

Fundamentals Level – Skills Module

# Corporate and Business Law (China)

Tuesday 7 December 2010

**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 square.

ALL TEN questions are compulsory and MUST be attempted

- 1 In relation to the Civil Procedure Law of China:
- (a) explain the term *exclusive jurisdiction*; (2 marks)
  - (b) state the major legal characteristics of exclusive jurisdiction, in terms of:
    - (i) the basis of exclusive jurisdiction; and (4 marks)
    - (ii) the effect of the rule of exclusive jurisdiction. (4 marks)
- (10 marks)**
- 2 In relation to the Property Law of China:
- (a) explain the term *right of lien*; (4 marks)
  - (b) state THREE conditions to be met for a party to claim the right of lien. (6 marks)
- (10 marks)**
- 3 In relation to the Labour Contract Law of China:
- (a) state the various powers of the labour administration in exercising its supervisory and examining functions; (2 marks)
  - (b) state any FOUR kinds of situations under which the labour administration may issue administrative orders to an employer for violations of Labour Contract Law. (8 marks)
- (10 marks)**
- 4 In relation to the Contract Law of China:
- (a) explain the term *termination of contract*; (2 marks)
  - (b) explain and distinguish between termination of contract and dissolution of contract. (8 marks)
- (10 marks)**
- 5 In relation to the Company Law of China:
- (a) state the basic rules regarding the shareholders of:
    - (i) a general limited liability company; (2 marks)
    - (ii) a sole-person limited liability company and a wholly state-owned company; and (2 marks)
  - (b) state the requirements for capital of:
    - (i) a general limited liability company; (2 marks)
    - (ii) a sole-person limited liability company; and (2 marks)
    - (iii) a company with exclusive state-ownership. (2 marks)
- (10 marks)**

- 6 In relation to the Enterprises Bankruptcy Law of China, state the legal effect of the acceptance of an application for bankruptcy by the court:**
- (a) in terms of the preservative measures against the assets of the debtor; (4 marks)
  - (b) in terms of the enforcement procedure against the relevant debtor; (4 marks)
  - (c) in terms of pending legal actions against a debtor. (2 marks)
- (10 marks)**

- 7 In relation to the Securities Law of China:**
- (a) explain the term *sponsor* in underwriting securities; (2 marks)
  - (b) state the objective of the legislation to set up the system of sponsorship in underwriting securities; (2 marks)
  - (c) state the various legal liabilities of a sponsor, in providing professional services, for his wrong doings or failure to perform his functions. (6 marks)
- (10 marks)**

- 8** In 2009 Mr Lee and the villager committee entered into a contract for the management of land, under which he obtained the right to manage the contracted piece of land in a small mountain for 30 years. The contract was duly registered with the relevant government authority in light of the Property Law.

One day when Mr Lee was planting trees on the mountain, he accidentally found a small coal mine in the mountain. Having discovered this information many villagers rushed to the mountain to exploit coal for sale. Mr Lee demanded the villagers stop the exploitation of coal, on the ground that he has been a legitimate holder of the right of management of land. Therefore, he should be a lawful holder of right to the coal mine under the land. On the other hand, the villagers refused to accept Mr Lee's position and insisted that Mr Lee's right to management of land would not extend to natural resources under the land. They held that the coal mine should be the common property of the villagers as a whole and they were entitled to dig coal.

Since Mr Lee and the villagers could not reach a settlement themselves, they filed a lawsuit against each other before the court for the determination of right.

**Required:**

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

- (a) describe what kind of property right Mr Lee has held regarding the mountain; (2 marks)
  - (b) describe who should hold the ownership of the coal mine in the mountain; (4 marks)
  - (c) state how the court should deal with the claim brought by Mr Lee for damages against villagers because some of the trees in the land were destroyed by villagers in digging coal. (4 marks)
- (10 marks)**

9 Natural Gas Company (Gas Company) and Yaowa Glass Company (Yaowa Company) entered into a supply contract. The major terms and conditions of the contract were that Gas Company would provide a minimum 4,000 m<sup>3</sup> of natural gas daily for a period of five years at a fixed price; it should give a written notice five days in advance where it reduces the quantity of supply; Yaowa Company would provide a sum of RMB 100,000 yuan as a deposit for the performance of the contract. Yaowa Company paid the deposit pursuant to the supply contract upon the conclusion of the contract.

Gas Company has been in decline since the beginning of 2010. In order to achieve extra profit, Gas Company sold more natural gas to other customers at a higher price by reducing the quantity of supply to Yaowa Company. One day Gas Company suddenly stopped providing natural gas to Yaowa Company without a notice in advance, which resulted in serious damage to the equipment of the latter.

Due to unsuccessful negotiation between the two parties, Yaowa Company intended to seek the assistance from the people's 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) explain the legal nature of the deposit under the contract law, and state whether a claim for a refund of twice the amount of the deposit should be supported by the court; (4 marks)
- (b) state whether a claim requiring specific performance of contract by Gas Company should be supported by the court where the Yaowa Company has already requested a refund of twice the amount of the deposit. (6 marks)

**(10 marks)**

10 Kingmart Joint Stock Company (Kingmart Company) was a listed joint stock company listing in Shanghai Securities Exchange, with total assets of RMB 500 million yuan; while Dahua Limited Liability Company's (Dahua Company) registered capital was RMB 160 million yuan. At the end of 2009 the board of directors of Kingmart Company adopted a special board of directors' resolution to merge with Dahua Company in a form of merger by absorption. After the completion of the merger plan Dahua Company would be dissolved.

For the purpose of carrying forward the merger plan, Kingmart Company and Dahua Company should take some procedural steps before the merger plan could be implemented and settle the credit and/or debt of these two companies with other parties.

**Required:**

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

- (a) state the relevant voting requirement by the general shareholders' meeting; (3 marks)
- (b) state the relevant rules with respect to public notice; (3 marks)
- (c) state how to deal with Dahua Company's debts of RMB 500,000 yuan owed to a local electricity plant. (4 marks)

**(10 marks)**

**End of Question Paper**