

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

JUNE 2018

LEVEL 6 UNIT 16 THE PRACTICE OF COMPANY & PARTNERSHIP LAW

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested answers is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2018 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' **comments contained within this report** which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

This paper is a Level 6 paper and was appropriately demanding. Congratulations to those candidates that have passed this Unit.

Overall those candidates that performed well reflected their abilities to apply their understanding to the facts and thereby produce good solid answers deserving of a higher mark. The majority of candidates had taken little time to consider the documents provided in the case study materials and thereby sought to use the facts imparted and apply the documents as they progressed through the paper.

General performance:

Much of what is set out below in this section has been stated before, but it still needs to be stated – particularly in response to requests for feedback.

Unsuccessful candidates need to be able to relate to their own performance to what was being required of them and to be able adapt their approach to this

topic, revision and the assessment, so that they are able to be successful in the future. Candidates are strongly encouraged not to just focus on the answer, but their overall approach.

It is worth a general observation that the performance by candidates was generally reflected by those who had fully and carefully prepared and reviewed the case study materials and were prepared to answer any change in the facts presented. As in previous papers, this paper relied on a good understanding of a set of facts set out in the Case Study materials. As per previous papers, the application of the mechanics of the document together with statute was key. There is always a marked differentiation in that such well performing candidates applied themselves according to their ability to tackling the questions such that they used their knowledge to provide sound advice taking into the facts supplied, as required by the questions. Those candidates that sought only to demonstrate knowledge of reading and imparting all that was known on a subject did not score as well.

General Advice:

In terms of approach and technique for examinations at this level, candidates must bear in mind that the intention is for the candidate to be able to apply his/her understanding of the practice of partnership and company law such that they are able to advise clients in a practical manner. In order to achieve this, candidates must resist the urge to write all that they know about a subject, which in this paper was all too often a problem; understandably there is a natural desire to demonstrate all that the candidate has read and knows. However, that approach will not work at this level. As has been stated before, application to the facts when answering questions is extremely important and often carried marks that candidates, who only impart knowledge, do not give themselves the opportunity to be awarded.

Additionally, as before, candidates while revising should not then be doing so in such a manner that they are rehearsing pre-prepared questions and answers. Less so in this paper than before, there remained instances where pre-prepared answers appeared to be relied upon with little consideration to the need to remain flexible and to be able to answer the questions as posed, rather than as desired.

Common weaknesses:

As has been said before, many candidates failed to appreciate that it is important when tackling problem questions to answer the question in the context to the issue raised by the question. Often the answers set out the law on a topic in issue without any great reference to the facts of the scenario, and often with no attempt being made to apply the principles that were actually relevant. This would then be followed by only a cursory discussion of the facts of the problem, often with only scant reference to the previous explanation of the law. A proper conclusion can only be demonstrated after careful application of the relevant principles of law to the facts of the scenario, and that demonstration is all the better made if the marker is then taken through the issues on a step-by-step basis with each step applied to the facts – candidates are strongly recommended to review the Suggested Answers for further guidance on how they may achieve the intended aims.

Review of Case Study Materials:

Candidates are recommended to consider the manner in which they prepare following the release of the Case Study materials. Candidates should try not to anticipate the questions following a review of the case study materials; rather analyse the facts to fully understand what is going on and then consider all the issues surrounding those facts, identify issues only and identify where problems may arise.

It is also worth repeating advice given in the past. Namely that candidates must not, when reviewing the Case Study materials, make assumptions about the facts or attempt to question spot – what the candidate may consider as a certain in terms of the type and wording of the question will invariably not be the question actually posed. Review the Case Study materials with an eye to be adaptable and fluid come the examination; remember the facts can be developed further come the examination, this can then alter the assumptions that may have been considered. Those candidates that do question spot invariably come to the examination with a pre-rehearsed answer which will not fit the question posed or be capable of incorporating additional or changed facts. Candidates should treat the examination as they would meeting a client for the first time, what you know from a brief telephone call or attendance note could change immediately when the client walks in the room.

15 Minutes Reading:

Candidates should also make appropriate use of the 15 minute reading time at the start of the examination. It is during this period that the candidate can read through the additional information provided in the examination paper, and how this relates to and moves on the pre-released Case Study materials. Candidates should pay particular attention to the wording or facts of the questions and discuss the relevant law, connecting their arguments to the actual issues raised by the questions. The candidate should always bear in mind that when tackling questions, the candidate must be able to demonstrate why the law he/she is writing about is relevant to the question, i.e. make sure that as you identify the relevant fact that demonstrates why it is so. It is the latter aspect that some candidates fail to do. Accordingly, it may be useful during this period to make notes on the key points of the law to be used and applied and the key facts to employ in giving a fully reasoned and considered piece of advice.

