

SOLUTION: COMPANY AND PARTNERSHIP LAW NOV 2008

SOLUTION1

- (a) (i) The date of the creation of the charge
- (i) The nature of the charge
- (ii) The amount secured by the charge
- (iii) Short particulars of the property charged
- (iv) The grantor of the charge
- (v) The persons entitled to the charge
- (vi) In the case of a floating charge, the nature of any restriction on the power of the firm to grant further charges ranking in priority to, or pari passu with the charge thereby created.
- (b) (1) A director may be removed by a resolution passed at any general meeting
- (2) The resolution to remove the director shall not be moved unless the 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
- (3) The company after receipt of the notice shall also give at least twenty-one days notice before the meeting
- (4) On receipt of the notice the company shall send a copy of it to the director concerned Immediately
- (5) The director shall be entitled to be heard on the resolution at the meeting
- (6) He shall also send to the company a written statement and copies of the statement shall be sent together with the notice for the meeting but where it is received less than seven days before the meeting.
- (7) On the application of the company or any aggrieved person, where a court is satisfied that the rights conferred on the director is being abused to secure needless publicity for defamatory matter, the court may order the director to pay the costs involved in the application. Unless the court otherwise directs the director in addition to being heard may require that his written statement be read to the meeting.
- (c) - A member of the Institute of Chartered Accountants under the Chartered Accountants Act, 1963 (Act 170)
- A practising Accountant within the meaning of the Act and not disqualified.

SOLUTION 2

- (a) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of the company prior to its formation
- (b) May be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit as if it has been in existence at the date of such contract or other transaction

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 its benefits
Section 13 of Act 179

- (c) A private company by its Regulations
 - restricts the right to transfer its shares
 - limits the total number of its members and debenture holders to fifty
 - prohibits the company from making any invitation to the public to acquire any shares or debentures of the company
 - prohibits the company from making any invitation to the public to deposit money for fixed periods or payable at call.

SOLUTION 3

- (a) Any arrangement for giving any director any security and indemnity in respect of money lent for the benefit of the company.
 - Any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself had assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security.
 - Any contract by a director to subscribe for or underwrite shares or debentures of the company.
- (b) 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
- (c) – The interests of the partners in the firm shall be personal estate
 - They shall not be in the nature of real or immovable property.
- (d) - The assignee is not entitled to interfere in the management or administration of the firm.
 - Not to inspect the partnership books
 - Assignee entitled only to receive the share of profits the assigning officer would be entitled
 - Assignee shall accept the account of profits agreed to by the partners
 - Assignee entitled to receive the amount which the assigning officer would be entitled on ceasing to be a partner.

SOLUTION 4

- (a) All the partners shall be entitled to share equally in the capital and profits of the firm and shall contribute equally towards the losses sustained by the firm
 - The firm shall indemnify every partner in respect of payments made and personal liabilities incurred by him in the ordinary and proper conduct of the business of the firm or in or about anything done for the preservation of the business or property of the firm.
 - A partner making for the purpose of the firm, any actual payment or advance beyond the amount of capital which he has agreed to subscribe shall be entitled to interest at the rate of five per centum per annum from the date of payment or advance
 - A partner shall not be entitled to payment of such interest before the ascertainment of the profits of the firm
 - Every partner may take part in the management of the business firm
 - No partner shall be entitled to remuneration for acting in the firm's business
 - No person may be introduced as a partner without his consent and the consent of all the existing partners
 - Any difference arising as to ordinary matters connected with the firm's business may be decided by a majority of the partners, but no change may be made in the nature of the firm's business without the consent of all the existing partners
 - The, partnership books and accounts shall be kept at the place of business of the firm or the principal place of business if there is more than one.

- (b) (i) The duty to secure the payment to him or discharge of all debts and other obligations that have passed to him.
- (ii) Publish a gazette notice vesting all properties of the company or any property held in trust on behalf of the company in his official name.
- (iii) Duty to realise assets i.e. he has to sell or assets and keep the money for distribution to creditors of the company.
- (iv) Duty to verify all debts i.e. he shall take steps to verify the correctness of every admitted proof
- (v) Duty to amend admitted proofs

