

**INDEPENDENT EXAMINATIONS COMMITTEE  
GENERAL LEGAL COUNCIL  
PROFESSIONAL LAW PART II/ POST CALL COURSE  
EXAMINATION (MAIN)  
COMPANY AND COMMERCIAL LAW PRACTICE  
8 JULY, 2022**

26  
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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 **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**

The fourth Quarter Meeting of the Board of Directors of Palace Company 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 financial report
4. Consideration of operational report
5. Approval of budget
6. Any other Business

Palace Company Limited has Ten (10) directors. On Tuesday 5<sup>th</sup> June,

2022, directors of the Company namely Mr. Adjei, Mrs. Ama Mensah, Professor James Benson, Dr. JKG Gray, Mr. David Kwesi James (Chairman) and Mr. John Frimpong had a board meeting at the Akuaba conference room of the Accra Hotel. Mrs. Gyasi who is the Managing Director of Palace Company Limited and Mr. Joe Aggrey who is the accountant were both there as well. Two other directors, Mr. and Mrs. Lee were in China and could not attend the meeting. There was however no news from the other director Mr. Amponsah. You were there as the Company Secretary. At 9:55 am each person glanced at their watches and proceeded to their seats at the conference table. At 10:02am, Mr. David Kwesi James 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 guidance and direction throughout this meeting. Amen'*

The following ensued:

**Mr David Kwesi James:** Let's look at the minutes of the previous meeting. Do we have any comments to make?

Prof Benson: Yes, yes, You people know I went to a good school so I am very particular about the English language. Look at page 1, paragraph 2 the word has been spelt wrongly. It should be 'management' and not 'mangment'. Again, look at page 3 paragraph 4 there should be a full stop after the word 'report'. Finally, on page 4 my name has been spelt wrongly; it is 'Benson' not 'Bieson'.

**Mr. David Kwesi James:** Secretary take note. Could someone then move for the minutes to be accepted?

**Mr. Adjei:** It looks like I am the one always moving the motion for the minutes to be accepted in this company. Anyway, I move for the minutes to be accepted as a true reflection of the events of the previous meeting held on 21<sup>st</sup> MARCH, 2022.

**Mr. Frimpong:** I second the motion.

**Mr. David Kwesi James:** Thank you. Any matters arising from the minutes of the previous meeting?

**Mrs. Gyasi:** At the last Board meeting, the Board directed that management should amend the format for presenting the operational report to the Board and also to ensure that all board papers get to the board in advance. We have done that. You will notice that for this meeting all Board papers were delivered early. You will also observe in our presentation on the operational report that our format now includes analysis in a tabular form.

**Mr. David Kwesi James:** Thank you Mrs. Gyasi. Now let's deal with the first main item on the agenda. The Financial report.

**Mrs. Gyasi:** Mr. Chairman. The company is not doing well at all. Anyway, I have brought the accountant here so you can hear from the horses own mouth. Mr. Aggrey over to you.

**Mr. Aggrey:** Distinguished Ladies and Gentlemen it is a real honour and privilege to have been given this opportunity by the indefatigable Mrs. Gyasi to present the financial report. It is true as Mrs. Gyasi said the company is not doing well. Our general and administrative expenses were very high and about GHS500,000. We also made a loss of about GHS 300,000. Thank you this concludes my presentation.

**Mr David Kwesi James:** This is not good at all.

Prof Benson: What are your plans for improving the performance of the company Mrs Gyasi. This is not good at all.

**Mrs Gyasi:** I agree it is not good at all. In fact, it will be difficult to even pay salaries at the end of the month. So immediately we want to go for a Loan. The new BEK Commercial Bank Limited that has been set up has asked us to open a bank account there and also apply for a loan of Three Hundred Thousand Ghana Cedis (GHS300,000.00). We need the board's approval to go and open the bank account and also apply for a loan of

Three Hundred Thousand Ghana Cedis (GHS300,000.00) from BEK Commercial Bank to be used for salaries. I will sign alone on the bank account.

**Mr. Adjei:** Mrs. Gyasi we have noted your request but this should not happen again. Something like this should have been put on the agenda and then you make a proper presentation to the board with supporting documentation.

