



CS PART III SECTION 5
FINANCIAL MARKETS LAW

THURSDAY: 26 November 2020.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) The stewards of a market intermediary are required to develop a board charter to implement corporate governance practices.
Discuss four components that should be contained in the board charter of a market intermediary. (8 marks)
- (b) Summarise six post-listing requirements that are placed on issuers. (6 marks)
- (c) Explain three circumstances that could lead to the removal of a custodian. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) One of the principles of the International Organisation of Securities Commissions (IOSCO) on securities regulation is aimed at ensuring the protection of investors, fair, efficient and transparent markets and the reduction of systemic risk.
With reference to the above statement, explain five IOSCO principles with regard to supervision of market intermediaries. (10 marks)
- (b) Outline five penalties for breach of duty provided for in the Central Depository Act and the offences they relate to. (10 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) In the context of financial markets law, explain the meaning of the term “insider information”. (4 marks)
- (b) Evaluate any four International Organisation of Securities Commissions (IOSCO) principles with reference to the regulator. (8 marks)
- (c) In relation to regulation of capital markets:
- (i) Summarise four reasons that could cause the suspension of a security industry licence by the Capital Markets Authority. (4 marks)
- (ii) Describe four functions of the Capital Markets Fraud Investigation Unit established under the Capital Markets Act. (4 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) The regulatory framework for the financial sector in Kenya consists of a number of independent regulators each charged with the supervision of their respective sub-sectors.
Describe five institutions involved in financial regulation in Kenya and their respective roles. (10 marks)
- (b) (i) Explain the meaning of the term “regulatory fragmentation”. (2 marks)
- (ii) Discuss four consequences of regulatory fragmentation in the financial services sector. (8 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) In the context of holding and trading of securities at a securities exchange, differentiate between “immobilisation” and “dematerialisation” of securities. (4 marks)
- (b) In the context of prevention of money laundering:
 - (i) Explain three features of Exchange-Traded Funds (ETFs) that distinguish them from other investment funds. (6 marks)
 - (ii) Outline four anti-money laundering obligations of a reporting institution under the Proceeds of Crime and Anti-Money Laundering Act. (4 marks)
- (c) The Prevention of Terrorism Act (PTA) No. 30 of 2012 is aimed at providing measures for the detection and prevention of terrorist activities, to amend the Extradition (Commonwealth Countries) Act and the Extradition (Contiguous and Foreign Countries) Act and for connected purposes.

In the context of the PTA, summarise six offences that are punishable under this Act. (6 marks)
(Total: 20 marks)

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CS PART III SECTION 5
FINANCIAL MARKETS LAW

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TUESDAY: 26 November 2019.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Your firm has been approved to operate as a Central Depository Agent. AZJ Ltd., your first client, needs you to handle its immobilisation and dematerialisation process. The client is also keen on understanding the importance of intermediaries in the financial markets.

With reference to the above scenario, advise AZJ Ltd. on the process of immobilisation and dematerialisation.

(10 marks)

- (b) Evaluate five functions of investment banks to issuers.

(10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) (i) Contrast between the role of an underwriter and that of a stockbroker. (4 marks)

- (ii) In the regulations issued by Capital Markets Authority (CMA) applicable to raising of capital in the securities market, exceptions have been granted to certain issuers from full compliance with the provisions of the regulations.

Required:

State four circumstances under which a public issue of securities might be treated as a private offer. (4 marks)

- (b) In the International Organisation of Securities Commissions (IOSCO) "Objectives and Principles of Securities Regulation", the principles are founded on three objectives focusing on investor protection, fairness, efficiency and transparency in the securities market and reduction of systemic risk.

Discuss three ways in which the Capital Markets Authority in your country has implemented these objectives as a member of IOSCO. (6 marks)

- (c) You have been appointed as the leader of a taskforce created to lay the foundation for a financial markets sector in a foreign country.

Required:

As the head of the taskforce, analyse three regulators that might be required in the country. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) With reference to prevention of money laundering:

- (i) As the appointing authority, determine five persons who would constitute the Counter Financing of Terrorism Inter-Ministerial Committee. (5 marks)

- (ii) Assess five ways in which intermediaries in the financial markets can aid in the fight against money laundering. (5 marks)

- (b) Corporate governance in its broad perspective will try to define the relationship in business entities between the company's board, management, shareholders and other stakeholders.

With reference to the above:

- (i) Describe three applications of corporate governance practice in the financial markets with particular attention to financial stability of the company. (6 marks)

- (ii) In the context of issuance of securities to the public by a company, describe four roles of a board of directors in driving good corporate governance practice. (4 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Describe four circumstances under which a company listed on the securities market could have its shares suspended from trading. (8 marks)
- (b) Extreme Financial Services Limited (EFSL) operates as a stock broker and a member of the Securities Exchange. The company now wants to apply to the Central Depository and Settlement Corporation (CDSC) to be allowed to operate as a Central Depository Agent (CDA).