SOLUTION 5

- (a) (i) A partnership is formed by at least two persons up to a maximum of twenty persons whilst a company can be formed by one person to an unlimited number if it is a public company and up to fifty persons if it is a private company.
 - (ii) In the case of a company the day to day management of the company is entrusted to a management team headed by the Managing Director and overseen by the Board of Directors whereas in the case of a partnership management is done by the members themselves acting in concert.
 - (iii) The liabilities of members of a company are limited to the unpaid balance outstanding on their shares whilst in the case of a partnership, the liability of members are unlimited.
 - (iv) A company can invite the public to buy shares as a way of raising capital but a partnership cannot issue shares and has to resort to borrowing.
 - (v) In the case of a company it pays dividends on profit made in the year but in the case of a partnership are shared among partners in accordance with capital contribution.
- (b) (i) When such a partner is shown to have become in any other way permanently incapable of unsound mind.
 - (ii) When such a partner is shown to have become in any other way permanently incapable of performing agreement.
 - (iii) When such partner has been guilty of such conduct as in the opinion of the court, having regard to the nature of the business of the firm, is calculated prejudicially to affect the carrying on of the business.

- (iv) When such partner wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the firm's business that it is not reasonably practicable for the other partners to carry on the business in the partnership with him
- (v) Whenever circumstances have arisen which, in the opinion of the court, render it just and equitable that such partner should cease to be a partner in the firm.

SOLUTION 6

- (a) Under Section 160 of the Companies Code, notwithstanding any contrary provisions in the Company's Regulations the following persons shall be entitled to attend a general meeting
 - Every member of the company
 - Every director of the company
 - The secretary of the company, and
 - Every auditor for the time being of the company.
- (b) The factors that may limit the right of members to attend meetings are
 - Where the Regulations of a company provide that a member shall not attend unless all calls or other sums presently payable by him in respect of shares in the company have been paid
 - Any member who is a holder of preference shares only shall not be entitled to attend if his right so to do is validly suspended in accordance with Section 49 of the code
 - However, nothing in the section shall be deemed to preclude other persons from attending any general meeting as long as they have the permission of the chairman.
- (c) Under Section 219 (2) of the code, the Registrar may call for the books of
 - A company for inspection in the following circumstances where it appears to the Registrar
 - That a provision of the Code is not being complied with or
 - That a document which the company is required to send to the Registrar under this Act does not disclose a full and fair statement of the matters to which it purports to relate
 - That the business of the company is being conducted with intent to defraud its creditors or the creditors of any other person or others for a fraudulent or unlawful purpose or the powers of the directors are being exercised in a manner oppressive to a 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 management of its affairs have in connection with its operations been guilty of a breach of duty towards the company or its members or
the members of the company have not been given all the information with respect to its affairs that they might reasonably expect.

SOLUTION 7

(a) Section 239 of the code provides that

- A receiver or manager appointed by the court shall be deemed to be an officer of the court and not of the company and therefore shall act in accordance with the directions and instructions of the court.
- On appointment, Section 238 of the code provides that a receiver of a property of a company shall, subject to the rights of any prior encumbrances, take possession of and protect the property receive the rents and profits and discharge the outgoings in respect of the property and realise the security of those on whose behalf that person is appointed shall carry on any business or undertaking
- A person appointed manager of the whole or part of a company shall manage the undertaking with a view to the beneficial realisation of the security of those on whose behalf the appointment is made.
- From the date of appointment of a receiver and manager, the powers of the directors or liquidators in a members voluntary liquidation to deal with the property shall cease unless the receiver is discharged
- If on the appointment of the receiver and manager the company is being wound up under the (Act 180) or the property is in the hands of an officer of the court or a liquidator, that officer is not bound to relinquish control of the property to the receiver or manager except under an order of the court.

Ref. Section 142 of Act 179

- (b) (i) That the company's regulations have been complied with.
- (ii) That every person described in the particulars filed with the Registrar as a director, managing director or secretary of the company or represented by the company through its members as at a general meeting, board of directors or managing director as an officer or agent of the company has been duly appointed and has the authority to exercise the powers and perform the duties customarily performed by a director, managing director or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned.
- (iii) That the secretary of the company, and every other officer or agent of the company having authority to issue documents or certified copies of documents to warrant the genuineness of the documents or the accuracy of the copies so issued

- (iv) That a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signatures of five persons who in accordance with paragraph (b) of this section, can be assumed to be a director and the secretary of the company
- (c) There are exceptions to this assumption
- (i) A person shall not be entitled to make such assumptions if he had actual knowledge to the contrary or having regard to his position with, or relationship to the company he ought to have known the contrary.
 - (ii) A person shall not be entitled to assume that any one or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority by reason only that the company's regulations provide that authority to act in the matter may be delegated to a committee or to an officer or agent.