

3801/205

COMPANY SECRETARIAL PRACTICE

November 2010

Time: 3 hours

THE KENYA NATIONAL EXAMINATIONS COUNCIL

HIGHER DIPLOMA IN SECRETARIAL MANAGEMENT

COMPANY SECRETARIAL PRACTICE

3 hours

INSTRUCTIONS TO CANDIDATES

This paper consists of SIX questions.

Answer QUESTION 1 and any THREE other questions.

QUESTION 1 carries 40 marks.

All other questions carry 20 marks each.

This paper consists of 3 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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1. Read the case below and answer the questions that follow.

Sonko is a limited company by shares that has been in existence for many years. The company, as a vehicle to facilitate the conduct of business subject to the limited liability of its owners, has therefore been hailed as an important milestone in revolutionizing the world of business. Indeed, its use has led to an immediate growth in the business.

The company, therefore, has seen to it that in the event of financial distress that leads to liquidation, the liability of its owners is limited to the said owners' investment in the company mainly in the form of share capital. Many times, the large corporate entities came with diversity in ownership in the form of numerous shareholders which meant that for practical operations, the control of everyday affairs had to be delegated by shareholders to a small number of directors who would be in charge of issues of administration and management. However, this is likely to cause problems of control, where the shareholders loose control because directors would choose to conduct corporate activities in a manner that best suited their interest as opposed to that of the shareholders. Although there is no rule in common law preventing a director from entering into contract with the company, it seems that unless the articles confer on a director express powers of contracting with the company, his powers of so contracting are rare. Section 200 of the Companies Act creates statutory requirement of disclosure by directors of interest in contract.

In order for shareholders to protect themselves from situations that may be perpetrated by directors in such instances, these mechanism that would be put into place take the form of requirements that the directors provide shareholders with periodic reports on the performance of the company. The reports are to be audited by external auditors who would be appointed by the shareholders. According, to Sonko Limited company, over the years, the shareholders have thought it wise to offer the directors remunerations devised in ways that will serve to align their interest to those of the shareholders. Despite Sonko's debacle, the limited liability company still remains an important facilitator of business for which no suitable replacement has been devised.

- (a) A director has ben appointed to the board of Sonko Ltd Co. of which you are the secretary. Write to him requesting from him the matters he is liable to disclose in order for you to file notice of appointment and to comply with other statutory requirements. (10 marks)
- (b) State circumstances prescribed by Table A under which a director is disqualified from holding office. (10 marks)
- (c) Outline the rights of directors to remuneration. (10 marks)
- (d) As one of the measures to ensure the directors act for the interest of the shareholders, explain
 - (i) two duties of an auditor
 - (ii) three rights of n auditor.
 (10 marks)

2. (a) As a company secretary of SAPEKA Limited, prepare an agenda to be considered at the first board meeting. (12 marks)
- (b) For a meeting to take place there must be a plurality of persons and the meeting must have a chairman. Outline circumstances when one person may constitute a meeting. (8 marks)
3. You are the company secretary of PEKARO company limited. At the request of the chairman of the company, you are to write a memorandum to explain with appropriate examples the following terms.
- (a) Spacial directors. (5 marks)
- (b) Special notice. (5 marks)
- (c) Special resolution. (5 marks)
- (d) Undesirable company name. (5 marks)
4. (a) The general rule is that, it is illegal for a company whether listed or unlisted in the stock market to reduce its share capital.
- (i) Explain two reasons for this rule. (4 marks)
- (ii) Explain exceptions to this rule. (6 marks)
- (b) JAKAWA Company limited has issued a prospectus inviting the public to subscribe to its shares. As a company secretary, explain four conditions that must be fulfilled to that effect. (10 marks)
5. (a) Under section 218 of the Companies Act, a petition for winding up order against a registered company may be presented to the High Court. As a company secretary, write a memo to advise the directors the circumstances that may lead to winding up the activities of the company. (12 marks)
- (b) A dividend is that part of a company's net profit which is distributed to its shareholders in proportion to their shareholdings. Outline the provisions as provided in the company's Articles. (8 marks)
6. (a) Kenya was one of the first countries in the world to adopt International Accounting Standards or International Financial Reporting Standards (IFRS). The accounts of any entity in Kenya, be it a company quoted on the stock exchange, a public but non-quoted company, a private company must comply with all IFRS's. Evaluate the above statement in the light of the auditors' report. (10 marks)
- (b) Your company which is limited by shares has decide to issue debentures as means of raising required finances. As a company secretary, explain itemised procedures of issuance of debentures to the public. (10 marks)