
Answers

- 1** This question requires candidates to explain the rules that shall be followed by people's courts in dealing with the contracts signed by a sponsor, in their name and in the name of the company respectively, during the process of setting up the company under the judicial interpretations by the Supreme People's Court.
- (a) In accordance with Article 2 of the Judicial Interpretations (III) on the Company Law, where the counterparty to a contract requests the sponsor of the company to be responsible for the contract, signed by the sponsor in their name for the purpose of setting up the company, the people's court shall support such a claim.
 - (b) Where the counterparty to the contract requests the company to be responsible for the contract which was signed by a sponsor in their name but for setting up the company, and where the company acknowledges the contract after the company is established or the company has actually enjoyed the contractual rights or performed the contractual obligations, the people's court shall support such a claim.
 - (c) In accordance with Article 3 of the Judicial Interpretations (III) on the Company Law, where the counterparty to the contract requests the company to be responsible for the contract, signed by the sponsor in the name of the company for setting up the company, the people's court shall support such a claim.
- 2** This question requires candidates to state the rules relating to the transfer of mortgaged property during the term of mortgage, and the rules relating to the transfer of credit which is secured by a mortgage under the Property Law of China.
- (a) In accordance with Article 191 of the Property Law, where a mortgagor transfers the mortgaged property during the term of mortgage, the proceeds obtained from such transferring shall be used to settle the debts to the mortgagee first, or be deposited with a competent authority. Where the amount obtained from such transferring exceeds the value of the mortgagee's creditor's rights, the surplus shall belong to the mortgagor; where the amount is insufficient to settle the value of the mortgagee's creditor's rights, the deficit shall be paid by the debtor. Without the mortgagee's consent, a mortgagor may not transfer the mortgaged property during the term of mortgage, unless the transferee pays off the debts on behalf of the mortgagor so as to terminate the mortgage right.
 - (b) In accordance with Article 192 of the Property Law, the mortgage right may not be transferred separately from the mortgagee's creditor's rights. When creditor's rights are transferred, the mortgage right thereof shall be transferred together, unless it is otherwise provided for by law, or otherwise agreed upon by the parties concerned.
- 3** This question requires candidates to explain the circumstances under which a labour contract terminates under the Labour Contract Law of China.
- In accordance with Article 44 of the Labour Contract Law, a labour contract terminates under any one of the following circumstances:
- (i) The term of a fixed-term labour contract expires;
 - (ii) The employee begins to enjoy his or her pension for retirement according to law;
 - (iii) The employee dies, or is declared dead or missing by a people's court;
 - (iv) The employer has been declared bankrupt according to law;
 - (v) The business licence of the employer is revoked, or the employer is ordered by a governmental department to close or the employer itself decides on early liquidation;
 - (vi) Other circumstances as stipulated by laws and/or administrative regulations.
- 4** This question requires candidates to describe the subject matters that are deemed as a kind of non-monetary obligation, and state the various circumstances under which a party's request for specific performance as a legal remedy will not be supported, even if the other party breaches the contract under the Contract Law of China.
- (a) In accordance with Article 107 of the Contract Law, specific performance is one form of the legal liabilities to be borne by a party who breaches the contract. The other party may request the breaching party to continue to perform their obligations under the contract.
 - (b) Subject matter of handing over a block of apartments to the owner by a real estate developer, or donating a painting to the museum by an artist and so on shall be deemed as forms of non-monetary obligations.

- (c) In accordance with Article 110 of the Contract Law, a party may request specific performance except under any one of the following circumstances, even if the other party has breached the contract:
- (i) specific performance is impossible in law or in fact;
 - (ii) the subject matter of the obligation is not suitable for a compulsory enforcement or the cost of performance is excessively high;
 - (iii) the obligee does not request specific performance within a reasonable time.
- 5** This question requires candidates to state the forms of a company merger and the various procedural requirements to be taken by the parties involved in such transactions under the Company Law of China.
- (a) In accordance with Article 173 of the Company Law, a company merger may take the form of merger by absorption, or merger by new establishment. The meaning of the two forms of a company merger are as follows:
- (i) Where a company absorbs another, it is an absorption merger, and the company being absorbed shall be dissolved.
 - (ii) Where two or more companies merge to establish a new company, it is a merger for new establishment, and all parties being merged shall be dissolved.
- (b) In accordance with Article 174 of the Company Law, when companies merge, the following procedural matters shall be taken by the parties to a merger:
- (i) The relevant parties shall conclude a merger agreement and formulate a statement of financial position and a detailed inventory of assets.
 - (ii) The company involving the merger shall inform its creditors of the proposed merger within 10 days following the date on which the merger resolution is adopted, and make at least three announcements in newspapers within 30 days.
