

## CASE STUDY MATERIALS

June 2012  
Level 6  
PRACTICE OF COMPANY & PARTNERSHIP LAW  
Subject Code L6-16

ilex



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## INSTITUTE OF LEGAL EXECUTIVES

### UNIT 16 – PRACTICE OF COMPANY & PARTNERSHIP LAW \*

### CASE STUDY MATERIALS

#### Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to the case study materials. You will be required to answer all the questions on the examination paper.
- You should familiarise yourself with the case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss the materials with your tutor/s either face to face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relates to the case study materials.

#### Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or text books into the examination.
- In the examination, candidates must comply with the ILEX Examination Regulations.

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\* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

## ADVANCE INSTRUCTIONS TO STUDENTS

You work in the Corporate Department of Kempstons LLP, Solicitors, The Manor House, Bedford, MK42 7AB.

You arrive at work to find the following memo awaiting your attention:

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### KEMPSTONS LLP

#### INTERNAL MEMORANDUM

**To:** Legal Executive  
**From:** Derek Ryan  
**Date:** (Today)  
**Matter:** **CLP Nano Technologies Limited**

I have been approached by Martin Taylor of CLP Nano Technologies Limited (CLP).

The directors of CLP Nano Technologies Limited are coming to see me shortly - please brief yourself on the attached and prepare accordingly so that you may assist.

*Derek*

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You find the following documents attached to the memo:

- DOCUMENT 1** Email from Martin Taylor, Managing Director of CLP Nano Technologies Limited
- DOCUMENT 2** A copy of the latest accounts for CLP Nano Technologies Limited, for the year ending 30 April 2012
- DOCUMENT 3** Company search against CLP Nano Technologies Limited
- DOCUMENT 4** Email from Derek Ryan
- DOCUMENT 5** Email from Derek Ryan
- DOCUMENT 6** Letter from Sofia Lombarti, Milan Science and Technology Institute, Business Development and Commercial Director
- DOCUMENT 7** Draft Debenture (extracts).

DOCUMENT 1

EMAIL

From: [mtaylor@clpnano.com](mailto:mtaylor@clpnano.com)  
To: [dr@kempstonsllp.com](mailto:dr@kempstonsllp.com)  
CC: [legalexec@kempstonsllp.com](mailto:legalexec@kempstonsllp.com)  
Date: 28 May 2012

**Re: Commercial Exploitation of Nano Technologies**

Dear Derek

I refer to our telephone conversation this morning. I am sorry that it was a little brief. Thank you for your agreement to advise the company on its expansion plans - one of the immediate concerns of the board of directors is to determine how best to finance the expansion.

The company has been in business for about four years and was established to develop and exploit the developing nanotechnology. By way of explanation nanotechnology is the vastly increased ratio of surface area to volume present in many nanoscale materials which opens new possibilities in surface-based science, such as catalysis. A number of physical phenomena become noticeably pronounced as the size of the system decreases. These include statistical mechanical effects, as well as quantum mechanical effects, for example the 'quantum size effect' where the electronic properties of solids are altered with great reductions in particle size. Materials reduced to the nanoscale can suddenly show very different properties compared to what they exhibit on a macroscale, enabling unique applications.

It is in these areas that we have managed to make considerable headway and believe that we have the capacity to exploit the technology within a commercial environment. Last year I met Mihail Roco of the Milan Science and Technology Institute, and persuaded him to join the company so that we could benefit from his expertise. Mihail Roco is renowned within this field and has the necessary contacts to allow us to exploit our developments.

I suggest that we chat again on Wednesday. In the meantime, I attach a copy of the company's last accounts made up to 30 April, which have just been filed at Companies House [**Document 2**]. I look forward to meeting you.

