

Fundamentals Level – Skills Module

Corporate and Business Law (China)

Monday 12 December 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) explain the roles of judicial interpretations made by the Supreme People's Court; (6 marks)

(b) state any one of the rules regarding the validity of a contract provided for in the judicial interpretations on the Contract Law by the Supreme People's Court. (4 marks)

(10 marks)

2 In relation to the Property Law of China:

(a) explain the term 'right to use the land for construction'; (3 marks)

(b) state the forms to establish the right to use the land for construction; (3 marks)

(c) state the various forms of disposal in relation to the right to use the land for construction by the owner of such a right. (4 marks)

(10 marks)

3 In relation to the Labour Contract Law of China:

(a) explain the circumstances that make a labour contract invalid or partially invalid in the process of concluding it; (3 marks)

(b) explain the provisions contained in a labour contract that would be regarded as invalid or partially invalid; (3 marks)

(c) state the provisions concerning liquidated damages for breach of a labour contract by an employee that may be incorporated into a labour contract. (4 marks)

(10 marks)

4 In relation to the Contract Law of China:

(a) explain the term 'liquidated damages', and state the legal nature of them; (2 marks)

(b) state the rules relating to the award of liquidated damages; (6 marks)

(c) state the rule relating to the award of liquidated damages for delay in performing the contractual obligation. (2 marks)

(10 marks)

5 In relation to the Company Law of China:

(a) state the circumstances under which a joint stock company may purchase its own shares; (6 marks)

(b) state the reasons why a joint stock company is generally not allowed to purchase its own shares, except under special circumstances. (4 marks)

(10 marks)

6 In relation to the Enterprise Bankruptcy Law of China:

- (a) state the rules on the circumstances to declare the creditor's right, including what is not required to be declared; (4 marks)
- (b) state the rules with respect to joint and several creditors/debtors during the course of declaration of the creditor's right. (6 marks)

(10 marks)

7 In relation to the Securities Law of China:

- (a) state, and explain the duties of, the relevant personnel of a listed stock company who are responsible for the disclosure of information in the company's regular reports; (4 marks)
- (b) state the legal liabilities of an issuer, a listed stock company and the relevant personnel for failing to disclose information, or disclosing false, misleading or omitted information. (6 marks)

(10 marks)

8 Mr Liu entered into an agreement to buy a second-hand car from Mr Feng at a price of RMB 50,000 yuan. After the conclusion of the agreement, Mr Liu paid the price and Feng delivered the car to Mr Liu. The two parties, however, did not register the sale of the car.

Following the sale Mr Liu took the car to a repair shop to repair the air conditioner. After the completion of the repair and on the way home, a fire accident occurred due to the defect of the air conditioner and caused serious damage to the car. Mr Liu returned to the repair shop claiming compensation for the defect of the air conditioner. The repair shop insisted that it was not liable for the fire accident and the resulting damage to the car. In addition, after retrieval of the data from the local vehicles registration centre, the repair shop found that the registered owner of the car was still Mr Feng, not Mr Liu. Under such a situation it refused to discuss the dispute any more with Mr Liu, on the ground that he was not a legitimate owner of the car. When Mr Liu asked Mr Feng to negotiate with the repair shop, Mr Feng was reluctant to do so on the ground that the transaction between them was over since he had duly delivered the car to Mr Liu.

Required:

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

- (a) state the rule as to the passing of ownership for a car as a kind of movables, and the effect of the agreement between the two parties; (4 marks)
- (b) state who should be the legitimate owner of the car; (4 marks)
- (c) state whether the repair shop should be liable for the damaged car if the fire was caused by the defect of the air conditioner. (2 marks)

(10 marks)

- 9** In January 2011 Department Store entered into a sales contract with Appliance Co to buy 100 refrigerators from the latter at a price of RMB 3,000 yuan/piece, total price being RMB 300,000 yuan. The payment would be made in two instalments: 100,000 yuan as advance payment to be paid after the conclusion of the contract, and the remaining 200,000 yuan to be paid in April 2011. Upon receiving the advance payment Appliance Co would deliver all the products. After the conclusion of the sales contract, Department Store made the first payment of 100,000 yuan and received all the products delivered by Appliance Co.

In the same month, Appliance Co intended to rent a space of 100 m² from Department Store to exhibit its other appliance products. For this purpose the two parties entered into a rental agreement and agreed upon the following terms and conditions: the term of rental would be one year as from January to December 2011; the total rental would be RMB 400,000 yuan and be paid RMB 100,000 yuan quarterly within the first 10 days of January, April, July and October.

At the end of March 2011 Appliance Co sent Department Store a written notice, stating that it would set off its rental of RMB 200,000 yuan for the second and third instalments with the remaining price of 200,000 yuan for the refrigerators.

Required:

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

- (a) state the nature and different forms of set-off as presented by Appliance Co to Department Store;**
(4 marks)
- (b) state the conditions to be met by Appliance Co when it was claiming the set-off of credit and debt with Department Store.**
(6 marks)

(10 marks)

- 10** Stationary Company was a joint stock company incorporated by four natural persons (A, B, C and D) and Fengli Co Ltd, with a total registered capital of RMB 50 million yuan. During the operations of the past three years, Stationary Company gained no profits in the financial years 2008 and 2009. In 2010 Stationary Company gained an after-tax profit of RMB 5 million yuan.

In the beginning of 2011 the board of directors of Stationary Company submitted to the general shareholders' meeting for approval two resolutions. The proposed resolutions were on the following:

- (i) The company would distribute dividends to the shareholders on the basis of 0.10 yuan per share with all its after-tax profit of RMB 5 million yuan for 2010;
- (ii) For the purpose of getting financing from the bank, the company was to place a pledge with all the shares of its shareholders to the bank.

Required:

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

- (a) state whether proposed resolution (i) on the distribution of dividends was in conformity with the law;**
(5 marks)
- (b) state whether proposed resolution (ii) on placing the shares as a pledge for a loan was in conformity with the law.**
(5 marks)

(10 marks)

End of Question Paper