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**NIGERIAN LAW SCHOOL**

**BWARI - ABUJA**

**BAR EXAMINATION-PART II FINAL**

**CORPORATE LAW PRACTICE**

**WEDNESDAY, AUGUST 31, 2016.      TIME ALLOWED: 3 HOURS**

**INSTRUCTIONS:**

**THIS PAPER IS DIVIDED INTO TWO SECTIONS. TWO ANSWER BOOKLETS ARE PROVIDED. QUESTIONS FROM EACH SECTION SHOULD BE ANSWERED ON A SEPARATE ANSWER BOOKLET. QUESTIONS 1 AND 4 ARE COMPULSORY. ONE OTHER QUESTION FROM EACH SECTION SHOULD BE ATTEMPTED.**

**WRITE YOUR EXAMINATION NUMBER ON EACH ANSWER BOOKLET.**

**SECTION A**

**QUESTION 1 (COMPULSORY)**

You were briefed by Mr. Fidelis Okon to incorporate a private company with the name "Kendel Palm Produce Limited". The other subscribers and directors of the Company are Nfon Okon and Etuk Okon. The registered address of the company and the address of the subscribers is No. 10, Yellow Duke Street, Calabar, Cross River State. The share capital of the Company is N10,000,000.00 divided into 10,000,000 ordinary

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shares of N1.00 each to be taken by the subscribers in the proportion of 50%, 10% and 10% respectively. The Company was incorporated December 15, 2012.

At the 3rd Annual General Meeting of the Company held on April 2, 2016 at its registered address, the following resolutions were proposed and passed:

- i. That the Company be registered as a public company;
- ii. That the name of the company be changed to Best Palm Produce Limited as Kent Palm Produce Limited.
- iii. That the registered address 'of the company be changed to No. 50 Atamuno Street, Calabar, Cross River State; and
- iv. That the sum of N5,000.000.00 be borrowed from Friendly Bank Plc of No. 17 Marien Hill road, Calabar, Cross Rivet State.

The loan was eventually taken and secured by a legal mortgage of the company's warehouse at No. 25, Edidem Isong Street, Calabar, Cross River State.

Two new members, Taye Hassan and Felicia Green were allotted 2,000,000 and 1,000,000 ordinary shares of the company respectively on August 15, 2016.

**Answer the following questions:-**

- (a) Complete the attached Forms CAC1A, 2A, 3 and 8.

(b) Draft the notice of the 3rd Annual General Meeting of the company stating two Ordinary and two special businesses from the scenario that the company will transact at the 3d Annual General Meeting.

(c) Draft the resolution to convert the company to a public the Company.

(d) The Company intends to register an organisation to take care of the welfare of the poor in its host Community. When registered the organisation will produce literature for distribution to raise money for the advancement of the organization's aim and objectives. Which organization is best suited for this purpose? List the documents that will be delivered to CAC in order to register the organisation.

## QUESTION 2

At the Annual General Meeting of Entak Nigeria Limited, there was a sharp disagreement amongst members regarding the proposal to incorporate an NGO as a platform to give back to the people of Bwari under the Company's corporate social responsibility.

Shortly after the meeting commenced, some members, walked out of the meeting following a serious disagreement with the Chairman.

Meanwhile, members agreed to register with the Corporate Affairs Commission, an organisation to be known as

Entak Football and Youth Empowerment Foundation. Concerned that the Attorney General of the Federation is a political adversary of the

Chairman, members want to know if there is an option of registering the foundation without seeking the consent of the Attorney-General.

**As the Company Secretary/Legal Adviser, answer the following questions:-**

(a) Advise the chairman on the legal implication of the actions of the members who walked out after the meeting commenced.

(b) Advise the members on the registration option that will allay their fear in registering the foundation.

(c) Highlight the documents to file at the Corporate Affairs Commission to register the option identified in (b) above.

(d) Draft the resolution of the Company authorising the registration of the foundation after the Annual General Meeting.

(e) Justify the inclusion of a special clause in the rules and regulation of the organisation.

