

SOLUTION – COMPANY AND PARTNERSHIP LAW MAY 2007

QUESTION 1

- a) Any one or more persons may form an incorporated company by complying with the provisions for registration under the Companies Code.
- b) A company limited by guarantee has the liability of its members limited to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wind up. A company limited by guarantee may not lawfully be incorporated with the object of carrying in business for the purpose of making profits.
- c) A company limited by shares may be converted into a company limited by guarantee if
- there is no unpaid liability on any of its shares
 - all its members agree in writing to such conversion and to the voluntary surrender to the company for cancellation of all shares held by them before the conversion.
 - new Regulations appropriate to a company limited by guarantee are adopted by the company
 - a member or members agree in writing to contribute to the assets of the company in the event of its being wind up.
 - delivery to the Registrar for registration a copy of the company's regulations and the special resolution adopting it.
 - a statutory declaration by a director and the secretary of the company confirming compliance with the condition
 - issuance of a new certificate of incorporation

QUESTION 2

- a) That the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders or in disregard of his or their proper interests as members, shareholders, officers or debenture holders of the company; or

That some act of the company has been done or is threatened or that some resolution of the members, debenture holders or any class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, are or more of the members or debenture holders.

- b)
- direct or prohibit any act
 - cancel or vary any transaction or resolution
 - regulate the conduct of the company's affairs in future
 - provide for the purchase of the shares or debentures of any members or debenture holders of the company by other members or debenture holders of the company or by the company itself.

QUESTION 3

- Every partner in a firm shall be jointly and severally liable with the firm and the other partners for all debts and obligations of the firm incurred while he is a partner.
- A person who is admitted as a partner into an existing firm shall not become liable to the creditors of the firm for anything done before he became a partner.
- A partner who retires from firm shall not cease to be liable for the debts or obligations of the firm incurred before his retirement.
- A retiring partner may be discharged from any existing liability by an agreement to that effect between himself and the firm and the creditor.
- Where a person deals with a firm after the retirement of any partner whom he knew to be a partner in the firm, he shall be entitled to treat the retired partner as still being a partner until he has notice of the retirement.
- If any such person had dealings with the firm prior to the retirement he shall not be deemed to have notice of the retirement unless he has actual knowledge, but an advertisement in a daily newspaper circulating in the district of the principal place of business of the firm shall be notice.

- The estate of a partner who dies or has insolvency order made against him under the Insolvency Act, 1962 (Act 153) or who retires shall not be liable for any debts or obligations of the firm contracted or incurred after that occurrence.

QUESTION 4

- a) An infant; any person found by a court of competent jurisdiction to be a person of unsound mind; a body corporate; any person connected on indictment whether in Ghana or elsewhere, of any offence involving fraud or dishonesty or any offence in connection with the promotion, formation or management of a body corporate; and undischarged bankrupt or any person subject to insolvency proceedings, a director of the company being liquidated; an auditor of that company?
- b) A special resolution that the winding up of the company shall be by private liquidation. The resolution shall include the appointment of a liquidator who would have previously consented to his appointment. Private liquidation is deemed to commence at the time of the passing of the resolution.

An affidavit made within five weeks immediately preceding the date of the passing of the special resolution. The affidavit is made at the meeting of directors to the effect that upon full enquiry into the affairs of the company they are of the opinion that the company will be able to pay its debts and liabilities in full within a period not exceeding twelve months from the commencement of the announcement.

When a company has passed a resolution for a private liquidation it shall within fourteen days after passing the resolution send to the Registrar a copy of the resolution and he shall publish it in the Gazette.

QUESTION 5

A company may by ordinary resolution at a general meeting remove from office all or any of its directors.

A resolution to remove a director shall not be moved at any general meeting unless notice of the intention to move it has been given to the company not less than thirty five days before the meeting at which it is to be moved.

The company shall give its member notice of such resolution at least twenty-one days before the meeting.

The company shall give the directive concerned a copy of the intended resolution and he shall be entitled to be heard on the resolution at the meeting.

He may also send to the company a written statement and the company shall send copies immediately to the members unless it is received less than seven days before the meeting.

Unless the court otherwise directs, the director may read his written statement at the meeting.

QUESTION 6

- a)
- Any partner of the firm
 - Any former partner who has not been paid, the amount due in respect of his interest and the firm
 - The legal representative of such and former partner
 - The registrar
- b)
- The firm does not commence business within a year from its registration or suspends it's business for a whole year.
 - The firm carries on business for more than six months with fewer than two partners
 - The firm is unable to pay its debts as they fall due.
 - The court is of the opinion that it is just and equitable that the firm should be wind up by the court.

QUESTION 7

a) The Tribunal had jurisdiction

- to hear and determine matters that fall for determination under the Act.
- to enforce recommendation of the Public Accounts Committee on the Auditor-General's reports as approved by Parliament.
- to enforce contracts and bonds entered into in pursuance of the Act.
- to make such orders as it considers appropriate for the recovery of monies, assets or other property due to the state.
- to prohibit any individual whether a public officer or not from managing public account or funds if the individual is inqualified professionally or has been persistently negligent to the management of public funds.
- to prohibit any person from participating as a bidder in any government procurement or contract where the person has a record of defrauding the state.

b) Liability may be accepted by

- offering to pay compensation; or
- making restitution.