

KASNEB

CS PART II SECTION 4

CORPORATE SECRETARIAL PRACTICE

THURSDAY: 25 May 2017.

Time Allowed: 3 hours.

Answer ALL questions. Marks allocated to each question are shown at the end of the question.

QUESTION ONE

SUNDOWNER LTD.

Six months ago, the Board of Directors of Sundowner Ltd. a public limited company, convened an emergency Board meeting. This was in response to a sensational article about the company published in the Financial Weekly magazine.

According to the reporter, accounting records for Sundowner Ltd. were manipulated to reflect impressive performance and maintain shareholders' confidence. Behind the scenes, major projects had failed to perform as expected plunging the firm into deep financial crisis. Obligations to creditors were becoming difficult to meet and some of the creditors enforced crystallisation of floating charges. The reporter, further claimed that Sundowner Ltd. was about to become insolvent.

According to the article, on investigation, the Board found out that the financial controller had colluded with the firm's auditor to conceal the company's actual financial position. The auditor was more interested in the hefty annual fee and the assurance of re-appointment on the expiry of his term of office. The financial controller had informed the Board that he was afraid that a drop in the share price to its actual market rate would expose the firm to the risk of forceful acquisition owing to its stable asset base.

The Board meeting recommended the immediate removal of the auditor among other measures and requested the company secretary to give notice of an extra-ordinary general meeting (EGM). A notification of the pending removal was served on the auditor.

Notice of the proposed resolution as well as that of the extra-ordinary general meeting (EGM) were given by advertisement in one of the daily newspapers.

The financial controller and the auditor tried to profile a case that would render the proceedings of the EGM invalid. However, the company secretary ensured that the meeting was validly convened and its business legally transacted.

Required:

- (a) Advise the auditor on his rights in relation to the general meeting at Sundowner Limited. (6 marks)
- (b) (i) Explain the type of resolution that was required to remove the company's auditor. (2 marks)
- (ii) Analyse the rules that should be observed in passing the resolution in (b)(i) above. (4 marks)
- (c) Examine the arguments that the auditor and the financial controller might have raised in their efforts to nullify the proceedings of the general meeting. (4 marks)
- (d) Outline four documents that the company secretary was required to avail at the extra-ordinary general meeting. (4 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) The new Companies Act No.17 of 2015 repealed the old Companies Act Cap. 486 of 1948 and introduced far reaching requirements in the management and governance of companies.

In relation to the above statement, compare the legal requirements in the new and the old Companies Act on the following governance and compliance issues:

- (i) Annual general meetings for private companies. (3 marks)
- (ii) Date for a company's annual returns. (3 marks)

- (iii) Audited financial statements for a small company. (3 marks)
- (iv) Requirement to have a company secretary. (3 marks)
- (v) Requirement to have a common seal. (3 marks)
- (b) An extra ordinary general meeting of Majani Trading Company Limited has been called to discuss the conduct of the managing director. The managing director has been accused of making and implementing a unilateral decision not approved by the board. In his defence, the managing director claimed that the decision was made at a previous board meeting, a fact that was supported by one other director. Perusal of the minutes of the said meeting do not contain any reference record to the said matter.

Required:

Explain to the members and the board of the company, five legal provisions relating to the minutes of director's meetings. (5 marks)

(Total: 20 marks)

QUESTION THREE

- (a) The management of Watamu Ltd. convened an extra-ordinary general meeting to alter the company's object clause. During the meeting, the alterations were approved and a special resolution passed. James Winsley, a shareholder felt that the alterations did not fall within the restrictions prescribed by the Companies Act. The shareholder has made an application to the court for an order to cancel the alterations.
- (i) Evaluate four conditions that the shareholder's application to the court should meet to be actionable. (4 marks)
- (ii) Discuss four statutory restrictions prescribed by the Companies Act as regards to the alteration of the Articles. (8 marks)
- (b) With reference to takeovers and mergers, the offeree company's Board is required to appoint an investment banker or a stock broker licensed by the Capital Markets Authority (CMA) as a transaction adviser.

Required:

Explain four factors that might disqualify the investment banker or stock broker from being appointed as independent advisors in a takeover or merger. (8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) The auditors of Zige Limited refused to make their report on the annual accounts of the company before they were signed on behalf of the Board of Directors.
- Advise the management of Zige Limited on the action of the auditors. (4 marks)
- (b) Zeddy Matole is a chief executive officer of Mzani Limited. On 30 April 2017, Zeddy Matole gave his resignation letter to the chairman of the Board of Directors. In the letter, he requested to be relieved of his official duties with immediate effect.
- Advise Zeddy Matole on when the resignation would take effect. (4 marks)
- (c) In the course of administration of the affairs of a limited company, the Chairman of the Board of Directors came across urgent matters which required the approval through a Board resolution.

In the prevailing circumstances, it was not possible to convene and hold a Board meeting.

Required:

As per provisions of the Companies Act, advise the Chairman of the Board on the relevant procedure to obtain Board approval without holding the Board meeting. (6 marks)

- (d) In Foss vs Harbottle (1843), it was held that, in any action in which a wrong is alleged to have been done to a company, the proper claimant is the company itself. One of the exceptions to this rule is the 'derivative action'.

Discuss the relevance of derivative action as applicable to a listed company. (6 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Distinguish between “provident fund” and “pension scheme”. (2 marks)
- (b) Evaluate two benefits that might accrue to a limited company by outsourcing the functions of a company secretary as opposed to recruiting a full time one. (4 marks)
- (c) The Board of Directors of Mashanga Limited held a meeting in which a resolution was passed recommending payment of dividends to shareholders.

Analyse the secretarial procedure that should be followed in connection with dividend distribution after the resolution of the Board meeting. (6 marks)

- (d) ABC Limited has made an offer to acquire all the equity shares of XYZ limited at a certain price.

The shareholders of XYZ Limited who hold 90% of the shares have accepted the offer. The remaining shareholding was held by two persons who did not agree to the offer.

Required:

Assess whether ABC Limited could acquire all the shares in XYZ Limited. (4 marks)

- (e) Princes Limited desired to appoint an additional director on its Board of Directors. The Articles of the company confer upon the Board the power to appoint an additional director. Based on the Articles, Henry Chimwaga was appointed as an additional director. Consequently, the annual general meeting of the company was not held within the stipulated period and was adjourned to a later date.

Required:

In light of the provisions of the Companies Act, examine whether Henry Chimwaga could continue as a director. (4 marks)

(Total: 20 marks)

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