Required:

Explain why EFSL must disclose the holders of beneficial interest of the accounts opened in its name. (6 marks)

- (c) (i) Highlight two circumstances under which the Capital Markets Authority (CMA) might grant permission for shares of a listed company to be transferred from a seller to a buyer outside a country's Securities Exchange system. (2 marks)
 - (ii) Explain two reasons why bond trading tends to occur more on the secondary market. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Highlight four categories of rules of the securities exchange. (4 marks)
 - (b) Describe three positive effects of cross border listing on the shares of a company. (6 marks)
 - (c) With reference to the Capital Markets Authority (CMA):
 - (i) Explain six objectives of the CMA. (6 marks)
 - (ii) Assess four functions of the Authority as provided by the Act and the regulations. (4 marks)
- (Total: 20 marks)**
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CS PART III SECTION 5
FINANCIAL MARKETS LAW

WEDNESDAY: 22 May 2019.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Alice Mogaka is one of the six members appointed by the Cabinet Secretary in charge of The National Treasury to be a Board member of the Capital Markets Authority (CMA). Her appointment letter states that she would cease to hold office if she delivers to the Cabinet Secretary a written resignation letter.

Required:

Advise Alice Mogaka on any other five grounds that would lead to her ceasing to hold office as provided for in the piece of legislation regulating capital markets in your country. (5 marks)

- (b) Describe five objectives of the Capital Markets Authority. (5 marks)

- (c) The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2013 established the Counter Financing of Terrorism Inter-Ministerial Committee.

Required:

In light of the above statement:

- (i) Highlight three functions of the Counter Financing of Terrorism Inter-ministerial Committee. (6 marks)

- (ii) Where any information relating to a money laundering offence is received by the Financial Reporting Centre, the information and the identity of the person giving the information shall be kept confidential.

Outline two circumstances which are an exception to the above rule. (4 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Moses Mamboleo is a certified company secretary in Faida Limited, a listed company at the Securities Exchange. During a Board meeting, the Chief Executive Officer (CEO) of Faida Limited reported that the company had received a notification from Enta Limited, a foreign based company of its intention to merge with Faida Limited. Moses Mamboleo, in trying to defuse an existing conflict with his wife, Mary Mamboleo, ended up disclosing the proposed merger with Enta Limited. Mary Mamboleo immediately logged into her Central Depository Account and bought 1,000 shares in Faida Limited. She also posted the information in her chamaa's whatsapp group. The Chairlady of the chamaa wasted no time in asking members to contribute funds towards the purchase of shares in Faida Limited as a matter of priority. Within two hours, members of the chamaa had raised Sh.25,000 which was used to buy shares in Faida Limited.

Required:

- (i) Advise the parties mentioned in relation to their legal position. (8 marks)

- (ii) Outline four circumstances under which information is deemed to have been made public. (4 marks)

- (b) With reference to the Capital Markets Authority code of corporate governance practices for issuers of securities to the public:

- (i) Describe two core values underlying ethical leadership. (4 marks)

- (ii) Highlight two guidelines on the remuneration of Board of directors of a corporate body. (4 marks)

(Total: 20 marks)

QUESTION THREE

- (a) You have been appointed the Company Secretary of Truth Limited. In a board meeting, the Board of Directors informs you that a prospectus had been published containing a statement that Truth Limited had struck oil which later turned out to be false.

Required:

- (i) Advise the Board on whether there are any possible liabilities for publishing false statement in a prospectus. (6 marks)

- (ii) The authors of a prospectus of a company are legally free to state in the prospectus whatever content they deem appropriate.

Examine three types of reports that must be included in a prospectus. (6 marks)

- (b) An application for a license to operate as a stock-broker shall be accompanied by the prescribed fees and certain specified documents, which include a business plan.

With reference to the above statement, summarise eight particulars that should be contained in the business plan. (8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Anne Wambui attended a conference on the immobilisation and dematerialisation of securities. She has approached you as a certified company secretary for clarification on certain concepts.

Required:

- (i) Explain the liability of the central depository for loss or damage to the certificates. (2 marks)

- (ii) Examine three effects of dematerialisation on a collective investment scheme (CIS). (6 marks)

- (b) In relation to the central depository system, explain four circumstances when a request for withdrawal of securities held in the central depository might be denied. (4 marks)

- (c) With the aid of the prepopulated table below, prepare eligibility requirements for public offering of shares and listing.

Requirement	Part A Criteria for the Main Investment Market Segment	Part B Criteria for the Alternative Investment Market Segment	Part C Criteria for the Growth Enterprise Market Segment (GEMS)
Incorporation status			
Share capital			
Net assets			N/A
Free transferability of shares			
Dividend policy	Issuer must have a clear future dividend policy	Issuer must have a clear future dividend policy	N/A

(8 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) The King of Wakanda Land would like to establish a Retirement Benefits Authority for the benefit of its senior citizens. He has requested you to propose the constitution of members to the board of the Authority.

The King has requested you to ensure that the board of the authority mirrors the one in your country.

