

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

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

**2010 EXAMINATIONS**

**ACCOUNTING TECHNICIAN PROGRAMME**

**PAPER TC12: COMPANY LAW**

**TUESDAY 7 DECEMBER 2010**

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

**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 are **not** 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 4 pages.

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

1. (a) The Articles of Association of a company can be altered to adapt to the ever changing business environment, among other reasons.

**Required:**

State any **four** legal rules which govern the alteration of Articles of Association.

**8 Marks**

- (b) Chirimba Transporters Limited (CTL) is proposing to alter its Articles of Association. The effect thereof will be to render the company incapable of performing its part of the contract entered into between itself and Patrick. Patrick, who has learned of the move, intends to restrain CTL from effecting the alteration of the articles of association by an injunction.

**Required:**

Advise Patrick whether, under the Companies Act, he can restrain CTL from altering its articles of association.

**5 Marks**

- (c) Express Motors Limited (EML) has altered its memorandum of association thereby making John take more shares than those initially allotted to him on incorporation. John is opposed to the alteration.

**Required:**

- (i) Advise John.

**5 Marks**

- (ii) Does it make any difference if John agrees to be bound by the alteration? Give reasons for your answer.

**2 Marks**

**(TOTAL: 20 MARKS)**

2. (a) In order to raise the profile of their company, members of Tikwere Produce Ltd (TPL) unanimously agreed to nominate Mr Chimimba to be a member of the company and allot some shares to him. Among the reasons for this decision was the fact that Mr Chimimba was rich, educated and as a former member of parliament, he would connect the company to influential people in business. Mr Chimimba, however, has declined the offer. Kachiwindi and Gondwa, representing the company, have vowed to do everything possible to have Mr Chimimba as member of their company as his membership is strategically important to TPL.

**Required:**

Advise the company the applicable law for one to become a member of a company.

**10 Marks**

**Continued/.....**

- (b) A register of members of a company may reflect the name of a particular person as a member when in fact he is not.

**Required:**

Explain whether or not you agree with the statement. **3 Marks**

- (c) Mention and explain the types of companies, under the Companies Act.

**7 Marks**

**(TOTAL : 20 MARKS)**

3. (a) The main point of the 'majority rule' with regard to company's decisions is that if the majority of members take a decision that is merely foolish, then only the majority can reconsider the matter.

**Required:**

Discuss the effect of this rule. **8 Marks**

- (b) Jacob was Company Secretary of Pamodzi Millers Ltd (PML). A majority of the shareholders entitled to attend and vote at an extraordinary general meeting convened a meeting to decide the removal of Jacob. They all voted in favour of the proposal to remove him. The procedural requirements for holding such an extraordinary general meeting, as outlined in the articles of association were, however, not adhered to. The notice of the extraordinary general meeting was only signed by one director instead of all the three directors and further, the directors themselves had not held a meeting prior to the preparation of the notice. There was, however, no indication that had the procedure been followed, the result of the poll would have been otherwise.

Jacob, now contemplates seeking a court injunction to restrain PML from acting on their decision to remove him because the correct procedure was not followed.

The news has reached PML which has approached you for advice.

**Required:**

Advise PML whether, under the Companies Act, Jacob can successfully obtain the contemplated court injunction.

**12 Marks**

**(TOTAL: 20 MARKS)**

**Continued/.....**

4. (a) State and discuss any **two** ways in which a company may incur liability through the acts of its directors. **12 Marks**
- (b) Outline the procedure for the removal of a director from his or her office. **8 Marks**
- (TOTAL: 20 MARKS)**

5. (a) Section 47 of the Companies Act allows every registered company to provide for different classes of shares by attaching to some of its shares rights or restrictions with regard to dividend, voting, returning of capital or otherwise. Some of these classes of shares are ordinary, deferred and preference shares.

**Required:**

Explain each of the **three** types of shares mentioned above. **8 Marks**

- (b) Explain what is meant by 'transfer of shares'. **3 Marks**
- (b) Outline the procedure for the transfer of shares. **4 Marks**
- (c) Outline instances where shares are transferred by operation of law. **5 Marks**
- (TOTAL : 20 MARKS)**

6. (a) On whose application can a company be wound up by the court? **6 Marks**
- (b) Outline at least **eight** grounds upon which a company may be wound up by the court. **8 Marks**
- (c) Mpemba Cement Co. Limited (MCCL) was incorporated ten years ago to manufacture cement. Among the most important ingredients for cement making was clinker which was not found locally but imported from Zimbabwe. Owing to the persistent economic problems in Zimbabwe, which negatively affected production of clinker, it became impossible to import any clinker, from there. As there was no alternative, MCCL was forced to close until such a time that it would be more feasible to import clinker from Zimbabwe.

Eighteen months after the closure of MCCL, one of its major shareholders, Clement has decided to petition for MCCL's dissolution on the grounds that it had ceased carrying on business for more than one year. Clement has come to you for advice on whether he has sufficient basis to petition for the winding up of the company.

**Required:**

Give Clement the necessary advice.

**6 Marks**  
**(TOTAL: 20 MARKS)**

**Continued/.....**

7. (a) Rose, Catherine and Jane formed a limited company named City Merchants Limited (CML) with 1,200,000 shares valued at K100.00 each. Rose took 100,000 shares, Catherine 108,000 shares and Jane took 992,000 shares. Rose and Jane later formed another company called Blantyre General Dealers Limited (BGDL) which offered to take over CML. Rose and Jane accepted the offer and gave notice to Catherine of their intention to compulsorily acquire her shares in the name of BGDL. Catherine objects to this compulsory acquisition.

**Required:**

Advise Catherine.

**10 Marks**

- (b) When Mr Banda heard that he could acquire shares in NBS Bank Limited through the Malawi Stock Exchange, he rushed to his bank and borrowed K500,000 with which he purchased some shares. Upon arrival at his home in Zingwangwa, he declared to his wife that with immediate effect what of money had become a thing of the past to them because they were now owners of NBS Bank Ltd by virtue of his purchasing shares in the Bank. Naturally, his wife was delighted. The next day, Mr Chirwa whom the family owed K10,000 approached Mr Banda complaining of the overdue debt. Mr Banda wrote a short letter advising NBS Bank Ltd to remit K10,000 to the bearer thereof and gave it to Mr Chirwa. "Go present that to any teller at any NBS Bank branch. He will give you the money. We own that Bank," he boasted. When later in the day Mr Chirwa brought back the letter, which had been rejected by the bank, Mr Banda furiously approached the Bank Manager and declared that he could not tolerate arrogant managers in his bank.

**Required:**

You are the Bank Manager. Advise Mr Banda.

**10 Marks**

**(TOTAL: 20 MARKS)**

8. (a) Discuss the position regarding directors that have been irregularly appointed in relation to the company's capacity to contract. **6 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*. **7 Marks**

**(TOTAL: 20 MARKS)**

**E N D**