### **QUESTION 3**

Clyde Information Technology Limited was incorporated in 2014 as a Nigerian subsidiary of the reputable Clyde Information Technology Inc of the United States of America. The Company has grown in reputation with both the Federal and State Governments owned schools in Nigeria.

In order to meeting with its business plans, the company now seeks to re-register Clyde Information Technology Limited as Clyde Information Technology Plc and list the shares of the Company on the floor of the

Nigerian Stock Exchange. As the Company Secretary, answer the following questions:-

(a) State the procedure, the Company will adopt in order to re-register the Company as Clyde Information Technology Plc?

(b) Draft the resolution to be passed at the Extra-ordinary General meeting of the Company held at No 4, Alfred Rwanda Road.

Mention three consequential alterations you will make in the Memorandum and Article of Association following the re-registration of the Company.

(c) List the five statutory books with relevant provisions of the Companies and Allied Matters Act that are required to be kept by Clyde Information Technology Plc.

(d) Mention five returns that are required to be filed with Corporate Affairs Commission by Clyde Information Technology. Plc and time stipulated for filing such returns.

## **SECTION B**

**PLEASE USE ANOTHER BOOKLET FOR THIS SECTION**

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#### **QUESTION 4 (COMPULSORY)**

**Read the following and answer the questions:**

(a) In the light of the looming economic depression in Nigeria as a result of the sharp decline in the global price of crude oil, the Federal Government has concluded plans to issue sovereignty bonds through the Debt Management office (DMO) to augment its dwindling revenue. Highlight five (5) conditions precedent to the successful issue of the bonds.

b) The controversy over the exclusive jurisdiction on investment disputes conferred by Section 284 of the Investment and Securities Act (ISA) on the Investment and Securities Tribunal (IST), having regard to the provisions of Section 251(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended) is yet to be resolved. Comment on the propriety of filing an action for the resolution of investment disputes at the IST.

(c) it is trite in corporate governance that while the minority will have their say, the majority will have their way. Briefly explain five (5) heads of protective reliefs available to minorities in Nigeria under the Companies and Allied Matters Act.

(d) New Generation Bank Plc was unable to satisfy the Central Bank of Nigeria' directive to Commercial Banks on the increase

of their share capital base to #100 billion. Three years after losing their operating licence, the shareholders consulted you to find out two

restructuring options that will salvage their investment in the moribund Bank, thus giving them the opportunity of holding shares in a viable Nigerian Commercial Bank. Advise them.

(e) The China - Nigeria Chamber of Commerce has concluded arrangements to register the body in Nigeria. Advise them on the most appropriate mode of registration. Briefly describe the registration procedure for the recommended entity.

## **QUESTION 5**

Citrus Pharmaceutical Nigeria Plc is a company engaged in manufacturing of drugs. Orange Chemicals Nigeria Limited is the major supplier of the chemicals and re-agents needed by the company for its business. Unfortunately, children started having complications after taking a batch of Citrus worm expeller which made NAFDAC to order that the drug be withdrawn from the market. The withdrawal of the drug affected the company as the drug was its cashcow and the negative publicity affected the sale of other drugs in the company's product line.

The company is owing Orange Chemicals Nigeria Limited the sum of 10 million which became due on 2nd November, 2015. Members of the company are not happy over its dwindling fortune. There have been allegations and counter-allegations of mismanagement of funds of the company. Members want to remove the Managing Director of the company. They also want to apply to CAC to investigate the affairs of the company on the grounds of failure of the Directors to convene a

general meeting of the company, keep accounting records, publish financial statements and file Annual Returns of the company.

Members also want to remove the Company Secretary for failure to keep records of minutes of meetings of the company held; and file the necessary returns to CAC.

**Answer the following questions:**

(a) Draft the statutory letter of demand on behalf of Orange Chemicals Nigeria Limited to Citrus Pharmaceutical Nigeria Pic to repay the sum of N10 million it is owing the company

(b) Draft an application to the CAC on behalf of the members of Citrus Pharmaceutical Nigeria Plc to investigate the affairs of the company.

(c) Highlight the procedure that will be followed by the members of the Company to remove the Managing Director of the Company.

(d) Enumerate the procedure for removing the Company Secretary.

