

**INDEPENDENT EXAMINATIONS COMMITTEE
GENERAL LEGAL COUNCIL
PROFESSIONAL LAW PART I COURSE
EXAMINATION (MAIN)
COMPANY AND COMMERCIAL PRACTICE
22 JUNE, 2021**

Time Allowed: Three (3) hours

10:00 a.m. – 1:00 pm

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning your answers.
 2. Answer **QUESTION 1 WHICH IS COMPULSORY AND ANY OTHER THREE (3) QUESTIONS.**
 3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of material.
 4. Do not write your name on the Answer booklet. Write only your seat or Index number.
 5. Adhere strictly to the instructions on the front cover of your Answer Booklet.
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Question 1

Third Quarter Meeting of the Board of Directors of **Park Ghana Limited**

Agenda

1. Adoption of the Minutes of the Previous Meeting
2. Matters Arising from the Minutes of the previous meeting
3. Consideration of the 3rd quarter Internal Audit Report.
4. Consideration of the 3rd quarter financial report
5. Consideration of 3rd quarter operational report.
6. Approval of budget
7. Any other matters

On 10th October, 2020, the directors of the Company, namely Mr Osei Kwame, Mrs Nketiaa Otoo, Professor Barnor, Dr Tony Yeboah, Mr Elim Abban, Mr Frank Antwi(Chairman) and Mr Twumasi Ankrah had a board meeting at the Eno conference room of the NOD hotel. Mrs Priscilla Antwi who is the Managing

Director of Park Ghana Limited and Mr Ibrahim Abdallah who is the Accountant were both there as well. You were there as the Company Secretary. At 9:20 am, Mr Frank Antwi welcomed everyone and said the following prayer to begin the meeting:

'Heavenly Father we thank you for this day and for bringing us together for this meeting. We ask for your guidance and direction throughout this meeting. Amen'

The other directors joined the chairman in singing the first and second stanza of Hymn 20 of the Alleluia Hymn book.

The following ensued:

Mr Frank Antwi: Let's look at the minutes of the previous meeting. Do we have any comments to make?

Mr Osei Kwame: I do not like the minutes. They are not a true reflection of what happened at the last meeting. For example, when the issue of increase in salary came up I indicated expressly that I was opposed to this. But I see that my objection is not captured in the minutes.

Mrs Priscilla Antwi: I also do not like the minutes. If you look through I only referred to as Priscilla Antwi. My Secretary why? Make sure you add the 'Mrs' to my name.

Mr Frank Antwi: Your corrections are all noted. Secretary take note and make the corrections. Could someone now move for the adoption of the minutes?

Mr Osei Kwame: I move for the minutes to be accepted as a true reflection of the proceedings of the previous meeting held on 1st MAY, 2020.

Mr Ankrah: I second that motion.

Mr Frank Antwi: Thank you. Those in favour? Those against? The motion is carried. Any matters arising from the minutes of the previous meeting?

Mrs Priscilla Antwi: At the last Board meeting, the Board directed that management should make changes to its style of reporting. Specifically, the Board asked that we also include tables and charts in our presentations. We have implemented the Boards directive and you will see this in our presentations today.

Mr Frank Antwi: Next on our Agenda is Consideration of the Internal Audit Report. I see that the Internal Auditor is not yet in and so let us take the next item on the Agenda and we can come back to it.

Mrs Priscilla Antwi: Mr Chairman, don't worry I prepared the report with the Internal Auditor. I had to send him to the bank to take care of an urgent matter and so I will present the report.

Professor Barnor: Colleagues this is not acceptable. Board meetings are important and the Internal Auditor ought to have been here. Again, it is not correct for the Managing Director to be preparing the report with the Internal Auditor. It defeats the purpose of Internal Audit. This is bad Corporate Governance and should not happen again.

Dr. Yeboah: Prof. I agree with you totally.

Mrs Priscilla Antwi: Ei! Prof 1, Prof book long. Yo! I have heard 'wie'.

Mr Frank Antwi: Let us make progress Mrs Antwi lets hear you on the Internal Audit Report.

Mrs Priscilla Antwi: Thank you Mr Chairman. Colleagues most of the issues in the report I have already addressed. The only outstanding issue is the fact that we have not been doing bank reconciliation on a daily basis. This is because we do not have enough people in the finance team to work on this.

Mr Frank Antwi: Thank you very much I move that the Internal Audit Report be approved.

Mrs Otoo: I second the motion.