Examination technique:

When tackling the questions posed in the examination, it is important to keep in mind the IRAC approach to answering question - Issue, Rule, Application, and Conclusion. This approach will help you structure your answers, and as you do you will be demonstrating to the examiners how you have reached your conclusions by leading them through your thought process and step-by-step analysis:

- (1) *Issue*: read the questions carefully and identify that which is relevant from the facts, state exactly what the question of law is;
- (2) *Rule*: identify and cite the applicable cases, statutory provisions or procedures that will help you make a correct legal analysis of the issue at hand - briefly, explain their requirements, identifying any key tests that must be applied;
- (3) *Application (or Analysis)*: this is the most important section of an IRAC because it develops the answer to the issue at hand. It requires you to apply

the applicable statutory law or procedures identified to the facts – this is the provision of the advice. It is important in this section to apply the rules to the facts of the case and explain or argue why a particular rule applies or does not apply in the case presented; and finally

(4) *Conclusion*: by summarising what you have set out above and for problem questions whether the client can or cannot achieve their intended aims, or in the case of an essay question, whether you agree or not, with the statement you have been set to discuss. It is important that your conclusion does not introduce any new rules or analysis; restates the issue and provides the final answer.

Statute book:

Although previously stated, candidates are reminded that they are able to take with them into the examination room the prescribed statute book, a valuable resource if used correctly – if used correctly when studying, during revision and then in the examination itself, a source to rely upon for all answers. Candidates should seek to use the statute book as a means by which to support their answers, in that the statute books will provide the necessary statute references, the correct terminology, clarification of the necessary procedure that is being applied and the resource to look through to identify additional points for inclusion. Candidates must learn how to use this resource effectively in the exam room, and this starts with revision – when revising a topic, locate and identify the corresponding statutory provisions, read and understand the manner in which they operate. The effective use of statute in the exam will only see to embellish answers and candidate performance.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

The first part of this question looked at identifying whether a business relationship was a partnership and the potential liability of being involved in a partnership and liability generally. Candidates that sought to identify and briefly consider their understanding to the various tests and additional requirements under the Partnership Act 1890 did well. Likewise, those candidates that looked to relate this application back to the facts, performed well on this aspect of the question. However, too many candidates did seek to state the position of the law only, without application – it is important to continually seek to apply the law to the facts and draw conclusions that provide the necessary advice that is sought.

The second part of the question looked at any potential claim that could be made against a partner for the use of partnership assets for her own purpose and for not focussing sufficient time on the partnership. Generally the issues were identified, however more was required to identify what is partnership property and to ensure that if a partner uses partnership property without permission from the other partners, then that partner must account for any profits as a result. Likewise, that if there is no provision dealing with work input and competing with the partnership, the implied position under the PA 1890 and common-law apply. It may not necessarily be possible to stop the individual involvement in her own enterprise as there is no obligation on a partner to spend time on the partnership business.

Question 2

The first part of this question asked candidates to both appoint and then award a long-term-service contract to a director. While the requirements to cover the need to seek members' approval was generally well done (although more was required in terms of the disclosure requirements of the term of the contract to members covered), only a few candidates fully covered the need for the director to make a declaration of interest under s177 and Art 14 – and in this instance, the individual's father would also be required to make a s177 declaration and would arguably be precluded from voting; a point made only by a few candidates (well done to those that did identify this), more use and consideration of the facts was required.

The need to make a declaration of interest and to be precluded from voting arises in a number of questions, but is still not covered by candidates well. Note, s177 is a declaration of interest only, not a precluding of voting as many candidates stated. It is Article 14 that potential precludes a director from participating in quorum.

The second part of the question looked at the removal and protection of a director. While most candidates were able to identify the basic requirements for the removal, the greatest aspect where candidates failed to gain marks related to the special notice requirements and procedures to be followed during the general meeting. Additionally, the question asked candidates to consider the actions that the director could take to protect his interests; this question was looking to establish those protections but all too few candidates gave this full consideration.

