

CORPORATIONS LAW

STUDENT ID:
[Pick the date]

Question 1

Issue

The key issue is to determine if Roger can challenge the decision by the company to fire him despite him not doing anything in violation of the code of conduct.

Relevant Rule

In accordance with s. 134, the internal management of the company is driven by the set of replaceable rules (if existing), company constitution or both. Further, s. 140 sets out the effect of the company constitution. The company constitution is to be treated as a contract enacted between the following parties.

- Between each member of the company and the company itself
- Between each director, company secretary and the company itself
- Between every member of the company and the other member

Further, in regards to undertaking an action which is contrary to the express provision of the Constitution, s.125 is applicable. In accordance with this section, the power exercised by a company is not invalid or nullified on the mere ground that it prohibits the constitution of the company or violates a particular express provision. Similarly, any act of the company that does beyond the objects highlighted in the company constitution does not become invalid only because of not being mentioned in the constitution.

Application

In the given case, the company has a constitution as per which the employees can be terminated only when there is a violation of the code of conduct. However, in case of Roger, he is fired for enacting a contract on behalf of the company with his friend despite being made clear that he does not possess any authority to enact any contract on company's behalf. For the given contract, the company did not have to suffer any liability since Roger told his friend that he did not have any authority to execute contracts on behalf of company. In the future, such conduct could potentially result in liability for the company. But a key aspect is that there is no violation of the Code of Conduct. Besides, in accordance with the company constitution, an employee can be terminated only if there is violation of the code. Notwithstanding the provisions of the company constitution, the termination of Roger by the

shareholders has legal grounds in the form of s.125. In the given case, the company does have a valid reason to fire Roger and he cannot challenge the same only because it violates the express provision of the company constitution.

Conclusion

The firing of Roger cannot be challenged in the court on the only ground being that it contravenes the express provisions mentioned in the company constitution. Clearly, Roger has not complied with the orders given by the shareholders and hence there is valid ground of him being fired.

Question 2

Issue

The key issue is to tender advice to the three shareholders who wish to alter the shareholding pattern of the company as per the relevant provisions of the Corporations Act 2001.

Relevant Rule

In accordance with s. 140, the company constitution is to be treated as a contract enacted between the following parties.

- Between each member of the company and the company itself
- Between each director, company secretary and the company itself
- Between every member of the company and the other member

Section 136(2) also highlights that the constitution may be modified through a special resolution. A special resolution refers to a resolution which is ratified by 75% of the total shareholders' vote.

However, a key limitation in terms of modification of company constitution is highlighted in s. 140(2). As per this section, with regards to the following matters, a concerned member would not be bound by the modifications made in the company constitution after he has become a member unless there is a written approval regarding the same. These matters are listed below.

- Requirement of a member to assume additional shares in the company
- Increasing the liability of member for share capital contribution
- Imposing or enhancing restrictions with regards to transfer of shares

Application

In the given case, the company constitution has authorised that 100 shares be issued to each of the four members namely Eric, Wayne, Kirk and Alan. Now, three members want to ensure that every member should double their share ownership in order to provide more capital for the company. Clearly, in accordance with s. 136(2), this would require a modification in the company constitution which is brought about through a special resolution. In the given case, since all members have equal shares and associated voting rights, hence, if Eric, Wayne and Alan vote in favour of increasing the shares issued and authorised share capital, then the resolution would be passed since 75% voting would be in favour of the proposal. However, it would be worthwhile to involve Kirk into the plan as in accordance with s. 140(2), the other members cannot force Kirk to contribute to additional share capital or assume higher liability. They can do so only if they obtain written consent regarding the same from Kirk. Hence, in order to execute their plan, the other members should focus on obtaining the same from Kirk to go ahead with their plan.

Conclusion

While a special resolution can be passed for increasing the authorised shares but in absence of any written approval from Kirk regarding this, the members voting in favour of the modification cannot force Kirk to contribute additional share capital or assume higher liability.

Question 3

Issue

The key issue is to decide whether there is an enforceable contract between Chen and Alan. Also, it needs to be opined as to who would be liable to fulfil the contractual obligations Alan or the company i.e. Weak Security Pty Ltd.

Relevant Law

In accordance with s. 124 of Corporations Act 2001, post registration a company would be realised as a legal entity which is separate from the owners or the shareholders. As a result, the company only after registration possesses the legal capacity to enter into contracts and be liable for the same. However, the promoters tend to start with the business as soon as the company is registered. Thus, they enter into contracts before the registration of the company is complete and these contracts are called as pre-registration contracts.