Yours sincerely

*Martin Taylor*

Managing Director

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## DOCUMENT 2

**CLP Nano Technologies Limited**  
**Profit & loss account for the year ending 30 April**  
**2012**

	£
<b>TURNOVER</b>	300,000
Cost of sales	<u>180,000</u>
GROSS PROFIT	120,000
Administrative costs	<u>60,000</u>
	60,000
Income from associated undertakings	-
<b>OPERATING PROFIT</b>	60,000
Extraordinary items	-
<b>PROFIT ON ORDINARY ACTIVITIES</b>	60,000
Interest payable	<u>9,000</u>
<b>PROFIT ON ORDINARY ACTIVITIES BEFORE TAX</b>	51,000
Taxation	<u>12,000</u>
<b>PROFIT FOR YEAR</b>	39,000
Dividends	-
RETAINED PROFIT for the year	<u><b>39,000</b></u>

**CLP Nano Technologies Limited**  
**Balance sheet as at 30 April 2012**

	£
<b>FIXED ASSETS</b>	
Tangible assets	<u>295,000</u>
	295,000
<b>CURRENT ASSETS</b>	
Stocks	24,000
Debtors	65,000
Cash at bank	<u>33,000</u>
	122,000
<b>CREDITORS DUE WITHIN 1 YEAR</b>	
Trade creditors	22,000
Other creditors	<u>16,000</u>
	(38,000)
<b>NET CURRENT ASSETS</b>	84,000
<b>TOTAL ASSETS LESS CURRENT LIABILITIES</b>	379,000
<b>CREDITORS DUE AFTER 1 YEAR</b>	<u>(200,000)</u>
<b>NET ASSETS</b>	<u><b>179,000</b></u>
<b>CAPITAL &amp; RESERVES</b>	
Called up share capital (45,000 ord £1 shares)	45,000
Profit & loss account	<u>134,000</u>
	<u><b>179,000</b></u>

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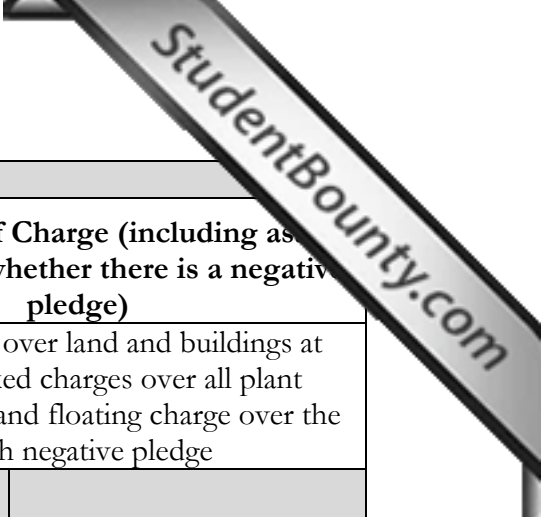
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## CLP NANO TECHNOLOGIES LIMITED

Company Search

Name of Company	<b>CLP Nano Technologies Limited</b>		
Company Number	RTYE7784301		
Company Type	Private company limited by shares		
Date of Incorporation	11 November 2008		
Previous Names	None		
Registered Office	Garnett Laboratories, Iffly Road, Oxford OX1 2DF		
Date of Last Annual Return	30 April 2012		
Accounting Reference Date	31 December		
Accounts	Last filed	Next due for period to	Overdue
	02 May 2012	31 December 2012	N/A
Current Directors and Secretary	Directors		Secretary
	Martin Taylor Tracey Taylor Helena Odegbune Shivani Vadukul		Helena Odegbune
Share Capital	Issued	Class	Amount paid up
	£45,000	Ordinary £1 45,000	£1 per share
Shareholders	Name	Class	No. of shares
	Martin Taylor	Ordinary £1	22,500
	Tracey Taylor	Ordinary £1	13,500
	Helena Odegbune	Ordinary £1	3,500
	Shivani Vadukul	Ordinary £1	4,500
	Amel Farag	Ordinary £1	1,500

