

EXAMINATION NO. _____



2016 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC12: COMPANY LAW

TUESDAY 31 MAY 2016

**TIME ALLOWED: 3 HOURS
2:00PM - 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 - 7.
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 5 pages.

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

1. (a) Who is a promoter? **2 Marks**
- (b) Why does the duty of promoters not allow them to make secret profit transactions between them and the company? **5 Marks**
- (c) (i) State the rule regarding the effect of pre-incorporation contracts to a company after its birth. **3 Marks**
- (ii) State **two** known exceptions to the rule in (i) above. **4 Marks**
- (d) During the liquidation of Master Drillers Ltd (MDL), one of its creditors Karim had unveiled evidence that Mark, who acted as a promoter before the incorporation of MDL, had diverted, while so acting, substantial amounts of money meant for the company to the building of a hotel in which he had a personal interest.
- Required:**
- Advise Karim on his legal position regarding money diverted by promoter Mark. **4 Marks**
- (e) Mark argues that during his term as promoter he had been appointed a director. He therefore relinquished his role as a promoter and assumed the duties of a director and he can therefore not be held liable as a promoter.
- Required:**
- Explain whether or not this is a valid argument. **2 Marks**
- (TOTAL: 20 MARKS)**
2. (a) The articles of association concern themselves with the internal administration of a company. Such matters cannot remain static all the time and so alterations must be possible.
- Required:**
- What is the legal position with regard to the alteration of and the altered articles of association? **8 Marks**
- (b) Kamba Confectionery Limited (KCL) is proposing to alter its articles of association. The effect thereof will be to render it incapable of performing its part of the contract entered into between itself and Miriam who, upon learning of this move, intends to restrain KCL from effecting the alteration by an injunction.
- Required:**
- Advise Miriam if, under the Companies Act 1984, she can restrain KCL. **5 Marks**

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- (c) Blantyre Clothing Limited (BCL) 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 on his legal position regarding the altered Memorandum of Association. **5 Marks**
- (ii) Shall it make any difference if James agrees to be bound by the alteration? Give reasons for your answer. **2 Marks**

(TOTAL : 20 MARKS)

3. (a) Distinguish a “fixed” from a “floating” charge. **6 Marks**
- (b) The going into liquidation of a company that has given a floating charge crystallizes the floating charge. The same applies when the company ceases business.

Required:

State whether or not the above statement correctly presents the true legal position. **6 Marks**

- (c) Paul loaned a substantial amount of money to Mibawa Woods Limited (MWL) which in turn gave a floating charge over all its assets. Despite the fact that MWL had made a default in the repayment of the loan, Paul did not take any steps to recover his money. Later, John, a judgement creditor of MWL obtained an order of the court against the latter’s bankers freezing their MWL account. Thereupon, Paul became very angry and said the court had granted an erroneous order since as a creditor with a charge on the company’s assets, he was entitled to the money and no order could be granted any judgement freezing MWL’s account.

Required:

Explain whether or not Paul’s argument is correct. Give reasons for your answer. **8 Marks**

(TOTAL: 20 MARKS)

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4. (a) (i) Who is a director? **5 Marks**
- (ii) What is the statutory minimum number of directors in a company, and what is the penalty stipulated for carrying on a business with less than the statutory minimum number of directors? **3 Marks**
- (b) Mention **four** types of persons disqualified from being directors. **4 Marks**
- (c) Agro Suppliers Limited (ASL) has just discovered that George, one of its directors, has appropriated a substantial amount of company funds for his own use. The company now wants to remove George as director.

Required:

Advise the company on the procedure to follow.

8 Marks

(TOTAL: 20 MARKS)

5. (a) State the categories of persons who are, by the Companies Act (1984), disqualified from acting as receiver or receiver and manager of the property or undertaking of a company on behalf of its debenture holders or other creditors. **12 Marks**

- (b) State the position, under the Companies Act (1984) with regard to liabilities of receivers on contracts entered into by them. **8 Marks**
- (TOTAL: 20 MARKS)**

6. (a) Explain the meaning of the following terms:

- (i) Annual General Meeting;
- (ii) Extraordinary General Meeting;
- (iii) Class meeting.

6 Marks

- (b) What are the requirements with regard to:

- (i) Class Meeting; **2 Marks**
- (ii) Length of notice of a General Meeting? **3 Marks**

- (c) Failure of notice of a general meeting to disclose sufficient indication of the notice of the special business to be transacted at the proposed meeting shall invalidate the resolutions passed at the meeting.

Required:

State whether or not this statement represents the true legal position.

5 Marks

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- (d) Rosemary, a shareholder of Chichiri Motors Limited, (CML) received notice of a general meeting stating that the special business to be transacted at the said general meeting was the appointment of additional directors.

Rosemary argued that the notice was invalid as it did not disclose the number of additional directors to be appointed, their required qualifications and the need for appointing them.

Required:

State whether or not her argument is valid.

4 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, Karim received a letter from the Managing Director of Automotive Services Limited (ASL) of which he was a minority shareholder. In the letter, the Managing Director of the said ASL 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 Karim.

Karim is disturbed by the news. He has 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 ASL.

Required:

Advise Karim on what to do, giving the grounds for his action and the expected results thereof.

12 Marks
(TOTAL: 20 MARKS)

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