

SOLUTION: COMPANY AND PARTNERSHIP LAW, NOV 2007

QUESTION 1

This question implies the advantages that a limited liability company may have over a partnership.

- (a) The company is separate from its members in that any company liability cannot be put on its members/shareholders but in a partnership the members are personally liable for the liabilities of the firm in the course of the business.
- (b) It is easier for a company to raise capital by floating shares or borrowing from banks whereas it becomes difficult for partnership to raise such capital.
- (c) The members of a company do not have to worry themselves with the problem of managing the company whereas in partnership all members have to take active part in the running and thus becomes cumbersome.
- (d) In a partnership all decisions have to be agreed upon by the members. This may be cumbersome whereas in companies decisions affecting day to day running are taken by the managing director and his management team.
- (e) In the event of liquidation the members of the partnership are called upon to pay all the debts of the partnership whilst in the case of a company a member will only be expected to pay the unpaid portion of his shareholding.

QUESTION 2

- (a) Where a company carries on business for more than six months without any member every director of the company becomes jointly and severally liable for the payment of all debts and liabilities of the company during the period after the six months when it carried out business.
- (b) Where a company carries on business for more than four weeks after the number of its directors falls below two, every director in default and every member in default is liable to a fine.
- (c) Where a company fails to either affix its name outside its registered office, have its name engraved on a seal or its name mentioned in legible characters on all its stationery, publications and negotiable instruments, every officer of the company in default is subject to a fine.
- (d) When a company breaches the requirement to furnish a return in duplicate containing certain particulars to the registrar prior to transacting business, the company and every officer in default shall be liable to a fine.

- (e) When a company breaches the minimum capital requirement, the company and every officer in default is liable to a fine.
- (f) In addition the first directors named in the regulations and any person who was a director at the time of the breach shall be jointly and severally liable to the whole of the debts and liabilities of the company incurred while the company did not have the minimum capital.
- (g) Where a company limited by guarantee carries on business for making profit all officers and members shall be jointly and severally responsible to pay and discharge all debts and liabilities incurred by the company.

QUESTION 3

- (a) The transfer to the transferee company of the whole or any part of the undertaking, assets and liabilities of any transferor company.
- (b) The allotting or appropriation by the transferee company of any shares, debentures or other like interests in that company which, under the arrangement or amalgamation, are to be allotted or appropriated by that company to or for any person.
- (c) The continuation by or against the transferee company or any legal proceedings pending by or against any transferor company.
- (d) The dissolution, without winding up, of any transferor company.
- (e) The provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the arrangement or amalgamation.
- (f) Such incidental, consequential and supplemental matters as are necessary to secure that arrangement or amalgamation shall be fully and effectively carried out

QUESTION 4

- (a) An officer of the company or of any associated company.
- (b) A person who is a partner of or in the employment of an officer of the company or of any associated company.
- (c) An infant
- (d) Any person found by a competent court to be a person of unsound mind.

- (e) A body corporate, except members of an incorporated partnership appointed in the name of the firm who are individually qualified to be appointed.
- (f) A person convicted of an offence including dishonesty or fraud, in connection with the formation of a company, a bankrupt, a person found guilty of any criminal offence in relation to any body corporate or of any fraud or breach of duty in relation to a body corporate unless a court has given leave to that person.
- (g) An undischarged bankrupt unless granted leave by the court which adjudged him bankrupt.
- (h) A person disqualified by an order of the registrar.

QUESTION 5

- a.
 - (i) A copy of the charter, statutes, regulations, memorandum or other instruments constituting or defining the constitution of the company in language acceptable to the Registrar.
 - (ii) A statement in duplicate in the prescribed form.
- b. Contents of statement:
 - (i) Its name
 - (ii) The nature of its business or businesses or other main objects
 - (iii) The present forenames and surnames and any former fore name or surnames, and the address and business occupation of some one or more persons sworn as local manager authorized to manage the business in Ghana.
 - (iv) The number of shares and their nominal value, the amount paid up and the amount remaining payable thereon distinguishing between the amounts paid and payable in cash and the amounts paid or payable otherwise than in cash.
 - (v) The address of its registered or principal office in Shanghai.
 - (vi) The address of its principal place of business in Ghana and its postal address.
 - (vii) The name and address in Ghana of a person referred to as a process agent authorized by the company to accept service of process and other documents on its behalf.

QUESTION 6

- (a) Losses shall be paid first out of profits, next out of capital and lastly by the partners individually in the proportion in which they were entitled to share profits.
- (b) Deficiencies of capital shall not be made up but shall be borne by the partners in the proportion in which they were entitled to capital.
- (c) The assets of the firm shall be applied in the following manner and order.
 - (i) In paying the debts and liabilities of the firm to persons who are not partners.
 - (ii) In paying to each partner rateably what is due from the firm to him for advance as opposed to his agreed share of capital.
 - (iii) In paying to each partner rateably what is due from the firm to him in respect of capital.
 - (iv) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

QUESTION 7

- (a) A company registered under the companies' ordinance or statutory re-enactment thereof.
- (b) A company, body corporate or unincorporated association formed under any other enactment.
- (c) A body corporate formed in accordance with the law of any foreign country whether or not carrying on business in Ghana .
- (d) A joint venture without a firm name for one or more specific operations.
- (e) Family ownership or co-ownership of property whether or not the family or co-owners share any profits made by the use of that property.
- (f) The payment of a servant or agent of a person engaged in business by a share of profits.
- (g) A person is not a partner if he did not participate in the carrying on of business or was not authorized to do so.