Mr Frank Antwi: The motion is carried. Next on our Agenda is Consideration of the 3rd quarter financial report. The Managing Director will take us through that.

Mrs Priscilla Antwi: Financial statement for the 3rd quarter of the year, 2020. Total revenue was GH¢ 500,000,000.00 gross profit was GH¢ 700,000 and net profit was GH¢ 200,000.

Mr Frank Antwi: Could someone please move for the approval of the 3rd quarter Financial Report?

Mrs Otoo: I move.

Mr Osei Kwame: I second the motion.

Mr Frank Antwi: Those in favour? Those against? The motion is unanimously carried. Next on our agenda is consideration of the 3rd quarter operational report.

Mrs Priscilla Antwi: Yes Mr. Chairman. We had some challenges with generating the operational report and so we cannot present it at this meeting.

Colleagues please forgive us. We hope to circulate it before the next Board meeting. However, we need an additional bank facility of Five Million Ghana Cedis to complete the construction of the new office building. GSB bank has asked that we present it with a resolution approving the additional bank facility of Five Million Ghana Cedis for a term of five years. They also want the Directors to sign joint and several guarantees.

Professor Barnor: But Mrs Frimpong what are you talking about? You have not presented the report yet you are asking for approval for an additional loan. As for me I don't approve.

Dr Tony Yeboah: Its ok Prof. Let us approve this and interrogate the issue later.

Mrs Nketiaa Otoo: I approve

Mr Tumasi Ankrah: I approve.

Mr Frank Antwi: I also approve. Our resolution is that the company should borrow an additional amount of Five Million Ghana Cedis from GSB for a term of five years in accordance with the term sheet we have received from GSB Bank. Mrs Antwi and Dr Yeboah are to sign the various documents for this transaction. The company's property at East Legon, 6 Legon Street will be used as security for the loan.

Professor Barnor: I wish to bring it to the Board's attention that I am resigning as a director of the company effective tomorrow.

Mr Frank Antwi: Oh but Prof. is this how to go about it? Just spring a surprise on everyone this way?

Professor Barnor: I am sorry it has come as a surprise to you. But I am not happy with how this company is operating. My reputation is at stake

Professor Barnor: I will email my letter to the MD and the Company Secretary. We have crossed the Rubicon now.

Mr Frank Antwi: I do not think we should belabour this issue. I am certain Professor Barnor has given this a lot of thought. If he wants to leave he can go. We accept your resignation and wish you well Prof.

Professor Barnor: Thank you.

Mr Elim Abban: Fellow Directors my apologies for coming in late. I know it's about 12.40 and you are about to finish. I am so sorry.

Professor Barnor: Mr Abban, you again, you are always late.

Mrs Otoo: Mr Abban this behaviour must stop.

Mr Elim Abban: I am sorry. By the way Mr Secretary. I refer to the minutes of the last meeting particularly minutes 2, 6 and 7, director is spelt wrongly as 'daletor' please correct it.

Mr Frank Antwi. Let us now look at the Budget. Mr Ibrahim Abdallah we are all ears.

Mr Ibrahim Abdallah: Thank you very much. The company's operating income for the year 2019 was GH¢21,130,897 and the budgeted figure for 2020 is GH¢21,570,298. The impairment charge on financial assets for 2019 was GH¢392,062 and the budgeted figure for 2020 is GH¢43.184. The profit before tax was GH¢10,882 for 2019 and the budgeted figure for 2020 is GH¢260,590. Staff cost for 2019 was GH 160,978.85 and the budgeted figure for 2020 is GH¢ 287,984.00. Directors' fees for 2019 was GH 19,957.60 and the budgeted figure for 2020 is GH¢21,000.00. Bad debt written off for 2019 was GH 19,957.60 and the budgeted figure for 2020 is GH¢21,000.00

Mrs. Nketiaa Otoo: Thank you Mr Abdallah for the Budget. I however have the following concerns: The profit target should not be expressed as an amount but as a percentage of some key ratios; Some of the performance indicators in the Budget were not useful for a company like ours and so Management should look to restructure the performance indicators; you should research into the key performance indicators for this company; There should be more analytical content in the budget.

Mr Frank Antwi: Thank you very much for your comments, Mrs Otoo. We all agree with you. Any other comments?

[All]: No other comments we approve the budget.

Mr Frank Antwi: Are there any other matters?

[All]: No

Mr Frank Antwi: Could someone please move for the closure of the meeting?

Mrs Nketiaa Otoo: I move for the closure of the meeting.

