

Chartered Secretaries Qualifying Scheme – Level 1

Corporate Law

Sample paper

Time allowed: 3 hours and 15 minutes
(including reading time)

Do not open this examination paper until the presiding officer or an invigilator tells you to.

You must not take this paper out of the examination room.

The examination paper contains **six** questions. Each question carries 25 marks. You must attempt **four questions only**.

Questions

(Answer **four** questions from this paper)

1. Chris and John are mechanics who originally operated their respective businesses as sole traders. They decided to combine their experience and resources and formed a company called Clever Mechanics Ltd to run their new business. All of the assets of their respective businesses were transferred to the new company. The date of the certificate of incorporation was 10 January 2010. Chris and John are the only directors and shareholders of the company, holding 10,000 shares each, which have a nominal value of £1 each and are partly paid for to the extent of 50 pence per share. The business is run from the company's garage premises previously used by John, which he continues to insure in his own name.

On 1 January 2010, Chris ordered some motor parts from Dan costing £1,000. He signed the contract with Dan, 'For and on behalf of Clever Mechanics Ltd (in formation)'. Dan has not received any payment for these parts.

The company has been financed mainly by a £25,000 loan from South Bank plc and this was personally guaranteed by John. In addition, John's sister, Sue, invested in the company by taking a thousand 6% non-voting preference shares of £2 each in the company.

In May 2010, the company's premises were destroyed by a fire. John made a claim on his insurance policy but the insurance company has refused to indemnify him, and John does not understand why. This has caused the company to go into insolvent liquidation. The liquidator has discovered that Chris was a director of another company called Intelligent Mechanics Ltd, which went into liquidation in 2009. Following the liquidation of this company Chris was disqualified for a period of 3 years.

Required

Advise Chris, John and Sue on their potential personal liability for the debts of the company and on any other matters that you feel are relevant.

(25 marks)

2. Alpha Ltd ('the company') is a private tutorial college. Alec, Christine and Barry are the only directors and shareholders of the company, each owning 100 shares. In addition, Alec has been appointed the managing director. The Articles of Association of the company contain the following clauses:

- (a) In the event of a resolution being proposed at any general meeting of the company for the removal from office of any director, any shares held by that director shall carry the right to three votes per share.
- (b) Jake shall be the company secretary.
- (c) The managing director, Alec, shall have the power to veto any board decision relating to the teaching of any new course at the college.

In addition, there is a shareholders' agreement signed by the company and all of the shareholders that the company will not increase its share capital unless all of the parties to the agreement give their consent.

At a recent board meeting, Alec tried to exercise his veto after the board decided that the college should offer a new course but Christine and Barry ignored Alec's veto. They then called a general meeting which passed a resolution ratifying the decision of the board. The company will need to raise additional capital to run the course but Alec has stated that he will not consent to any increase in the company's share capital. Christine and Barry are now considering calling another general meeting to remove Alec as a director. Jake acted as the company secretary but has since been removed.

Required

Advise Alec and Jake whether they can rely on any of the above Articles of Association or the shareholders' agreement.

(25 marks)

3. Magda plc ('Magda') recently created the following charges over assets:

- (i) On 1 September, a floating charge over its stock of goods in favour of Beryl, to secure a loan by her of £50,000. This charge was not registered.
- (ii) On 1 October, a floating charge over the entire undertaking of the business in favour of North Bank plc ('the bank'). The background to creating this charge was that the bank had granted an unsecured overdraft of £60,000 to Magda. The bank then asked for it to be secured and so the company paid the overdraft off with what little money it had and then immediately borrowed the money from the bank again, but this time on a secured basis. In consideration for granting the charge, the bank agreed to extend the overdraft facility to £70,000. The charge contains a clause which prohibits Magda from creating any further charges ranking equally with, or having priority over, the charge granted to the bank. This charge was registered on 10 October.
- (iii) On 5 October, a charge which was expressed to be a 'first specific charge' over its book debts in favour of East Bank plc ('East Bank'). The charge contained the following clause:

"The company shall pay into an account with East Bank, designated for that purpose, all monies which it may receive in respect of the book debts, and shall not without the prior consent of East Bank in writing make any withdrawals or direct any payment from the said account."

