

KASNEB

CS PART II SECTION 4

CORPORATE SECRETARIAL PRACTICE

THURSDAY: 24 November 2016.

Time Allowed: 3 hours.

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

QUESTION ONE

DAMA LIMITED

Dama Limited is a public listed company in which 60% of the shares are held by the national government. The company deals with manufacture, import and export of electronics. The Board comprises nine directors and has appointed four committees namely:

- Audit and risk.
- Finance, administration, human resource and strategy.
- Operations and marketing.
- Nominations, governance and compensation.

The Board meets four times in a year, though additional meetings may be called upon to discuss urgent matters. The committees of the Board meet eight times in a year.

You have recently been appointed as the corporate secretary to assist streamline the operations of the Board and therefore make it more effective in its work.

The Board members have complained to you that they do not get accurate, adequate and timely information from management. On the other hand, management perceive the demand for information by the Board members as being unnecessary interference on management's work. Management has even tried to convince you that the Board members rarely read the information provided leading to delays or failure to approve recommendations from the management.

This is partly because the Board papers are at times very technical, therefore posing a challenge to Board members who do not have the technical knowledge of the industry.

Required:

- (a) Examine six governance issues at Dama Limited. (6 marks)
- (b) As the corporate secretary, advise the Board of Dama Limited on the best practices regarding to:
- (i) The composition of the nominations, governance and compensation committee. (4 marks)
- (ii) The functions of the nominations, governance and compensation committee. (4 marks)
- (c) Sketch a Board work plan to guide the meetings and operations of the Board of Dama Limited for the financial year 2016/2017. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight six contents of the statement on corporate governance included in a company's annual report. (6 marks)
- (b) Assess the relevance and use of the company seal. (4 marks)
- (c) The first meeting of the Board of directors had overrun the scheduled time by four hours. Some of the directors were sleeping during the meeting, others were busy using their personal phones browsing while others were exchanging notes. The Chairman of the Board has requested you as the corporate secretary to advise him on how to bring the meeting back on track.

Required:

Advise the Chairman appropriately.

(6 marks)

- (d) Following completion of the external audit of the accounts for the year ended 31 October 2016, the directors of Bungu Limited recommended the declaration of a dividend out of profits available.

Required:

As the corporate secretary, summarise the agenda items that would be included in the notice convening the Board meeting to approve the dividends. (4 marks)

(Total: 20 marks)

QUESTION THREE

- (a) A group of students have approached you as a corporate secretary to assist them in setting up three forms of organisations.

The first organisation will import motorcycles' spare parts from China and export bacon and rabbit meat to China. To finance operations of this organisation, each of the students will contribute Sh.100,000. The market research indicates that each year they will be earning more than Sh.1,000,000 (shillings one million) which will be distributed amongst themselves.

The second organisation will deal with promoting education access to poor families. The key target group will be slum children who have passed their national examinations but are unable to continue with education for lack of school fees. Donors (both local and foreign), government, large corporates and individual well wishers are expected to finance this noble task.

The third organisation will be a faith based organisation which will conduct open air crusades and other meetings for purposes of propagating religious beliefs. The organisation will recruit as many members and followers as possible who will finance its operations.

Required:

Discuss the legal and regulatory requirements for registration of each of the above three forms of organisations.

(12 marks)

- (b) You have been appointed as the Chief Executive Officer (CEO) of Madunguni Limited, a company quoted on the securities exchange of your country. The company wishes to recruit a corporate secretary.

Prepare a Board paper on the hiring of a corporate secretary for the company.

(8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Abutta Limited had powers under the memorandum of association to sell its undertaking to another company with similar objects. The Articles of the company contained a provision by which directors were empowered to sell or otherwise deal with the property of the company.

The shareholders passed an ordinary resolution for sale of some assets on certain terms and required the directors to carry out the sale. The directors refused to comply with the wishes of the shareholders to sell the assets. The shareholders argued that they were the principal and the directors were their agents hence were bound to implement their decision.

Required:

- (i) Using the Companies Act and decided cases, advise whether the contention by the shareholders that the directors should implement the shareholders decision was tenable. (8 marks)

- (ii) Assess whether shareholders could usurp the powers which according to the articles of association are vested in the directors by passing a resolution at the general meeting. (2 marks)

- (b) Caxton Gambo, a director of Galanema Limited proceeded on a long foreign vacation in the United States of America. Gambo appointed Mr. Nyale as an alternate director to act for him during his absence.

The Articles of the company provide for appointment of alternate directors. Caxton Gambo being a director claimed that he had a right to appoint an alternate director.

Required:

Examine the validity of the claim made by Caxton Gambo.

(4 marks)

- (c) Explain three circumstances under which a person is deemed a "substantial creditor" in a take-over. (6 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) XYZ Limited is engaged in the construction industry. The management of the company issued shares to the public. The money received was used for construction purposes.

Since the company is not in a position to pay any dividends for a long time to shareholders, the Board of directors proposed to pay interest out of capital to its shareholders.

Required:

Advise the Board on the conditions to be complied with when paying interest out of capital under the Companies Act. (6 marks)

- (b) Makata Ltd. was registered in the year 2016 under the Companies Act, 2015.

There are allegations that three directors who manage the affairs of the company are defrauding the company.

The company has not declared any dividends on the ground that it is incurring losses. Kalama Lewa, who controls 51% of the share capital of the company, has sent a notice to the management that he will inspect the books of accounts to verify the allegations.

Required:

Examine the right of Kalama Lewa to carry out the inspection of the books of accounts of the company. (6 marks)

- (c) Sadi Mzungu was appointed as an additional director of Pingilikani Finance Ltd. with effect from 1 October 2015 to fill a casual vacancy by way of a circular resolution passed by the Board of directors.

The next annual general meeting (AGM) of the company was scheduled on 31 March 2016, but the meeting was not held due to delay in the finalisation of the accounts.

Some shareholders of the company have questioned the validity of the appointment of Sadi Mzungu and his continuation as an additional director beyond 31 March 2016.

Required:

Advise the management of the company on the concerns raised by the shareholders. (8 marks)
(Total: 20 marks)

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