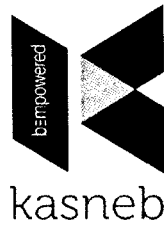
With reference to the above facts, propose the composition of members to the Retirement Benefits Authority Board of Wakanda Land. (8 marks)

- (b) Justify in four ways the importance of penalties for breach of financial markets law. (4 marks)

- (c) Summarise four prohibitions imposed on a person either directly or indirectly, when purchasing or selling any security. (8 marks)

(Total: 20 marks)

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CS PART III SECTION 5
FINANCIAL MARKETS LAW

WEDNESDAY: 28 November 2018.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Mwananchi Bank Limited (MBL) is a newly established financial institution licensed under the Banking Act.
Advise the board of directors on eight administrative sanctions which might be pursued by the Central Bank against MBL for failure to comply with prudential guidelines. (8 marks)
- (b) A guarantee fund is a fund set up by Central Depository and Settlement Corporation (CDSC) to ensure financial integrity in the securities market
Required:
Explain six ways of financing the guarantee fund. (6 marks)
- (c) The central depositories regulations require a central depository to maintain an insurance policy at all times to cover losses or damages.
Required:
Summarise six areas that the insurance policy should cover. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) The International Organisation of Securities Commissions (IOSCO) is an association of organisations that regulate the world's securities and futures markets.
With reference to the above statement, discuss IOSCO principles relating to:
- (i) Collective investment schemes (CIS). (4 marks)
- (i) Secondary market. (6 marks)
- (b) Abbas Gambo holds 10,000 ordinary shares of Blam PLC. The company is in the process of ensuring that all its shareholders open securities accounts with Central Depository Agents (CDAs) to facilitate dematerialisation of share certificates.
Required:
- (i) Explain the term "dematerialisation of shares certificates". (2 marks)
- (ii) Assess eight benefits which could be enjoyed by Abbas Gambo as a result of opening a Central Depository System (CDS) securities account. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Emma Kosgei is a newly employed management trainee at Bima Bank. Her supervisor mentioned about the Financial Reporting Centre during induction of newly recruited employees last month. Emma has never heard about the Financial Reporting Centre.

Required:

Advise Emma on:

- (i) The objectives of the Financial Reporting Centre. (4 marks)
 - (ii) Particulars of customer records that Bima Bank should establish and maintain in fulfilment of Financial Reporting Centre's requirements. (6 marks)
- (b) With reference to the Capital Markets Authority (CMA) code of corporate governance practices for issuers of securities to the public, examine five guidelines which touch on the company secretary, as the principal officer who supports the Board in ensuring adherence to board policies and procedures. (10 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) After attending a retirement planning seminar, Janet Akinyi is confused on whether to invest individually for her retirement or join a retirement benefits scheme.

Required:

Advise Janet Akinyi on the benefits of joining a retirement benefits scheme registered under Retirement Benefits Authority (RBA) compared to individual investment. (10 marks)

- (b) Discuss five recent changes in the legal framework that affected the pension industry. (10 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) With reference to management of a collective investment scheme (CIS), highlight seven duties of a fund manager. (7 marks)

- (b) Bee Ltd. plans to convert to a public limited company (PLC) in the next six months. The transaction advisor has advised the directors to prepare a prospectus for the initial public offer (IPO).

Required:

Advise the management of Bee Ltd. on six contents of the legal opinion to be included in the prospectus. (6 marks)

- (c) A securities exchange trading system must be approved by the capital markets authority before it is implemented to ensure transparency and efficient pricing mechanism.

Required:

Assess seven legal requirements expected of such a trading system. (7 marks)

(Total: 20 marks)

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CS PART III SECTION 5
FINANCIAL MARKETS LAW

WEDNESDAY: 23 May 2018.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) The Capital Markets Authority (CMA) or equivalent authority in your country might, where the circumstances so dictate, intervene in the operations of securities and derivatives exchanges. This is one of the regulatory roles of the authority.

With reference to the above statement:

- (i) Describe four circumstances under which the authority might be forced to intervene in the operations of securities exchanges. (4 marks)
- (ii) Summarise six directives that the authority might issue by notice in writing to a securities exchange to remedy any of the matters referred to in (a) (i) above. (6 marks)
- (b) A central depository might establish a central depository guarantee fund for the settlement of trade through the depository.

With reference to the above statement, summarise the constituents of the central depository fund. (5 marks)

- (c) Permitted disclosures are those disclosures which nothing in any written law shall entitle any person to refuse to disclose.

With reference to the above statement, summarise five permitted disclosures in the Central Depository Act or equivalent law in your country. (5 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Rufus Okeke opened a central depository account in his home country in January 2015, soon after he received a scholarship to study finance in the United Kingdom. During his stay in the United Kingdom, Rufus Okeke did not transact in his central depository account.

According to the central depository (dormant accounts) operational procedures, after a lapse of twenty four months of inactivity, the central depository system shall automatically flag an account dormant.

The Central Depository and Settlement Corporation (CDSC) then sent Rufus Okeke a notification through his email address informing him that his account had been declared dormant. Rufus Okeke is now back in his home country and has tried to transact through his account but to no avail. The CDSC has advised Rufus Okeke to first activate his account before attempting to sell or otherwise deal with any shares through the account.

