

Fundamentals Level – Skills Module

Corporate and Business Law (China)

Tuesday 4 December 2007

Time allowed

Reading and planning: 15 minutes

Writing: 3 hours

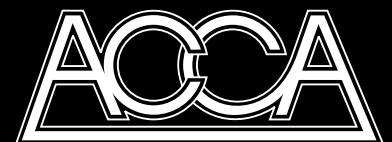
ALL TEN questions are compulsory and MUST be attempted.

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)

ALL TEN questions are compulsory and MUST be attempted

1 In relation to the General Principles of the Civil Law of China:

- (a) Explain the meaning of a legal person and its capacity. (4 marks)
- (b) Describe the differences between a legal person and a partnership, in terms of their capacity for civil rights and the right toward the property of a legal person or partnership. (6 marks)

(10 marks)

2 In relation to the Labour Law of China:

- (a) Explain the time limit for a probation period in a labour contract. (2 marks)
- (b) Describe the conditions under which an employee and the employer may terminate a labour contract during the period of probation respectively. (4 marks)
- (c) Describe the conditions under which an employee may terminate a labour contract without the advance notification to the employer. (4 marks)

(10 marks)

3 In relation to the Contract Law of China:

- (a) Explain the term *acceptance*. (2 marks)
- (b) State the conditions to be met for an effective acceptance. (6 marks)
- (c) Describe the legal consequence of an effective acceptance with respect to the formation of a contract. (2 marks)

(10 marks)

4 In relation to the Contract Law of China:

- (a) Explain the term *liability for fault in concluding a contract*. (3 marks)
- (b) State the types of conduct a party might engage in during the making of a contract which would make him liable for any loss thereby caused to the other party. (3 marks)
- (c) Distinguish the *liability for fault in concluding a contract* from the liability for breach of contract. (4 marks)

(10 marks)

5 In relation to the Company Law of China:

- (a) Explain the objectives and rationale of the Company Law that restricts a company from purchasing its own shares. (3 marks)
- (b) State the various circumstances under which a company may purchase its own shares. (4 marks)
- (c) Where a company may purchase its own shares, state the limitations and conditions that apply to such purchases. (3 marks)

(10 marks)

6 In relation to the Company Law of China:

- (a) State the general rules applicable to a company which wants to provide a guarantee for others (legal person or natural person). (4 marks)
- (b) State the special rules for a company to provide a guarantee for the shareholders or actual controller of the company. (6 marks)

(10 marks)

7 In relation to the Guaranty Law of China:

- (a) Explain the terms *general suretyship guaranty* and *joint and several suretyship guaranty*. (6 marks)
- (b) State the major differences between general suretyship guaranty and several and joint suretyship guaranty. (4 marks)

(10 marks)

8 On 1 July 2006, for the purpose of buying a shipment of a wooden plate, Oriental Construction Materials Company (Oriental Company) sent a purchase order to Wooden Company which contained the terms and conditions of the wooden plate, including quantity, quality, way of payment and time of shipment. The purchase order also indicated that Wooden Company should reply within 10 days upon receipt of the purchase order.

On 9 July 2006 Wooden Company sent back a fax and accepted all the terms and conditions of the purchase order, and added the price of the said wooden plate. The fax indicated that Oriental Company should give its final decision within three days upon receipt of the fax.

On 11 July 2006 Oriental Company replied with a fax accepting the price forwarded by Wooden Company and demanded that a written letter of confirmation was required for finally concluding a contract.

On 15 July 2006 Wooden Company despatched a written confirmation letter, via a DHL package, which contained all the terms and conditions for the sales of the wooden plate as agreed upon by the two parties. The written confirmation letter also provided that the liquidated damages amounting to 10% of the total price of the goods would be borne by the breaching party as the liability for breach of contract.

Just during the period of the negotiations between the two parties, the market price of the wooden plate rose quickly. Oriental Company urged Wooden Company to deliver the goods according to the terms of the written confirmation letter, which it alleged to constitute an effective contract, without any delay. However, Wooden Company insisted there was no contract at all between the parties. Under such circumstances Oriental Company filed a law suit against Wooden Company in the local court.

Required:

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

(a) State the legal status of the purchase order of Oriental Company on 1 July 2006, the fax of Wooden Company on 1 July 2006 and the fax of Oriental Company on 11 July 2006. (6 marks)

(b) Explain whether there was a contract between the two parties. (4 marks)

(10 marks)

- 9 Four natural persons Mr A, Mr B, Mr C and Mr D entered into an incorporation agreement to establish a limited liability company with a registered capital of RMB 400,000 yuan. Among other things, the incorporation agreement provided for the following matters regarding to the proposed company:
- (a) Mr A, Mr B and Mr C would contribute their capital with cash of RMB 100,000 yuan, RMB 100,000 yuan and RMB 50,000 yuan respectively. Mr D would make his capital contribution in the form of technology with a value of RMB 150,000 yuan. He has already applied for a patent for his technology with the Administration of Intellectual Property, but he has not yet been granted the patent. The value of RMB 150,000 yuan was estimated by Mr D himself and was accepted by Mr A, Mr B and Mr C. (3 marks)
 - (b) The proposed company would set up an executive director, instead of a board of directors. Mr A was appointed as the executive director and would be the legal representative of the company. (3 marks)
 - (c) Mr B would be the chief finance officer and the supervisor of the company. (2 marks)
 - (d) In order to expand the scale of business, the company would issue the corporate bonds of RMB 2,000,000 yuan within one year after its incorporation. (2 marks)

Required:

Discuss whether the matters (a), (b) and (c) of the above agreement were in conformity with the relevant rules of the Company Law, and whether the matter (d) of the above agreement was in conformity with the relevant rule of the Securities Law of China.

Note: the mark allocation is shown against each of the four matters above.

(10 marks)

- 10 An auditing firm was entrusted by a listed stock company (Stock Company) to audit its accounts for the year ended 31 December 2006. During the process of auditing, the certified public accountants (CPAs) found the following information relevant to the business transactions for the year 2006:
- (a) On 1 April 2006, Stock Company concluded a contract with an instrument company. Under this contract Stock Company would be responsible for the management of the instrument company for three years. It would be compensated with 30% of the net profit of the instrument company for the management. By the end of 2006, Stock Company received a management fee of RMB 4 million yuan, which accounted for 10% of the net profit of Stock Company. (3 marks)
 - (b) Stock Company was involved in a commercial dispute with a third party and the dispute was brought to the basic level court for trial. Stock Company had disclosed the information on the local newspaper when it received the judgement of the first instance. Both parties to the dispute disagreed with the judgement of the first instance and brought an appeal to the intermediate court. However, the court had not heard the appeal case by the end of 2006. (3 marks)
 - (c) In September 2006, one of the shareholders who held 3% shares of Stock Company placed its shares as guarantee for a loan agreement. (4 marks)

Required:

For the Items (a), (b) and (c), discuss whether the above-mentioned information of Stock Company should be disclosed to the public in accordance with the relevant provisions of the Securities Law of China.

Note: the mark allocation is shown against each of the three items above.

(10 marks)

End of Question Paper