

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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