

EXAMINATION NO. \_\_\_\_\_

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

**2012 EXAMINATIONS**

**ACCOUNTING TECHNICIAN PROGRAMME**

**PAPER TC12: COMPANY LAW**

THURSDAY 6 DECEMBER 2012

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) Discuss the legal principle expounded in the classic case of Salomon v Salomon (1897) A.C. 22. **4 Marks**
- (b) Explain the meaning of “lifting the veil of incorporation”. **4 Marks**
- (c) How can the veil of incorporation be lifted under:
  - (i) statutory law; **6 Marks**
  - (ii) the common law. **6 Marks**

**(TOTAL: 20 MARKS)**
  
2. (a) The Articles of Association relate to the internal administration of a company. New challenges in the business environment may force a company to alter its Articles of Association.
 

**Required:**

State any **four** legal provisions regarding the alteration of Articles of Association. **8 Marks**
- (b) Malasha Industries Limited (MIL) is proposing to alter its Articles of Association. The effect thereof will be to render the company incapable of performing its part of a contract entered into between itself and Paul who, upon learning of this move, intends to restrain MIL from effecting the alteration by an injunction.
 

**Required:**

Advise Paul if, under the Companies Act, he can restrain MIL from altering its Articles of Association. **5 Marks**
- (c) United Textiles Limited (UTL) has altered its Memorandum of Association thereby making James take more shares than those initially allotted to him on incorporation. James is opposed to the alteration.
 

**Required:**

  - (i) Advise James. **5 Marks**
  - (ii) Would it make any difference if James agreed to be bound by the alteration? Give a reason for your answer. **2 Marks**

**(TOTAL : 20 MARKS)**

**Continued/.....**

3. (a) State the difference between a “limited” and an “unlimited” company. **4 Marks**
- (b) State the difference between “a company limited by guarantee” and “a company 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)
4. (a) State the rule in the case of the *Royal British Bank vs Turquand*. **8 Marks**
- (b) Explain the doctrine of *ultra vires* as applied in company law. **6 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** circumstances under which a court may order the winding up of a company. **10 Marks**
- (b) State **three** circumstances under which such a company may be deemed to be unable to pay its debt. **5 Marks**
- (c) 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) Henry is a shareholder in Chitataka Milling Company (CMC). He wants to raise funds to start up a business in town.
- Required:**
- Advise Henry how he can use his shares in CMC to raise the funds that he needs. **2 Marks**
- (b) Define the term ‘debenture’. **4 Marks**
- (c) State **three** ways in which a debenture may be secured. **6 Marks**
- (d) Rodrick holds debentures in General Construction Company (GCC). The company has defaulted on its obligations under the debenture. Rodrick wants to have his money paid by GCC.
- Required:**
- Mention **four** possible remedies that may be available to Rodrick. **8 Marks**  
(TOTAL: 20 MARKS)

7. (a) State the facts and rule in the case of *Foss vs Harbottle*, without outlining its exceptions. **8 Marks**

- (b) Last month, John received a letter from the Managing Director of New Technologies Limited (NTL) of which he was a minority shareholder. In the letter, the Managing Director of the said NTL stated that in exercise of his powers and upon consultation with the rest of the shareholders, he had considered it appropriate to decide to compulsorily acquire all the shares held by John.

John was disturbed by the news. He had not given his consent to the compulsory acquisition of his shares as required by the Articles of Association and, in any case, he would not want to cease to be a shareholder of NTL.

**Required:**

Advise John on what to do, giving the grounds for his action and the expected results therefore. **12 Marks**

**(TOTAL: 20 MARKS)**

8. (a) Who may convene an extraordinary general meeting by requisition? **2 Marks**

- (b) Mention the persons who are entitled to receive notices of general meetings of a company. **4 Marks**

- (c) State the notice period for the following meetings:

- (i) an annual general meeting; **1 Mark**

- (ii) any meeting other than an annual general meeting for the passing of a special resolution. **1 Mark**

- (d) State the persons entitled to attend and to speak at any general meeting of a company. **4 Marks**

- (e) Mention the legal requirements for a valid special resolution of a general meeting. **5 Marks**

- (f) Mention the rights of a member's proxy at a general meeting. **3 Marks**  
**(TOTAL: 20 MARKS)**

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