Required:

Advise Rufus Okeke on the procedure for activation of his central depository account:

- (i) Through the central depository agent (CDA). (8 marks)
- (ii) By the account holder (self service). (6 marks)
- (b) The Board of a company shall ensure that a governance audit is carried out at least annually to confirm that the company is operating on sound governance principles.

With reference to the above statement, outline six parameters that the governance audit should cover: (6 marks)

(Total: 20 marks)

QUESTION THREE

(a) ABC Ltd. wishes to be guided on the eligibility requirements for public offering of shares.

You have been provided with the following eligibility criteria checklist:

Requirement	Criteria for the main investment market segment
Incorporation status	(i)
Size: Share capital	(ii)
Net assets	(iii)
Transferability of shares	(iv)
Dividend policy	(v)
Availability and reliability of financial records	(vi)

For each of the above requirements, indicate the corresponding eligibility criteria labelled (i) to (vi). (12 marks)

(b) Suggest eight types of suspicious activities or transactions that might indicate possible money laundering activities. (8 marks)
(Total: 20 marks)

QUESTION FOUR

(a) (i) Define the term “demutualisation”. (1 mark)

(ii) Summarise five documents and information that shall accompany an application to the Capital Markets Authority for approval to operate as a demutualised entity. (5 marks)

(b) Discuss the legal provisions relating to withdrawal of prescribed securities. (8 marks)

(c) Self-Regulatory Organisations (SROs) can be a valuable complement to the regulator in achieving the objectives of securities regulation.

With reference to the above statement:

(i) Highlight the characteristics of SROs. (3 marks)

(ii) Explain three benefits that could be accrued from self-regulation. (3 marks)

(Total: 20 marks)

QUESTION FIVE

(a) Explain six circumstances where the Central Depository might specify a book-entry security held in any particular securities account as “under suspense”. (6 marks)

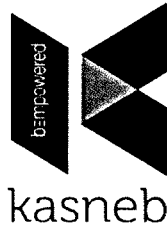
(b) Describe three types of accounts that a client or a central depository agent could use to record eligible securities in accordance with the operational procedures. (6 marks)

(c) Every collective investment scheme shall appoint a custodian approved by the Capital Markets Authority to perform certain duties.

With reference to the above statement, examine four duties of the scheme custodian. (8 marks)

(Total: 20 marks)

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CS PART III SECTION 5
FINANCIAL MARKETS LAW

WEDNESDAY: 29 November 2017.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Assume that you are the Minister of Finance in your country. One of the roles you are charged with is establishment of the Capital Markets Tribunal. The Tribunal is charged with the responsibility of receiving appeals made to the Capital Markets Authority on any matter relating to the Capital Markets Act, inquiring into the matter and making recommendations thereon.

With reference to the above statement, describe the procedure you would follow to establish the Capital Markets Tribunal. (10 marks)

- (b) Neema Bwire is an employee of the recently established Central Depository and Settlement Corporation (CDSC) in your country. A central depository is expected to make rules that will govern all aspects of its operations.

Advise Neema Bwire on five rules that should be made to govern the operations of the central depository. (10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Stella Chelewa travelled abroad to pursue her undergraduate degree. Before her departure, she had purchased shares from Pendeza Company Ltd. The company issued her with a share certificate for the shares bought. Upon her arrival back in the country, she realised that her shares must undergo immobilisation. Stella Chelewa has approached you for guidance as she is afraid she might lose her shares.

Advise Stella Chelewa on the process of immobilisation. (10 marks)

- (b) (i) Upon establishing that a customer is high risk, a market intermediary should undertake enhanced due diligence (EDD) on the customer.

With reference to the above statement and guidelines on prevention of money laundering, propose five forms of EDD that could be undertaken. (5 marks)

- (ii) Identify five programmes and policies that a market intermediary should develop, adopt and implement to prevent and detect offences relating to money laundering. (5 marks)

(Total: 20 marks)

QUESTION THREE

- (a) It is common practice in current recruitment processes to ask for a report from rating agencies such as credit reference bureaus.

With reference to the above statement, describe five functions of credit rating agencies. (10 marks)

- (b) In relation to raising capital in the securities market:

(i) Explain two advantages of private placement. (2 marks)

(ii) Highlight three disadvantages of private placement. (3 marks)

- (c) Describe five major disclosures that a firm listing its shares for the first time on a securities exchange is required to make. (5 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Weak corporate governance has contributed to financial instability in many countries. This is by virtue of the fact that it increases the risk profile of companies and exposes institutions to a greater risk of loss than would otherwise be the case.

With reference to the above statement, analyse six of the underlying factors that might cause weak corporate governance. (12 marks)

- (b) Kijivu Ltd., a cement manufacturing company is in the process of listing on the securities exchange.

Advise Kijivu Ltd. on the documents required to be submitted to the Securities Exchange for purposes of listing. (8 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) The Securities Exchange might, with a company's approval, grant a request for suspension from trading of any listed securities, where an issuer requests for the suspension in writing.

