

Examination No. _____

THE PUBLIC ACCOUNTANTS EXAMINATION
COUNCIL OF MALAWI

2011 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC12: COMPANY LAW

TUESDAY 7 JUNE 2011

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 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 3 pages.

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

1. (a) Mention **seven** clauses which a Memorandum of Association of a company limited by shares should state. **7 Marks**
- (b) State the effect of the Memorandum and Articles of Association upon the company, its members and outsiders. **3 Marks**
- (c) Explain what is meant by the phrase “lifting the corporate veil”. **4 Marks**
- (d) Mention **three** circumstances under which the veil of incorporation may be lifted under the provisions of the Companies Act, 1984. **6 Marks**
(TOTAL: 20 MARKS)
2. (a) Distinguish a limited company from an unlimited company. **4 Marks**
- (b) Distinguish a company limited by guarantee from one limited by shares. **4 Marks**
- (c) Outline the procedure for converting:
 - (i) a limited company to an unlimited company; **6 Marks**
 - (ii) a company limited by shares to one limited by guarantee. **6 Marks**
(TOTAL : 20 MARKS)
3. (a) Explain the following:
 - (i) An annual general meeting **4 Marks**
 - (ii) An extraordinary general meeting and how it is convened; **5 Marks**
 - (iii) A class meeting and its major difference from a general meeting. **6 Marks**
- (b) Preference shareholders of Lilongwe Milling Co. Ltd convened a meeting to discuss changing some of the rights attached to their class of shares. The meeting was, however, attended by members of other classes of shares who felt the move intended by preference shareholders was prejudicial to their rights. The intended resolution was not reached because the members, other than preference shareholders, also voted at this meeting. Preference shareholders did not turn the other shareholders away as they genuinely thought that the whole group comprised preference shareholders. They have now discovered that members of other classes of shares also attended the meeting and actually voted.

Required:

Advise the preference shareholders on what action to take.

5 Marks
(TOTAL: 20 MARKS)

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4. (a) State the rule in the case of the *Royal British Bank v Turquand*. **7 Marks**
- (b) Explain the doctrine of *ultra vires* in Company Law. **7 Marks**
- (c) How has the Companies Act affected the application of the doctrine of *ultra vires*? **6 Marks**
- (TOTAL: 20 MARKS)**
5. (a) Mention **five** grounds under which the court may order the winding up of a company. **10 Marks**
- (b) State **three** grounds under which such a company may be deemed to be unable to pay its debt. **5 Marks**
- (d) State **five** occasions on which the court will exercise its powers to wind up a company on the ground that it is just and equitable to do so. **5 Marks**
- (TOTAL: 20 MARKS)**
6. (a) Who is a director? **4 Marks**
- (b) Name **four** categories of persons who are disqualified from being directors. **4 Marks**
- (c) State **two** circumstances under which a director of a company may cease to hold the office of director. **2 Marks**
- (d) Describe the duties of a director. **10 Marks**
- (TOTAL: 20 MARKS)**
7. (a) Define the following terms:
- (i) Share distinguishing number; **4 Marks**
- (ii) Share certificate; **4 Marks**
- (iii) Share warrant; **4 Marks**
- (iv) Share trust. **4 Marks**
- (b) Mkontho Breweries Ltd paid dividends to, amongst other registered members, Vitumbiko, who had in fact held the shares in trust for his cousin Tinkhani. Tinkhani is now contemplating suing Mkontho Breweries Ltd on the grounds that it should not have paid those dividends to Vitumbiko who has since squandered the dividends and is now bankrupt as he (Vitumbiko) had no beneficial interest in the shares he was holding.

Required:

Advise Mkontho Breweries Ltd whether or not Tinkhani can successfully sue them. **4 Marks**

(TOTAL: 20 MARKS)

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8. (a) (i) Distinguish a “fixed charge” from a “floating charge”. **3 Marks**
 (ii) In what circumstances does a floating charge become fixed? **4 Marks**
- (b) Outline **two** major advantages and any **three** disadvantages of a floating charge. **5 Marks**
- (c) One of the remedies of a debentureholder is the appointment of a receiver.

Required:

- (i) State the duty of a receiver **2 Marks**
 (ii) In what circumstances is a receiver appointed? **3 Marks**
- (d) Oasis Purified Water Ltd borrowed money from Unity Bank Ltd under a debenture and created a debenture charge over the company’s assets as security for the loan. Later, Mpondamatiki, a wealthy businessman but an unsecured creditor of the company, obtained judgement and then a warrant of execution to seize the company’s property.

Required:

Advise Unity Bank Ltd on the way forward.

3 Marks
(TOTAL: 20 MARKS)

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