Professor Barnor: I second the motion.

Mr Frank Antwi: Thank you. Will Prof please pray for us since today is his last meeting?

Prof Barnor prayed at 14:15pm.

The meeting ended. Refreshments followed.

1. As the Company Secretary who was present at this board meeting, draft the minutes of the third quarter board meeting of Park Ghana Limited.
2. Two weeks after the adoption of the minutes by the Board, the Managing Director approached you for an extract from the minutes as proof of the resolution to borrow from the bank. Produce an extract from the minutes for the attention of the Bank.

(25 Marks)

QUESTION 2

H.P Ghana Limited (HP) is a company registered under the Laws of Ghana with two shareholders and a five-member board of directors. Of the five directors of HP only Mr Kwesi Siaw is a Ghanaian. You have recently been appointed as the Head of Legal of HP. The Board Chairman of HP, Mr Van Der Berg, who is also the majority shareholder of HP, claims to have removed Mr Kwesi Siaw as a director by filing of Form 17 (return in changes in directorship) at the Companies Registry. Following the protest by Mr Kwesi Siaw, Mr Van Der Berg has approached you for advice on how to remove a Director under Ghanaian Law and whether or not he must give reasons for the removal of Mr Kwesi Siaw as a Director of HP.

Provide Mr Van Der Berg with your advice, having regard to the relevant sections of the Companies Act 2019, Act 992 and decided cases.

(25 MARKS)

QUESTION 3

You are the Company secretary of Bliss Insurance Limited (Bliss Insurance), which is an insurance Company. The current shareholding of Bliss Insurance is as follows:

Mrs Paulina Antwi	60%
Mr Kwame Busumpra	30%
Lawyer Kweku Boateng	8%
Mr. Latif Imoro	2%

The current stated capital of Bliss Insurance is GH¢5 million. The National Insurance Commission, the Regulator, has issued a directive that with immediate effect every Insurance Company should have a new stated capital of GH¢40 million. The directors of Bliss Insurance have decided that to comply with the directives of the Regulator, the company's stated capital should be increased from GH¢ 5 million to GH¢40 million as follows:

1. Contributions to be made by existing shareholders in proportion to their existing shareholding are as follows:
 - a. cash contribution from Mrs Paulina Antwi -GH¢4,000,000.00
 - b. cash contribution from Mr Kwame Busumpra -
GH¢6,000,000.00
 - c. cash contribution from Lawyer Kweku Boateng -
GH¢1,600,000.00
 - d. cash contribution from Mr. Latif Imoro -GH¢400,000.00
2. Transfer from reserves to stated capital- GH¢15,000,000.00
3. Mrs Paulina Antwi is offering her new office building valued at GH¢6,000,000.00 to the company in exchange for shares.
 - a. Advise the board of directors on the processes for increasing the stated capital of the company. (10 marks)
 - b. Draft the relevant written resolutions. (10 marks)
 - c. Specify the statutory forms which should be completed and filed with the Registrar of companies. (5 marks) **(25 Marks)**

QUESTION 4

Following the enactment of the Companies Act 2019, Act 992, your client a French multinational company, Le Petit Garcon Sarl (LPG) proposes to invest in Ghana to engage in the business of steel production. LPG has considered various market entry strategies and has finally decided to invest in Ghana as follows:

- a. By setting up a wholly owned private subsidiary as a limited liability company in Ghana;
- b. By acquiring 75% shares of Mr Tony Asiedu in Senchi Aluminium Limited (SAL).

LPG would like the wholly owned Ghana subsidiary to be registered with a constitution.

You have been engaged as LPG's Lawyer, in Ghana. Advise your client on:

- a. the requirements, processes and steps for registering LPG's subsidiary in Ghana. (15 marks)
- b. Explain to your client what legal due diligence means as well as the necessity and procedure for conducting legal due diligence prior to the purchase of Mr Tony Asiedu's shares. (10 marks)

(25 MARKS)

QUESTION 5

Write short notes on the following:

- a. Waiver clause in a commercial agreement (5 marks);
- b. 'To transact the ordinary business of an Annual General Meeting' (5 marks);
- c. Any five essential steps which a company must take for the purpose of going into private liquidation (5 marks)
- d. Minority shareholder protection under The Companies Act 2019, Act 992 (10 marks)

(25 MARKS)

Question 6.

'The statutory derivative action introduced by the Companies Act 2019 (Act 992) is the same as the provisions on representative action in Act 992 except in name'.

Discuss the above statement.

(25 Marks)