**Mrs. Mensah:** I agree with Mr. Adjei's sentiments. This should not be encouraged at all.

**Mrs. Gyasi:** I apologise colleagues. Your comments have been noted in good faith. This will not happen again. It was because of the urgency of the situation that is why I have tabled it like this.

**Mr. David Kwesi James:** Ladies and gentlemen I have noted your comments lets go ahead and help our Managing Director here. Let's give her the go ahead for this.

**ALL:** If you say so Mr. Chairman. We support you on this.

**Mr. David Kwesi James:** Thank you all. I move that we should open a cedi current account with this new Bank, BEK Commercial Bank Ltd. Once we open the account, we should also take a loan from them. We should take an amount of Three Hundred Thousand Ghana Cedis (GHS300,000.00) from the Bank to pay for salaries. As for the signatories to the bank account, it should be Mrs. Gyasi and our Accountant.

**Mr. Amponsah:** Colleagues! Colleagues! I am very sorry for coming in late. Since it is about 11:30 now, I am sure you have discussed a lot of important issues already. I don't want to take you back so go ahead. If I have any questions on what you have discussed I will go ahead and ask.

**Mr. David Kwesi James:** Mr. Amponsah! nice of you to finally join this meeting. You seem to be coming late for meetings these days. Anyway welcome. Next on our agenda is consideration of the operational report.

**Mrs. Gyasi:** Yes Mr. Chairman. This year management has put in various measures to improve our performance. We have now introduced new products on the market.

**Mr. Frimpong:** What are some of these products. You should have even brought some of them for us to try first to see if they will be good for the market

**Prof. Benson:** But Mr. Frimpong you do this often. Every product you want to try.

**Mrs. Gyasi:** Instead of the big bottles now we have introduced smaller bottles as well. Our market survey showed that the smaller bottles are very popular for funerals, weddings and birthdays. We are hopeful that these products will really be patronised.

**Mr. David Kwesi James:** Mrs. Gyasi thank you for your presentation on the operational report. I get the sense that we are all in favour of it go ahead and implement it. It is approved

**Mr David Kwesi James:** Are there any other matters? If not, we can close

**Mrs Gyasi:** Mr Chairman, you have forgotten about our budget.

**Mr David Kwesi James:** Oh yes. Let's deal with that. Please let us hear you on that.

**Mrs Gyasi:** Thank you. This should have come to you late last year but because of a few challenges we are now presenting our 2022 budget. The company's operating income for the year 2021 was GH¢21,130,897 and the budgeted figure for 2022 is GH¢21,570,298. The impairment charge on financial assets for 2021 was GH¢392,062 and the budgeted figure for 2022 is GH¢43.184. The profit before tax was GH¢10,882 for 2021 and the budgeted figure for 2022 is GH¢260,590. Staff cost for 2021 was GH 160,978.85 and the budgeted figure for 2022 is GH¢ 287,984.00. Directors' fees for 2021 was GH 19,957.60 and the budgeted figure for 2022 is GH¢21,000.00. Bad debt written off for 2021 was GH 19,957.60 and the

budgeted figure for 2022 is GH¢21,000.00

**Prof. Benson:** Madam MD thank you. Kindly make sure next year's Directors fees are higher. You know times are hard these days.

**Mr David Kwesi James:** Any additional comments.

**[All]:** No

**Mr David Kwesi James:** Very well. It has been a long meeting It is 4pm now. We are ok with your budget. Could someone please move for the closure of the meeting?

**Mrs. Mensah:** I move for the closure of the meeting.

**Prof. Benson:** I second the motion.

**Mr David Kwesi James:** Thank you. Shall we pray. Father we thank you for this day and for bringing all of us together for such a successful meeting. Take all of us home safely in Jesus' name we pray.

Refreshments followed.

- a. As the Company Secretary who was present at this board meeting, draft the minutes of the board meeting of Palace Company Limited.

(30 Marks)

- b. State briefly the differences between the procedure for holding a board meeting and the procedure for holding an Annual General Meeting.

