

3801/205
COMPANY SECRETARIAL PRACTICE
November 2011
Time: 3 hours



THE KENYA NATIONAL EXAMINATIONS COUNCIL
HIGHER DIPLOMA IN SECRETARIAL MANAGEMENT
COMPANY SECRETARIAL PRACTICE
3 hours

INSTRUCTIONS TO CANDIDATES

*Answer question ONE and any other THREE questions.
Question ONE carries 40 marks.
The remaining FIVE questions carry 20 marks each.*

This paper consists of 4 printed pages.

Candidates should check the question paper to ascertain that all the pages are printed as indicated and that no questions are missing.

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Turn over

SECTION A (40 marks)

Question ONE is compulsory.

1. *Read the case below and then answer the questions that follow.*

Makasembo Plc was incorporated as a public limited company under the Companies Act on 1st July 2008. It received its certificate to commence business on 1st March 2009. Thereafter the company embarked on its dairy farming business.

The company has now been trading for two years but has not yet held an Annual General Meeting. The shareholders have requested the directors to call for an Annual General Meeting but they have failed to do so. The statutory meeting scheduled to be held three months after commencement of business had been called off at the last minute. The reason given was unavoidable circumstances. An aggrieved shareholder wrote to the Registrar and informed him of the anomaly. The Registrar subsequently ordered the holding of the statutory meeting to which the company duly complied.

Katoroti was elected as one of the directors at the meeting. Katoroti and his wife Mwende are the owners of Herufi Company Ltd. Makasembo Co. Ltd placed an open tender for the supply of equipment, Herufi Co. Ltd a tenderer qualified for the purpose. However, Katoroti had not disclosed his connection with Herufi Co. Ltd.

When shareholders learnt that Katoroti was one of the directors of Herufi Co. Ltd, they were aggrieved and resolved to remove him from office as a director of Makasembo Co. Ltd.

Other suppliers to Makasembo Co. Ltd have not been paid for a while and they have given demand notice for payment. Despite the demand for payment, the suppliers have not been paid yet. The suppliers have held a creditors meeting where a resolution was passed for petitioning winding up of the company.

In view of the above:

1. (a) Explain to the shareholders the procedure to be followed in removal of a director before the expiry of his contractual term. (10 marks)
- (b) Outline the circumstances under which a director may lawfully enter into contracts with the company. (6 marks)
- (c) Explain the consequences of the creditors petition to wind up the company. (8 marks)

- (d) Outline the procedure followed in transmission of shares where one of the joint shareholders dies leaving a nominee. (8 marks)
- (e) Section 143 (1) of the companies Act Cap 486 of the Laws of Kenya provides that “A printed copy of every resolution or agreement to which this section applies shall, within thirty days after the passing or making thereof be delivered to the Registrar for registration”.
Outline **four** resolutions or agreements which requires to be registered under this section. (8 marks)
2. (a) Explain **four** characteristics of a floating charge. (8 marks)
- (b) The Companies Act Cap 486 of the Laws of Kenya requires companies to be audited at the end of each financial year.
In relation to the seventh schedule of the Act, explain the matters that must be contained in the auditor’s report. (12 marks)
3. (a) Explain **five** rules regarding declaration and payment of dividends by a company. (10 marks)
- (b) (i) Outline the circumstances under which a statement in lieu of prospectus is filed with the Registrar of companies. (6 marks)
- (ii) State the effects of insertion of an untrue statement in a prospectus. (4 marks)
4. (a) Explain the duties of the Chairman of the Board of Directors of a registered company as regards the conduct of meetings. (10 marks)
- (b) Tunga Ltd which runs a chain of hotels across the country was placed under receivership six months ago of which Bombo held four thousand preference shares. Tumaini was appointed as a receiver manager, as part of his strategy, he has invited shareholders to purchase debenture with attractive interest rate. Bombo intends to purchase debentures but she is apprehensive as to how her interests will be catered for. Tumaini has assured her that the debenture transaction will be contained in a “Trust Deed”.
Advise Bombo on what a “Trust Deed” is and outline its contents. (10 marks)
5. (a) Outline **five** circumstances under which a company may, by a special resolution alter the objects in its Memorandum of Association. (10 marks)

- (b) A company secretary incurs no personal liability while acting within the scope of his or her authority, in good faith and with reasonable care. However, there are instances when the company secretary becomes personally liable. Explain the instances when the company secretary may be held personally liable. (10 marks)
6. (a) (i) Explain the purpose of a scheme of arrangement. (4 marks)
- (ii) Outline the procedure followed for the implementation of a scheme of arrangement. (6 marks)
- (b) Explain the procedure that a registered company follows when issuing bonus shares. (10 marks)