

## COMPANY AND PARTNERSHIP LAW NOVEMBER 2009

### QUESTION 1

- (a) Section 12 (1) of the code defines a promoter as any person who is or has been engaged or interested in the formation of a company.
- The definition excludes a person who acts in a professional capacity like a lawyer, an accountant, a tax consultant who is retained in his professional capacity to assist in forming a company.
- (b)
- A promoter stands in a fiduciary relationship to the company
  - Observe utmost good faith towards the company in any transactions
  - Compensate the company for any loss suffered by reason of the promoter's failing and
  - Account for profits for properly or information in circumstances where such acquisition should have been for the company and not for the promoter.

### QUESTION 2

- (a) Section 12 (1)-(3) describes the nature of a partnership firm in Ghana
- When the firm is registered the firm shall be a body corporate under the firm name, distinct from the partners of whom it is composed, capable of exercising all the powers of a natural person of full capacity
  - Despite changes in the constitution of the partnership, the firm shall continue to exist as a corporate body until dissolved according to the Act
  - However notwithstanding the fact that the firm is a body corporate each partner therein shall be liable without limitation for debts and obligations of the partnership, though they may also be entitled to an indemnity from the firm
- (b) Under section 5(2) of Act 152 the Registrar will refuse to register a partnership if
- The partnership is not registrable under the Act
  - Any of the business which the partnership has been engaged is unlawful
  - The name of the firm is misleading or undesirable
  - Any of the partners is an infant or of unsound mind, or a person who, within the preceding 5 years, has been guilty of fraud or dishonesty, whether convicted or not in connection with any trade or business or is undischarged bankrupt.

- The partnership statement is incomplete, illegible, inaccurate, irregular or on paper insufficient durable to be suitable for registration.

### QUESTION 3

- (a) The problem is on the effect of share certificates. A share certificate has two related effects – section 54 of the code.
1.
    - Statements made in a share certificate under the company's common seal shall be prima facie evidence of title to the shares of the person named therein as the registered holder and of the amounts paid or payable thereon.
    - This means, a registered holder of shares certificate is entitled to all the rights and liabilities as a shareholder of his class of shares, including notice of general meetings, dividends when declared and transfer of one's shares.
  2. The company is bound by the accuracy of those statements – such that if any person (including the shareholder and third parties) changes his position to his detriment in reliance in good faith on the continued accuracy of the statements made in the share certificate the company will be ..... in favour of such a person from denying the continued accuracy of the statements and would be made to compensate persons who would have suffered a loss.
    - In the instant case Awo Dede will be Advised NO to pay for the shares, the false statement on the share certificate properly issued by the company will ..... the liquidator from denying the truth of the statement as against Awo Dede who has changed her position in reliance on the certificate.

### QUESTION 4

- (a) The payment of commission on brokerage to any person in consideration of his subscribing or agreeing to subscribe or procuring or agreeing to procure subscribers for any share in the company if the Regulations of the company allow it and it does not exceed 10% of the price of the shares.
- (b) Where the lending of money is part of the ordinary business of the company, notwithstanding that such money may be used to purchase the shares in such company.
- (c) The provision by a company in accordance with any scheme of money for the purchase of subscription of shares to be held for the benefit of persons bona fide in the employment of the company including a director holding a salaried employment in the company.

- (d) The granting of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe to shares to be held by themselves beneficially and not as nominees for the company or any other person.
- (e) Payment by a company of a lawful dividend on its shares notwithstanding that the dividend received by the shareholder is used to discharge any liability on his shares or to repay money borrowed for the purpose of subscribing or purchasing shares.

### **QUESTION 5**

- (a) All partners share profits and losses equally.
- (b) The firm shall indemnify every partner in respect of payment on liability incurred in the proper conduct of the affairs of the firm and necessarily done for the preservation of the business or property of the firm.
- (c) Any advance beyond what the partner has agreed to contribute attracts 5% interest.
- (d) Interests are not paid on capital before the ascertainment of profits.
- (e) Every partner takes part in the management of the firm.
- (f) No partner is paid remuneration for acting in the firm's business.
- (g) No person is admitted as a partner without his consent and the consent of all other members.
- (h) Any differences are resolved by a majority decision but any change in the firm's business needs the consent of all partners.
- (i) Books of accounts are kept at the firm's place of business or principal place of business if more than one.
- (j) Partners to contribute equally to capital.

### **QUESTION 6**

- There are two kinds of meetings of members Annual General Meeting (AGM) and Extraordinary General Meeting (EGM).
- An AGM should be held every year and it is designated as such by the notices that call it. It should not be held in the year following if it had been held within 18 months of incorporation. It should not be held no later than 15 months after the last AGM.

- An AGM can be dispensed with in any year if the auditors and all the company members entitled to attend and vote at the meeting agree in writing to dispense with the meeting.
- When an AGM is going to be held at least 21 days before the meeting documents like profit and loss account, balance sheet any group accounts, directors and auditors report on the financial statements these will be laid before the AGM.
- The ordinary business of an AGM is declaration of dividends, consideration of the reports on the financial statements electing directors to replace those retiring fixing the remuneration of auditors and removing and electing the auditor and directors.
- An EGM on the other hand, may be convened by directors whenever they think fit or by any director where there are sufficient directors to form a quorum.
- Any general meeting which is not an AGM is an EGM.
- Two or more members holding at least 10% or more of the shares of the company can requisition an EGM Directors.
- Matters that may be discussed at EGMs include but not limited to alteration of the Regulations, removal of directors or auditor, Arrangements and amalgamation, and the event of voluntary winding up.

## QUESTION 7

- (a)
- Under Section 190 of the Code it is mandatory for every company to have a Secretary.
  - If any company shall carry on business for more than six months without a Secretary, the company and every officer of the company in default shall be liable to a fine not exceeding five pounds for each day that the company continues to carry on business without a Secretary.
  - The Secretary acts as the administrative assistant of the board of directors.
  - He is also an administrative officer of the company and as such is an agent for the company and owes all the fiduciary duties of agent to a principal.
  - The Secretary may be a director and may also be a body corporate or a company
  - Where an act is to be done by a director and the Secretary, the same person even if a director cannot do the act in the two separate capacities.
  - If the office of the Secretary is vacant, then anything required to be done by or to the Secretary may be done by or to the Secretary may be done by or to

