

Fundamentals Level – Skills Module

# Corporate and Business Law (Vietnam)

Monday 8 December 2014



**Time allowed:** 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

**Do NOT open this paper until instructed by the supervisor.**

**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

The Ministry of Finance of the Socialist Republic of Vietnam

# Paper F4 (VNM)

# ACCA

**Section A – ALL 45 questions are compulsory and MUST be attempted**

Please use the space provided on the inside cover of the Candidate Answer Booklet to indicate your chosen answer to each multiple choice question.

- 1 Linh was to be dismissed by her company, and in accordance with the Labour Code, the company attempted to convene a hearing with her. However, she did not attend the meeting.

**What is the next step in the dismissal process?**

- A The company should issue a formal notice of dismissal to Linh stating the number of days time in which her dismissal will become effective
- B The company should issue a notice to the trade union and to Linh stating that no further discussions on the dismissal are possible
- C The company must make a second attempt to convene a meeting with Linh at the earliest opportunity
- D The company should ascertain why Linh did not attend the hearing, and if she had no reasonable excuse should proceed with the dismissal

**(2 marks)**

- 2 **When a shareholding company becomes insolvent, which of the following has the HIGHEST priority for repayment of monies owing to them?**

- A An unsecured bondholder who purchased the bond from the company in August 2012
- B A mortgagee who accepted security over the company's buildings in September 2012
- C An employee of the company, whose wages have been unpaid for four months
- D A dividend preference shareholder who purchased the shares in June 2012

**(2 marks)**

- 3 Anh has purchased inventory on behalf of a company which is to be formed in the next month. Anh will be a member of the new company.

**In relation to this transaction, which of the following statements is correct?**

- A Anh will continue to be liable for the obligation once the company is formed
- B Anh cannot transfer the obligation to the company without the unanimous consent of all members
- C Anh's obligation under the contract will be assumed by the company on registration
- D Anh should not have entered into this obligation unless she was the company's authorised representative

**(2 marks)**

- 4 **Which of the following statements about a loan supported by a guarantee is correct?**

- A If the guarantor is required to repay the principal debt, they may claim what they have paid out from the principal debtor
- B The guarantor is automatically liable for further subsequent borrowings from the same creditor while the guarantee is in force
- C The guarantor has a statutory right to withdraw the guarantee at any time without the consent of the principal creditor

**(1 mark)**

**5 In relation to the law of obligations, which of the following statements is correct?**

- A** A legally binding contract is formed if an offer is partially accepted
- B** Once issued, an offer cannot be withdrawn by the offeror
- C** An offer can be accepted by the actions of the offeree
- D** If a counter-offer is made, it is still possible to accept the original offer

**(2 marks)**

**6** The following statements relate to labour contracts:

- (1) A written labour agreement must be issued for all paid employment
- (2) A definite term labour agreement can be renewed only once

**Which of these statements are true?**

- A** Both statements
- B** Neither statement
- C** Statement 1 only
- D** Statement 2 only

**(2 marks)**

**7 If the assets used by way of capital contribution to a new company are valued by the shareholders, what proportion of the shareholders must agree with the final valuation?**

- A** 51%
- B** 75%
- C** 100%

**(1 mark)**

**8 Which of the following provisions applies to the name of a newly-formed enterprise?**

- A** The proposed name of the company must be in the Vietnamese language and cannot be in a foreign language
- B** Once formed, the company must always use its full name and cannot use an abbreviated name
- C** A decision by the registration authority rejecting a name proposed by the founders of a company may be appealed
- D** A proposed name which differs from an existing company name only by the insertion of the word 'new' cannot be registered

**(2 marks)**

**9** BBB Company, a shareholding company, could not hold its general meeting of shareholders because the meeting hall booked for the purpose had insufficient space to accommodate those attending.

**Under these circumstances, which of the following applies?**

- A** The meeting must be cancelled and a new meeting called with a minimum of 30 days notice
- B** The meeting must be reconvened within the next 24 hours
- C** The meeting can be reconvened within a maximum of three days
- D** A new meeting can be convened, with the same agenda and original list of shareholders, within one month

**(2 marks)**

10 Trang has been elected to the board of management of a shareholding company. He replaced Lien, who was dismissed from the board after exactly 24 months of service.

**What is Trang's maximum permitted term of office before he has to present himself for re-election by the members?**

- A Until the next general meeting of members
- B One year
- C Three years
- D Five years

(2 marks)

11 Which of the following must be alleged if an individual is to be accused of insider dealing?

- A Fraudulent activity
- B Dealing in listed securities
- C Concealing or disguising assets
- D The perpetrator obtaining a financial gain

(2 marks)

12 Which of the following has supervisory responsibilities in relation to legal compliance by ministries and government departments?

