

Examination No. \_\_\_\_\_

**THE PUBLIC ACCOUNTANTS EXAMINATION COUNCIL**  
**OF MALAWI**

**2009 EXAMINATIONS**

**ACCOUNTING TECHNICIAN PROGRAMME**

**PAPER TC12: COMPANY LAW**

**MONDAY 7 DECEMBER 2009**

**TIME ALLOWED: 3 HOURS**  
**2.00 PM - 5.00 PM**

**INSTRUCTIONS: -**

1. You are allowed **15 minutes** reading time **before the examination begins** during which you should read the question paper and, if you wish, make annotations on the question paper. However, you will **not** be allowed, **under any circumstances**, to open the answer book and start writing or use your calculator during this reading time.
2. Number of questions on paper - 8.
3. **FIVE** questions **ONLY** to be answered.
4. Each question carries 20 marks.
5. Your answers must be supported, where appropriate, by relevant decided cases and statutory provisions.
6. Begin each answer on a fresh page.
7. **DO NOT OPEN THIS PAPER UNTIL YOU ARE INSTRUCTED BY THE INVIGILATOR.**

This question paper contains 3 pages.

This question paper must **not** be removed from the examination hall.

1. (a) What documents must be delivered to the registrar when registering a Company and what are their contents? **5 Marks**
- (b) Explain the legal effect of the certificate of incorporation? **5 Marks**
- (c) (i) Explain the rule in *Foss vs Harbottle*. **3 Marks**  
(ii) State **two** main advantages of this rule. **2 Marks**
- (d) State the statutory provisions regarding pre-incorporation contracts. **5 Marks**  
**(TOTAL: 20 MARKS)**
  
2. (a) Explain the difference between a:
  - (i) limited company and unlimited company. **5 Marks**
  - (ii) company limited by guarantee and one limited by shares. **5 Marks**
  - (iii) public company and private company. **5 Marks**
  - (iv) holding company and subsidiary company. **5 Marks****(TOTAL : 20 MARKS)**
  
3. (a) Define the terms:
  - (i) reduction of capital; **3 Marks**
  - (ii) cancellation of capital. **3 Marks**
- (b) What conditions must be satisfied if a company wishes to reduce its capital and alter its memorandum or articles? **4 Marks**
- (c) State **three** reasons that are acceptable under the Companies Act, 1984 for reducing capital. **6 Marks**
- (d) State the provisions in the Companies Act that protect the interests of creditors where a proposed reduction of capital affects the company's creditors. **5 Marks**  
**(TOTAL: 20 MARKS)**

Continued/.....

4. (a) Define the term '**share**' as stated by *Farewell in Borland's Trust v Steel (1901)* **2 Marks**
- (b) Describe **two** types of shares that a company may issue. **6 Marks**
- (c) General Merchants Ltd is disposing of its shares held by Chambo Fisheries Ltd in Union Foods Ltd. The shares are to be sold at K250.00 each, but the memorandum of Union Foods states that the shares are K150.00 par value each.

**Required:**

- (i) Why is the sale of shares legally permissible at a higher price of K250.00 each, instead of the stated par value share price of K150.00 each. **5 Marks**
- (ii) Give reasons for the shares to be sold at a price above the par value. **2 Marks**  
**7 Marks**
- (d) State **five** uses of a share premium account allowed under the Companies Act. **5 Marks**  
**(TOTAL: 20 MARKS)**

5. (a) Write a brief note on what an interim dividend is. **5 Marks**
- (b) When does a dividend become payable and enforceable as a debt against the company? **5 Marks**
- (c) Directors of Water Drillers Co. Ltd (WDC), a private limited liability company, paid out dividends to its members. Soon afterwards, it was discovered that there were insufficient distributable reserves from which any dividend could be paid.

**Required:**

- (i) What is the legal position of the directors regarding their liability? **5 Marks**
- (ii) Can WDC recover from its members the dividends paid to them? **5 Marks**  
**(TOTAL: 20 MARKS)**

**Continued/.....**

6. (a) Discuss the position regarding directors that have been irregularly appointed in relation to the company's capacity to contract. **8 Marks**
- (b) State the rule in the case of *Royal British Bank vs Turquand*. **7 Marks**
- (c) State the insider exception to the rule in the case of the *Royal British Bank vs Turquand*. **5 Marks**
- (TOTAL: 20 MARKS)**
7. (a) What is a Debenture and give **two** examples of a debenture. **3 Marks**
- (b) Give **two** differences between a share and a debenture and one similarity between a share and a debenture. **3 Marks**
- (c) Name **four** different classes of debentures and give a brief discussion of each one of them. **8 Marks**
- (d) Itai, Nkenna and Edward own shares in Big Brother Limited in the following percentages; Itai 50%, Nkenna 30% and Edward 20%. Nkenna and Itai are now married and use their combined shareholding in the company to bulldoze decisions which are detrimental to the company and Edward feels oppressed. For instance, they have passed a resolution authorising the company to enter into a contract for the construction of a building worth K300 million with Nkenna's brother's company despite Edward's disapproval and despite the fact that there are other Companies who can build the same building at the same quality for less than K200 million. What remedy does Edward have? **6 Marks**
- (TOTAL: 20 MARKS)**
8. (a) What are the **four** statutory duties and powers of auditors. **4 Marks**
- (b) Mavuto Chibwe was a director of Continental Shipping Ltd. He misappropriated a large amount of company's funds by making false entries into books of accounts. The auditor of the company, Vitumbiko Phiri was informed of this but he made no investigations. As a result of this, the company declared dividends which it would not have made had the auditor acted on the report. The company has now gone into liquidation.
- Required:**
- Advise the liquidator. **6 Marks**
- (c) What are the statutory provisions for:
- (i) the qualifications of an auditor; **2 Marks**
- (ii) the removal of an auditor? **8 Marks**
- (TOTAL: 20 MARKS)**

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