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Undischarged Mortgages or Charges			
Chargee	Date of charge	Amount Secured	Description of Charge (including as secured and whether there is a negative pledge)
Cotton Bank Plc	4 September 2009	All monies	Legal mortgage over land and buildings at various sites, fixed charges over all plant and machinery and floating charge over the undertaking with negative pledge
Articles of Association			
			Model Articles for private companies limited by shares (with pre-emption rights on transfer of existing shares, clause 21A)
		Yes/No	Clause No.
Check the main provisions to see, as far as we are aware, it has the power to carry on its main business		YES	3 (a) to (d)
Check the provisions to ensure it has the power to:			
borrow		YES	3 (e)
secure its own borrowings		YES	3 (f)
give guarantees without consideration		YES	3 (g) and (m)
give security for guarantees and other third party obligations		YES	3 (g)
charge all of its assets, including uncalled capital, if and to the extent and in the manner required by the security/ charge		YES	3 (f)
give financial assistance		YES	3 (h)
Unusual documents		Yes/No	(Include copies)
Appointment of receiver/administrator/ winding-up order		NO	
Authority to allot shares under section 551 CA 2006		NO	
Any other comments		NO	
Report completed by:		PR	Date: May 2012

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DOCUMENT 4

**EMAIL**

From: [dr@kempstonsllp.com](mailto:dr@kempstonsllp.com)  
To: [legalexec@kempstonsllp.com](mailto:legalexec@kempstonsllp.com)  
Date: 30 May 2012  
**Re: CLP Nano Technologies Limited (CLP)**

I spoke again to Martin Taylor earlier this morning and gleaned a little more about CLP's expansion plans.

There is a little more to Mihail Roco joining CLP than Martin's email suggests. This is effectively the start of an in-depth collaboration with the Milan Science and Technology Institute (the 'Institute'). The negotiations have been led by Martin and Tracey Taylor; Tracey is currently in Milan following up on aspects of the draft agreement.

Whilst Mihail Roco is a leading authority in the area, his research is the intellectual property of the Institute, but under his terms of employment he will benefit from any commercial exploitation by the Institute, as is common with academic and research institutions. Accordingly, it is possible for Mihail Roco to collaborate and share his research with CLP only if the Institute expressly grants consent.

The expectation is that the collaboration will see sufficient advances in the technology that CLP will be able to target and make substantial gains in its market share for the medical industry within 5 years. The Institute sees CLP as a means by which to access this market and to capitalize on its investment in Mihail Roco's research.

Negotiations are already some way down the track and draft heads of agreement have been prepared, the main points are:

1. The Institute and CLP will mutually exchange and share their knowledge on nanotechnology, this will be done by:
  - a. the Institute granting a license to CLP to use all its proprietary intellectual property associated with Mihail Roco's research;
  - b. the Institute will enter into a confidentiality agreement and undertake to keep secure and not disclose any information that CLP supply to Mihail Roco and his colleagues at the Institute;
  - c. all developments resulting from the collaboration will be the proprietary intellectual property of CLP.



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2. The Institute will become a majority shareholder in CLP; the actual size of the investment is still to be determined, but Martin has indicated that he expects a figure of approximately £550,000 to be invested.
3. Given the substantial investment by the Institute, the expectation is that the current director/shareholders will all but match the Institute's investment. This is likely to be achieved by the following options:
  - a. increase shareholding by the current shareholders; and/or
  - b. the directors making personal loans to CLP.

For personal reasons however Shivani Vadukul, who has been suffering with stress, is stepping down from the company and will sell or transfer her shares in the company.

4. The following appointments to the board of CLP will be made:
  - a. Mihail Roco, will be the Institute's technical representative;
  - b. Sofia Lombarti, the Institute's Business Development and Commercial Director will also be appointed to the Board of CLP.
5. In relation to Mihail Roco:
  - a. CLP will provide Mihail Roco with a loan at preferential rates for him to establish a base in Oxford to facilitate the collaboration further;
  - b. Mihail Roco will also be making an investment in CLP.
6. To capitalise on the reputation of the Institute, CLP will change its name to Milano & CLP Nano Technologies Limited.

