

SOLUTION: COMPANY AND PARTNERSHIP LAW, MAY 2008

QUESTION 1

Where it appears to the Registrar that there are circumstances suggesting, in relation to any company,

- that any provisions of the Companies Code are not being complied with
- that any documents which the company is required to send to him under the provisions of the Code does not disclose a full and fair statement of the matters which it purports to relate
- that the business of the company is being conducted with the intention to defraud its creditors or the creditors of any other person
- that the business is being in for a fraudulent or unlawful purpose
- that the business 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 connected 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 2

(a) 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 the best interests of the company as a whole;
- So as to preserve its assets;
- Further its business;
- Promote the purpose for which it was formed;
- Act in a faithful, careful, diligent and skilful manner.

(b) The directors shall not, without the approval of an ordinary resolution of the company, exceed the powers conferred upon them by this code and the company's Regulations or exercise such powers for a purpose different from that for which such powers were conferred notwithstanding that they may believe such exercise to be in the interests of the company

QUESTION 3

- (a) An ordinary resolution is passed by a simple majority of votes cast by such members of the company entitled to vote at a general meeting.
- A special resolution is however passed by not less than three-fourths of the votes cast by such members of the company who are entitled to vote at a general meeting.
- (b) Resolutions requiring confirmation of the court may be passed to:
- reduce its stated capital in any way
 - extinguish or reduce the unpaid liability on any of its shares
 - resolve to pay or return to its shareholders any of its assets which are in excess of the wants of the company
 - alter its Regulations by canceling any of its shares

QUESTION 4

- (a) A firm that is not carrying on business because the business has ceased or has been transferred to a company or some other person
- (b) Where the Registrar, of his own knowledge or upon information supplied by any partner or creditor of the firm suspects that a firm is not carrying on business
- He may send to the last registered principal place of business of the firm a letter by registered post enquiring whether the firm is carrying on business and stating that if it is not carrying on business or if no reply is received within two months from that date a notice will be published in the Gazette with a view to striking the firm off the register
 - If the Registrar either received a reply from the firm that it is not carrying on business or does not receive any reply, he may publish in the Gazette and send by registered post to the last registered place of business of the firm, a notice that at the expiration of two months from the date of that notice the firm shall, unless cause be shown to the contrary, be struck off the register and dissolved.
 - At or after the expiration of the time mentioned in the notice, the Registrar may, unless cause is shown, strike the firm off the register and shall publish notice of it in the Gazette and on such publication in the Gazette the firm shall be dissolved.

QUESTION 5

- (a) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company a written demand requiring the company to pay the sum so due and the company has for twenty-one days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor.
- If in Ghana execution or other process issued on a judgment, decree or order of any court in favour of a creditor of a company is returned unsatisfied in whole or in part.
- (b) The company does not within a year from its incorporation commence to carry on all the business which it is authorized by its Regulation to carry on
- Suspends any of its business for a whole year
 - The company has no member
 - The business or objects of the company are unlawful or the company is operated for an illegal purpose or the business being carried on by the company is not authorized by its Regulations
 - The company is unable to pay its debts
 - The court is of the opinion that it is just and equitable that the company should be wound up.

QUESTION 6

The firm upon registration shall be a body corporate under the firm name distinct from the partners of whom it is composed, and capable of exercising all the powers of a natural person of full capacity in so far as such powers can be exercised by a corporate body.

- Even though the firm is a body corporate each partner shall be liable without limitation for the debts and obligations of the firm
- 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.
- Each partner shall be entitled to an indemnity from the firm and to contribution from his co-partners in accordance with his rights under the partnership agreement.

QUESTION 7

- (a) - The Regulations do not comply with this Code
- The objects for which the company is being formed or the business which it is to carry on or any of them are unlawful.
- Any of the subscribers to the Regulations is an infant or of unsound mind
- Any of the directors named in the Regulations is incompetent to be appointed a director.
- (b) - Ultimate Systems Co. Ltd is different from Mr Kofi Abban and so the company's liabilities are not personal liability.
- Upon incorporation a new entity came into being separate and distinct from Mr Kofi Abban.
- Ultimate Systems Co. Ltd is vested with power and has all the powers of a natural person distinct from that of Mr Kofi Abban.
- The assets of the company are for the company and not that of Mr. Kofi Abban.
- The company can sue and be sued as distinct from Mr. Abban.
- The company has its own rights and liabilities separate from that of Mr Kofi Abban.
- The company has its own seal.