case study 2.1 solution

Fonterra Co-Operative Group Limited shareholders’ rights in a liquidation

47. LIQUIDATION

47.1 Distribution of assets: If the Company is liquidated the liquidator may, with the approval of Shareholders by Special Resolution and any other sanction required by the Act:

(a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and

(b) for the avoidance of doubt, all Co-operative Shares are Shares of the same Class and rank pari-passu and without priority or preference among themselves on liquidation notwithstanding that they may have been issued for different Fair Values; and

(c) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

SOURCE**:** Constitution of Fonterra Co-Operative Group Limited, 30 June 2010, Information on the Company, last accessed 02 September 2013: http://www.fonterra.com/wps/wcm/connect/ad590c8040a009d694d5f63dece10957/2154056+Consolidated+constitution+- +30+June+2010+-+v1.pdf?MOD=AJPERES

Questions

1 Briefly describe what is meant by a ‘company liquidation’.

Company liquidation is the process by which companies are terminated, assets are disposed of, shareholders may be called upon to contribute amounts uncalled or unpaid on their shares, creditors are fully or partly paid out in accordance with a strict set of priorities, and shareholders may or may not receive a distribution based on their rights and the residual asset (cash) balance remaining. At the end of the process there are no balances left in any accounts and the company ceases to exist (deregistered).

2 What does the word ‘limited’ refer to in the company name ‘Fonterra Co-Operative Group Limited’?

The term ‘limited’ refers to the liability of the shareholders to contribute funds to the company. Companies can be classified as ‘unlimited’, ‘limited’, or ‘no liability’. Limited means that the shareholders’ liability to the company issuing the shares is limited to the prescribed or registered or issue value of the shares acquired. At any point in time the shareholder can only be asked to pay to the company on any shares owned the amount that has been called but not paid, plus the amount that has not previously been called. So if Mr Smith acquired 100 shares in Fonterra Co-Operative Group Limited at an issue price of $10, but which were called to $8 and he has only paid $7, then the maximum liability of Mr Smith being 100 shares times $3 ($1 called but not paid, plus $2 uncalled).

3 If a company goes into liquidation, resources are normally distributed to creditors first. Who are the creditors?

‘Creditor’ is a general term for a liability account where a specific individual and amount can be identified (as contrasted with provisions). It will include those providing funds (banks, loans, advances), those providing goods and contractual services (trade and other payables), and those providing labour (wages, sick leave, annual leave, long service leave, and so on).

4 Why would the creditors have priority over other stakeholders in the distribution of assets?

Shareholders are the residual owners of the business and they benefit from any gains and suffer losses. Creditors by their very nature have priority over the owners, but sometimes they will enter contracts also giving them preferential treatment over other creditors (a specific or general claim on certain assets, i.e. a mortgage), or the corporations law may give them priority (the amount owing to the tax office, the claims of the liquidator, the claims of employees).

5 What is meant by a ‘co-operative’ form of business ownership?

A co-operative is a business organisation owned and operated by a group of individuals for their mutual benefit. Co-operatives are defined by the International Co-operative Alliance’s Statement on the Co-operative Identity as autonomous associations of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through jointly owned and democratically controlled enterprises.

A co-operative is a legal entity owned and democratically controlled by its members. Members often have a close association with the enterprise as producers or consumers of its products or services, or as its employees. Co-operatives often share their earnings with the membership as dividends, which are divided among the members according to their participation in the enterprise, such as patronage, instead of according to the value of their capital shareholdings (as is done by a traditional company form of ownership).

Fonterra Co-operative Group Limited is a New Zealand multinational dairy co-operative owned by over 10 500 New Zealand farmers. The company controls about 30% of the world’s dairy exports. It is New Zealand’s largest company with revenue exceeding NZ$16 billion.

6 What does the term ‘pari-passu’ mean in this context?

The term ‘pari-passu’ is from the Latin meaning equal footstep or equal footing. In this context the term is referring to two or more classes of shares having equal rights of payment or level of preference.

7 Explain how the surplus after the payment of all amounts owing to creditors and preference shareholders is to be distributed.

The surplus will be distributed equally to the holders of Fonterra Co-Operative Group Limited shareholders on the basis of the issued and paid-up value of those shares.