

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

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

**2013 EXAMINATIONS**

**ACCOUNTING TECHNICIAN PROGRAMME**

**PAPER TC12: COMPANY LAW**

**TUESDAY 3 DECEMBER 2013**

**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) Describe **five** distinguishing features of a partnership and a limited liability company. **10 Marks**
- (b) Distinguish between:
- (i) a public and private company; **5 Marks**
- (ii) a holding and subsidiary company. **5 Marks**
- (TOTAL: 20 MARKS)**
2. (a) Who is a promoter of a company? **2 Marks**
- (b) Explain a promoter's duty towards the prospective company, at common law. **6 Marks**
- (c) Outline a promoter's personal liability for pre-incorporation contracts. **6 Marks**
- (d) Outline a company's liability for pre-incorporation contracts. **6 Marks**
- (TOTAL : 20 MARKS)**
3. (a) State **four** ways in which an individual can become a member of a company limited by shares. **5 Marks**
- (b) State **four** ways in which an individual can cease to be a member of a company limited by shares. **5 Marks**
- (c) Mention **four** acts which a company cannot do except by special resolution. **4 Marks**
- (d) The directors of Unity Cement Company (UCC) Limited intend to meet to pass a resolution in respect of some aspects of the company's affairs. Unfortunately, all the directors are too busy to attend a meeting to discuss the business.
- Required:**
- Advise the Company Secretary for Unity Cement Company (UCC) Ltd on how to go round this problem. **6 Marks**
- (TOTAL: 20 MARKS)**

**Continued/.....**

4. (a) (i) State **two** circumstances under which a company may be wound up voluntarily. **2 Marks**
- (ii) State the procedure to be followed upon the passing of a resolution for voluntary winding up of a company. **4 Marks**
- (iii) At what time is a voluntary winding up of a company deemed to commence? **2 Marks**
- (b) What is the effect of the commencement of voluntary winding up of a company? **4 Marks**
- (c) Due to the persisting tough economic situation, Changu Transport Limited was forced to wind up voluntarily. One of the requirements for voluntary winding up of a company is that directors of the company should make a declaration to the effect that they have made full inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full. To the declaration must be attached a statement of affairs of the company.

**Required:**

- (i) What should the statement of affairs show? **3 Marks**
- (ii) What conditions must be satisfied in order to give effect to the declaration? **5 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 in regard to dividend, voting, returning of capital or otherwise. Some of these are: ordinary, deferred and preference shares.

**Required**

- Discuss the **three** types of shares mentioned above. **9 Marks**
- (b) Define the term 'transfer of shares' as stipulated in Section 43(1) of the Companies Act. **2 Marks**
- (c) State the procedure for transfer of shares. **4 Marks**
- (d) Outline instances of transfer of shares by operation of law. **5 Marks**
- (TOTAL: 20 MARKS)**

**Continued/.....**

6. (a) Define the term 'director' as stipulated in Section 140 of the Companies Act. **4 Marks**
- (b) Mention **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) Discuss the **three** main fiduciary duties of a director. **10 Marks**  
(TOTAL: 20 MARKS)
7. (a) (i) Distinguish a **fixed** from a **floating** charge. **3 Marks**
- (ii) Mention the **four** circumstances under which a floating charge becomes a fixed charge. **4 Marks**
- (b) Outline the major **advantages** and any three **disadvantages** of a floating charge. **5 Marks**
- (c) One of the remedies available to 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) General Merchants Ltd borrowed money from Credit Bank Ltd under a debenture and created a debenture charge over the company's assets as security for the loan. Later, Patrick, a wealthy businessman but an unsecured creditor of the company, obtained judgment and then a warrant of execution to seize the company's property.
- Required:**
- Advise Credit Bank Ltd on their legal position. **3 Marks**  
(TOTAL: 20 MARKS)
8. (a) What is the principal role of an auditor to a company? **5 Marks**
- (b) What standard of skill and care is imposed on an auditor? **5 Marks**
- (c) How can an auditor cease to act as such? **5 Marks**
- (d) Which persons are qualified to be appointed auditors in Malawi? **5 Marks**  
(TOTAL: 20 MARKS)

**E N D**