As you prepare for our meeting with Martin, can you make sure that you are fully conversant with the above.

Derek

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DOCUMENT 5

**EMAIL**

From: [dr@kempstonsllp.com](mailto:dr@kempstonsllp.com)  
To: [traineelegalexec@kempstonsllp.com](mailto:traineelegalexec@kempstonsllp.com)  
Date: 31 May 2011  
**Re: CLP Nano Technologies Limited (CLP)**

Further to my earlier email, Martin has called again. There seems to be some issues of clarity between CLP and the Milan Science and Technology Institute (the 'Institute') about the type of investment that it is to make in CLP. Sofia Lombarti, the Institute's Business Development and Commercial Director, has been in touch to ask who she should send documents to for review. Martin has given my details.

Martin hasn't been able to speak to Tracey so he is unsure of the details regarding the Institute's investment in CLP. From his conversation it appears that it may well include a substantial loan to CLP.

Since speaking to Martin, I have received the attached letter [**Document 6**] together with a draft loan agreement [**Document 7**] from Sofia Lombarti.

My secretary is organising a meeting with Martin and the rest of the CLP Board, whilst Martin seeks to clarify exactly what is happening.

Can you review the attached in preparation.

Many thanks.

Derek

Milano  
Istituto Della Scienza e Della Tecnologia

Garibaldi-Repubblica  
Milano  
Repubblica Italiana

May 2012

Mr D Ryan  
Kempstons LLP, Solicitors  
The Manor House  
Bedford  
MK42 7AB

Dear Mr D Ryan

**CLP Nano Technologies Limited**

I understand that you act for CLP Nano Technologies Limited.

The Istituto Della Scienza e Della Tecnologia (the Milan Institute of Science and Technology) has offered to lend £1,250,000 to the company on the terms of the loan agreement attached [**not provided**]. The agreement requires the company to grant security to the Institute in the terms of the enclosed mortgage debenture [**extract attached**].

After the company has signed the loan agreement to indicate acceptance of the offer and executed the mortgage debenture please forward these to Medway Solicitors, for the attention of Paul Hodgson together with a certified copy of the appropriate directors' resolutions. On confirmation of receipt of these documents by Medway Solicitors I shall arrange for the £1,250,000 to be made available to the company.

Yours sincerely

*Sofia Lombarti*

Sofia Lombarti  
Business Development and Commercial Director

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**DOCUMENT 7**

Dated: \_\_\_\_\_ 20 \_\_

\_\_\_\_\_ (1)

- and -

**Milano**  
**Istituto Della Scienza e Della Tecnologia (2)**

**MORTGAGE DEBENTURE**

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**THIS DEBENTURE** is dated \_\_\_\_\_ to 20\_\_\_\_  
and made **BETWEEN**:

- (1) \_\_\_\_\_  
(registered in England number \_\_\_\_\_) whose registered office is at  
\_\_\_\_\_  
(the '**Borrower**'); and
- (2) **Milano Istituto Della Scienza e Della Tecnologia**, Garibaldi-Repubblica, Milano,  
Repubblica Italiana (the '**Institute**').

**WITNESSES** as follows:

### 1. **Covenant to Pay**

**1.1** The Borrower covenants when the same shall be or become due or, in the absence of any specified due date, on demand to pay and discharge to the Institute all monies obligations and liabilities whether principal interest or otherwise which may now or at any time in the future be due owing or incurred by the Borrower to the Institute whether actual or contingent and whether alone severally or jointly as principal guarantor surety or otherwise and in whatever name or style and whether on any current or other account or in any other manner together with interest charges and other expenses so that interest shall be calculated and compounded in accordance with the usual practice of the Institute from time to time as well after as before any demand made or judgment obtained hereunder.

