

Fundamentals Level – Skills Module

Corporate and Business Law (China)

Tuesday 3 June 2008

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 Civil Procedures Law of China:

- (a) explain the rules on territorial jurisdiction of the Chinese people's court over a civil case against a natural person and a legal person respectively; (4 marks)
- (b) explain the term *exclusive jurisdiction*; and (3 marks)
- (c) describe the types of civil cases which are under the coverage of the exclusive jurisdiction of the court. (3 marks)

(10 marks)

2 In relation to the Property Law of China:

- (a) explain the term *ownership*; (3 marks)
- (b) state the procedural rules for the change of the property rights in immovables; and (3 marks)
- (c) state the general rules governing the effectiveness of the creation and assignment of rights in movables. (4 marks)

(10 marks)

3 In relation to the Labour Contract Law of China:

- (a) explain the term *open-ended employment contract* (i.e. a labour contract without a fixed-period of employment); and (2 marks)
- (b) state the various circumstances under which an *open-ended employment contract* must be concluded by the employer and employee. (8 marks)

(10 marks)

4 In relation to the Contract Law of China:

- (a) state the various legal remedies for breach of contract; and (6 marks)
- (b) state the conditions to be met for a party to be eligible for specific performance as a legal remedy for breach of contract. (4 marks)

(10 marks)

5 In relation to the Company Law of China:

- (a) in the context of the incorporation of a joint stock limited company, explain the terms *incorporation by share offering* and *incorporation by means of sponsorship*; (4 marks)
- (b) state the minimum registered capital required for a joint stock limited company; and (3 marks)
- (c) state the statutory requirement for capital contributions by the sponsors of a joint stock limited company that is incorporated by means of sponsorship. (3 marks)

(10 marks)

6 In relation to the Company Law of China:

- (a) state the conditions to be met for a shareholder of a limited liability company to transfer his equity to a party other than the shareholders of this company; and (6 marks)
- (b) state the procedures and conditions to be complied with when a court orders the transfer of the equity of a shareholder of a limited liability company under the enforcement procedures of the law. (4 marks)

(10 marks)

7 In relation to the Enterprise Bankruptcy Law of China:

- (a) state the composition of the creditors' meeting; (2 marks)
- (b) state the general conditions to be met for the creditors' meeting to approve a resolution; and (4 marks)
- (c) state the special procedure that can be taken for the creditors' meeting to approve a resolution involving the matters on the settlement agreement or the restructuring of an enterprise in the process of bankruptcy liquidation. (4 marks)

(10 marks)

8 For the purpose of expanding his business, Mr Zhang borrowed RMB 100,000 yuan from Mr Lee and would provide a mini-bus as the pledge to Mr Lee. However, Mr Lee returned the mini-bus to Mr Zhang because he did not hold a driver's licence.

Subsequently, Mr Zhang borrowed another RMB 100,000 yuan from Mr Wang and put the mini-bus as the pledge to Mr Wang. After the conclusion of the loan agreement and pledge agreement, Mr Zhang delivered the mini-bus to Mr Wang.

During the period of his possession of the mini-bus, Mr Wang concluded a rental agreement with a transport company without the advance consent of Mr Zhang. The mini-bus was put into transportation service by the transport company but was totally destroyed in a traffic accident.

Upon the expiration of the loan agreement, Mr Zhang came to repay the principal and interest. However Mr Wang could not return the pledged mini-bus to him.