With reference to the above statement, discuss four circumstances under which an issuer might request for suspension from trading of its securities. (8 marks)

- (b) A Central Depository is required to maintain a depositor's record, usually in the form of a statement.

Highlight four pieces of information which must be included in the depositor's record. (4 marks)

- (c) The Regulatory Framework in the financial services sector in Kenya and the East African region generally faces a number of challenges. These challenges may be reflected in a myriad of problems facing the Sector.

Discuss four of these challenges indicating clearly how they impact on the growth of the sector. (8 marks)

(Total: 20 marks)

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KASNEB

CS PART III SECTION 5

FINANCIAL MARKETS LAW

WEDNESDAY: 24 May 2017.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) A number of players in the financial sector are established as companies. The integrity of the financial system as a whole is dependent on the level of integrity of the entities within the financial sector.

An essential component of the analysis of a company's level of integrity is a review of the quality of its corporate governance system. The board of directors are a critical part of the system of checks and balances that lie at the heart of corporate governance system. Both individually and as a group, board members have imperative responsibilities to perform.

Required:

In relation to the above statement, highlight five responsibilities of board members, both individually and as a group. (10 marks)

- (b) The rapid spread and far-reaching impact of the global financial crisis have highlighted the need for strengthening financial systems in both advanced economies as well as emerging markets. Emerging markets face particular challenges in developing their nascent financial systems and making them resilient to domestic and external shocks.

Required:

In relation to the above statement, argue five cases in favour of regulation of financial markets in your country. (5 marks)

- (c) Discuss five challenges faced by the insurance industry in your country. (5 marks)

(Total: 20 marks)

QUESTION TWO

- (a) On Thursday, 20 April 2017, Fanikisha Bank Limited experienced liquidity difficulties forcing the Central Bank to put it under statutory management. On the same day, the Central Bank appointed Deposit Insurance Corporation as the receiver manager to assume the management, control and conduct of the affairs and business of Fanikisha Bank Limited.

Required:

Describe six circumstances that could have prompted the Central Bank to appoint the Deposit Insurance Corporation as the receiver manager of Fanikisha Bank Limited. (6 marks)

- (b) In relation to charging of securities:

- (i) Explain the meaning of the term "share pledge". (2 marks)
- (ii) Analyse five key aspects that a legal due diligence process must entail to aid an investor in acquiring the whole undertaking of an existing company. (5 marks)

- (c) In the context of raising capital in the securities market:

- (i) Explain the term "delisting". (2 marks)
- (ii) Discuss five reasons why a company could opt to delist. (5 marks)

(Total: 20 marks)

QUESTION THREE

(a) Radiant Global Investment Limited (RGIL), during its annual general meeting, resolved to form a collective investment scheme (CIS) to broaden their income stream. Patricia Lesuda, RGIL's Company Secretary, was tasked by the Chief Executive Officer (CEO) to apply for a CIS licence from the capital markets regulator in her country.

Required:

Identify six documents that Patricia Lesuda should furnish the capital markets regulator to enable RGIL form the CIS. (6 marks)

(b) In relation to raising capital through the securities exchange:

(i) Distinguish between a "private offer" and a "public offer". (2 marks)

(ii) Evaluate four roles played by a sponsoring broker for a firm issuing shares to the public for the first time. (4 marks)

(c) In relation to regulation of savings and credit co-operative societies (SACCOs) in your country:

(i) Differentiate between "deposit-taking" and "non-deposit taking" SACCO's. (2 marks)

(ii) Explain six actions that the regulator could take on a SACCO society that operates in a manner that is detrimental to the interest of members. (6 marks)

(Total: 20 marks)

QUESTION FOUR

(a) With reference to the Proceeds of Crime and Anti-Money Laundering Act:

(i) Summarise four functions of the Financial Reporting Centre. (4 marks)

(ii) Identify four measures that the Board of Directors of a financial institution should take to prevent money laundering. (4 marks)

(iii) Machaveli Communications Limited is a victim of internal fraud in which one of its employees wired the company's funds to his personal bank account.

Advise the company on four measures that could be taken to prevent fraud through wire transfers in future. (4 marks)

(b) Examine four categories of fraud investigated by the capital markets fraud investigation unit (CMFIU). (8 marks)
(Total: 20 marks)

QUESTION FIVE

(a) According to the Central Depositories Act, "a central depository shall keep or cause to be kept such records and accounts in sufficient detail".

In relation to the above statement, highlight four particulars that should be disclosed on records and accounts maintained by a central depository. (4 marks)

(b) Discuss three principles of International Organisation of Securities Commissions (IOSCO) relating to market intermediaries. (6 marks)

(c) In accordance with the Capital Markets Act, a person who deals in listed securities or their derivatives that are price-affected in relation to the information in his possession commits an offence of insider trading.

In the context of the above statement, highlight five examples of insider information. (5 marks)

(d) With reference to the Central Depositories Act regarding immobilisation and dematerialisation of securities:

(i) Highlight the legal provisions regarding restriction on trade in eligible securities. (2 marks)

(ii) Describe three types of records that should be maintained by a central depository. (3 marks)

(Total: 20 marks)

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KASNEB

CS PART III SECTION 5

FINANCIAL MARKETS LAW

WEDNESDAY: 23 November 2016.

