

**CPA**

**CS**

**CCP**

**PART II**

**SECTION 3**

**COMPANY LAW**

**CLASS NOTES**

**Updated November 2020**

## PAPER NO.7 COMPANY LAW

### GENERAL OBJECTIVES

This paper is intended to equip the candidate with knowledge, skills and attitudes that will enable him/her to apply and comply with the provisions of company law in relevant circumstances and environments.

### LEARNING OUTCOMES

A candidate who passes this paper should be able to:

- Apply legal principles relating to formation of companies
- Evaluate the rights and obligations of members and shareholders
- Comply with the legal principles governing liquidation of corporates and restructuring
- Comply with the legal principles relating to companies incorporated outside Kenya
- Ensure books of account are prepared in compliance with the law.

### SYLLABUS

#### 7.1 Nature and classification of companies

- Nature and characteristics of a company
- Types of companies
- Principle of legal personality and veil of incorporation
- Distinction between companies and other forms of business associations, sole proprietorships, partnerships and cooperative societies.

#### 7.2 Formation of companies

- Promoters and pre-incorporation contracts
- Process of forming a company
- Memorandum and articles of association
- Certificate of incorporation
- Effects of incorporation

#### 7.3 Membership of a company

- Acquisition of membership
- Register of members
- Rights and liabilities of members
- Cessation of membership

#### **7.4 Shares**

- Classes of shares
- Variation of class rights
- Share certificates
- Issue and allotment
- Transfer and transmission
- Transfer of shares under central depository system
- Mortgaging and charging of shares

#### **7.5 Share capital**

- Meaning and types of share capital
- Raising of share capital
- Prospectus/information memorandum
- Maintenance of capital
- Alteration of capital
- Dividends

#### **7.6 Debt capital**

- Borrowing powers of a company
- Debentures
- Charges
- Registration of charges
- Remedies for debenture holders

#### **7.7 Company meetings**

- Nature and classification of company meetings
- Essentials of a valid meeting
- Voting
- Resolutions

#### **7.8 Directors**

- Qualifications, appointment and disqualification
- Powers and duties of directors
- Removal and vacation of office
- Register of directors
- Remuneration of directors
- Loans to directors

- Compensation for loss of office
- Disclosure of director's interest in contracts
- The rule in Turquand's case/Indoor Management rule
- Insider dealing

### **7.9 The company secretary**

- Qualification, appointment and removal
- Powers and duties of the company secretary
- Liability of the company secretary
- Register of secretaries

### **7.10 Auditors**

- Qualification, appointment and removal
- Remuneration of auditors
- Powers and duties
- Rights and liabilities

### **7.11 Company accounts, audit and investigation**

- Books of accounts
- Form and content of accounts
- Group accounts
- Director's report
- Auditor's report
- Annual returns
- Investigation of company affairs
- Appointment and powers of inspectors
- Inspector's report

### **7.12 Corporate restructuring**

- Need for restructuring
- Mergers,
- Post merger reorganisation
- Takeovers and acquisitions
- Schemes of arrangement and compromises
- Reconstruction

### **7.13 Receivership and liquidation of companies**

- Meaning of receivership
- Appointment and vacation of office
- Powers and duties of a receiver
- Termination of receivership
- Meaning of liquidation
- Types of liquidation
- Appointment, powers and duties of liquidators
- Discharge of liquidators
- Distribution of assets and dissolution of companies

#### **7.14 Companies incorporated outside the country**

- Process of registering a company
- Certificate of registration
- Power to hold land
- Registration of charges
- Accounts of foreign companies
- Service of process and notices on foreign companies
- Returns
- Penalties
- Cessation of business

