

## Question 1

- a) A pre-incorporation contract in any contract or other transaction entered into by a company or by any person on behalf of the company prior to its formation.

A pre-incorporated contract may be ratified by the company after its formation making the company bound and entitled to any benefit under such contract as if it was in existence before it became a party to it.

Prior to ratification by a company, the person or persons who purported to act in the name or on behalf of the company shall:- in the absence of express agreement to the contrary be personally bound by the contract or other transaction and shall be entitled to the benefit thereof.

- b) The Ultra Vires doctrine states that: “A company shall not carry on any business not authorised by its Regulations and shall not exceed the powers conferred upon it by its regulations or this Code.

The exception to the ultra vires doctrine is that: “no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of authorized business of the company or that the company was otherwise exceeding to objects or powers.

*S25 (1) & 25 (3)*

## Question 2

*S153 (1), (2) & 154*

- a) The contents of the notice of a meeting shall be:

- the place of the meeting
- the date of the meeting
- hour of the meeting
- nature of the business to be transacted
- where a special resolution is to be considered the term of it.

- b) The ordinary business is:

- to declare a dividend
- consideration of the accounts and reports of the directors and auditors
- the election of directors in the place of those retiring
- the fixing of the remuneration of the auditors
- the removal and election of auditors and directors where the prior notices have been given.

- c) The persons entitled to receive notice of general meetings are:
- every member
  - every person upon whom the ownership of a share devolves by reason of his being a legal personal representative, receiver or a trustee in bankruptcy of a member
  - every director of the company
  - every auditor for the time being of the company.

### **Question 3**

- A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf.
- A director shall act at all times in what he believes to be in the best interest of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinary skillful director will act in the circumstances
- In considering the best interests of the company as a whole, a director may have regard to the interests of the employees as well as the members of the company and when appointed by or as representative of a special class of members, employees or creditors may give special but not exclusive consideration to the interests of that class.
- A director shall not be relieved from his duty or any liability resulting from any breach by any provision in the Regulations of the company, any contract or any resolution of the company.
- If any director commits any breach of his duties, the director and any other person who knowingly participated in the breach shall be liable to compensate the company for any loss it suffers as a result of such breach.
- The director shall account to the company for any profit made by him as a result of such breach.
- Any contract or other transaction entered into between the director and the company in breach of such duties may be rescinded by the company.

#### Question 4

a)

- Every company shall within two months after the issue of any of its shares or after the registration of the transfer of any share deliver to the registered holder a certificate under the common seal of the company.
- The number and class of shares held and the definitive number thereof if any
- The amount paid on such shares
- The amount if any remaining unpaid
- The name of the registered holder
- The address of the registered holder

b)

- Statements made in a share certificate under the common seal of a company shall be prima facie evidence of the title to the shares of the person named as the registered holder and of the amounts paid
- If any person shall change his position to his detriment in reliance on good faith on the continued accuracy of the statements in the certificate the company shall be estopped in favour of such person and shall compensate such person for any loss suffered on reliance of such not.

c) A company shall not:-

- after the number of its shares or the amount remaining on it
- release any shareholder or former shareholder from any liability on the share
- provide any financial assistance, directly or indirectly for the subscription or purchase of its shares or the shares of its holding company
- acquire by way of purchase or otherwise any of its issued shares or any shares of its holding company.

#### Question 5

*S219 (2) (a) – (e)*

- Where it appears to the registrar that any provisions of the Companies Code are not being complied with
- Where it appears to the Registrar that any document which the company is required to send to him under the provisions of the Companies Code does not disclose a full and fair statement of the matters which it purports to relate to

- That the business of the company is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose
- That the business of the company is being conducted or the powers of the directors are being exercised in a manner oppressive to some part of the members or debenture holders or in disregard of their proper interests as members, shareholders, officers or debenture holders
- That persons concerned with its formation or the management of its affairs have in connection therewith been guilty of a breach of duty towards it or its members that the members of the company have not been given all the information with respect to its affairs that they might reasonably expect.

### Question 6

*S47 (1) and (3)*

- a)
  - Any partner of the firm
  - Any former partner who has not been paid the amount due in respect of such former partner's interest in the firm
  - Or the legal representative of such former partner
  - The Registrar
  
- b)
  - The firm does not commence business within a year from its registration or
  - The firm suspends its 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 otherwise just and equitable that the firm should be wound up by the court.

### Question 7

*S 5 (1)*

- a) There shall be sent or delivered to the Registrar for registration a copy of the partnership agreement  
and
  - a statement in the prescribed form signed by all the partners

b)

*S5 (2)*

- The partnership is not one which is registrable under the Act
- Any of the businesses which the partnership has been carrying on or is to carry on is unlawful

- The name of the firm is misleading or undesirable
- Any of the partners is an infant
- Any of the partners is of unsound mind
- Any of the partners is a person who is within the preceding five years has been guilty of fraud or dishonesty whether convicted or not, in connection with any trade or business
- Any partner is an undischarged bankrupt
- The statement is incomplete, illegible, inaccurate, irregular or on proper insufficiently durable to be suitable for registration.