

INTERNATIONAL LEGAL ENGLISH CERTIFICATE

Test of Reading

TIME 1 hour and 15 minutes

Part 1

Read the text and choose the correct answer, **A**, **B**, **C** or **D**. For example: **(0) A On B**
When **C** If **D** Provided

Corporate Insolvency

(0) a company becoming insolvent, there are informal and formal ways to **(1)** the situation. A small company with few creditors may informally negotiate a **(2)** extension and larger companies in multi-bank situations may use the London Approach, involving the banks remaining supportive and continuing banking **(3)** while seeking a solution involving rescheduling and a possible debt-for-**(4)** swap. The danger of informal **(5)** is that there is no protection from action by other creditors while the terms of a workout are being agreed. The **(6)** Act tries to ensure the survival of the business through the formal options of (i) receivership; (ii) administration; (iii) company voluntary arrangement; and (iv) liquidation.

- | | | | | |
|---|---------------------|----------------------|---------------------|----------------------|
| 1 | A resolve | B solve | C remedy | D rectify |
| 2 | A liability | B debt | C borrowing | D obligation |
| 3 | A activities | B facilities | C actions | D acts |
| 4 | A property | B assets | C shares | D equity |
| 5 | A proceeds | B processes | C procedures | D proceedings |
| 6 | A Insolvency | B Liquidation | C Debentures | D Company |

Read the text and choose the correct answer, **A, B, C** or **D**.

Basis of EC Competition Law

The inspiration of the EC system was American law, which aimed at developing free interstate trade by **(7)** anti-competitive agreements, and notification of agreements to competition law authorities, **(8)** between competitors at the same level of the market (that is, horizontal arrangements,) or between persons at different levels of supply (that **(9)** ..., vertical arrangements). The European Commission regulates closely all vertical and horizontal arrangements and looks at market power, the efficiency benefits of an agreement and the effect on consumers. The basic principle is set **(10)** in the EC Treaty in Article 2 and in **(11)** Article 3(f) which envisages 'the institution of a system ensuring that competition in the common market is not distorted'. The framework for regulation of competition between private undertakings (as opposed to public undertakings and restrictions on state aids) is in Article 85 (which regulates restrictive practices), Article 86 (which regulates abuse of a dominant position), together with Regulation 17 (which establishes the machinery for the **(12)** of the law).

- 7 **A** outlawing **B** prohibiting **C** Prohibition **D** banning
- 8 **A** both **B** whether **C** either **D** if
- 9 **A** since **B** for **C** means **D** is
- 10 **A** in **B** out **C** upon **D** forward
- 11 **A** general **B** spirit **C** name **D** particular
- 12 **A** enforcement **B** implementation **C** application **D** enactment

Part 2

Read the text and choose one word that best completes the gap.

A promissory note is a **(13)** legal contract. As with all contracts, something of value is exchanged between two parties. In this **(14)** , you (the borrower) receive money. The lender receives your promise to repay the money with interest on specified dates. If you don't **(15)** the repayment terms, the lender can sue and get a judgment **(16)** you for the amount you owe plus court costs and possibly lawyers' fees. With a judgment in hand, the lender can then collect the money owed from your bank accounts and other assets. Before borrowing money and signing a promissory note, you need to fully understand the terms and details. If your business is organized as a sole proprietorship or general **(17)** , by definition you'll be personally **(18)** for repaying the business loan. But if your business is organized as a corporation or limited **(19)** company, and you **(20)** to sign a promissory note on **(21)** of the corporation or the LLC, you would not be personally liable for repayment. The lender would only be able to go after your business's assets for repayment. For this reason, a bank or other commercial lender usually **(22)** you to personally guarantee repayment of a loan to your corporation or LLC, in which case you make yourself personally liable for the debt. If your spouse is asked to guarantee repayment of a loan, be **(23)** of the possible consequences. Your spouse's personal liability added to your own will place **(24)** risk any property you and your spouse own jointly, as well as your spouse's separate property and wages.