Question 3

This question required the candidates to advise the company on the steps it would be required to undertake in order to allot only ordinary shares in exchange for assets. In relation to the issue of shares, most candidates covered the basic requirements for the allotment of shares well, although generally application and the use of statute was lacking. Additionally, most candidates failed to identify that the requirement under the right of pre-emption (and the means by which this could be either dis-applied or waived – the latter being most appropriate given that the facts suggested that the current shareholders were most likely to agree the investment) did not apply when shares were being issued for non-cash assets; the detail and application was lacking by most candidates and the answers were then in general terms relating to the allotment of shares. Too many candidates only sought to outline the procedure with little reference to the particular circumstances in hand.

When addressing the procedural requirements, only a few candidates covered this well and only a few identified the need to credit the share account in respect of that sum representing the nominal value of the shares.

The greatest failing of candidates was the failure to consider those involved. In this instance, all the directors who were in post at this point in time would be required to declare their interests in the share allotment. This consequently required the issue of s177 and Article 14 to be addressed.

The second part of the question looked at the tax consequences arising for the individual director in terms of a salary and dividend payment and the

company.

Question 4

This question looked at the scenario of a loan to the company over assets of the company; it was not, as a number of candidates sought to argue, a loan to a director, this was incorrect nor suggested by the facts or question. As a consequence of fully understanding the first part of the question this, in some instances, affected the candidates' performance in relation to identifying the steps the bank should consider before granting the loan to the company. This was an issue of capacity (s40 Companies Act 2006), did the company have the requisite authority and capacity to enter into what effectively amounted as a loan, and how indebted was the company should the need for the guarantee be called upon? Consequently, not all candidates considered the need to include an express power in the company's constitution to ensure the directors had the power to borrow/grant guarantee without limit. A number of candidates did identify the need to undertake searches against the company for any existing charges over the company's freehold property in the company's register of charges, at the Registrar of Companies and at the Land Registry/ Land Charges Registry but not always then applying their reason for doing so. Again, the need to address a declaration of interest and preclusion from voting was not covered well/ identified by the majority of candidates.

The final question asked candidates to advise on the company acting as guarantor for a loan to a director. Generally, the principles were addressed well. However, the applicable exemption was not correctly identified; the loan/guarantee was not for company expenditure, rather it was a minor/business transaction and therefore did not need member approval. Again, the need to address a declaration of interest and preclusion from voting was not covered well/ identified by the majority of candidates.

Candidates are referred to the Suggested Answers for further guidance; the means by which the answer is demonstrably applied to the facts should also be noted.

SUGGESTED ANSWERS

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Question 1(a)

The business that Reuben Iyamu has entered into with Laura Thwaites is a partnership, i.e. a relationship which subsists between persons carrying on a business in common with a view of profit (s1(1) Partnership Act 1890). S2 Partnership Act 1890 states that the sharing of profits of the business is *prima facie* evidence of being a partner. However while s2 Partnership Act 1890 lists a number of situations where a receipt of a share of profits does not, by itself, make a person a partner, there is no suggestion that any of those situations apply to the facts of this question. As such, on the basis of the information provided, a business has been set up, the purpose behind which is clearly to make a profit. Therefore, the business carried on by Reuben and Laura

satisfies s1(1) Partnership Act 1890 and can be viewed as a partnership.

In relation to any liability that Rueben may incur in relation to this partnership, and others' authority to bind the partnership (and thereby Rueben), liability arises under the Civil Liability (Contribution) Act 1978 and s9 Partnership Act 1890. The Partnership Act 1890 liability is only joint, whereas the Civil Liability (Contribution) Act 1978 provides that a claimant can bring action successively against partners who are jointly liable, even if the judgement was obtained against the other partners.

Authority to bind the firm arises by virtue of:

- s6 Partnership Act 1890 a partner will bind the firm if he/she is authorised, such authority being vested in a partner by express agreement or implied by the conduct of the members of the firm
- s5 Partnership Act 1890 covers apparent authority for the partner to bind the firm and need to use the four stage test:
 1. Is it the type of business carried on by the firm?
 2. Would a partner usually have authority to bind the firm?
 3. Does the third party know or reasonably suspect that the partner did not have authority?
 4. Does the third party know or believe that the individual is not a partner?
- s7 Partnership Act 1890 where an individual pledges the credit of the firm for a purpose not connected with the firm's business, the firm is not bound unless the pledge was specifically authorised by the other partners
- s8 Partnership Act 1890 provides that a restriction on a partner's authority will not bind a third party unless they have notice of it.

Reuben will be liable for debts whilst a partner under s17 Partnership Act 1890.

1(b)

The equipment used is likely to be partnership property; they are ordinary items, which were probably bought using partnership money (s21 Partnership Act 1890).