(e) Assuming that Orange Chemicals (Nigeria) decides to exercise its right to file a petition for the winding up of Citrus Pharmaceuticals (Nigeria) Plc, state the procedure.

**QUESTION 6**

Optimum Construction Limited had ten (10) members on its Board of Directors at incorporation in July 2014. After the Annual General Meeting (AGM) in 2015 eight (8) of the Directors the company were appointed to fill the casual vacancy.



During the 3rd Annual General Meeting held on August 30, 2016, the Chairman introduced another item in the Agenda, which he stated to be retirement Of Directors, in accordance with extant law.

Otunba Kola Gbedu, one of the earliest appointed Directors interjected and cautioned the Chairman to stop pointing at him, as the rule does not affect him, having being a founding Director of the company. The Chairman further advised the newly appointed directors to confer among themselves and select those who would join in the retirement, otherwise they should all step down. When they stepped out, the newly appointed Directors, Okey Aziz was asked to accept to retire, being the youngest among them. He vehemently rebuffed their suggestion, and they returned without reaching an agreement. Rather, they insisted that they reserve the right to be re-elected automatically, even after retirement at the same Annual General Meeting.

Amidst the controversy, Haji Bunmi Shokoyn, a shareholder, indicated that she would be recommending two (2) Directors to replace retiring ones. The Chairman overruled her, and stated that it was the prerogative of the Chairman to nominate candidates to replace the retiring Director and that, as the Officer, he was not affected by the retirement rule.

The meeting was thrown into confusion. You have been

consulted for the resolution of the legal issues:

(a). (i) Advise the company on the application of the retirement rule on the Directors of the company, indicating how many of the Directors, and who in particular, would be affected by the rule.

(ii) Examine the contention of Ounba Cbedu that he would not retire being a founding Director of the company.

(b)(i) Outline the circumstances that may affect a Director's automatic election upon retirement at an Annual General Meeting.

(ii) How are the first Directors and additional Directors appointed? What constitute the ordinary business of an Annual General Meeting?

(c). (i) What Consequential records/returns are kept and delivered to the Corporate Affairs Commission upon change of Directors?

(ii) Examine the propriety of Chief Greg Woko, occupying dual position as Chairman/Chief Executive Officer in the company, under the code of Corporate Governance 2013.

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**NIGERIAN LAW SCHOOL**

**BAR PT II EXAMINATIONS**

**AUGUST 2016**

**CORPORATE LAW PRACTICE**

**MARKING SCHEME**

**SECTION A**

## **QUESTION 1( COMPULSORY)**

1(A) See: Completed CAC FORMS-----10 Marks

**(B)**

**KENDEL PALM PRODUCE LIMITED**

**NO. 10, YELLOW DUKE STREET, CALABAR**

**CROSS RIVER STATE**

**NOTICE OF THE 3RD ANNUAL GENERAL MEETING**

**RC. NO:**

**NOTICE IS HEREBY GIVEN** that the 3rd Annual General Meeting of the above named Company will be held on April 2, 2016 at the registered Address of the company, at No. 10. Yellow Duke Street, Calabar, Cross State to transact the following business:

### **ORDINARY BUSINESS**

1. Presentation of financial statement directors report and auditor's report
2. Re-election of retiring directors
3. Appointment of auditor and fixing the remuneration of auditors
4. Declaration of dividend. **1 Mark for any two**

### **SPECIAL BUSINESS**

1. Re-registration of the company as a public company



**DATED this..... day of..... 2016**

**Director**

**Director/Company Secretary**

**6 Marks**

(D)

The organisation best suited for this purpose is a Company Limited by Guarantee.

Reason being it is for charitable purpose, and that the profit made from the business will be used for the advancement of its aims and objectives. **See S. 26CAMA**

The documents that are required to be delivered to CAC in order to register the organisation are as follows:

- (1) Memorandum and Articles of Association duly Stamped
- (2) Written consent of the Attorney General of the Federation
- (3) CAC 1 -Availability Check and Reservation of Name
- (4) CAC 3 Notice of the Registered Address and any change thereof
- 5) CAC 2.1 Particulars of Company Secretary
- 6) CAC- Statutory Declaration of Compliance
- 7) CAC7-Particulars of First Directors and Subscribers e.g Driving International Passport, National Identity Card, etc

## QUESTION 2

(A)

By virtue of S. 232(1) CAMA, unless otherwise provided in the articles, no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and throughout the meeting.

