeover by offer of a listed company; (3 marks)
- (b) explain what happens after the expiration of the duration of the takeover by offer. (7 marks)
- (10 marks)
- 7 In relation to fraudulent behaviour in corporate management, in terms of capital of the company:**
- (a) describe various activities that shall be regarded as fraudulent behaviour; (6 marks)
- (b) state the reasons why such activities will be regarded as fraudulent behaviour. (4 marks)
- (10 marks)
- 8** Aishen Garment Co entered into a contract with Bulinger Store to sell 10,000 pieces of sportswear to the latter. Under the contract Aishen Garment Co would deliver the goods at Bulinger Store's warehouse by 30 June 2012 and receive payment upon delivery of the goods.
- Having found market conditions tough after the conclusion of the contract, Bulinger Store asked to decrease the quantity of goods, but Aishen Garment Co disagreed. At this moment, Bulinger Store learnt that a company named Conka Sales intended to buy the same garments and resell them to another province. Therefore, Bulinger Store concluded an agreement with Conka Sales to transfer the rights and obligations under its contract with Aishen Garment Co.
- Bulinger Store sent a letter to Aishen Garment Co, notifying it that the rights and obligations under the contract had been transferred to Conka Sales. Aishen Garment Co did not reply to the letter.
- On 15 June 2012, however, Aishen Garment Co sent a fax to advise Conka Sales to be prepared for receiving the goods. At the end of June Aishen Garment Co delivered 10,000 pieces of sportswear to the premises of Conka Sales and received the total price paid by Conka Sales. However, a certificate of inspection issued by an independent institute indicated that nearly 30% of the goods were below the quality standard. Therefore, Conka Sales intended to reject the goods. Aishen Garment Co insisted that there was no contractual relationship between them, since it was merely under its contract with Bulinger Store to directly deliver the goods to Conka Sales.
- Required:**
- Answer the following questions in accordance with the Contract Law of China, and give your reasons for your answers:**
- (a) state whether there was a contractual relationship between Aishen Garment Co and Conka Sales; (8 marks)
- (b) state whether Aishen Garment Co or Bulinger Store should be liable for the defects of the goods. (2 marks)
- (10 marks)

- 9** Tenda Co Ltd was incorporated by five natural persons (Mr A, Mr B, Mr C, Mr D and Ms E). Mr A was the majority shareholder and elected to be the chairman of the board of directors and the legal representative of the company.

In the business operations, Mr A, in the name of Tenda Co Ltd, sold a large shipment of goods at a low price to an enterprise invested by Mr A and other investors, which caused a huge loss to Tenda Co Ltd. Having discovered this, Ms E submitted a formal request to the board of supervisors to file a lawsuit against Mr A for his wrong-doing. However, she did not receive any response from the board of supervisors.

**Required:**

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

(a) state whether Ms E was entitled to bring a lawsuit against Mr A, due to Mr A's transaction causing a huge loss to Tenda Co Ltd; (4 marks)

(b) state the pre-conditions to be satisfied for Ms E to bring a lawsuit in her own name against Mr A; (3 marks)

(c) explain which party should be the beneficiary of a legal action against Mr A, assuming Ms E obtained a favourable judgement from the court. (3 marks)

**(10 marks)**

- 10** Dalie Limited Liability Co (Dalie Co) applied to the people's court for bankruptcy due to its poor business operations. On 30 April 2012, the people's court rendered an order to accept the bankruptcy application and designated a bankruptcy administrator. At this moment, Dalie Co faced the following key financial matters:

- (i) Construction Company had brought a lawsuit against Dalie Co for its delay to pay the construction price due, but the case was still pending for trial;
- (ii) Dalie Co owed a loan totalling RMB 20 million yuan to Industry Bank, of which RMB 12 million yuan was secured by a guarantee agreement on the buildings of Dalie Co;
- (iii) Dalie Co had provided a guarantee to Merchant Bank for a loan of RMB 10 million yuan borrowed by Jiqing Company. The loan has matured but Jiqing Company failed to repay the principal and interest.

**Required:**

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

(a) state how to deal with the pending disputes between Construction Company and Dalie Co; (3 marks)

(b) state how to deal with the loan of RMB 20 million yuan owed to Industry Bank; (3 marks)

(c) state whether Merchant Bank was entitled to declare the credit and join the bankruptcy procedure. (4 marks)

**(10 marks)**

**End of Question Paper**