



CS PART III SECTION 6

GOVERNANCE AND SECRETARIAL AUDIT

FRIDAY: 1 December 2017.

Time Allowed: 3 hours.

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

QUESTION ONE

SIGAMANYA LIMITED

Richard Kiti is the chairman of the board of directors of Sigamanya Limited, a public listed company in the technology sector. He also doubles up as the chairman of the nomination committee. The chairman has requested you as the company secretary of Sigamanya Limited to discuss the feedback received from the recent annual performance review of the board, its committees and the independent directors.

The Board consists of eight directors comprising the chairman, two executive directors and five independent non-executive directors. Among the directors of the board, only one is a female director. The external secretarial auditors who undertook the performance review of the board indicated several weaknesses with some of the non-executive directors (NEDs).

A recently appointed NED has complained to the auditors that she did not receive enough support from the company when she was appointed. According to her, being given copies of the minutes of past board meetings, being taken on a tour of several offices of the company and holding two meetings with the company secretary to discuss the company's affairs was not sufficient induction training.

Another NED was accused by fellow directors of wasting time at board meetings and committee meetings by talking for too long. It was also argued that he was not preparing adequately by reading the board papers before commencement of the meetings.

A third NED was accused by colleagues of failing to contribute adequately to discussions in board meetings. He was an ex-government minister who had some useful political connections which might benefit the company.

A fourth NED who was the chairman of the audit committee has been a board member for ten years. He had just finished the first year of a renewed three-year contract, subject to annual re-election by the shareholders.

The Chief Executive Officer (CEO) has also raised in confidence another problem. He stated that, at the moment there were just two executive directors on the board, the CEO and the Human Capital Director. The chief finance officer (CFO) had informed the CEO that the time was ripe for him to be appointed to the Board in order to further his career. If he does not get the appointment that he is hoping for, he will probably resign and look for boardroom opportunities with other companies. The CEO has reaffirmed that he does not want to lose the services of the chief finance officer.

Required:

- (a) Discuss three responsibilities of the board chairman of Sigamanya Limited in relation to the annual performance review of the board in compliance with the corporate governance code of your country. (6 marks)
- (b) Advise Richard Kiti on five measures he might consider, in response to the findings of the performance review of the directors of Sigamanya Limited in order to improve board effectiveness. (10 marks)
- (c) As the company secretary of Sigamanya Limited, discuss how you would respond to the request of the chief finance officer for an appointment to the board. (4 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Differentiate between “diversion of funds” and “siphoning of funds”. (4 marks)
- (b) You have been engaged by Waamini Limited, a company that is involved in the distribution of fast moving consumer goods to develop and recommend the implementation of annual board evaluation system in the company.
- Discuss five main steps you would adopt in working with the Board of Directors to implement an annual board evaluation system at Waamini Limited. (5 marks)
- (c) As a practicing Certified Secretary, generate five issues that are likely to inform your focus in a due diligence process where your client intends to invest significant amount of money in an existing business. (5 marks)
- (d) The board of Mwembeswere Ltd. has recently grown in size. The chairman of the board, Mongo Chilabu is considering how to enhance its effectiveness, particularly in terms of decision making.

The company operates in the information communication technology industry, a highly dynamic technical field. The board decisions are usually delayed due to a significant volume of technical questions raised at its board meetings. These questions have to be referred to the relevant technical team within the company or be directed to external advisors who had assisted in the research and development of the technology. Majority of the directors have also highlighted that the volume and complexity of the board papers is an issue. There is insufficient time to fully digest the information presented in the board papers prior to meetings.

Required:

As the company secretary, advise the board of Mwembeswere Ltd. on how to overcome the issues it is experiencing. (6 marks)
(Total: 20 marks)

QUESTION THREE

- (a) Elucidate the salient features of fraud risk management policy in a public limited company. (6 marks)
- (b) Internal audit has long been part of good corporate governance. Today, a growing number of boards, audit committees and management view the audit function as an important governance activity that offers significant benefits to the organisation. To achieve this potential, however, an internal audit must show superior levels of performance and effectiveness.

Required:

Assess the effectiveness of an internal audit function as a key player in corporate governance. (8 marks)

- (c) Many jurisdictions require listed companies to include a statement on their internal control systems in their annual reports. In some instances, there is need for the internal auditors and the board to report on the procedures used.

Required:

In relation to the above statement, describe good governance practices in reporting on internal control systems as per the corporate governance code of your country. (6 marks)
(Total: 20 marks)

QUESTION FOUR

- (a) (i) Describe the term “integrity pact”. (2 marks)
- (ii) Evaluate the monitoring mechanism under the integrity pact developed by Transparency International. (6 marks)
- (b) A practicing company secretary ignored some material discrepancies while issuing out a compliance certificate to a company.
- In relation to the above aspects, analyse the professional responsibility involved in issuing a compliance certificate. (6 marks)
- (c) Assess the significance of compliance of secretarial standards for good governance in organisations. (6 marks)
(Total: 20 marks)

QUESTION FIVE

- (a) A majority of the board of directors of Debby Ltd. have realised that some of the business activities carried out in the name of the company are not in the interest of either the company or its members.

The directors propose that the company should make an application to the court to appoint an inspector to carry out an investigation so as to find out the whole truth.

Required:

- (i) Examine the procedure that should be followed by the directors to get the company's affairs investigated as per the Companies Act. (4 marks)
- (ii) As the company secretary, draft the application to the court. (12 marks)
- (b) The directors of a public company are aware that they are likely to be prosecuted for an offence under the Companies Act which is not compoundable.

Assess the circumstances under which the directors could seek relief from the liability for the offence as provided under the Companies Act. (4 marks)

(Total: 20 marks)

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