

THE BOARD OF LEGAL EDUCATION  
GHANA SCHOOL OF LAW

PROFESSIONAL LAW EXAMINATION -PART 1

COMPANY LAW AND PRACTICE

Wednesday June 30, 2010

TIME ALLOWED: THREE (3) HOURS 9.30 am- 12.30 pm

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning to answer your questions. Be concise and endeavour to answer the required number of questions.
2. Answer Question 1 (which is compulsory) and 3 other questions from Sections B and C.
3. Students are required to answer at least one question from Sections B and C.
4. Do not write your name on your Answer Book but please do put down your Index or Seat Number.

SECTION A

Question 1 (This is a compulsory question and carries 40 marks)

Answer any four (4) of the following questions:

Consider the validity/legality of the following:

- (a) Kwame Amo and Yaw Yaro were childhood friends and are equal shareholders in Amoya Limited. Both Amo and Yaro resigned from their previous employment to commit themselves to the Company's business on a full time basis. The company never declared dividends and distribution was by way of directors' remuneration. The Regulations required that both shareholders should be present for any meeting to be quorate. As a result of personal disagreements, Kwame has now monopolized the affairs of the company and forced Yaw out of his management position in the Company. Yaw has refused to attend shareholders' meetings rendering them inquorate. (10 marks)

- (b) Kofi Kyei was the sole shareholder of Prosperity Limited. Prosperity Limited approached Business Consult Limited for business restructuring advice. The advice was negligent. Prosperity Limited suffered catastrophic losses. Kofi Kyei's investment is virtually worthless. He wants to sue Business Consult Limited. Subsequently, the last audited accounts of Prosperity Limited indicated a large cash surplus and generally impressive financial returns. Ebo Quarame, a friend of Kyei purchased shares and Kyei himself purchased additional shares in the company after reading the accounts. It turned out that the accounts had been creatively prepared and contained numerous misrepresentations. Both Ebo and Kyei are considering suing the auditors of Prosperity Limited. (10 marks)
- (c) John Mensah was a director of ABC Limited, a company engaged in building construction. The Company was in serious financial difficulties and has been unable to complete several contracts awarded to it because of severe financial constraints. Consequently, several companies have written to it saying that they would not do any business with it unless its financial position and performance improved. Recently while searching on the internet, John became aware of a contract to build a new hospital in Accra. He reasoned that the company was not in a financial position to take up the job. To avoid any problems, he resigned his position and put in a bid for the contract, which he won and executed for his own personal benefit. (10 marks)
- (d) Anuanom Ltd is a private limited liability company incorporated solely for the importation of herbal medicine from China for sale in Ghana. Its business is booming and the company is unable to meet the demand for its products. The board has resolved to raise additional capital to expand its operations. Consequently, the company placed an advertisement in a daily newspaper inviting interested persons to invest in the company and promising returns three times the Treasury Bill Rate. The response was positive. Over 1000 investors applied but the company could issue shares to only 500 of them. Advise the parties. (10 marks)
- (e) Joe Mendis was the sole shareholder and Managing Director of Crown Limited. Joe recently died in a tragic motor accident. In his will he bequeathed all his "property and rights related to such properties" to his dear wife Amina Mendis. Amina has issued a letter to Cash Bank, the bankers of Crown Limited, introducing herself as the new sole shareholder of the company, its Managing Director and sole signatory to the company's bank accounts. (10 marks)

**Section B [Answer at least one question from this section]**

Question 2

Yaw Kyei holds 60% of the issued shares of New Way Contracts Limited, a private limited liability company. Kojo Mensah and Esi Addo are the other shareholders of the company. The Company had five directors including Kojo Mensah and Esi Addo.

Yaw had been unhappy about the conduct of some of the directors of the company for some time and the general direction of the company's business. On May 1, 2009, Yaw Kyei sent a letter to the registered address of the company requesting a general meeting of the company within 30 days from the date of the request.