### 2. **Charge**

**2.1** The Borrower as beneficial owner and as a continuing security charges with the payment or discharge of all monies obligations and liabilities hereby covenanted to be paid or discharged by the Borrower:

(a) by way of *first* legal mortgage any freehold leasehold or other immovable property referred to in the Schedule to this Debenture together with all buildings, trade and other fixtures, fixed plant and machinery of the Borrower from time to time thereon;

(b) by way of *first* fixed charge:

(i) all other freehold leasehold and other immovable property now or in the future belonging to the Borrower together with all buildings, trade and other fixtures, fixed plant and machinery of the Borrower from time to time thereon;

(ii) all plant and machinery now or in the future belonging to the Borrower other than fixed plant and machinery;

(iii) all book debts and other debts now or in the future due or owing to the Borrower;

(iv) all stocks shares and other securities now or in the future belonging to the Borrower together with all dividends and other rights deriving therefrom;

(v) the goodwill of the Borrower and its uncalled capital for the time being;

(vi) all patents trade marks service marks designs and other intellectual property rights choses in action and claims and all fees, royalties and other rights of every kind deriving therefrom now or in the future belonging to the Borrower;

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(c) By way of *first* floating charge the whole of the Borrower's undertaking and all its property and assets whatsoever and wheresoever present and future other than the property and assets from time to time effectively charged to the Institute by way of legal mortgage or fixed charge by this Debenture.

2.2 The Institute may convert the floating charge at any time by notice in writing to the Borrower into a fixed charge as regards all the property and assets which for the time being are the subject of such floating charge or, as the case may be, such of the said property and assets as are specified by such notice.

2.3 The security from time to time constituted by or pursuant to this Debenture shall be in addition to and shall not prejudice determine or affect any other security which the Institute may from time to time hold for or in respect of all or any part of the monies obligations and liabilities hereby secured. No prior security held by the Institute over the property charged by this Debenture or any part of it shall merge in the security created hereby or pursuant hereto which will remain in force and effect as a continuing security until discharged by the Institute.

**3. Restrictions on Dealing**

3.1 The Borrower shall not without the prior written consent of the Institute:  
(a) create or permit to subsist any mortgage charge pledge hypothecation lien or other security interest on any of its assets other than this Debenture;  
[.....]

**4. Covenants by the Borrower**

[.....]

**5. Enforcement**

[.....]

**6. Receiver**

[.....]

**7. Application of Proceeds**

[.....]

**8. Protection of Third Parties**

[.....]

**9. Entry into Possession**

[.....]

**10. Power of Attorney**

[.....]

**11. Currency Indemnity**

[.....]

**12. New Accounts**

[.....]

**13. Prior Charges**

[.....]

**14. Further Assurance**

[.....]

**15. Set-off**

[.....]

**16. Costs and Indemnity**

[.....]

**17. Miscellaneous**

[.....]

**18. Notices**

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[.....]

**19. Governing Law and Jurisdiction**

**19.1** This Debenture shall be governed by and construed in accordance with the law of England and the Borrower irrevocably submits to the non-exclusive jurisdiction of the English Courts.

**20. Land Registry**

**20.1** The Borrower certifies that this Debenture does not contravene its Memorandum and Articles of Association and has been executed in accordance therewith and hereby applies to the Chief Land Registrar for a restriction to be entered on the register of its title to registered properties charged by this Debenture that: 'Except under an Order of the Register no disposition or dealing by the proprietor of the land is to be registered or noted without the consent of the proprietor for the time being of Charge No \_\_\_\_\_'.

**IN WITNESS** whereof the Borrower has executed this Debenture as a Deed and the Institute has executed this Debenture the day and year first above written.

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**SCHEDULE**

**Clause 2.1(a)**

**Description of Immovable Property and Title Number**

1. [to be completed]

**THE COMMON SEAL** of  
Limited was affixed in the presence of

Director

Secretary

**End of Case Study Materials**

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