However, where a member(s) withdraw from the meeting for what appears to the Chairman to be insufficient reasons and for the purpose of reducing the quorum, and in fact quorum is no longer present, the meeting may continue with the number present, and their decision shall bind all the shareholders and where there is only one member, he may seek direction of the court to take decision that will bind all the members. See: **S. 252(4) CAMA.**

where there is a quorum at the beginning, but no quorum later due to some shareholders leaving for what appears to the chairman to be insufficient reasons, the meeting shall be adjourned to the same place, and time, in a week's time, and if there is no quorum still at the adjourned meeting, the members present shall then be the quorum and their decision shall bind all Shareholders and where only one member is present, he may seek direction of the Court to take decision that will bind all the members. See **section 232(5)CAMA.**

In the instant case, the law allows the chairman to decide whether the reason for walking out is sufficient or insufficient. The legal implication

or the decision he takes will be in accordance with **S.232 (4)(5) CAMA**, as above.

(B) The registration option that will allay the fears of the members in registering the foundation is Incorporated Trustees under part **C CAMA**, in which case the Written Consent of the Attorney General of the Federation is not required.

(c)

1. CAC Form 1 -Availability check and reservation of name
2. CAC Form IT 1 -Duly completed Incorporated Trustees Application Form
3. Two copies of the constitution of the Foundation
4. Impression of the common seal of the Foundation
5. Copy of the resolution of the meeting where the special clause was adopted
6. Evidence of ownership of land or an underaking in lieu of ownership of land within two years of incorporation
7. Extracts of the minutes of the meeting where the trustees were appointed and the special Clause adopted
8. Duly Sworn Trustees Declaration Form
9. passport photographs each of the trustees attached to the trustees declaration form

10. Formal application for the Registration of the Foundation signed by the Chairman and the secretary or the solicitor (if any) engaged to undertake the registration

11. Original copies of newspaper publication or certified true copies of same

12. any Other document as may be required by the commission from time to time

13. Original receipts of payment of prescribed registration fees

(D)

**ENTAK NIGERIA LIMITED RC: 123456**

**(ANY ADDRESS)**

**ORDINARY RESOLUTION FOR FORMATION OF AN ORGANIZATION**

the Annual General Meeting of the company duly convened and held on the 3rd day of August 2016 at the conference hall of Aridof Hotels and Towers, Bwari, Abuja, the following resolution was proposed and unanimously passed:

"THAT Entak Football and Youth Empowerment Foundation be registered with the Corporate Affairs commission under part C of the Companies and Allied Matters Act."

**DATED this..... day of..... 2016**

**Director**

**Director/Company Secretary**

**1 Marks**



E) The justification of the special clause is to regulate the use and application of the organization's income and properties. By virtue of section 603(1) CAMA, the income and property of the organization shall be applied solely towards the promotion of the objects of the organization as set forth in its constitution and any portion thereof shall be paid or transferred directly or indirectly, by way of the income and dividend, bonus or otherwise by way of profit to any of the members of the organization. Also, in the event that the organization is dissolved, excess assets will not be distributed to members but will be given to organization of similar objects, if not found, such will be transferred to any other charitable organization.

### **QUESTION 3**

A) Procedure for re-registration of a private to public company under S.50 CAMA is as follows:

- Board proposal of re-registration
- Company Secretary would call an Extra- Ordinary general meeting
- Company giving 21 days Notice
- Special Resolution passed at General meeting
- Secretary to file the following documents
- -Letter of Application.

- printed copy of altered memorandum and articles of association
- -A copy of written statement on oath signed by the directors and secretary showing that the paid up capital of the company is not less than 25% of the authorised share capital.
- A Copy of the balance sheet as at the date of resolution or preceding 6 months whichever is later.
- Statutory Declaration by a director and secretary showing that the Special resolution has been passed and that the company's net assets are not less than the aggregate of the paid up capital and non-distributable reserves
- A copy of any Prospectus or Statement in lieu of prospectus delivered Within the preceding 12 months to SEC.