Required:

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

- (a) explain whether the pledge agreement between Mr Zhang and Mr Lee came into effect; (3 marks)
- (b) explain what the legal relationship between Mr Zhang and Mr Wang was; (2 marks)
- (c) explain whether Mr Wang was entitled to lease the mini-bus to the transport company; and (2 marks)
- (d) explain against whom Mr Zhang should act in law for the recovery of the mini-bus. (3 marks)

(10 marks)

- 9 Since Hongyan Mechanical Engineering Co Ltd (Hongyan Co) could not settle the huge amount of debts due, its creditors applied for bankruptcy in the competent people's court. The court accepted the application of the creditors and declared the bankruptcy of Hongyan Co. The court designated a bankruptcy administrator to be in charge of the bankruptcy liquidation. During the process of bankruptcy liquidation, the bankruptcy administrator formulated a list of bankruptcy assets, debts due and declared credits.
- (a) the appraised bankruptcy assets of Hongyan Co were as follows:
 - (i) Office building – appraised value of RMB 2,400,000 yuan, mortgaged for a loan borrowed from the Communication Bank.
 - (ii) Investment to a mutual fund – RMB 1,400,000 yuan.
 - (iii) A rental receivable from Company A – RMB 1,900,000 yuan.
 - (iv) Giving up a creditor's right due 10 months before the bankruptcy of Hongyan Co – RMB 1,000,000 yuan.
 - (b) the declared credits by Hongyan Co's creditors were as follows:
 - (i) Communication Bank's loan – principal RMB 2,000,000 yuan with 10% of annual interest rate for two years.
 - (ii) Company A's credit due – RMB 7,000,000 yuan.
 - (iii) Company B's credit under a sales contract payable by Hongyan Co – RMB 1,500,000 yuan.
 - (iv) Company C's damages due to the termination of contract by the bankruptcy administrator – RMB 1,400,000 yuan.

Required:

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

- (a) **state which creditor should be satisfied in the priority order in the allocation of the bankruptcy assets;** (2 marks)
- (b) **state the particular debt of Hongyan Co that could be off-set from its bankruptcy assets;** (2 marks)
- (c) **state the particular transaction of Hongyan Co that could be revoked by the bankruptcy administrator in the process of liquidation; and** (3 marks)
- (d) **state the credits that should be deemed as the common credits of bankruptcy.** (3 marks)

(10 marks)

10 Dongfang Import & Export Co (Dongfang Co) and Lidar Steel Company (Steel Co) entered into a cooperation contract. According to the contract Dongfang Co was responsible for the importation of 10,000 metric ton (M/T) of iron ore and exportation of pig iron 6,000 M/T, while Steel Co was responsible for the processing of iron ore into pig iron; Steel Co was also under the obligation to complete the processing within 10 days upon the arrival of iron ore and then carry the pig iron to Tianjin port for export by Dongfang Co.

On 10 March 2008 the first shipment of 5,000 M/T iron ore arrived at the designated port and was promptly carried to the premises of Steel Co for processing.

10 days later the second shipment of 5,000 M/T arrived at the Chinese port. However Dongfang Co found that several bank accounts of Steel Co were frozen by the order of the court in a dispute with a third party. Therefore, it immediately despatched a written memo to Steel Co, stating that it would detain the second shipment of iron ore until Steel Co delivered the processed pig iron.

Upon the receipt of the notice, Steel Co sent back a fax to express its sincere regret for its delay to deliver pig iron. Steel Co emphasised, however, that it suffered from insufficient funds to buy coke for the processing. It promised to make efforts to deal with this problem, but failed to specify any concrete measures to be taken or give the necessary security for the performance of the contractual obligation. Steel Co also urged that Dongfang Co deliver the remaining 5,000 M/T of iron ore.

Considering the date for the shipment of pig iron was approaching but Steel Co did not deliver any processed pig iron, Dongfang Co declared the dissolution of the cooperation contract and sold the remaining 5,000 M/T of iron ore to a third party. Under such circumstances Steel Co brought an action against Dongfang Co for damages on the ground that Dongfang refused to deliver the second shipment of 5,000 M/T iron ore for processing.

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 whether Dongfang Co was entitled to detain the remaining 5,000 M/T of iron ore;** (6 marks)
- (b) **State whether Dongfang Co was entitled to dissolve the cooperation contract and sell the remaining iron ore to a third party; and** (3 marks)
- (c) **State whether Steel Co's claim should be supported by the court.** (1 mark)

(10 marks)

End of Question Paper