Under s20 Partnership Act 1890, partnership property must be used exclusively for the partnership. Therefore, the Partnership can in theory ask for any items to be returned, or as appropriate ask Laura to compensate the Partnership.

S29 Partnership Act 1890 states that if a partner uses partnership property without permission from the other partners, then that partner must account for any profits as a result. On the facts, it appears that the partners have not given consent for Laura to use these items. Therefore, Laura must account for any profits earned by her own business as a result of using such items.

As there is no partnership deed, there is presumably no express agreement dealing with work input by the partners, or competition against the partnership. Accordingly, these matters are dealt with by the implied terms found in the Partnership Act 1890 and the common law. No claim could be brought against Laura for her failure to spend time on the business of the partnership, since there is no implied obligation on a partner to spend time on the partnership business.

Note, that s30 Partnership Act 1890 does not apply in this instance as the business that Laura is undertaking is not of the same nature or in competition with the firm. As such Laura will not be required to account for profits from her separate business activities under s30 Partnership Act 1890.

However, under s29 Partnership Act 1890, which we have already noted above in connection with Laura's use of partnership property, a partner is also obliged to account for profits made as a result of the use of the partnership name or its 'business connexion'. This may also apply to our question, if it is possible to establish that Laura has been marketing/supplying clients of Spick 'N' Span.

Question 2(a)

Reuben Iyamu may be appointed a director of Kempston Garage Services (The Grange) Limited ('KGS'), either by the directors in a Board Meeting or by members in a General Meeting by Ordinary Resolution in accordance with Article 17(1) Model Articles.

To appoint by General Meeting, directors will need to call a GM on 14 clear days' notice or short notice (s307 Companies Act 2006 (CA 2006) and Article 48 Model Articles). Alternatively, KGS could use the written resolution procedure under s288-300 CA 2006.

However, Reuben is also to be awarded a director's service contract of three years. As this is for a fixed term exceeding two years, the term must be approved by an ordinary resolution of the company (s188 CA 2006). A copy of the proposed agreement or a memorandum of its terms, including the term which requires members' approval, must be available for inspection by the members of the company at the company's registered office for not less than 15 days (s188(5) CA 2006). Alternatively if a written resolution is used the memorandum should be attached to it. If such a term is granted before the members' approval is obtained, it is void and the agreement terminable at any time by the company on giving reasonable notice (s188(5) CA 2006).

Accordingly, as an ordinary resolution is required, the appointment and approval of the contract should be deferred to a General Meeting of KGS. Reuben need not declare his interest in the grant of his service contract by virtue of s177(6)(c) CA 2006 but should be advised to do so as a matter of good practice. Reuben may not however vote or be counted in the quorum at the board meeting called to approve his service contract (Article 14 Model Articles).

Reuben's father, George, will also be required to make a s177 declaration, although s177(6)(b) or (c) will apply. Additionally, Article 14 will arguably preclude George from voting as he will be regarded as having an interest in his son's appointment and award of a service contract. As such George will be prevented from participating in quorum and voting.

Administration: a number of documents will need to be prepared, namely, Board Meeting minutes and resolutions (first to decide on the appointment and the terms of the service agreement, then to hold the required General Meeting to approve the term, and finally a subsequent Board Meeting to authorise the execution of the service contract), Notice of General Meeting and minutes, and the necessary Ordinary Resolution. The proposed agreement or a memorandum of its terms will need to be prepared, and letters noting the

declaration of interest on the part of the director, updating of the registers of directors and Form AP01 to be completed and filed with the Registrar.

2(b)

Reuben may be removed from office by an ordinary resolution of the shareholders notwithstanding any contrary provision in any agreement between him and the company (s168 CA 2006). The proposed service contract will not therefore prevent Reuben's removal as a director before the term of that contract has come to end. However, the right of the company to remove him as a director will be without prejudice to any claim for compensation that Reuben might have if his removal constitutes a breach of his service contract (s168(5)).

Special Notice of any such proposed resolution must be given to the company at least 28 days before the meeting.

Reuben is entitled to protest his removal by speaking at the meeting called to consider the resolution to remove him and to make written representations to the meeting (s169 CA 2006).

He can be protected in the following ways:

- include a Bushell v Faith (1970) clause in the Articles to give him enhanced voting rights in the event of a resolution to remove him or to amend or remove the Bushell v Faith clause from the Articles (or the Bushell v Faith clause might also be prevented from amendment or removal by a 'provision for entrenchment', under s22 CA 2006)
- amend Article 18 Model Articles to reduce the circumstances in which a director would be disqualified from holding office
- by a clause in a separate shareholders' agreement which requires parties to that agreement to vote against any resolution to remove him as a director.