This charge was registered on 8 October.

In addition to these charges, Magda has borrowed £50,000 from First Finance plc. The rate of interest charged by First Finance plc is 35 per cent.

Required

In the event that Magda goes into liquidation, discuss the nature and validity of the:

- (a) 1 September charge. *(7 marks)*
 - (b) 1 October charge. *(6 marks)*
 - (c) 5 October charge. *(7 marks)*
 - (d) Loan with First Finance plc. *(5 marks)*
- (Total: 25 marks)*

4. Sarah is the company secretary of Beta plc, ('the company'), a non-listed public company. She seeks your advice on the following matters.
- (a) The company has 100,000 £1 preference shares and 500,000 £1 ordinary shares. The Articles of Association provide that the preference shares carry the right to a 12 per cent preference dividend and a prior right to the return of their capital on a winding up. They have no right to vote except at class meetings. The board of directors wants to reduce the preference dividend from 12 to 8 per cent.
 - (b) The company plans to allot an additional £30,000 ordinary shares with a nominal value of £1 to Roger, for £1.30 each. Roger cannot afford to pay for the shares in full and has suggested that the company allows him to pay £1 per share, and that he acts as the company's legal adviser for the next three months in order to pay for the premium. Alternatively, he has suggested that the company re-registers as a private limited company. Roger will then arrange a loan of £39,000 from his bank which will be guaranteed by the company.

Required

Advise Sarah:

- (a) On the proposed dividend reduction and on any procedural matters necessary to implement it.

(12 marks)
- (b) On the validity of the plans to allot the additional ordinary shares to Roger.

(13 marks)

(Total: 25 marks)

5. Mytec plc ('the company') designs and installs computer software. At a recent board meeting, the following resolutions were passed:
- (a) To purchase a plot of land from Stuart, the husband of Mary, one of the company's directors, for £200,000. Mary did not disclose that the land is owned by her husband.
(6 marks)
 - (b) To reject a proposed contract with Riverside University to install a new computer system in its library. The board did not feel that there was enough profit in the contract to make it commercially viable. After the meeting, Derek, a director of the company, approached Riverside University and has been offered the contract in his personal capacity which he intends to accept.
(7 marks)
 - (c) To purchase some new computer equipment from iTech plc. This contract was negotiated by Ian, one of the company's directors, who, unknown to Mytec plc, has been paid a £5,000 commission for recommending iTech plc to the company.
(5 marks)
 - (d) To award Edward, a director of the company, £100,000 compensation for loss of office.
(7 marks)

Required

Advise the company on any potential breaches of directors' duties.

(Total: 25 marks)

6. Rubero plc (the company) is an importer of electrical equipment and was formed in 1990. It has two directors, Albert and Bob, and three shareholders, Albert, Bob and Clive.

The company's financial problems began in late 2007 when it lost its major customer. Since that time it has exceeded its overdraft on many occasions, its cheques have been returned unpaid, and trade customers have been paid either late, or not at all. The company made a loss in 2008 and 2009 but made a profit in 2010, following which the directors recommended a dividend that the general meeting declared shortly afterwards.

In November 2009, the directors started importing spare parts for motor cars. They did so in the hope of avoiding liquidation, even though no mention of this was made in the company's objects clause in the Article of Association. This did not turn out to be profitable and caused the company to lose a further £60,000.

By August 2010 the directors realised that there was no alternative to the company going into liquidation as the company could no longer pay its debts as they fell due. The directors intend to put the company into a members' voluntary winding up. Before doing so, they have ensured that any money that has been received by the company has been used to reduce the company's overdraft with West Bank plc, which they have personally guaranteed.

Required

- (a) Advise the directors why a members' voluntary winding up is not possible.
(5 marks)
- (b) If the company goes into compulsory liquidation by the court, explain what action a liquidator could take to swell the assets of the company available for distribution.

(20 marks)

(Total: 25 marks)

The scenarios included here are entirely fictional. Any resemblance of the information in the scenarios to real persons or organisations, actual or perceived, is purely coincidental.

