

**THE INDEPENDENT EXAMINATION COMMITTEE**

**GHANA SCHOOL OF LAW**

**PROFESSIONAL LAW COURSE**

**FINAL EXAMINATION 2017/2018 ACADEMIC YEAR**

**DATE: MONDAY, 22 OCTOBER 2018**

**SUBJECT: COMPANY AND COMMERCIAL PRACTICE**

**TIME ALLOWED: THREE (3) HOURS 10:00am – 1:00pm**

**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 answers.
4. **Do not** write or sign your name on the Answer Booklet. **Only write your index number.**
5. Adhere strictly to the instructions on the front cover of your Answer Booklet.

**THIS QUESTION PAPER MUST NOT BE REMOVED FROM THE EXAMINATION HALL**

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**QUESTION 1**

Azonta Life Insurance Co Ltd (ALICOL) has three shareholders, Yaw Brefo, Aba Amanda and James Allotey, with 40%, 27% and 33% shares respectively. The company owns ALICOL House and some huge hiring equipment. It has become necessary for the company to raise funds for its operations as a result of a new strategic direction. Paul Rigor Mortis, a foreign investor has approached the company to buy its ALICOL House and the company is desirous of doing so even though the ALICOL House is substantially the whole of the assets of the Company.

As the Company Secretary advise the Company on:

- a) How to go about the sale; and

**[11Marks]**

- b) Draft the necessary Resolutions that should accompany the documents for the transaction.

[14 Marks]

[Total Marks 25]

## QUESTION 2

FJ Ltd, a foreign company involved in IT Solutions registered by the GIPC with equity participation of two persons, a Ghanaian and a Lebanese, has a stated Capital of \$500,000. The shareholding structure between them is 60-40 in favour of the Lebanese, which exhausted all the authorized shares of the company. The Company wants to go into trading after another person, an Indian, has expressed interest in investing in the company as a shareholder. The Indian brings on board machinery for packaging valued at about \$1,000,000. The shareholding structure agreed upon is as follows:

Ghanaian	20%
Lebanese	30%
Indian	50%

The need to raise the stated capital of FJ Ltd has therefore arisen.

- Advise the board on the process for increasing the Stated Capital of the Company. [8 marks]
- Draft the relevant Written Resolutions [12 marks]
- Specify the statutory forms which should be completed and filed with the Registrar of Companies. [5 marks]

[Total Marks 25]

## QUESTION 3

What are the two legs of the Rule in *Foss v Harbottle*. How has the Companies Act, 1963 (Act 179) impacted on the application of this rule in Corporate Litigation.

[25 Marks]

#### QUESTION 4

The Promoters of Machine World Limited were Akua Foriwaa, Asuo Benin and Kwame Owusu. Before the incorporation of the Company, Akua Foriwaa signed a contract on behalf of the Machine World Ltd for the purchase of equipment with a Supplier based in Dubai on credit terms. Machine World Ltd was subsequently incorporated, with Akua Foriwaa holding 55% of the issued shares of the Company. The remaining shares were held equally by Asuo Benin and Kwame Owusu both of whom were made directors. Akua Foriwaa was also the Managing Director the Company.

A few days after the incorporation of the Company, the equipment was delivered, installed and operations began. The Chief Financial Officer of the Company, on the instructions of Akua Foriwaa had been making payments to the Supplier. Akua Foriwaa died a few months after the Company had commenced business. After the death of Akua Foriwaa, the Company defaulted in making further payments to the Supplier despite persistent demands. The Supplier has issued a pre-litigation correspondence threatening legal action. The lawyers for Machine World Limited have responded that the Company is not privy to the contract and has no intention of making any further payments to the Supplier.

Consider and resolve the legal issues arising.

[25 Marks]

#### QUESTION 5

Where a person enters into a contract on behalf of an Unformed Company, a conceptual problem arises. The resolution of this conceptual problem however varies from one jurisdiction to the other.

With the aid of decided cases and appropriate sections of the Companies Act, 1963 (Act 179) discuss the above Statement.

[25 Marks]

#### QUESTION 6

- a) What is a foreign company and what is an external company. [10 Marks]
- b) What are the processes required for the registration/incorporation of a foreign company on one hand and an external company on the other under the laws of Ghana. [15 Marks]

[Total Marks 25]

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