- A The Supreme People's Procuracy
- B The Supreme People's Court
- C The National Assembly

(1 mark)

13 To which of the following is the Chief Justice of the Supreme People's Court responsible if the National Assembly is not in session?

- A The President
- B The Government
- C The Prime Minister

(1 mark)

14 Pham has purchased a building from Anh. Their agreement makes no reference to the place at which the obligation was created.

**Under the provisions of the Civil Code, which of the following is considered to be the place at which the obligation was created?**

- A Pham's place of residence
- B The place of the property which was transferred
- C Anh's place of residence

(1 mark)

15 Hai made an offer to Trang, but before the offer was accepted or rejected Hai lost his civil capacity.

**What is the status of the offer now?**

- A It is valid but voidable at the discretion of Hai's guardian
- B It only remains valid with the consent of Hai's guardian
- C It is void and cannot be accepted
- D It remains valid

**(2 marks)**

16 On 10 April, Thuy telephoned Phuong to suggest entering into a contract, to which Phuong agreed in principle. Thuy drew up the contract and signed it on 12 April. Phuong received the contract on 14 April and signed it immediately, and then returned it to Thuy, who received it on 16 April.

**When did a legally binding contract come into effect?**

- A 10 April
- B 12 April
- C 14 April
- D 16 April

**(2 marks)**

17 **Which type of contract is formed where someone performs an act in return for an offered reward?**

- A Unilateral
- B Bilateral
- C Auxiliary

**(1 mark)**

18 **Which legal remedy for breach of contract restores the parties to the position they were in before they entered into their obligations?**

- A Damages
- B Rescission
- C Performance

**(1 mark)**

19 **What is the consequence of a company paying a dividend to its shareholders in excess of the maximum amount payable?**

- A Each member of the board of management bears responsibility for a proportion of the excess payment, and the shareholders bear no responsibility
- B The shareholders and members of the board of management are jointly and severally liable to repay the excess dividend to the company
- C The shareholders must repay the excess dividend to the company, but if they cannot do so, the board of management is responsible for the repayment

**(1 mark)**

**20 Which of the following has responsibility for supervising and guiding the activities of the People's Councils, and for repealing any improper resolutions made by them?**

- A** The Supreme People's Court
- B** The Standing Committee of the National Assembly
- C** The Government

**(1 mark)**

**21** The Constitution refers to the legislature, the executive and the judiciary. The following statements refer to these functions.

- (1) The National Assembly is the executive organ of the state
- (2) Both the National Assembly and the Government are the legislative organs of the state

**Which of these statements are true?**

- A** Both statements
- B** Statement 1 only
- C** Statement 2 only
- D** Neither statement

**(2 marks)**

**22** Dash Company is a shareholding company with severe financial difficulties. Some of the shareholders wish to petition the court for bankruptcy of the company.

**What is the minimum shareholding required in order for the petition to be heard by the court?**

- A** 5%, subject to the shares being held for a minimum period of one year
- B** 10%, subject to the shares being held for a minimum period of six months
- C** 20%, subject to the shares being held for a minimum period of six months
- D** 25%, subject to the shares being held for a minimum period of one year

**(2 marks)**

**23 What action should the committee for management and liquidation of assets take in respect of highly perishable inventory held by an insolvent company?**

- A** Write off the value of the inventory
- B** Sell the inventory by auction immediately for the best price
- C** Seek permission from the judge to sell the inventory

**(1 mark)**

24 Kim's investment in Sill Company provides her with a fixed dividend, payable irrespective of the company's performance, and a bonus dividend. She is not entitled to attend general meetings or to vote on resolutions.

**What type of investment does Kim have?**

- A Redeemable preference shares
- B Dividend preference shares
- C Corporate bonds
- D Ordinary shares

**(2 marks)**

25 **What would be the consequence of the death of one of the partners in an unlimited partnership?**

- A The partnership would have to be terminated
- B The heir to the deceased partner would have a legal right to join the partnership
- C The heir to the deceased partner could join the partnership subject to the agreement of the surviving partners
- D The heir to the deceased partner would have no right to join the partnership, but would be entitled to a capital payment from the surviving partners

**(2 marks)**

26 **In relation to voluntary representation, what is the minimum age at which an individual may be a representative under authorisation?**

- A 15 years
- B 16 years
- C 18 years

**(1 mark)**

27 **In relation to unlimited partnerships, which of the following decisions requires the support of at least 75% of the partners?**

- A Purchase of an asset valued at 15% of the charter capital
- B The amount of annual profits payable to each partner
- C Changing the authorisation limits for expenditure by any partner

**(1 mark)**

28 **Which of the following is permitted to enter into an oral labour contract?**