On May 4, Yaw sent email notices to the other members of the Company informing them of a general meeting of the company to be held in his house on June 1, 2009 to approve the following:

- (i) the removal of Kojo Mensah and Esi Addo as directors of the company for their failure to recognise Yaw Kyei's status as the majority shareholder of the Company;
- (ii) the issuance of all the treasury shares of the Company to Kyei Limited, a company wholly owned by Yaw Kyei;
- (iii) alteration of the Regulations to make Yaw Kyei chairman for life;
- (iv) the appointment of Yaw Kyei Junior, as the new managing director of the Company; and
- (v) the declaration of a dividend of GHC2 per share for the last financial year.

Kojo Mensah and Esi Addo were prevented from entering Yaw Kyei's house, because according to the "machomen" at the gate they had not paid for their shares and therefore could not attend the meeting. The resolutions were passed at the meeting.

A few days later Yaw Kyei sent a written note to the directors of the company inviting them to a board meeting to "usher in a new era". At the meeting, Yaw Kyei Junior was introduced to the board as the new managing director. The board also passed a resolution appointing Yaw Kyei's wife a substitute director for Yaw Kyei Junior. The board increased executive remuneration and directors' fees.

Kojo Mensah and Esi Addo are unhappy with the conduct of Yaw Kyei and have come to you for advice. (20 marks)

### Question 3

Sena and Adjo had a taste for the good things in life. They were the Managing Director and Secretary, respectively, of Paradise Limited. The sole object of the company was to operate a travel and tour business. Sena recently met Miss Anipa, a very attractive young lady. He immediately appointed her as his executive assistant and ordered a top of the range Land Rover for her from Prestige Motors. He also promised to issue 20,000 shares in the company to her.

Adjo has also been renting luxury apartments from LuxCo Limited under the pretext that they were required for the guests of Paradise Limited. These rentals were requested for on the letterheads of Paradise Limited. Over time a substantial debt was accrued.

It has recently come to the knowledge of Kwame Bob, a significant shareholder and director of Paradise Limited, that the company under the leadership of Sena and Adjo has been operating a used car dealership. Upon being challenged by Bob, Sena explained that the car dealership was helping the cashflow of Paradise Limited. Bob immediately called a board meeting of the company for the board to terminate all contractual arrangements relating to the used car dealership.

Bob has also found documents signed by Sena confirming that the Paradise Limited borrowed a large amount of money from Cash Bank Limited to finance the car dealership business. Cash Bank has been Paradise Limited's banker from the inception of its business and has all the incorporation documents of the company.

Before the proposed board meeting, the company received demand letters from Prestige Motors and LuxCo Limited on the company's outstanding indebtedness to them. Further Miss Anipa's lawyer has written to the company demanding that the shares promised to her by Sena should be issued forthwith. Cash Bank is also demanding the repayment of the loan.

Paradise Limited has come to you for advice. Consider the issues arising and advise the Company. (20 marks)

### Question 4

Kofi Armah held 70% of the issued shares of Big Ambitions Limited. Yaw Barimah held the remaining shares. The Company has a stated capital of GHC 1,000,000. Mrs. Armah, the wife of Kofi Armah, Yaw Barimah and Miss Opoku were the directors of Big Ambitions. There have been consistent clashes between Mrs. Armah and Yaw Barimah, who alleges that Mrs. Armah is "under Kofi Armah's thumb". Mrs. Armah vehemently denies such allegations and has consistently challenged Yaw Barimah to produce the evidence.

Recently Big Ambitions decided to build a new office block. Kofi Armah bid for the contract and the board of directors (Mrs. Armah and Miss Opoku voting in favour) awarded the contract to Kofi Armah. Yaw Barimah is livid and alleges that Mrs. Armah has bribed Miss Opoku to vote in favour of Kofi Armah's bid.

Kofi Armah recently wrote a letter to Yaw Barimah proposing an amendment to the Regulations of Big Ambitions Limited to increase the membership of the board of directors to 5 and to allow him to appoint and remove four of the directors, and also to appoint the Managing Director of the Company. Yaw Barimah indicated that he was opposed to the suggestion. Soon thereafter, a resolution was passed at a board meeting issuing additional shares to Kofi Armah to bring his shareholding to 80%. A written shareholders' resolution signed by Kofi Armah approving the share issue was presented to the board.