Time Allowed: 3 hours.

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

QUESTION ONE

As the trading landscape becomes increasingly international, securities exchanges are cross listing each other's securities in a cooperative bid to boost liquidity and increase trading volume. The hope is that these arrangements tap into a latent demand, suppressed by the complexity of trading on a foreign securities exchange.

Required:

- (a) Explain the term "cross-border listing". (2 marks)
- (b) Argue the case for and against cross-border listing. (10 marks)
- (c) Describe four ways through which the core market institutions responsible for the fair, efficient and orderly functioning of the capital markets are made sufficiently robust to provide investors with confidence to channel their funds through the capital markets. (8 marks)

Total: 20 marks

QUESTION TWO

- (a) Ezra Tunde, an employee of the Central Depository and Settlement Corporation (CDSC), was given access to the computer system of his employer. Ezra Tunde was shocked by the magnitude of information revealed by the computer system.

Ezra Tunde has been advised that though he has all that access he could easily be accused of irregular use of the computer system.

Required:

- (i) Describe three offences that Ezra Tunde might commit while using the computer system. (6 marks)
 - (ii) Explain two penalties arising from the above offences. (2 marks)
 - (iii) Highlight the importance of taking reasonable computer system security measures by central depositories and their agents. (2 marks)
- (b) Juma Mwashuma received an email from Ellen Kachero, a lady whose husband had invested heavily in the local capital markets. Ellen Kachero informed Juma Mwashuma that her husband had just died in a motor vehicle accident, leaving behind a big fortune in the securities exchange. The e-mail further stated that Ellen Kachero had been diagnosed with a terminal illness and had only three months to live.

Ellen Kachero then requested Juma Mwashuma to impersonate her late husband, Chapuo Kachero and undertake unauthorised transactions in his securities account. Juma Mwashuma had been facing financial difficulties and so accepted the plan without much convincing.

The above matter has come to the attention of the Capital Markets Fraud Investigation Unit.

Required:

- (i) Explain six functions of the Capital Markets Fraud Investigation Unit. (6 marks)
- (ii) Describe four actions that could be taken against Juma Mwashuma by the Capital Markets Fraud Investigation Unit. (4 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Discuss five conditions under which an offer shall be regarded as a private offer. (10 marks)
- (b) Credit Rating Agencies issue opinions on the future creditworthiness of a particular company, security or obligation as of a given date. Given the influence Credit Rating Agencies opinions could have on securities markets, their activities are thus of imperative interest to investors, lenders, issuers and securities regulators alike.

Propose five ways through which credit rating agencies could ensure the following aspects in their activities:

- (i) Quality and integrity of the rating process. (5 marks)
- (ii) Independence and freedom from conflicts of interest. (5 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Credible deterrence is a key component of any effective enforcement strategy. Deterrence is credible when would be wrongdoers perceive that the risks of engaging in misconduct outweigh the rewards and when non-compliant attitudes and behaviours are discouraged.

With reference to the above statement, summarise six key elements of credit deterrence. (6 marks)

- (b) Zakayo Hazi is an Investment and Financial Analyst student who intends to open an account with the Central Depository and Settlement Corporation (CDSC) in your country.

Required:

Advise Zakayo Hazi on the following:

- (i) Three documents required in order to open a CDSC account. (3 marks)
- (ii) Five benefits of having a CDSC account. (5 marks)
- (c) In the context of charging and mortgaging of securities:
- (i) Describe the procedure of securing a loan through charging listed ordinary shares as security for the loan. (4 marks)
- (ii) Explain two ways through which payment of dividends on charged securities might be effected. (2 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Politically Exposed Persons (PEPs) are individuals who are or who have been entrusted with prominent public responsibilities. Licensees should be aware that business relationships with PEPs, family members and close associates of PEPs are deemed to pose a greater than normal money laundering risk to licensees by virtue of the possibility for them to have benefited from proceeds of corruption.

Propose five risk management systems that licensees should put in place to demonstrate enhanced due diligence measures in conducting such relationships. (10 marks)

- (b) Explain two differences and two similarities between "money laundering" and "terrorist financing". (4 marks)
- (c) (i) Provide the definition of the term "corporate governance" as adopted by the International Organisation of Securities Commission (IOSCO) from the Organisation for Economic Cooperation and Development (OECD) principles. (2 marks)
- (ii) Board committees play an important role in the governance process. Each committee should have specific written terms of reference issued by the Board and adopted by the committee.

Suggest four terms of reference for the Risk Committee of the Board. (4 marks)

(Total: 20 marks)

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KASNEB

CS PART III SECTION 5

FINANCIAL MARKETS LAW

WEDNESDAY: 25 May 2016.

Time Allowed: 3 hours.

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

QUESTION ONE

You have been appointed as the Company Secretary of ABC Ltd. which has been in existence for the past five years and has been performing very well. The company was listed on the securities exchange just about one year ago.

