

## Law of Obligations I – 25 April 2012

- The duration of the examination is 75 minutes.
- During the course of the examination, candidates may freely consult materials in their possession, including Statutes (in Korean or in English), lecture notes, online resources.
- On each Answer sheet, candidates must write their **student number only**. Please do **not** write your name.
- **All candidates must attempt Question 1 and Question 2.**

### [1] Question 1

Anam Housing Coop (“AHC”) is a non-profit corporation whose purpose is to purchase a plot of land, to execute housing redevelopment project and to sell the completed units to employees of Tiger Electronics, Co. (“TEC”). AHC, however, did not register as a non-profit corporation. AHC is entirely funded by contributions of those employees of TEC who wish to participate in the project and TEC itself. Since TEC was substantially subsidizing the project, nearly 80% of TEC’s employees contributed and became members of the AHC.

Mr Ho is the executive director of AHC. He hired Mrs Ma whose job is to oversee the advertising and sale of the completed units.

A number of completed units were sold to former employees of TEC. They are the ones who were fired after a bitter confrontation with the company. Some units which were already sold to the members were also sold again to former employees who are non-members of AHC. Mr Ho and Mrs Ma disappeared with the down payments.

Mr Kim was appointed as the new executive director. Mr Kim denied the validity of AHC’s sale contracts with non-members asserting that those transactions are beyond the scope of AHC’s purpose. Mr Kim also relied on the Memorandum of Incorporation of AHC which stipulates that disposal of important assets of AHC requires prior approval of the board of directors of AHC. None of the sale contracts of the completed units were approved by the board of directors. Mr Ho, in fact, did not even convene a single board meeting while he was serving as the executive director.

The units, which were sold at 500 million KRW, are now worth 600 million KRW.

Discuss how the dispute should be resolved.

### [2] Question 2

In the late 1990’s, Tiger Life Insurance Co (“TLI”) was suffering from financial crisis. It was on the verge of bankruptcy. The government decided to rescue the company by injecting tax-payer’s money. TLI became a state-owned insurance company.

When the economic situation improved and TLI’s performance showed signs of recovery, the government decided to sell 51% of TLI’s shares to an investor who has experience and know-how of running a world class insurance company. The government accordingly invited bidders worldwide indicating that the investor should ideally have proven records of managing insurance companies. **[Please turn over.]**

**[Continued from the previous page]**

HW, Inc. had no record or experience of running insurance companies. It's main line of business has been manufacturing of all sorts of hardware for home and industrial use. HW formed a consortium with Short Life Insurance (SLI) which is a renowned and well-respected household name in the insurance business worldwide.

The consortium (HW-SLI) was successful in acquiring 51% share of TLI in March 2003. In the hand of HW-SLI, TLI was doing good business. However, in October 2006, it emerged that HW had attempted to bribe government officials in an effort to acquire TLI in 2003. Moreover, before the acquisition of TLI, HW had secretly guaranteed SLI that SLI would not bear any risk even if TLI's performance should turn out to be poor. According to their secret arrangement, SLI would not benefit from the good performance of TLI either. It had been further agreed that, one year after the acquisition, SLI would leave the consortium leaving TLI entirely in the hand of HW. SLI did leave the consortium in March 2004. The government was somewhat surprised by this move, but no action was taken by the government at that time.

In October 2006, however, when HW's attempted bribery was being investigated, the government began monitoring the situation. In June 2007, while the directors of HW were being prosecuted for their attempted bribery and when the secret arrangements between HW and SLI began to be divulged, the government notified rescission of the sale of 51% share of TLI to HW-SLI consortium (2003 sale) and demanded HW to return the shares of TLI.

HW flatly rejected the government's demand arguing that it is a politically motivated move aggravated by the government's greed, seller's remorse and shameless effort to get hold of the fantastic results of TLI in the meantime which, according to HW, were due entirely to HW's effort and skill.

How should this dispute be resolved.

[End of questions]

All candidates **must** attempt **both** Questions 1 **and** 2.