#### **7.15 Emerging issues and trends**

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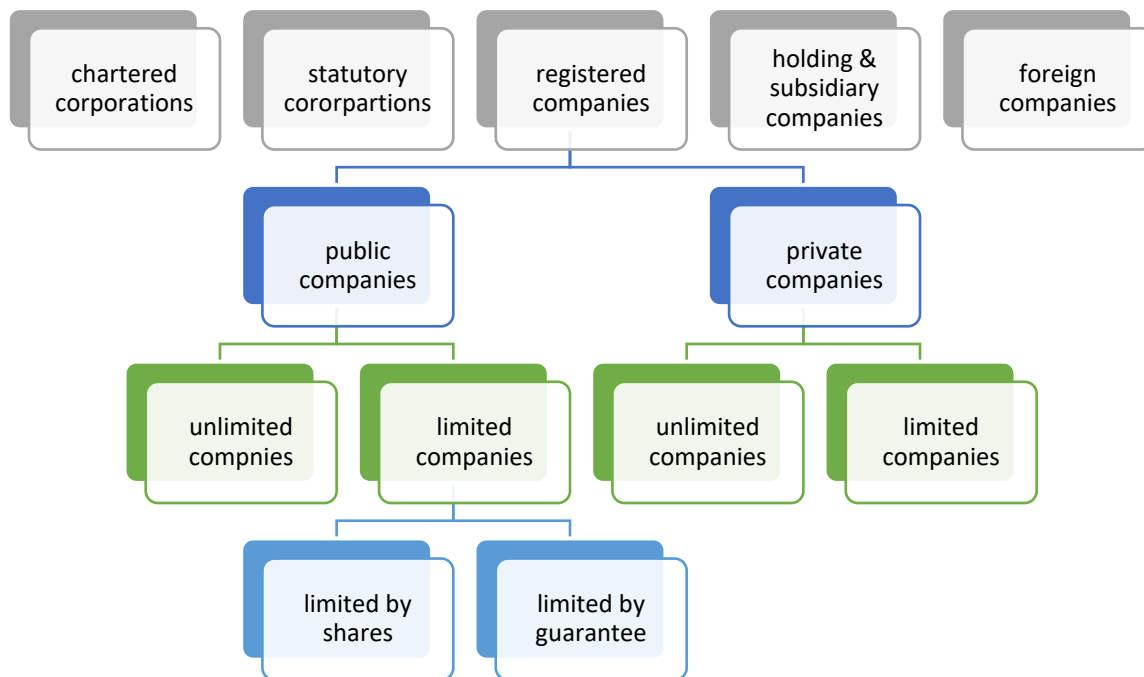
**TOPIC 1**

**NATURE AND CLASSIFICATION OF COMPANIES**

➤ *Definition of company law*

- It's a study of the rules & principles that governs and regulates the affairs of a company/corporation.

➤ **Types of companies**



**1. Chartered corporations**

- These are corporations created by a charter that is granted by the president.
- Only private universities are created through charter in Kenya.
- Under university's act, the president is empowered to grant a charter to any private university intending to be set up to benefit the country.
- The charter must set out the name, membership and also the powers and functions of the universities e.g. mount Kenya University.

## 2. Statutory corporations

- They are created by an Act of parliament or an order of the president in accordance with the state corporations Act.
- These are government corporations especially parastatals.
- The Act creating the corporation gives it a name, management structure and also prescribes the objects i.e. Kenya pipeline, Kasneb, NSSF, NHIF, Central Bank etc.

## 3. Registered corporations

- Are created in accordance with the provisions of companies Act.
- Certain documents must be delivered to the registrar of companies for registration i.e. MOA and AOA. Examples include public and private companies.

### Public company

- This is a company with the following features:
  1. Must have a minimum of 7 members and no. maximum.
  2. Must have at least 2 directors.
  3. Its shares must be freely transferable.
  4. It must have a statutory meeting i.e. first AGM within 3 months of formation for companies that were created before 2015.
  5. Must publish annual accounts.
  6. After acquiring certificate of incorporation, it must go ahead and acquire certificate of trading to commence business.
  7. It must have a company secretary.

*N/B: A public company is required to include at the end of its name the words-public limited company (PLC) e.g. Safaricom PLC*

### Private company

A private company is a company with the following features.

1. Members are a minimum of 1 and max of 50 persons excluding employees.
2. It requires at least 1 director.
3. Restricts the right to transfer its shares.
4. It prohibits any invitation to the public to subscribe for its shares i.e. doesn't issue a prospectus.
5. Not mandatory to publish its accounts.
6. Required to have a Company secretary if it has a share capital of 5million.



*N/B: A private company must include the word **limited or Ltd** at the end of its name.*

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*A public and private company may be classified under;*

**a) Companies Limited by shares**

It refers to a company which the liability of members is limited to the amount unpaid on the shares held by them.

**b) Companies Ltd by guarantee**

A company Limited by Guarantee if:

1. it does not have a share capital;
2. The liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its liquidation; and
3. Its certificate of incorporation states that it is a company limited by guarantee.

Companies Limited by Guarantee in Kenya are mainly registered for the purpose of operating non-profit organizations that require a legal personality.

**c) Unlimited companies**

- These are companies where member's liability is unlimited.
- Such members may lose their private assets, in case the company is declared insolvent.

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**Difference between Public Company and private company**

	<b>Public company</b>	<b>Private company</b>
<b>Membership</b>	Minimum of 7 and no maximum	Minimum of 1 and maximum of 50
<b>Prospectus</b>	Can issue a prospectus	Cannot issue a prospectus
<b>Director</b>	At least 2 directors	At least 1 director
<b>Transfer of shares</b>	Shares are freely transferable	Restricts transfer of shares to members only
<b>Commencement of business</b>	Can only commence business after certificate of trading is issued	Can commence business after certificate of Incorporation is issued
<b>Publication of accounts</b>	Must publish its account	No requirement to publish accounts

**Difference between Registered Company and statutory company**

<b>Registered company</b>	<b>Statutory company</b>
Incorporated under the provisions of the Company Act	Created by an Act of parliament
Governed by directors	Owned by the government
Can only engage in transactions stipulated in memorandum and articles of association	Can only engage in transactions set by the statute.