

INDEPENDENT EXAMINATIONS COMMITTEE
GENERAL LEGAL COUNCIL
PROFESSIONAL LAW PART II/ POST CALL COURSE
EXAMINATION (MAIN AND SUPPLEMENTARY)
COMPANY AND COMMERCIAL PRACTICE

15 MARCH, 2022

Time Allowed: Three (3) hours

10:00 a.m. – 1:00 p.m.

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning your answers.
 2. Answer **ANY FOUR (4) 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

A Russian national, Vladimir Putin and his Ghanaian friend Kofi Lupin have approached you for legal advice on setting up a business in Ghana. Mr. Vladimir Putin and Kofi Lupin (the two friends) want to set up a construction company in Ghana with minimum stated capital of GHS 100,000.00. They have proposed Dangotti Construction Limited or VPKL Construction LLC as the name of their company. The two friends also indicated that the proposed nature of business of the company should be the following:

- i. Buying and selling of construction materials
- ii. Building of houses
- iii. General trading
- iv. Building of roads and highways
- v. Borrowing money from the bank
- vi. Letting of apartments
- vii. To do all other things incidental to the business

- a) Advise Vladimir Putin and Kofi Lupin on the requirements, processes and steps for registering the Company in Ghana.
- b) Mr. Vladimir Putin and Kofi Lupin have also instructed you to provide for preemption rights in their Constitution, so that no member can transfer his shares unless they have been offered to the other member. Advise the two friends on how you will cater for their request for pre-emption rights.

(25 Marks)

QUESTION 2

“...a company may by ordinary resolution at a general meeting remove from office all or any of the directors despite anything in the constitution of that company or in an agreement with the director.” **Section 176(1) of the Companies Act, 2019 (Act 992).**

- a) In the light of decided cases and relevant provisions of the Companies Act, discuss the procedure for removal of directors

under Ghana law touching especially on the mandatory nature or otherwise of same.

- b) An argument that compliance with section 176 is mandatory for the removal of directors may be awkward to defend when considered in the light of section 29(2) of the Companies Act, which empowers persons who may not be members to appoint and remove directors of a company. If section 176 is considered as mandatory, then there appears to be a conflict. What is your take?

(25 Marks)

QUESTION 3

Write short notes on the following. Support your answers with the relevant authorities.

- a) The persons who may qualify to act as company secretary are strictly outlined in the Companies Act, 2019 (Act 992). With the aid of relevant statutory provisions, list these persons who may qualify to act as company secretaries.

(5 Marks)

- b) Briefly outline the steps and requirements necessary for shareholders of a private company limited by shares to successfully requisition an Extraordinary General Meeting.

(5 Marks)

c) Ordinary Resolution, Special Resolution and Written Resolution.

(5 Marks)

d) How is corporate power distributed under the Companies Act, 2019 (Act 992)? What actions may shareholders at a general meeting take in respect of the company, under Act 992?

(5 Marks)

e) In anticipation of a planned capital raising round, your client has approached you to conduct a legal audit on their company and advice on any legal compliance issues identified. Explain the steps and processes involved in this legal audit to your client.

(5 Marks)

QUESTION 4

The rule in Foss v. Harbottle enjoys absolute application under Ghana law. Discuss.

(25 Marks)

QUESTION 5

Consider and comment on the validity or legality of the following:

f) Jean Baptiste was a director of Asakaa Limited, a company engaged in building construction. The Company is in serious financial difficulty 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 browsing the internet, Jean became aware of a contract to build a new classroom block in Kumasi. To avoid any problems with Asakaa Limited, she resigned from her position with Asakaa and put in a bid for the contract, which she won and executed for her own personal benefit.

(5 Marks)

g) Limo Wulana, a director and a company secretary of Asakaa Limited approached Kojo Botsio, the Sales Manager of a top car company in Accra. He ordered a top of the range luxury Benz S Class on the letterhead of the company. It has also come to light that Limo Wulana has taken monies from several persons promising them employment in "his" company. The company has denied liability for Limo Wulana's conduct.

(5 Marks)

h) Asakaa Limited is a company with a booming business that engaged the services of Jonas Company Limited to advise it on restructuring various aspects of its business to make it more profitable. On the advice of Jonas Company Limited, Asakaa Limited took a huge bank loan to engage in the manufacturing of a special local food spice for export to Asia. The venture was a complete flop because Jonas Company Limited failed to analyze the market prospects properly and the directors blindly followed their advice. Asakaa Limited suffered massive losses. Anane,

the majority shareholder of Asakaa Limited has lost all his investments and has consulted you to take legal action against the Directors of Asakaa Limited for relief. Advise him on his chance of success.

(5 Marks)

- i) Under the registered Constitution of Asakaa Limited, Akola Mako, who held Class B shares had the right to appoint and remove two directors. There have been allegations on Yentie FM that one of the directors appointed by Akola Mako was a serial “womanizer”. These rumors, in the view of the Class A shareholder (the majority shareholder) was bringing the company into disrepute. Despite the demands of the Class A shareholder, Akola Mako refused to remove the director. The Class A shareholder proceeded to serve notice on the director of his intention to remove him at the forthcoming EGM.

(5 Marks)

- j) The shareholders of Asakaa Limited are no longer interested in owning the business and they wish to shut down the entire operation. Advise them on how to go about this.

(5 Marks)

QUESTION 6

Asakaa Limited, a company involved in citrus farming registered by the GIPC with equity participation of 2 persons, a Ghanaian and a Norwegian, has a stated capital of \$200,000. The shareholding structure between

them is 85- 15 in favour of the Norwegian which exhausted all the authorised shares of the Company. The Company wants to go into fruit juice processing after another person, an Indian, has expressed interest in investing in the Company as a shareholder. The Indian brings on board machinery for packaging. The shareholding structure agreed upon is as follows:

Ghanaian – 5%; Norwegian – 60%; Indian – 35%

The need to raise the stated capital of Asakaa Limited has therefore arisen.

a) Advise the Board on the process for increasing the stated capital of the Company

(10 marks)

b) Specify the statutory forms which should be completed and filed with the Registrar of Companies

(5 marks)

c) Extract the relevant resolutions from the meetings held in pursuance of the capital raise

(10 Marks)