With regards to any liability arising from pre-registration contracts, Section 131 of Corporations Act 2001 highlights a scheme for allocation of liability between the company and the promoter while ensuring that the interest of the outside party is safeguarded. In accordance with s. 131(1), if the pre-registration contract is ratified by the company after the registration within a reasonable timeframe, then all the liabilities and contractual benefits would be borne by the company. In such a case, if the company does not fulfil obligations on a pre-registration contract, then the company would be held liable.

Further, in accordance with s. 131(2), if the pre-registration contract is not ratified by the company in a reasonable amount of time or there is a failure in registration of the company, then the liability of the contract would fall on the promoter who enacted the contract for the benefit of the future company. A relevant case in this regard is *Bay v Illawarra Stationary Supplies Pty. Ltd* (1986) 4 ACLC 429. According to the verdict of this case, in case of multiple promoters of the business, in case of s. 131(2) being applicable, only that promoter who has entered into the pre-registration contract would be held liable and the other promoters would not be held liable. Also, as per s. 131(3), in such cases, secondary liability would fall on the company and it may be possible depending upon the circumstances that the court may order the company to bear all or part of the liability arising from the pre-registration contract.

Application

As per the given facts, it is apparent that the company has not been registered when Alan entered into the contract with Chen. Hence, the given contract would be termed as a pre-registration contract. Also, it is noticeable that even after the company has been registered, the contract with Chen has not been ratified. The contract would still be considered enforceable. Therefore in accordance with s. 131(2), Alan would be the one who would be primarily liable for the contractual obligations. The other promoters of the company i.e.

Wayne, Erin and Kirk would not be held liable for the contractual obligations as per *Bay v Illawarra Stationary Supplies Pty. Ltd* case. Further, the company also might be held liable by Chen especially if Alan is not able to settle the contractual obligations.

Conclusion

The pre-registration contract between Chen and Alan would be considered as enforceable. Since, it is not ratified by the company, hence primary liability would be on Alan alone and not on other promoters. However, secondary liability does fall on the company whose magnitude would be dependent on the liability settled by Alan.

Question 4

Issue

The key issue is to opine on whether there is an enforceable contract between Walter and the company i.e. WEAK Security Pty Ltd.

Relevant Law

It is noteworthy that despite the company being a legal entity, it does require to delegate powers to agents for execution of contracts. Such contracts as ratified by the agent with the third parties would be considered as enforceable provided there is apparent or explicit authority for the agent. To safeguard the interests of the innocent third parties, s. 128 and s.129 find place in the Corporations Act 2001. Section 129 allows the outside party to assume the following.

- There is compliance of the rules and the clauses highlighted in the company constitution or replaceable rules as may be applicable for the company.
- The agent acting on behalf of the company has been duly appointed and has the necessary authorization to enact the contract on behalf of the company. However, this assumption is valid only when the agent in the eyes of the third party has either explicit or apparent authority.
- Also, while contract execution, the requisite sections of s.127 that apply have been complied with.

With regards to enacting a contract with the company, s. 128(1) allows the outside party to make the above assumptions. As per s.128(3), the above assumptions continue to hold even if the conduct of the agent is fraudulent. However, a reasonable limitation is placed by s. 128(4) which outlines that the above assumptions would not hold true when the third party is not innocent and has prior knowledge that the concerned agent is not authorised to enter into the given contract on behalf of the company.

The above clauses in the Corporations Act 2001 have been enacted on the basis of a landmark case with regards to immunity available to third parties i.e. *Royal British Bank v Turquand* (1856) 6 E&B 327. From this case, the doctrine of indoor management emerged as per which any innocent third party entering into the contract with company can assume that the internal formalities have been complied with and the agent possesses the necessary authority for execution of contract. However, the above doctrine is not valid when there is reasonable suspicion or prior information that the agent may not have the requisite authority.

Application

In the given case, even though Rodger is an agent of the company but clearly he is not authorised to enter into any contracts for the company. Rodger has a friend Walter who is offering to sell a truck at a reasonable price. Rodger enters into contract with Walter for the sale of the truck as he believes the truck would do immense value addition to the company. However, before entering the contract, he clearly communicates to Walter that he is not authorised to enter into any contract on company's behalf. In the given case, s. 128(4) would apply and no protection to Walter would be available since he was aware before the enactment of the contract that Rodger cannot execute any contract on behalf of the company. Thus, Walter cannot hold the company liable for the contract citing indoor management doctrine or s. 129.

Conclusion

Considering that Walter knew before enacting the contract that Rodger cannot enact any contract on company's behalf, hence the protection offered to third parties would not be applicable here and hence the company would be liable for the contract.