One of the observations you make as a new appointee is the strained relationship between Moses Chacha, the Chief Executive Officer (CEO) of ABC Ltd. and Charles Odongo, the Chairman of the Board of Directors of ABC Ltd.

The relationship between the Chairman of the board and the CEO is so bad that Board meetings always end up in heated arguments between the two. Their disagreement centres on their roles as Chairman and CEO. There seems to be a conflict and each wants to perform the functions of the other.

Although their roles are generally known, there is no written document relating to their roles. There is a clear battle of supremacy between the Chairman of the board and the CEO of ABC Ltd.

Among your key roles as the Company Secretary, is to prepare guidelines with reference to the Code of Governance practices for issuers of securities to the public.

Required:

Propose clear guidelines on the following:

- (a) (i) Roles of the Chairman and the Chief Executive Officer. (6 marks)
- (ii) Company Secretary's role in supporting the Board to adhere to Board policies and procedures. (4 marks)
- (b) Organisations need to be proactive and diligent in the fight against money laundering within their organisations.

With reference to the above statement, describe five indicators of potential money laundering activities in the following areas:

- (i) Fund transfers and deposits. (5 marks)
- (ii) Securities transactions and account activity. (5 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Bob Njela has just completed filling in the application form for appointment as a central depository agent. He would like to submit the application form to the chief executive of the central depository, but he is not sure about the documents that must accompany the application.

Required:

- (i) Advise Bob Njela on the documents that must accompany his application to operate as a central depository agent. (6 marks)
- (ii) Describe four continuing obligations that every central depository agent shall have throughout the term of its appointment. (4 marks)
- (b) With specific reference to regulations of capital markets:
 - (i) Explain four principle objectives of the Capital Markets Authority in your country. (4 marks)

- (ii) Highlight the principles of International Organisation of Securities Commissions (IOSCO) relating to the regulator. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Describe four instances when a person shall be deemed to have an interest in a security. (4 marks)
- (b) Explain the legal provisions governing the following:
- (i) Records and accounts that a central depository should maintain. (4 marks)
- (ii) Audit of records and accounts maintained by central depository agents. (2 marks)
- (c) The complex system of securities transactions and the sophistication of fraudulent schemes require strong and rigorous enforcement of securities laws. The regulator or other competent government authority should, therefore, be provided with comprehensive investigatory and enforcement powers.

Required:

Propose six comprehensive investigatory and enforcement powers that a regulator or competent government authority should have. (6 marks)

- (d) Examine the process of charging and subsequently discharging of a book-entry security. (4 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) You are the company secretary of XYZ Ltd. The Board of Directors would like your advice on the relationship between inside information and public information.

Advise the Board of Directors on the following matters:

- (i) The ways in which a person might induce or attempt to induce another person to subscribe for, sell or purchase securities. (6 marks)
- (ii) Circumstances under which information might be treated as having been made public. (4 marks)
- (b) Explain the circumstances under which a company secretary shall file an information notice with the Capital Markets Authority for an issuer or offeror. (6 marks)
- (c) Suggest four measures that an offeror could put in place to ensure that shareholders have the information necessary to enable them make informed decisions. (4 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) As the company secretary of Mvua Ltd., you have been requested to develop a template of elements for an effective self regulatory organisation for use by organisations in your country.

Required:

Develop a list of the basic elements you would include in the template. (8 marks)

- (b) A market intermediary shall not provide services in respect of a regulated activity unless it has entered into a written agreement with the client and the service to be provided in accordance with the agreement.

With reference to the above statement, summarise six rights of the client that should be included in the agreement.

(6 marks)

- (c) Discuss the procedure to be followed in withdrawal of an immobilised security. (6 marks)

(Total: 20 marks)

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KASNEB

CS PART III SECTION 5

FINANCIAL MARKETS LAW

WEDNESDAY: 25 November 2015.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Self-regulation, typically involves a unique combination of private interests with government oversight and is an effective and efficient form of regulation for the complex, dynamic and ever-changing financial services industry. In the International Organisation of Securities Commissions (IOSCO) report of 1998, it was stated that “Self-Regulatory Organisations (SROs) can be a valuable component to the regulator in achieving the objectives of securities regulations”.

Assume that you have received the above write-up from the chairman of the Board of the company you work for. You have instructions to attend the next Board retreat to elaborate further on self-regulation.

Required:

- (i) Justify to the Board the need for incorporating self-regulation into regulatory frameworks. (8 marks)
- (ii) Describe four rules that a self regulatory organisation shall make relating to matters for which it has regulatory or supervisory functions. (4 marks)
- (b) For the Capital Markets Authority to carry out its objectives, it might exercise or perform certain powers, duties and functions bestowed upon it.

With reference to the above statement, explain eight such powers, duties and functions. (8 marks)

(Total: 20 marks)

QUESTION TWO

- (a) On Saturday, 19 September 2015, Uwezo Ltd. held its annual general meeting. A number of resolutions were passed. One of the proposals was made by Michael Matata who proposed that Uwezo Ltd. ventures into the business of securities by operating a central depository.