(10 Marks)

## Question 2

Clifford Ghana Limited is a company registered in Ghana and engaged in food processing. The shareholding structure of Clifford Ghana Limited is

as follows:

Bliss Limited-	80%
Lloyds Bank PLC-	3%
Jask Investments Limited	15%
Caramel Limited	2%

The Constitution of Clifford Ghana Limited provides in Paragraph 32 that:

***'No member shall have the right to transfer all or any of his shares in the company, unless same shall first have been offered to all the existing shareholders of the shares of the class or classes being transferred in proportion as nearly as may be to their existing holdings'***

Clifford Ghana Limited has been doing very well in the industry and has been making a lot of profit. Bliss Limited has however decided to sell 50% of its shares to Vamos International PLC for a price of Fifteen Million United States Dollars. At the 50<sup>th</sup> Board Meeting of Clifford Ghana Limited held on 15 March 2022, the nominee of Bliss Limited on the board of Clifford Ghana Limited, Mr. Antwi, informed the board of Clifford Ghana Limited of the agreement that Bliss Limited had reached with Vamos International PLC. The nominee of Jask Investments Limited Mr. John Essien expressed his displeasure and indicated to the board of Clifford Ghana Limited that the transaction between Bliss Limited and Vamos International PLC was wrong. Despite Mr. Essien's protests, the board of Clifford Ghana Limited has gone ahead to approve the sale of shares and issued a share certificate to Vamos International PLC.

Mr. Jonn Essien is unhappy about this and has approached you on behalf of Jask Investments Limited and has instructed you to commence legal proceedings.

With the aid of statute and decided cases advise Jask Investments Limited on how they should proceed to court and justify the procedure you would use in commencing court proceedings.

**(20 marks)**

### **Question 3**

The Companies Act 2019, Act 992 has enhanced minority shareholder protection in Ghana. With the aid of decided cases and statute discuss the above statement.

**(20 Marks)**

### **Question 4**

You are the Company secretary of Stream Reinsurance Limited (Stream Re), which is a Reinsurance Company. The current shareholding of Stream Re. is as follows:

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

The current stated capital of Stream Re is GH¢50 million. The authorized

shares of Stream Re. are 100 million shares of *no par* value. The National Insurance Commission, the Regulator, has issued a directive that with immediate effect every Reinsurance Company should have a new stated capital of GH¢150 million. The directors of Stream Re. have decided that to comply with the directives of the Regulator the company's stated capital should be increased from GH¢ 50 million to GH¢150 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¢40,000,000.00
- b. cash contribution from Mr Kwame Busumpra -  
GH¢24,000,000.00
- c. cash contribution from Lawyer Kweku Boateng -  
GH¢6,400,000.00
- d. cash contribution from Mr. Latif Imoro -  
GH¢1,600,000.00

2. Transfer from reserves to stated capital- GH¢20,000,000.00

3. Mrs Paulina Antwi has agreed with the company to offer her new office building valued at GH¢8,000,000.00 to the company in exchange for shares.

- a. Advise the board of directors on the processes for increasing the stated capital of the company. (8 marks)
- b. Draft the relevant written resolutions. (8 marks)
- c. Specify the prescribed statutory forms which should be completed and filed with the Registrar of companies. (4 marks)

**(20 MARKS)**

### Question 5

Following the enactment of the Companies Act 2019, Act 992, your client, a former French international footballer, Monsieur David Platini (David) proposes to invest in Ghana to engage in the construction of affordable houses. David has considered various market entry strategies and has finally decided to invest in Ghana by setting up a limited liability company in Ghana. He wants to be the sole shareholder and has decided to invest One Hundred Thousand United States Dollars in his business in Ghana.

David would like the name of his private limited liability company in Ghana to be Uni- Leva Ghana Limited or D.P Ghana Limited. He also wants the company to be registered with a constitution and for the nature of business to include:

- 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

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

- a. the requirements, processes and steps for registering a private company limited by shares in Ghana.

**(12 marks)**

- b. David has also heard of the phrase 'pre-emption rights' and has asked that you cater for this in the relevant documents of the Company. Explain to your client how you will cater for pre-emption rights.

**(8 marks)**

**Question 6.**

- a. The processes involved in the registration of a company's immovable property as security for a lending transaction in Ghana leaves much to be desired.

Discuss the above statement with reference to relevant laws.

**(12 marks)**

- b. Write short notes on the following four boiler plate clauses in a commercial agreement.:
- a. Waiver
  - b. Entire agreement
  - c. Force Majeure
  - d. Dispute resolution

**(8 marks)**