Part 3

Read the text below . With the word in the adjacent box form a derivative that best fits the gap. For example: **(0) infringing FRINGE**

We demand that you order the destruction of all said **(0)** materials, information, and products now in your **(25)** Cease and desist from using any intellectual property **(26)** similar to our company's intellectual property. Permit **(27)** of our company to inspect your premises to **(28)** that those products are not present. Nothing in this letter should be construed as a **(29)** of any of our company's rights, all of which are **(30)** reserved.

FRINGE
POSSESS
CONFUSE
REPRESENT
SURE
WAIVE
EXPRESS

In **(31)** terms, unfair dismissal claims dominate the work of tribunals, **(32)** for the majority of their workload. The legislation governing unfair dismissal has remained largely **(33)**..... – the major **(34)** being concerned with dismissal for nonunion **(35)**..... .In 1978 an attempt was made to consolidate the legislation in the Employment Protection Act and ss. 3-5 contained the relevant **(36)**..... .

QUANTITY
ACCOUNT
ALTER
AMEND
MEMBER
PROVIDE

Part 4

Which paragraph (**A**, **B**, **C**, or **D**) does each heading refer to? You will need to use some of the letters more than once.

37 Tax benefits of spin-offs.

38 Advantages of spin-offs.

39 Defensive spin-offs.

40 Involuntary spin-offs.

41 Disparity pressures

42 Corporate downsizing.

A

Spin-offs have become one of the more popular forms of corporate downsizing. We have had some major spin-offs in corporate finance, and one of the biggest was the AT& T spin-off that broke up AT& T in the 1980s. Another was the spin-off of the international conglomerate ITT. In 1995, ITT initiated a \$12.4 billion spin-off of the international conglomerate's assets into three separate entities. The ITT spin-off was motivated by the fact that the overall company was composed of various valuable assets and divisions, but the company's overall equity value was not reflecting the underlying values of its combined assets. This can be a problem because the breakup value of the assets may be greater than the enterprise value that constitutes the combination of the company's liabilities and the depressed equity value. With these market-based pressures in mind, ITT sought to implement a downsizing but one that was in the best interests of shareholders. Its solution to this problem was to do a spin-off. Part of the benefits that a spin-off was able to provide to shareholders is the tax treatment that can be available with a spin-off but may not be available with other forms of downsizing.

B

It is also useful to briefly mention voluntary spin-offs. A corporation may utilize this form of restructuring to defend itself against a hostile takeover. Companies may choose to spin off divisions to make the company less appealing to a hostile bidder. A well-known example of this occurred in January 1987, when Diamond Shamrock's board of directors decided to approve a restructuring plan that would spin off two core businesses and form a new company— Diamond Shamrock R& M. In doing so, it would distribute R& M stock to its shareholders. This is a drastic antitakeover defense. While one should be aware of these types of transactions, they are also not the types of deals in which we are most interested. We are assuming that the company is not under attack from a hostile bidder and that it is deciding on the best course of action for its shareholders in the absence of immediate pressure from a hostile bidder.

C

The heralded AT& T spin-off that was mentioned earlier came as a result of an antitrust suit that was originally filed in 1974 by the Justice Department. The result was that the government and AT& T reached an accord to break up the large telecommunications company. The parties entered into an agreement that became effective on January 1, 1984, and provided for the breakup of the telecom giant into 22 operating companies, which would be organized within seven regional holding companies. This spin-off gave rise to many other M& As as AT& T's former telecommunications business consolidated and transformed itself into a new market-based combination that quickly did not resemble the one that was initially created by the initial spin-off. In this famous spin-off, the 22 holding companies focused on local telecommunications service, while the new AT& T became exclusively a long-distance telecommunications company.

