

EXAMINATION No. _____

THE PUBLIC ACCOUNTANTS EXAMINATION
COUNCIL OF MALAWI

2014 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC12: COMPANY LAW

TUESDAY 3 JUNE 2014

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 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 - 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) Mention **six** items which a Memorandum of Association of a company limited by shares is required to stipulate. **6 Marks**
- (b) State the effect of a Memorandum and Articles of Association upon a company, its members and outsiders. **4 Marks**
- (c) Explain the meaning of the phrase “lifting the corporate veil of incorporation.” **4 Marks**
- (d) Mention **three** circumstances under which the veil of incorporation may be lifted as stipulated in the Companies Act, 1984. **6 Marks**
(TOTAL: 20 MARKS)

2. (a) State **five** functions of the Registrar of Companies as stipulated in the Companies Act, 1984. **5 Marks**
- (b) State the contents of a register of members of a company limited by shares. **5 Marks**
- (c) Mention **three** differences between a public company and a private company. **3 Marks**
- (d) Kapeni Bakeries Ltd (KBL), once a successful bakery, is on the verge of liquidation. Of immediate concern to KBL is its failure to pay its suppliers, most notably, Pacific Traders Ltd (PTL) whom it owes K30 million for the wheat supplied. To KBL’s relief, a search at the Registrar of Companies’ office has revealed that while PTL is a duly registered company, some formalities required for the registration of a company had not been fulfilled. KBL has approached you for advice convinced that PTL is an illegal company, therefore, cannot enforce or in any way sue on the contract.

Required:

Advise PTL whether or not the information discovered justifies rescission of the contract.

7 Marks

(TOTAL : 20 MARKS)

Continued/.....

3. The news that Equity Holdings Ltd is offloading some of its shares in the CBS Bank Ltd has triggered a public scramble for the shares. The shares are being sold at K100 each which is K30 more than what is stated in the Memorandum of CBS Bank. The Memorandum states that the nominal value for the shares is K70 par each. In view of that, Joseph, a prospective investor, has approached you for some clarification on this issue.

Required:

- (a) Explain to Joseph the following:
- (i) What a share is. **3 Marks**
 - (ii) The main types of shares that CBS Bank Ltd may issue. **4 Marks**
 - (iii) How CBS Bank's sale of the shares above nominal value is legally permissible. **8 Marks**
- (b) Mention **five** uses of a share premium account, allowed under the Companies Act, 1984. **5 Marks**
(TOTAL: 20 MARKS)
4. (a) (i) Define the term "promoter". **3 Marks**
- (ii) Mention any **five** functions of a promoter. **5 Marks**
- (iii) At what point does the role of a promoter end? **2 Marks**
- (b) John, acting as a promoter for a prospective fruit juice company to be known as Mudi Cannery Limited (MCL), borrowed K10 million from Horizon Bank Ltd (HBL) in March 2010. The loan agreement expressly stipulated that John was contracting the loan as an agent of a group of investors of the proposed company. The conviction of the bank was that the incorporation of the company was underway. In fact, on a number of occasions, John had shown the bank manager legal documents purportedly to that effect. The loan was repayable by February, 2013. Contrary to expectations, MCL is yet to be incorporated and consequently no single instalment to date has been paid on the loan.

Required:

- Advise HBL on the recoverability of the loan in the circumstance. **10 Marks**
(TOTAL: 20 MARKS)

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5. (a) Chitawira Garments Ltd (CGL), through Charles, its most active director, entered into a contract with Blantyre Textiles Ltd (BTL) for the purchase of rolls of cloth worth K15 million. The Articles of Association for CGL, however, did not authorize the directors of the company to enter into contracts involving sums in excess of K10 million without the sanction of an ordinary resolution of a general meeting. No such resolution was passed with regard to this transaction.

Required:

State whether or not CGL are liable to pay the whole sum of K15 million.

10 Marks

- (b) CGL would now like to remove Charles from his office as director for having put the company into unnecessary financial problems without its sanction and because of the strong rumours circulating that Charles had received a bribe from BTL. The problem, however, is that the Articles of Association of CGL stipulate that Charles is to hold the office of director for ten years and the period has not yet elapsed.

Required:

- (i) Can CGL remove Charles from the office of director before the expiry of ten years? **2 Marks**

- (ii) What procedure should be followed if Charles were to be removed?

8 Marks

(TOTAL: 20 MARKS)

6. (a) On whose application can a registered company be wound up compulsorily by a court order? **5 Marks**
- (b) State any **six** statutory grounds for winding up a company by the court. **6 Marks**
- (c) Section 213(3) of the Companies Act, 1984, outlines the circumstances under which a company is deemed to be unable to pay its debts.

Required:

Outline these circumstances.

9 Marks

(TOTAL: 20 MARKS)

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7. Mary has read in one of the daily newspapers that Mkontho Breweries Ltd (MBL) is now under receivership at the instance of First Bank Ltd (FBL) whom MBL owes K30 million on a secured debenture. MBL also owes Mary an unsecured debt of K5 million in maize supply invoices dating back to 2009. Meanwhile, Mary has also established that MBL obtained the loan from the bank only in 2011 and that it was not to become due until 2015; only that the company has been in default on some interest payments prompting the bank to move in, as it has done, in terms of the debenture. It is also a known fact that MBL owes a number of unsecured maize suppliers a lot of money and that some of them have already obtained court judgments against the company. Mary is therefore annoyed and surprised that the bank could place MBL under receivership as if it were the only creditor with the longest outstanding loan.

Required:

- (a) Explain the legality of the appointment of a receiver at FBL's instance. **4 Marks**
- (b) State the legal position of a receiver. **7 Marks**
- (c) What is the effect of the appointment of a receiver on MBL. **7 Marks**
- (d) What course of action should Mary take? **2 Marks**
- (TOTAL: 20 MARKS)**
8. (a) What is an Annual General Meeting? **4 Marks**
- (b) Which people are entitled to attend and to speak at a company's annual general meeting? **5 Marks**
- (d) At a company meeting a resolution may be decided by voting either by a show of hands or a ballot.

Required:

- (i) State **two** situations where the Companies Act prohibits the demand for a poll. **4 Marks**
- (ii) Can the right to demand a poll be excluded by a company's Articles of Association? **1 Mark**
- (ii) State the circumstances that would make the provision in a company's Articles of Association be void, due to the effect of denying the right of demand for a poll. **6 Marks**

(TOTAL: 20 MARKS)

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