- A Seasonal workers engaged for agricultural jobs for up to six months
- B Professional trainees who are subject to a probation period of less than 12 months
- C Temporary employees whose jobs will not exceed three months
- D Domestic servants who are subject to definite term labour contracts

**(2 marks)**

**29 Which of the following sources of law has the HIGHEST level of authority?**

- A Decrees issued by the Government
- B The Constitution
- C International treaties entered into by the state

**(1 mark)**

**30 For a non-contractual obligation to be proven, which of the following is true?**

- A There must be a financial loss sustained by one party
- B There must be direct causation between the event and the loss sustained
- C The parties to the claim must be known to one another
- D There must be an intention to cause loss or damage

**(2 marks)**

**31 Which of the following procedures is required when the employees of an insolvent company wish to nominate a representative to serve their interests?**

- A Secret ballot or collection of signatures
- B Open ballot at an employees' meeting
- C Appointment by a union representative

**(1 mark)**

**32 Civil cases are primarily concerned with which of the following?**

- A Punishment for behaviour of which the State disapproves
- B Maintaining public order and dealing with offences
- C Resolution of disputes or disagreements between citizens or entities
- D Deterring illegal actions by citizens and entities

**(2 marks)**

**33 In relation to the content of a contract, which of the following is an essential feature of an offer?**

- A It must be addressed to one specific person
- B It must refer to rights and obligations of at least two persons
- C It must specify a time-limit for acceptance
- D It must convey a willingness to enter into a binding agreement

**(2 marks)**

**34 Which of the following statements in relation to acceptance of an offer is true?**

- A The method of acceptance must be specified in the contract
- B If acceptance is late, it is regarded as a new offer, replacing the original offer
- C Silence can never be regarded as acceptance

**(1 mark)**



**35 To which of the following Vietnamese legal entities is the offence of insider dealing relevant?**

- A** All incorporated bodies
- B** All companies whose securities are publicly traded
- C** All limited companies and shareholding companies
- D** All limited partnerships and companies

**(2 marks)**

**36 What period of notice is required, if an employer wishes to rescind the labour agreement with an employee during the probationary period?**

- A** None
- B** Two days
- C** Seven days

**(1 mark)**

**37 Which of the following must occur in order for a non-contractual obligation to arise?**

- A** The parties are known to one another
- B** Loss, harm or injury is intended
- C** Failure of a duty of care to another person or persons

**(1 mark)**

**38 In relation to mortgaged property, which of the following is a right of the mortgagee?**

- A** To insist that the mortgaged property is insured, and to require evidence of this
- B** To acquire legal title to the mortgaged property until the principal obligation is fulfilled
- C** To utilise the mortgaged property for any purpose, with or without the consent of the mortgagor
- D** To lease the mortgaged property to a third party while the mortgage remains in effect

**(2 marks)**

**39 What is the legal consequence of an employee of a company causing a financial loss to a customer of the company through their negligence?**

- A** The company will be liable and cannot take action against the employee for recovery of compensation payable to the customer
- B** The company will be liable, but can claim some or all of the compensation payable to the customer from the employee
- C** The employee will be personally liable to the customer to the full extent of any compensation payable to the customer
- D** The employee and the company are jointly and severally liable for any compensation payable to the customer

**(2 marks)**

**40 Under the provisions of the Civil Code, which of the following methods of securing obligations requires the debtor to make a deposit of money?**

- A Escrow
- B Pledge
- C Guarantee

**(1 mark)**

**41** When a contract is breached, a claim can be made for compensation and the contract can be rescinded.

**Which alternative legal remedy is envisaged by the Civil Code?**

- A Reduction in price
- B Performance of the obligation
- C Offset of the obligation against the debtor's assets

**(1 mark)**

**42 What is the consequence if neither party to a fixed term labour agreement takes any action in respect of the contract by its expiry date?**

- A It will automatically be terminated
- B It will be regarded as extended for a new fixed term
- C It will become an indefinite term contract

**(1 mark)**

**43** Hoang and Chi entered into a contract in which they agreed on a fixed penalty for any breach of the contract. However, as a result of Hoang's breach, Chi incurred substantial additional losses.

**What can Chi do in this situation?**

- A Claim the fixed penalty and any tangible losses sustained
- B Choose to claim damages or the fixed penalty, but not both
- C Claim the fixed penalty but cannot make any further claim
- D Claim the fixed penalty and insist on performance of the obligation

**(2 marks)**

**44** Nhi served notice on her employer that she wished to leave the company to take a career break, but then changed her mind and wrote to the company advising that she was rescinding her resignation.

