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**CPA PART II SECTION 3**

**CS PART II SECTION 3**

**CCP PART II SECTION 3**

**COMPANY LAW**

**WEDNESDAY: 19 May 2021.**

**Time Allowed: 3 hours.**

**Answer any FIVE questions.**

**ALL questions carry equal marks.**

**QUESTION ONE**

- (a) XYZ Ltd. is a newly formed company which deals in manufacture and supply of stationery.

The board of directors of XYZ Ltd. is composed of first time directors who are not conversant with company operations.

Advise the board of directors of XYZ Ltd. with regards to auditors and specifically on the following:

- (i) Eligibility for appointment as a statutory auditor of a company. (3 marks)
- (ii) Auditor's rights to information from foreign subsidiaries. (3 marks)
- (iii) Person mandated by law to provide an auditor with information or explanations as the auditor thinks necessary for carrying out their responsibilities. (4 marks)

- (b) State six particulars that a company's register of directors is required to contain:

**Note: Register of directors who are natural persons.** (6 marks)

- (c) As a company law expert, you have been approached by three friends who intend to form a private company to give guidelines on matters regarding directors.

Explain to the three friends, the relevant governing legal provisions on each of the items below:

- (i) Minimum number of directors for a private company. (1 mark)
- (ii) Minimum age for a director. (1 mark)
- (iii) Two requirements that a loan to directors must meet. (2 marks)

**(Total: 20 marks)**

**QUESTION TWO**

- (a) Explain three characteristics of a company. (6 marks)

- (b) Highlight four differences between a "private company" and a "public company". (4 marks)

- (c) With reference to both case law and common law, discuss five rules governing pre-incorporation contracts. (10 marks)

**(Total: 20 marks)**

**QUESTION THREE**

- (a) With specific reference to derivative actions:

- (i) Define the term "derivative claim". (2 marks)

- (ii) Identify two causes of action with respect to which a derivative claim might arise. (2 marks)

- (iii) Highlight three outcomes that might arise upon the court hearing the application of a derivative claim. (3 marks)

- (b) Outline three rights that a member of a company has with regards to a general meeting. (3 marks)
- (c) With respect to companies incorporated outside Kenya or your country, explain five documents which are necessary to accompany the application for registration in Kenya or your country. (10 marks)
- (Total: 20 marks)**

**QUESTION FOUR**

- (a) In the context of debt capital:
- (i) Outline six terms contained in a debenture trust deed. (6 marks)
- (ii) Highlight four advantages of a floating charge. (4 marks)
- (b) Identify four uses of a statement of profit or loss. (4 marks)
- (c) Highlight three conditions for a company to be deemed a “small company”. (6 marks)
- (Total: 20 marks)**

**QUESTION FIVE**

- (a) In relation to the company secretary:
- (i) Highlight three qualifications required for one to be registered as a company secretary. (6 marks)
- (ii) Discuss the status of the company secretary in relation to the company. (6 marks)
- (b) Mutiso, a member of Tusonge Company Ltd., inspected the register of members of the company and noted that his name had been omitted.
- Advise Mutiso on how he should proceed to have his name entered in the register. (8 marks)
- (Total: 20 marks)**

**QUESTION SIX**

- (a) Enumerate six most common reasons why companies might want to reduce their capital. (6 marks)
- (b) In the context of company dividends:
- (i) Explain the meaning of the phrase “cutting a melon”. (2 marks)
- (ii) State three reasons why a limited company might suspend issuing dividends. (6 marks)
- (c) Explain six advantages of preference shares to both the shareholder and the company: (6 marks)
- (Total: 20 marks)**

**QUESTION SEVEN**

- (a) With reference to corporate restructuring:
- (i) Describe four types of company mergers. (4 marks)
- (ii) State three causes of internal reconstruction of a company. (3 marks)
- (b) Outline five circumstances under which an unregistered company can be liquidated. (5 marks)
- (c) The case of Sharp V. Dawes indicates that one person cannot constitute a meeting.
- Explain four exceptions to this rule. (8 marks)
- (Total: 20 marks)**
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