 - (iii) In accordance with Article 180 of the Company Law, upon completion of the merger, any changes in the legal status of the companies involved in such transactions shall be registered with the Administration for Industry and Commerce according to law.
- 6** This question requires candidates to state the legal effect of the settlement of debts by a debtor against individual creditors when a people's court has accepted the application for bankruptcy, the obligations and legal consequences for breach of such obligations by debtors of the debtor or property holders of the debtor after the people's court has accepted the application for bankruptcy under the Enterprise Bankruptcy Law of China.
- (a) In accordance with Article 16 of the Enterprises Bankruptcy Law, the settlement of debts made by the debtor to individual creditors after a people's court accepts an application for bankruptcy of the debtor shall be invalid. Such an action would damage the rights and interests of other creditors against the debtor.
- (b) (i) In accordance with Article 17 of the Enterprise Bankruptcy Law, after a people's court has accepted an application for bankruptcy of the debtor, debtors of the debtor or property holders of the debtor shall settle the debts or deliver the relevant property to the bankruptcy administrator designated by the people's court.
- (ii) In accordance with Article 17 of the Enterprise Bankruptcy Law, where any debtor or property holder intentionally violates their above statutory obligations by settlement of its debts to the debtor or delivery of the property to the bankruptcy administrator and thus causes any losses to creditors, their obligations of settlement of debts or delivery of the property shall not be exempted.
- 7** This question requires candidates to explain the administrative penalty of banning access to the securities market, state the circumstances under which the relevant persons may be penalised and state the activities committed by a sponsor that may be subject to the penalty of banning access to the securities market under the Securities Law of China.
- (a) In accordance with Article 233 of the Securities Law, banning access to the securities market refers to a system whereby the relevant responsible person shall be prohibited from engaging in securities business or shall be prohibited from acting as director, supervisor or senior executive of a listed company within a fixed period of time or even for life as ordered by the securities supervisory authority under the State Council.
- (b) In accordance with Article 233 of the Securities Law, where any person who is responsible for matters as stipulated by the law intentionally violates the laws, administrative regulations or rules of the securities supervisory authority and the circumstances are serious, the said government department may adopt the administrative penalty of banning access to the securities market against the relevant person. The key factors to be considered by such government department in adopting such administrative penalty are the intention of the person in violation and the seriousness of the circumstances.
- (c) In accordance with Article 192 of the Securities Law, any sponsor who issues a letter of sponsorship containing a falsehood, misleading statement or major omission or fails to perform other statutory duties may be subject to the administrative penalty of banning access to the securities market for a fixed period of time or for life by the securities supervisory authority.

- 8** This question requires candidates to deal with the legal issues in relation to the pledge of rights and the restrictions on the transfer of the right as pledged under the Property Law of China.
- (a)** In accordance with Article 226 of the Property Law, where the pledged equity interests are registered with the securities registration and clearance institution, the right to the pledge shall be established upon registration of such pledge. In this case the two parties applied for registration of the pledge on 16 June 2012, the day after the conclusion of the agreement. This was the date of the establishment of the right to pledge. Since TCL is a listed company, under the same provision of the Property Law, the registration of the pledge of its shares shall be registered at China Securities Registration and Clearance Company Ltd.
 - (b)** In accordance with Article 226 of the Property Law, the registration of the pledge of other equity interests, other than the shares of a listed company, shall be done at the Administration for Industry and Commerce. Therefore, if TCL were a limited liability company, the local Administration for Industry and Commerce should be the statutory institution for registration.
 - (c)** In accordance with Article 226 of the Property Law, no fund units or equity interest may be transferred after the pledge, unless the pledgor and pledgee agree after a consultation. In this case, City Bank and Drinking Co were the pledgee and pledgor respectively. City Bank might agree with Drinking Co's proposal but had no obligation to do so. Therefore, City Bank was entitled to refuse the proposal of Drinking Co to sell the shares under the pledge and make an early repayment.
- 9** This question requires candidates to deal with the legal issues in respect of the formation of a contract under the Contract Law of China.
- (a)** There was a contract between Trading Co and Textile Company. In accordance with Articles 14 and 16 of the Contract Law, Trading Co sent an offer which had reached Textile Company. Therefore, the offer came into effect. Article 14 states that an offer is an intention to enter into a contract. And Article 16 states that an offer becomes effective when it reaches the offeree. Textile Company sent back a fax which should be regarded as a reply purported to be an acceptance but contained additions. However, in accordance with Article 30 and 31 of the Contract Law, package of goods contained in its fax was not a term which materially changed the term of the offer. Article 30 states that an acceptance which materially alters the term of the offer constitutes a new offer, a change in the subject matter, quality, quantity, price or remuneration, place and method of performance, liability for breach of contract or method of dispute resolution is a material change to the terms of the offer. This is not the case here but in accordance with Article 31 is an acceptance containing non-material changes. Since Trading Co did not promptly object to such non-material changes, the fax constituted an effective acceptance. Upon arrival of the acceptance to Trading Co, the contract was formed.