The articles of association may be amended by Special Resolution (s21 CA 2006), with a copy filed at Companies House (s26 CA 2006), together with a reprinted copy of the amended articles of association (s34 CA 2006).

Question 3(a)

The directors of KGS, a private company with only one class of shares, may exercise any power of the company to allot shares (or grant rights to subscribe for or to convert any security into shares) without any further authority, unless they are prohibited from doing so by the company's articles of association (s550 CA 2006). Shares are of one class for this purpose if the rights attaching to the shares are in all respects uniform (s629 CA 2006). KGS has the model articles for a private company limited by shares, and these do not contain any restriction on the directors' authority to allot shares.

As there are no restrictions in KGS's articles on the power of allotment and there is only one class of share in issue before and after the proposed allotment, it would seem that KGS can rely on the more relaxed regime for private companies contained in s550 CA 2006. The directors will therefore need to pass a board resolution resolving to allot the new ordinary shares which should be recorded in board minutes.

The ordinary shares will have the right of pre-emption attached to them as they will be 'equity securities' for the purposes of s 560 CA 2006. As such they should be offered to existing holders of equity securities first, in proportion to their existing holdings and on the same or more favourable terms (s561 CA 2006). This allows those shareholders to preserve their percentage holding after the issue, provided that they have sufficient funds available to subscribe for the new allotment.

However, where the allotment of equity securities is for a non-cash consideration then the right of pre-emption does not apply (s565 CA 2006). Therefore as the allotment to Reuben is in exchange for non-cash assets, the equity securities do not attract the right of pre-emption and may be allotted to Reuben without the need to offer to existing holders of equity securities first nor with the need to seek either a waiver of entitlement or disapplication by means of a special resolution.

As a director of KGS, Reuben, *prima facie*, will have to declare his interest under s177 CA 2006 in relation to the allotment of shares at the board meeting. However, since the directors can reasonably be assumed to be aware of the other's interest, Reuben will be exempt from this requirement under s177(6)(b) CA 2006. Article 14, Model Articles provides that a director may not vote or be counted in the quorum in respect of an arrangement or transaction with the company in which he is interested. This however does not apply where the director's conflict of interest arises, as here, from a proposed subscription for shares.

As this is a private company there will be no need to value the assets being transferred to it.

Administration: a number of documents will need to be prepared, namely, Board Meeting minutes and resolutions (to first decide on the allotment, and to finalise the allotment), a statement of capital, Form SH01, transfer documents for the assets and letters noting the declaration of interest on the part of the directors and updating of the registers of allotments.

3(b)

Tax implications for Reuben in respect of any salary and any dividend received are as follows:

- Remuneration under a service agreement is income subject to income tax and taxable under Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Under the PAYE scheme, tax is deducted at source by the employer, i.e. the company. Reuben's income tax liability will be calculated by taking his income, deducting his personal allowance and then applying the income tax rates. The basic rate is 20 percent and thereafter the balance will be taxed at the higher rate of 40 percent and then at the highest rate of 45 percent.
- Any dividends paid to Reuben will amount to taxable income, taxable under Part 4 IT(TOI)A 2005 and are paid gross and have the benefit of annual tax-free allowance. The allowance exempts the first £5,000 of a taxpayer's dividend income, but does not reduce total taxable income. As a result, dividends within the allowance count as taxable income when determining how much of the basic rate band or higher rate band has been used. Dividend income in excess of the tax-free allowance are

taxed at the following rates 7.5% (basic rate taxpayers), 32.5% (higher rate taxpayers) or 38.1% (additional rate taxpayers).

The tax implications for Reuben if he gifts his shares are as follows:

- The gift would be a disposal for capital gains purposes. The basic gain is calculated by deducting the original purchase price paid by Reuben and the incidental expenses of acquisition plus the cost of disposal from the market value.
- The gain arising is then subject to capital gains tax at Reuben's basic rate of capital gains tax (for non-residential property) of 10%, rising to 20% should he be deemed a higher or additional rate taxpayer.
- The reliefs that Reuben could claim, in the following order, are: Entrepreneurs' Relief on the basis that the shares were a business asset of Reuben and held for at least 1 year prior to disposal. Reuben will have held more than 5 per cent of the shares and have been an officer and employee of the company, accordingly the gain will be taxed at a rate of 10 per cent.
- Alternatively, provided both Reuben and recipient elect, hold-over relief may be claimed (s165 TCGA 1992). Reuben's shares would have to qualify as business assets. If hold-over is claimed the recipient will be deemed to have acquired the assets at Reuben's original purchase price and Reuben's will not be liable for any tax. If claimed, hold-over relief may not be claimed in conjunction with any other form of relief.
- The gift may also be subject to Inheritance Tax; treated as a lifetime transfer of value, which means that there would be no immediate Inheritance Tax implications. It would be a potentially exempt transfer (PET) for Inheritance Tax purposes. If Reuben dies within seven years of making the PET the value of the gift will be subject to IHT when the individual dies. The value of the gift of the share of shares would be established at the time of transfer.
- Reuben can also claim his annual exemption for Capital Gains and Inheritance Tax.

Question 4(a)

In order to accept the loan from David Whiskin, the Company's articles of association should be reviewed to confirm that there are no restrictions on the company's power to borrow money and to give security, and that its directors have the power to approve the loan and to issue a debenture. By virtue of s31 CA 2006, any company has unlimited capacity, save insofar as the company's articles of association expressly limit its capacity. KGS has the Model Articles of Association for a private company limited by shares. The Model Articles do not contain any such express limitation of the company's capacity. At common law a trading company has an implied power to borrow money. Therefore, the Company will have the power to borrow money and to give security. Moreover, the Model Articles also give the directors a general authority to exercise all the powers of the company which would include the power to borrow without limit and to give security (Model Articles, Article 3).

However, it may be prudent to incorporate into the constitution an express power authorising the directors to exercise the company's power to borrow. It is highly likely that David's advisers (if he has any) will request such an amendment. The articles of association may be amended by special resolution (s21 CA 2006), with a copy filed at Companies House (s30 CA 2006) together with a reprinted copy of the amended articles of association (s26 CA 2006).

On the assumption that the loan will be secured by way of a first fixed charge over the assets of the company, searches should still be undertaken of the company's register of charges, at Companies House and at the Land Registry/Land Charges Registry to make sure there are no prior charges registered.

Once the charge has been created, it may be registered by delivering a s859D statement of particulars to Companies House (s859A(2) CA 2006), and a certified copy of the instrument creating the charge (s859A(3) CA 2006). It is very likely that David's advisers will want to register the charge using Form MR01 which they should submit to Companies House within 21 days beginning with the day after the day on which the charge was created (s859A(2) and (4) CA 2006), together with the fee.

Registration of the charge is voluntary but failure to register it within the time limit renders the charge void against a liquidator or an administrator of the company, and also against the company's other creditors (s859H(3) CA 2006). For that reason the lender will want to make sure the charge is registered.

The Registrar issues a certificate of registration (s859A(2) and s859I(3) CA 2006), which (under s859I(6) CA 2006) is conclusive evidence that the charge is properly registered. If the charge is going to be over freehold property then it should be registered with the Land Registry if it is registered land.

In the event that the charge was not registered, KGS can make an application to the court for registration out of time under s859M CA 2006. This procedure allows the court, if satisfied the omission to register was accidental, to extend the time for registration. Alternatively, David's advisers may request KGS to grant a new charge and attempt to ensure that this is registered before any third party registers a charge that would take precedence. David must disclose his interest (s177 CA 2006) and cannot vote on the matter or count in quorum (Article 14 Model Articles); but quorum can nonetheless be achieved.

4(b)

The proposal to act as guarantor for Reuben is treated in the same way as making a loan to a director. The relevant law is s197 CA 2006, which prohibits a company from entering into any loan, or guarantee in connection with a loan made by any person, to one of its directors, unless approved by a shareholders' ordinary resolution.

S197 CA 2006 requires that, in addition to obtaining member consent, a written memorandum setting out the nature of the transaction or arrangement, the amount and purpose of the loan and the extent of the company's liability connected with it must be made available to members before they give their approval by way of ordinary resolution.

Shareholder approval may not be required if an exception applies. The one most likely to be applicable here is the s207 CA 2006 exception for

expenditure for minor and business transactions where the proposed loan is less than £15,000. Given the reasons for making the loan, and the fact that it is £10,000, the exception will therefore apply and an ordinary resolution of the shareholders will not be required.

In any event the decision to grant the guarantee is a directors' decision. Reuben must also disclose his interest (s177 CA 2006) and cannot count in the quorum or vote on the matter (Article 14 Model Articles). However, the quorum can nonetheless be achieved. Likewise, Reuben's father George, as a connected person, will be required to disclose his interest.