D

A major advantage that a spin-off has over other forms of corporate downsizing is that the transaction may be able to be structured in a manner that does not have an adverse tax impact on shareholders. This was the case with the spin-off of the regional Bells. The exchange of shares in the various telecom companies that were formed with this deal did not create tax liabilities for the shareholders. This is very different from the outcome that might occur if a company decided to sell off a division. With such an outright sale, the company may incur a gain that may have adverse tax consequences for its shareholders. The tax effects are very important considering that management and the board of directors must keep in mind when deciding which form of downsizing to pursue. In some instances, the tax benefits of spin-offs may offset any cash infusion that a company may receive from other forms of sell-offs. In other cases, the main goal is to separate the division from the parent company so as to have a more focused strategy, and the cash infusion from a sale is not the main impetus behind the deal.

Part 5

For questions **43-48** read the text and then choose from the list **A-H** the best phrase or sentence to fill each of the gaps. For example: **(0) E**.

You need to use each letter once only.

There is an extra sentence which does not fit at all.

The terms merger and acquisition are often confused or used interchangeably. It is important to understand the difference between the two. **(0)**

Merger: A combination of two or more companies in which the assets and liabilities of the selling firm(s) are absorbed by the buying firm. **(43)** The merger of equals between Sprint and Nextel is an example.

Acquisition: The purchase of an asset such as a plant, a division, or even an entire company. For example, Procter & Gamble made a major acquisition in 2005 when it purchased The Gillette Company, Inc., **(44)**

On the surface, the distinction in meaning may not really matter, since the net result is often the same: two companies (or more) that had separate ownership are now operating under the same roof, usually to obtain some strategic or financial objective. **(45)** A merger typically refers to two companies joining together (usually through the exchange of shares) as peers to become one. An acquisition typically has one company—the buyer—that purchases the assets or shares of the seller, with the form of payment being cash, the securities of the buyer, or other assets of value to the seller. In a stock purchase transaction, the seller's shares are not necessarily combined with the buyer's existing company, but often kept separate as a new subsidiary or operating division. **(46)** The expectations are that the value of the assets purchased will exceed the price paid over time, thereby enhancing shareholder value as a result of the strategic or financial benefits of the transaction.

At the heart of all decisions regarding mergers and acquisitions is a fundamental question: Are we better off buying a new capability, market entry, customer base, earnings opportunity, etc. or attempting to build it ourselves? **(47)**, but may require more patience to achieve these objectives and may result in some lost opportunities.

The allocation of resources to M& A will tend to expedite the achievement of growth objectives, **(48)** What variables should a growing company consider in striking the right balance between organic growth (build) vs. mergers and acquisitions (buy)?

A The motivation for the deal, and the underlying goals and objectives for the transaction on a post-closing basis, often affects the structure of the transaction as well as pricing and valuation issues.

B Yet the strategic, financial, tax, and even cultural impact of a deal may be very different, depending on the type of transaction.

C In an asset purchase transaction, the assets conveyed by the seller to the buyer become additional assets of the buyer's company.

D but also increase the level of risk if deals are not structured and negotiated properly

E A technical definition of the words from David L. Scott in 'Wall Street Words' :

F Although the buying firm may be a considerably different organization after the merger, it retains its original identity.

G The dedication of financial and human resources to organize growth must be based on long-term, sustainable value creation to the company's stakeholders

H in order to extend its reach in the consumer products industry

Part 6

Read the text and then choose **A**, **B**, **C**, or **D**.

What's All the Fuss About?

Mergers can be the most effective and efficient way to enter a new market, add a new product line, or increase distribution reach. Mergers and acquisitions are more strategically motivated than in the past. One key trend in M&A is to acquire a company to access today's "knowledge worker" and to obtain the intellectual property. Many technology companies—such as Cisco, Google and Yahoo!—pursue acquisitions as a means to get the employees in addition to the products and intellectual property.

The financing behind the deal is more sound and secure than ever before. Companies continue to use their stock as currency giving the seller potential upside in the combined entity. This motivates both parties to work together on a post-closing basis to truly enhance shareholder value. In addition, third-party financing is more readily available. The number of financing sources has continued to grow giving middle market companies more access to capital than in the past.