 - (b)** The nature of Textile Company's fax to Trading Co was a reply purported to be an acceptance but contained additions. Its legal nature depends on the following expression of Trading Co. Since the offer sent by Trading Co did not contain any term in relation to the package of the goods, however, the fax of Textile Company added this term.
- 10** This question requires candidates to deal with the legal issues concerning the registered capital of a limited liability company under the Company Law of China.
- (a)** In accordance with Article 26 of the Company Law, the amount of initial capital contributions made by all the shareholders of a limited liability company shall not be less than 20% of the registered capital of the company. Since the amount of initial capital contributions to be paid by the three sponsors was less than 20% (Mr Lee 20,000 + Mr Chan 90,000 = 110,000/total registered capital 600,000) of the registered capital of the company, it was not in conformity with the law.
 - (b)** In accordance with Article 27 of the Company Law, the amount of capital contribution in currency by all shareholders shall not be less than 30% of the registered capital of the limited liability company. In this case, the amount of capital contribution in currency was RMB 340,000 yuan (Mr Lee 70,000 + Mr Chan 270,000/total registered capital 600,000), much more than the minimum requirement by the law. Hence, it was in conformity with the law.
 - (c)** In accordance with Article 26 of the Company Law, all the capital contributions shall be paid by the shareholders of the company within two years upon the incorporation of the company unless otherwise provided for by the law. In this case, the time limit for making capital contributions for Mr Lee and Mr Wang was in conformity with the law. The time of making capital contribution by Mr Chan, however, was not in conformity with the law because of some of the capital contribution to be made in the third year upon the incorporation of the company.

- 1** 8–10 A thorough answer which explains the rules to deal with the different circumstances: a contract is signed by its sponsor in his name for setting up the company while the counterparty requests the sponsor to be responsible for the contract in part (a); a contract is signed by its sponsor in their name for setting up the company while the counterparty requests the company to be responsible for the contract upon incorporation of the company in part (b), and a contract is signed in the name of the company during the process of setting up the company while the counterparty requests the company to be responsible for the contract upon incorporation of the company in part (c).
- 6–7 An answer which explains the rules to deal with the circumstances as stipulated in any two parts among parts (a), (b) and (c).
- 3–5 An answer which explains the rule to deal with the circumstance as stipulated in any one part among parts (a), (b) and (c).
- 0–2 An answer which does not explain or explains very limited points in any one of the three parts, but fails to explain the rules in the other two parts.
- 2** 8–10 A thorough answer which states the rules relating to the transfer of mortgaged property and states the rules relating to the transfer of credit which is secured by a mortgage.
- 6–7 An answer which states the rules relating to the transfer of mortgaged property during the period of mortgage in part (a), but does not state the rules relating to the transfer of credit which is secured by a mortgage in part (b). Or as an alternative, an answer which states some points in part (a) and part (b).
- 3–5 An answer which states most of the points in part (a), but fails to give any points in part (b). Or as an alternative, an answer which fails to state any points in part (a), but states correctly the rules relating to the transfer of credit which is secured by a mortgage in part (b).
- 0–2 An answer which does not state any point or states very limited points in part (a) or part (b).
- 3** 8–10 An answer that states all or at least four kinds of the circumstances under which a labour contract terminates.
- 6–7 An answer that states more than half of the circumstances under which a labour contract terminates as provided for by the law.
- 3–5 An answer that states any two kinds of circumstances under which a labour contract terminates, alternatively, an answer that states any one kind of circumstance under which a labour contract terminates.
- 0–2 An answer that fails to state any points, or states only very limited points.
- 4** 8–10 A thorough answer that explains correctly the term specific performance, states the subject matter of a contract that shall be deemed as a non-monetary obligation and states the circumstances under which a party may not request specific performance as a legal remedy, even if the other party has breached the contract.
- 6–7 An answer that explains correctly the term of specific performance as a form of legal remedy for breach of contract in part (a) and some points in part (c); alternatively, an answer that states the circumstances in part (c); or an answer that explains the rule as to specific performance in part (a) and describes the subject matter of a contract to be deemed as a kind of non-monetary obligation in part (b), with limited points in part (c).