**Which of the following statements is true?**

- A Nhi's resignation cannot be rescinded, so she would have to apply for a new position in the company
- B Nhi's resignation can be rescinded, even if the company does not wish to retain her services
- C Nhi's resignation will automatically be set aside and her resignation will be disregarded
- D Nhi's resignation can be rescinded but only with the consent of the employer

**(2 marks)**

**45** Bao entered into a contract with Truc to deliver 100 garments made of green cloth. However, Bao supplied garments made of blue cloth by mistake. Truc sold the garments to her customers at the same price as that which would have been charged for the green garments. Truc has refused to pay Bao for the garments, insisting that they were inconsistent with the terms of the contract.

**Which of the following statements is correct?**

- A** Bao can claim the full price of the garments plus interest for late payment
- B** Bao can claim the full price of the garments only
- C** Bao can claim a reduced payment from Truc
- D** Bao cannot recover the cost of the garments from Truc

**(2 marks)**

**Section B – ALL FIVE questions are compulsory and MUST be attempted**

Please write your answers to all parts of these questions on the lined pages within the Candidate Answer Booklet.

- 1** Trang is a dealer in antique books. Having acquired three rare books, he wrote a letter to three customers stating that one book would be available to each of them at a purchase price of 5 million dong if they placed their orders before 1 October.

Canh replied stating that she wished to purchase the book, but she would expect her usual discount of 5% on the price. Her letter was received by Trang on 28 September.

Thuy replied stating that she would purchase the book. Her letter also arrived at Trang's office on 28 September, but the following day she changed her mind and sent an email to cancel the order.

Toan replied stating that he would purchase the book, but his letter arrived on 2 October.

**Required:**

**(a) Explain whether Trang's letter to Canh, Thuy and Toan may be considered as offers.** (3 marks)

**(b) Explain whether legally binding contracts have been created between Trang and Canh, Thuy and Toan respectively.** (3 marks)

**(6 marks)**

- 2** Phong and Hai were partners in an unlimited partnership which provided gardening services.

The partners were working on a contract to redesign and create a new garden in the grounds of a large company. Phong was responsible for ordering inventory, but in doing so he purchased excess inventory in order to carry out personal work for customers who were not known to Hai.

Hai discovered Phong's dishonesty and demanded full details of Phong's additional work, as well as a share in the profits which he made. In response, Phong refused to provide any of these details and walked away from the partnership, resigning with immediate effect. As a result, Hai incurred significant additional expenditure, as he had to hire sub-contractors to complete the work on the new garden for his corporate customer.

**Required:**

**(a) Explain Phong's right to resign from the partnership.** (2 marks)

**(b) Explain whether Phong would have any potential liabilities for the obligations of the partnership if he resigned.** (2 marks)

**(c) Explain Hai's rights to demand information on Phong's additional work and a share in the profits made in respect of this work.** (2 marks)

**(6 marks)**

- 3 XXX Company made a profit of 3 billion dong in the most recent financial year. It also raised 10 billion dong by way of issuing additional shares. The board of directors decided to pay total dividends of 5 billion dong to the shareholders. YYY Company made a loss of 3 billion dong in the most recent financial year, and decided not to make dividend or interest payments to its shareholders and bondholders respectively.

**Required:**

- (a) **Discuss the legality of the dividend paid by XXX Company.** (3 marks)
- (b) **Explain the potential consequences of YYY Company not making payments to its shareholders and bondholders.** (3 marks)

**(6 marks)**

- 4 DDD Company is a shareholding company which manufactures computers and other hardware. Its products are sold to retailers and wholesalers.

The board of management has decided to enter the retail market, selling its products to the general public. It intends to support this new venture with a high profile advertising campaign.

Several shareholders have become aware of this development and fear that it will anger DDD Company's corporate customers and result in a loss of business. They are also concerned that the board of management will be reckless if it commits to major expenditure on advertising, which will damage profitability.

**Required:**

- (a) **Explain the actions which the shareholders may consider if they wish to prevent the board of management from entering into the new initiative.** (3 marks)
- (b) **Explain the potential consequences to members of the board of management if their actions result in losses to the company.** (3 marks)

**(6 marks)**

- 5 Cam is the finance director of BBB Company, a shareholding company whose securities are traded on the Hanoi Stock Exchange. While attending a party, Cam told Linh, his sister, that she should purchase shares in BBB Company as the financial statements which will be released next week will announce profits which are much higher than expected in the financial markets. Linh then told Anh, a colleague at work, that she was buying shares in BBB Company in the hope of making a profit, though she did not reveal any further details of her reasons for doing so.

**Required:**

- (a) **In the context of BBB Company, explain what is meant by 'price sensitive information', and why it is necessary to regulate deals and disclosures made on the basis of having price sensitive information.** (3 marks)
- (b) **Explain whether any offences have been committed by Cam, Linh and Anh.** (3 marks)

**(6 marks)**

**End of Question Paper**