KASNEB

CS PART II SECTION 4

CORPORATE SECRETARIAL PRACTICE

THURSDAY: 26 May 2016. **Time Allowed: 3 hours.**

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

QUESTION ONE

CAREFREE LTD.

Carefree Ltd., a listed company, has been experiencing challenges in the last two years including decline in sales, high employee turnover, huge penalties from government agencies for non-compliance and poor customer rating.

During its special board meeting held in December 2015, the Board of Directors resolved to undertake a corporate restructuring of the company. To drive the restructuring process, the Board recruited Mwasi Mwachiro as the new chief executive officer (CEO) and gave him a target of changing the company's fortunes by growing it by at least 200% in the next three years.

To achieve the target, the CEO proposed that Carefree Ltd. acquires majority shareholding in Usafi Ltd., another listed company. In addition, the CEO plans to diversify the operations of Carefree Ltd. from Agriculture to importation of new cars as well as investment in real estate. Other changes the CEO proposed include selling off non-performing subsidiaries, a rights issue of shares, establishment of an employee share ownership plan and leveraging on information technology to improve efficiency in the company's operations.

Required:

(a) Assuming that you are the company secretary of Carefree Ltd., advise the chief executive officer on the relevant approvals required before implementing the proposed changes in the company. (3 marks)

(b) Advise the chief executive officer on the procedure to be followed by Carefree Ltd. in acquiring majority shareholding in Usafi Ltd. (6 marks)

(c) Explain the following terminologies as used in the context of Carefree Ltd.:

(i) Rights issue. (2 marks)

(ii) Corporate restructuring. (2 marks)

(iii) Leverage on information technology. (2 marks)

(d) Outline five consequences of the appointment of a receiver in a winding up process of a company. (5 marks)

(Total: 20 marks)

QUESTION TWO

(a) The Board of Directors of Red Ivy Ltd. filled up a casual vacancy caused by the death of Mr. X by appointing Mr. Y as a director on 30 April 2016. Unfortunately, Mr. Y passed on after working for about 40 days as a director. The Board wishes to fill up the casual vacancy by appointing Mrs. Y in the forthcoming meeting of the Board.

Required:

Advise the Board on the appointment of Mrs. Y as a director of the company. (8 marks)

(b) One of the clauses in the Articles of Association of Neema Ltd. provides that a meeting of the Board of Directors of the company shall be held at 9.00 a.m. on the last day of every quarter ending 31 March, 30 June, 30 September and 31 December.

Relying on the above clause in the Articles, the company did not send notices to the directors in respect of the board meeting held on 31 March 2016. Some of the directors have questioned the validity of the board meeting on the ground that individual notices were not sent to the directors.

Required:

Advise the aggrieved directors on the validity of the board meeting held on 31 March 2016. (6 marks)

(c) With reference to takeovers and mergers, a company which intends to acquire effective control in a listed company is required to announce the proposed offer by press notice and serve a notice of intention of the takeover scheme to various persons.

Explain six exceptions to the above rule. (6 marks)
(Total: 20 marks)

QUESTION THREE

(a) Explain six circumstances under which an offer could be regarded as a private offer. (6 marks)

(b) The directors of Madingolo Ltd. are desirous of registering a pension scheme for their employees.

Advise the directors on the following:
(i) Requirements for registration of a pension scheme. (4 marks)
(ii) Requirements for registration as a scheme administrator. (6 marks)

(c) Highlight four contents of a director's report in the company's annual report. (4 marks)
(Total: 20 marks)

QUESTION FOUR

(a) James Karakara who holds 15% shareholding of a company and other shareholders have lost confidence in the Managing Director of their company. The Managing Director does not retire by rotation and was re-appointed for another 5-year term in the last annual general meeting (AGM) of the company.

Required:
Advise James Karakara on the procedure of removing the Managing Director under the Companies Act. (8 marks)

(b) A public limited company created a mortgage over its property in respect of a loan granted by a brother of one of the directors of the company. This transaction was well known by all the directors of the company, but the interested director neither disclosed his interest nor abstained from voting when the loan transaction was approved at the Board meeting.

Required:
Examine the validity of the transaction under case law and the Companies Act. (6 marks)

(c) Highlight six requirements of a valid oral will. (6 marks)
(Total: 20 marks)

QUESTION FIVE

(a) The Board of Directors of Chilulu Limited held a board meeting on 2 May 2016 at its registered office. During the meeting, Fredrick Nyale was appointed as the Managing Director of the company for a period of 5 years.

Required:
Draft a board resolution for the appointment of Fredrick Nyale as the Managing Director of the company for 5 years with effect from 1 June 2016. (10 marks)

(b) Eric Mazia was appointed as the chief executive officer of Kolongoni Ltd. for a period of 5 years with effect from 1 April 2013 on a basic salary of Sh.240,000 per month with other benefits. The Board of Directors of the company later discovered some questionable integrity issues with the chief executive officer in the conduct of affairs of the company. The company terminated services of the chief executive officer with effect from 1 March 2016. Eric Mazia termed his removal from office as the chief executive officer as illegal and claimed compensation from the company.

Required:
Discuss whether the management of Kolongoni Ltd. was bound to pay compensation to Eric Mazia after termination of his services. (6 marks)

(c) The shareholders of Malanga Ltd. unanimously passed a resolution at an annual general meeting (AGM) for payment of dividends at a rate higher than that recommended by the directors.

Required:
Examine the validity of the resolution passed by the shareholders of the company. (4 marks)
(Total: 20 marks)

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