To finance the construction of its new office block, Big Ambitions Limited issued debentures to raise an amount of GHC 3,500,000. The debentures were secured by a floating charge over the account of the company held with Sikaman Bank. The Trustee for the debentureholders has recently written to the bank demanding that no payments should be made from the account without the prior consent of the Trustee.

Consider and address and the relevant issues. (20 marks)

#### Question 5

Bola took all the necessary steps towards the incorporation of KAB Ltd. She provided her own building to be used as the company's principal place of business. However, the company's records indicated that the property was purchased from Evans, the local building contractor. Bola paid Evans 5% commission when he transferred the purchase price paid by KAB Ltd into her bank account.

Kwame, Amadu, and Bola are the subscribers and first directors of KAB Ltd, a private limited liability company whose sole authorized business is the manufacture of hair products. Kwame holds 70% of the authorized shares and the remaining shares are held equally by Amidu and Bola.

Kwame was a busy man and left the day-to-day management of the company in the hands of Amidu who often took decisions and concluded contracts on behalf of the company without consulting Kwame.

In April 2009, Amidu and Bola hatched a plan to assume total control of the company. Amidu then wrote to his brother Dramani, appointing him a director of the company even though it was known that Dramani had been convicted for fraud and declared bankrupt in the United Kingdom.

Amidu and Bola also issued 1,000 shares (representing 42% of the issued shares of the company) at GHC 1 per share to Issa. Issa paid for the shares with an old laptop worth

GHC200 in the open market.

Sharp Eye Partners are the auditors for KAB Ltd. In their report to the shareholders for the AGM in December 2009, they questioned the validity of the shares issued to Issa. This annoyed Amidu who then wrote to the auditors dismissing them with immediate effect without assigning any reasons.

At the next board meeting, Kwame confronted Amidu and Bola about their acts and transactions and opposed the presence of Dramani at the board meeting and refused to recognize Issa as a member of the company. But he was outvoted by the three of them.

Kwame thereafter requisitioned an extraordinary general meeting with the required notice for the removal of Amidu, Bola and Dramani as directors. At the meeting Amidu, Bola and Issa purported to outvote Kwame and thereupon proposed and passed a resolution to remove Kwame as a director.

Kwame does not accept his removal and has commenced legal action contending that he is still a director of the company and that Amidu and Bola have been removed and have ceased to be directors. He also contends that Dramani has never been a director of the company and that the purported issuance of shares to Issa is illegal.

Identify and address the issues, and advise the parties (20 marks)

### Section C [Answer at least one question from this section]

#### Question 6

Justice Smart sitting at the High Court at Brahabebome recently opined as follows:

“We cannot allow ourselves to be shackled by archaic Victorian legal norms such those encapsulated in the so called *Rule in Foss v Harbottle*. Our Companies Act, 1963 (Act 179) is an expression of our legal independence and I dare say that the Rule in Foss v. Harbottle has since 1963 been consigned to the graveyard of quaint legal theories and is no longer applicable in Ghana.”

Comment on this statement. (20 marks)

#### Question 7

Write short notes on any three (3) of the following:

- (i) Directors fiduciary duties to shareholders (7 marks);
- (ii) Ratification of pre-incorporation contracts (7 marks);

- (iii) Unlawful distributions to shareholders (6 marks); and
- (iv) Financial assistance for the purchase of a company's own shares. (6 marks)

Question 8

"It is fair and proper to mention that the doctrine of the separate personality of a company is well known and applied in Ghanaian case law and jurisprudence ... [B]ut then the rule ... is not sacrosanct ... [T]hus within certain circumstances the law would disregard the corporate entity status of the company and rather pay regard to the hard facts. This is couched in the hackneyed parlance as lifting or piercing the veil ..."

Ansa JA, *Kumi & Co Ltd v New World Investment Limited* (unreported) [15/01/03] Fast Track High Court. Consider the above statement and discuss the judicial inroads into the rule referred to in the statement. (20 marks)