- 3–5 An answer that explains correctly the term of specific performance in part (a) and limited content in part (c). As an alternative, an answer that describes the subject matter of a contract to be deemed as a kind of non-monetary obligation, with limited content in part (c). Alternatively, an answer that states some contents in part (c) but fails to answer any points in the other two parts.
- 0–2 An answer that fails to explain the term of specific performance in part (a) and describe the non-monetary obligation in part (b), but states very limited points in part (c). As an alternative, an answer that explains the rule in part (a) but fails to answer the other two parts.
- 5** 8–10 A thorough answer that explains two forms of merger of a company in part (a), and states all the procedural matters to be taken by the parties involved in such transactions with respect to notification, announcement and registration in part (b).
- 6–7 An answer that explains two forms of merger of a company in part (a), states some points with respect to the procedural matters to be taken by the parties involved in such transactions in part (b). As an alternative, an answer that explains one form of merger of a company in part (a), and states some points in part (b).
- 3–5 An answer that explains one form of merger of a company in part (a), and states limited points with respect to the procedural matter in part (b).
- 0–2 An answer that fails to state any points in the two parts, or states only very limited points.

- 6** 8–10 A thorough answer that states the legal effect of the settlement of debts by the debtor to individual creditors and the reason why such an action would be deemed as invalid in part (a), the obligations of the debtors or property holders of the debtor as well as the legal consequences where the relevant entities breach the obligations after the court has accepted the application for bankruptcy in part (b).
- 6–7 An answer that states correctly part (b) but fails to answer part (a). Alternatively, an answer that states correctly part (a) and any sub-part in part (b).
- 3–5 An answer that states both sub-parts in part (b) but fails to answer part (a). Alternatively, an answer that states some points both in part (a) and any sub-part in part (b).
- 0–2 An answer that fails to state any points in the two parts, or states only very limited points in the two parts.
- 7** 8–10 A thorough answer that states the administrative punishment of banning access to the securities market in part (a), and states the relevant persons and activities committed by a sponsor that may be punished by banning access to the securities market by the securities supervisory authority in part (b) and (c).
- 6–7 An answer that states correctly both in part (a) and (c), but fails to state any points in part (b). As an alternative, an answer that states correctly both in part (b) and (c), but fails to state any points in part (a).
- 3–5 An answer that states correctly part (a) or part (b), with limited or no points in part (c). Alternatively, the answer states correctly part (c), with some points in part (a) or part (b).
- 0–2 An answer that fails to state any points, or states only very limited points in the three parts. Alternatively, the answer states correctly in part (c), but fails to state any points in part (a) or (b).
- 8** 8–10 An answer which states correctly the date when the right to pledge has been established in part (a), the statutory institutions for the registration of the pledge of shares of a listed as well as the equity of a limited liability company respectively in part (b), and gives a correct conclusion to the effect that City Bank was entitled to refuse the proposal of Drinking Co in part (c).
- 6–7 An answer that gives a correct conclusion in part (c) and any one part of parts (a) or (b). As an alternative, the answer states completely part (a) and (b), but fails to give a correct conclusion in part (c).
- 3–5 An answer that states completely any one part of parts (a) or (b) and states limited points in part (c). Alternatively, the answer states most of the points in parts (a) and (b), but fails to give a correct conclusion in part (c).
- 0–2 An answer that states correctly part (b), but fails to state any points in parts (a) and (c). Alternatively, the answer states no points to this question.
- 9** 8–10 An answer that gives a correct conclusion concerning the formation of the contract in part (a) and the detailed reasons to support such a conclusion, states correctly the nature of Textile Co's fax in part (b).
- 6–7 An answer that states correctly the conclusion concerning the formation of the contract in part (a) and some reasons to support the conclusion, and the nature of the fax in part (b). As an alternative, the answer gives a correct conclusion in part (a) and states some reasons to support the conclusion, but fails to state any points in part (b).
- 3–5 An answer that gives a correct conclusion in part (a) but fails to state the reasons to support the conclusion, but fails to state the nature of Textile Co's fax in part (b).
- 0–2 An answer that fails to state any points in parts (a) and (b), or states only very limited points.
- 10** 8–10 An answer that states the correct conclusions to questions in parts (a), (b) and (c), and gives all or some reasons to support the conclusions.
- 6–7 An answer that gives any two correct conclusions to questions among the three parts, and gives some reasons to support such conclusions.
- 3–5 An answer that states a correct conclusion to a question among the three parts or some reasons to support such a conclusion, but fails to give any answer to the other parts. As an alternative, an answer that gives correct conclusions to any two questions among the three parts but fails to give reasons to support such conclusions.
- 0–2 An answer that fails to state any points to the questions in the three parts, or states only very limited points in any one part.