Mergers and acquisitions are being driven in many cases by a key trend within a given industry, such as rapidly changing technology, which is driving many of the deals in high technology; fierce competition, which is driving many of the deals in the telecommunications and banking industries; changing consumer preferences, which is driving many of the deals in the food and beverage industry; the pressure to control costs, which is driving many of the deals in the healthcare industry; or a reduction in demand, such as the shrinking federal defense budget, which is driving the consolidation in the aerospace and defense contractor industries.

Some deals are motivated by the need to transform corporate identity. In 2003, videogame company Infogrames, for example, gained instant worldwide recognition by acquiring and adopting the old but famous Atari brand. Similarly, First Union adopted the brand of acquisition target Wachovia in hopes of benefiting from Wachovia's reputation of quality and customer service.

Many deals are fueled by the need to spread the risk and cost of developing new technologies, such as in the communications and aerospace industries, research into new medical discoveries, such as in the medical device and pharmaceutical industries, or gaining access to new sources of energy, such as in the oil and gas exploration and drilling industries.

The global village has forced many companies to explore mergers and acquisitions as a means to develop an international presence and expanded market share. This market penetration strategy is often more cost-effective than trying to build an overseas operation from scratch.

Many recent mergers and acquisitions come about with the recognition that a complete product or service line may be necessary to remain competitive or to balance seasonal or cyclical market trends. Transactions in the retail, hospitality, food and beverage, entertainment, and financial services industries have been in response to consumer demand for "one-stop shopping."

Many deals are driven by the premise that it is less expensive to buy brand loyalty and customer relationships than it is to build them. Buyers are paying a premium for this intangible asset on the balance sheet, which is often referred to as goodwill. In today's economy, goodwill represents an asset that is very important but which is not adequately reflected on the seller's balance sheet. Veteran buyers know that long-standing customer and other strategic relationships that will be conveyed with the deal have far greater value than machinery and inventory.

Some acquisitions happen out of competitive necessity. If an owner of a business decides to sell a business, every potential buyer realizes that their competitors may buy the target, and in so doing, must evaluate whether they would prefer to be the owner of the business for sale.

49 In what sense are currently M&A more strategically motivated ?

- A** M&A enter strategic markets.
- B** M&A obtain intellectual property.
- C** M&A increase distribution reach.
- D** M&A access 'knowledge workers'.

50 What additional incentives are available for the seller after a M&A deal?

- A** Shareholders value is increased.
- B** Access to financing is easier.
- C** Markets outreach is wider.
- D** Employees work better.

51 What factors contribute to M&A in the aerospace industry?

- A** New technologies.
- B** Competition
- C** Shrinking defense budget
- D** The need to spread the costs

52 Why do corporations need to change their identity?

- A** They lack the popularity enhanced by certain trademarks.
- B** They can hardly bring quality and customer service to their products.
- C** They get an international marketing edge.
- D** It is more sound financially.

53 What is the meaning of 'goodwill', in the seventh paragraph?

- A** an intangible asset
- B** brand loyalty
- C** all of the above
- D** a valuable asset

54 What does the title 'What's All the Fuss About?' refer to?

- A** the factors making M&A more safe and secure
- B** the relationship between industry trends and M&A
- C** the key reasons for M&A deals
- D** methods to increase the efficiency of a company

Answers key:

1 A 2 B 3 B 4 D 5 C 6 A 7 B 8 B 9 D 10 B 11 D 12 A 13 binding 14 case 15 meet 16 against 17 partnership 18 liable 19 liability 20 were 21 behalf 22 requires 23 aware 24 at 25 possession 26 confusingly 27 representatives 28 ensure 29 waiver 30 expressly 31 quantitative 32 accounting 33 unaltered 34 amendments 35 membership 36 provisions 37D 38 A 39 B 40 C 41A 42 A 43 F 44 H 45 B 46 C 47 G 48 D 49 D 50 B 51 C 52 D 53 D 54 C