You are the Certified Secretary (CS) of Uwezo Ltd. and the Chief Executive Officer has asked you to prepare a write up on how to establish a central depository.

Required:

- Prepare a summary of the rules governing the establishment of a central depository. (6 marks)
- (b) A central depository may establish a Central Depository Guarantee Fund for the settlement of trade through the central depository.
- Highlight four examples of the contents of the Central Depository Guarantee fund. (4 marks)
- (c) In the context of prevention of money laundering:
- (i) Explain the meaning of the term “money laundering”. (6 marks)
- (ii) Describe the process involved in money laundering. (4 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Bendere Ltd. is a listed company that was incorporated in the year 2000 in Country X whose immediate neighbour is Country Y. Bendere Ltd. would like to be listed on the securities exchange of Country Y. Upon being listed, Bendere Ltd. plans to publicly offer debt securities.

Bendere Ltd. would like to ensure that all the information that will enable investors to determine whether the debt securities are being offered on terms that are acceptable to them, is included.

Advise Bendere Ltd. on the information which should be included in the public offer. (10 marks)

- (b) With reference to immobilisation and dematerialisation:
 - (i) Explain four circumstances under which an issuer shall refuse registration of the transfer to a central depository. (4 marks)
 - (ii) Examine the procedure used by central depository agents to dematerialise securities at the central depository. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Summarise five records that must be maintained by the securities exchange. (5 marks)
- (b) Explain the content of the record of depositors maintained by a central depository. (5 marks)
- (c) Credit rating agencies issue opinions on the future creditworthiness of a particular company, security or obligation as of a given date. These opinions tend to be relied upon and can have an effect on securities markets in a variety of ways. Credit rating agencies should therefore endeavour to issue opinions that help reduce the asymmetry of information among borrowers, lenders and other market participants.

Comment on how credit rating agencies could reduce asymmetry of information making reference to the above statement and to International Organisation of Securities Commissions (IOSCO) principles on credit rating agencies.

(10 marks)
(Total: 20 marks)

QUESTION FIVE

- (a) The emerging markets committee of the International Organisation of Securities Commissions (IOSCO) recommended that its members foster good corporate governance through legislation, regulation and codes of good practices using the Organisation for Economic Co-operation Development (OECD) principles of corporate governance as a benchmark.

With reference to the above statement and your knowledge on corporate governance, propose five ways in which a company would ensure that shareholders have the opportunity to participate effectively in general shareholder meetings. (10 marks)

- (b) One of the basic shareholders' rights is to participate and vote in general shareholder meetings. Identify five other basic rights of shareholders. (5 marks)
 - (c) In relation to insider trading, "inside information" means information which has not been made public. Describe five ways through which information could be made public. (5 marks)
- (Total: 20 marks)**
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KASNEB

CS PART III SECTION 5 FINANCIAL MARKETS LAW

PILOT PAPER

www.masomomosingi.com

September 2015.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Discuss four arguments in favour of self-regulation of financial markets. (8 marks)
- (b) Explain six powers that a statutory regulator should have in order to effectively supervise financial markets licencees. (12 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) A securities exchange is required to furnish the regulator every year with a report relating to the activities of the exchange in the preceding year.
- Discuss six contents of such a report. (12 marks)
- (b) Explain four types of dealings that a stockbroker is prohibited from engaging in by the Capital Markets Authority. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) As a regulator of the banking sector, the Central Bank is conferred with certain powers in relation to commercial banks.
- Discuss four functions of the Central Bank in relation to commercial banks. (8 marks)
- (b) As a way of promoting economic growth and development through the securities exchange, the Securities Exchange in your country introduced a Growth Enterprise Market Segment of the exchange.
- Explain six eligibility requirements for listing on the Growth Enterprise Market Segment. (12 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Joshua Simba retired from employment five years ago. During his working days in the 1970s and 1980s, he had purchased shares in various companies that are now listed on the Nairobi Securities Exchange.
- Mr. Simba is still in possession of the share certificate in relation to most of his shares but some certificates have been lost or misplaced.
- On the advice of his son, Mr. Simba now seeks to sell all his shares so as to finance the construction of a retirement home.
- (i) Advise Mr. Simba on how to deal with the problem of the lost share certificates. (4 marks)
- (ii) Outline the role of a company secretary in the process of immobilisation and dematerialisation of securities. (6 marks)
- (b) Outline six matters that should be provided for in the CDS rules made by a central depository. (6 marks)
- (c) Distinguish between an "Investor Compensation Fund" and a "Deposit Insurance Corporation". (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

(a) Discuss three principles of co-operation in regulation of securities markets as set out in the International Organisation of Securities Commission (IOSCO) principles. (6 marks)

(b) You are an employee of the Capital Markets Authority working in the fraud investigation unit.

The Authority has received certain information from an anonymous source regarding alleged shortcomings in corporate governance of a listed company and you have been tasked with conducting an investigation of the company.

Prepare a memorandum setting out four key issues that your investigation would focus on. (8 marks)

(c) Discuss three requirements for registration of a Retirement Benefits Scheme. (6 marks)

(Total: 20 marks)

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