(B)

**CLYDE INFORMATION TECHNOLOGY LIMITED**

**(ADDRESS)**

**SPECIAL RESOLUTION PURSUANT TO S. 50 CAMA**

At the Extra- ordinary General Meeting of the company held On..... at No.4A Rewane Road, Ikoyi, Lagos it was resolved as follows:-

"that the company be re-registered as a Public Company"

**DATED this..... day of..... 2016**

**Director**

**Director/Company Secretary**

## 1 Marks

(c)

### MEMORANDUM OF ASSOCIATION

- The Name of the Company to end with PLC
- The Name of the Company in the Name Clause will end with PLC
- Status Clause to reflect that it is now a Public Company
- If the Share Capital of the company is less than N500,000, it must be increased accordingly

### ARTICLES OF ASSOCIATION

- The Name of the Company to end with PLC
- Restriction in transfer of shares in the capital clause to be removed.
- Any clause on written resolution for general meetings to be removed
- Any clause stipulating that more than 1 director can be appointed by a single resolution to be removed unless prior unanimous resolution has been passed.

(D)

- ✓ The Statutory Books with the Sections are: (ANY FIVE)
- ✓ REGISTER OF MEMBERS S- S.33
- ✓ INDEX OF MEMBER S- 35
- ✓ REGISTER OF SUBSTANTIAL INTERESTS IN SHARES-S. 97
- ✓ REGISTER OF DIRECTORS' SHAREHOLDING- S.275
- ✓ REGISTER OF DIRECTORS & SECRETARIES-. 292
- ✓ REGISTER OF CHARGES-S.91
- ✓ REGISTER OF DEBENTURE HOLDERS-S.193
- ✓ MINUTE BOOK-S.241
- ✓ RECORD OF INSTRUMENTS- S.207
- ✓ ACCOUNTING RECORDS-S.331

(E) The Statutory Returns to be filed at CAC and the Time are ( ANY 5):

- Notice of Change of name-. 15 days
- Notice of Change of Directors- 14 days
- Notice of change of Secretary- 14 days
- Notice of change of Registered office- 15 days
- Increase in Share Capital 14/15 days
- Reduction in share Capital-15 days

- Notice of Consolidation- 15 days
- Notice of Merger- 15 days
- Notice of Change of object- 15 days after the expiration of 28 days  
Or 15 days after court order.
- Allotment of Shares. One month
- Notice of Appointment of Auditor- 14 days
- Removal of Auditor- 14 days
- Re-registration-15 days

CORPORATE AFFAIRS COMMISSION

4-1 (9)

2 MKS



CHANGE OF NAME AVAILABILITY CHECK AND RESERVATION OF NAME  
Paragraph to Sections 31, 662 and 674

FORM CAC 1A

Name of Presenter: ANY NAME  
 Accreditation No: ANY NUMBER  
 Address: ANY ADDR 33  
 State: ANY P.O. Box: ANY NO. Telephone No.: ANY NUMBER  
 City: ANY CITY Email: ANY EMAIL

NAME OF COMPANY/BUSINESS NAME/INCORPORATED TRUSTEES

KENDEL PALM PRODUCE LIMITED 1/4 MKS

PROPOSED NAME OF COMPANY/BUSINESS/INCORPORATED TRUSTEES:

OPTION ONE  
BEST PALM PRODUCE PLC 1/2

OPTION TWO  
KENT PALM PRODUCE PLC 1/2

The name is to be used for:

- a. Private Limited Company (LTD)
- b. Public Limited Company (PLC)
- c. Unlimited Company (ULTD)
- d. Company Limited By Guarantee (LTDIGTE)
- e. Business Name
- f. Incorporated Trustees

Dated this ANY DATE Day of APRIL 20 16

Signature of Presenter

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TEN OKON NO. 10, YELLOW LAKE ST CALABAR   State CROSS RIVER	No of shares 1,000,000	Type of shares ORDINARY
TEN OKON NO. 10, YELLOW LAKE ST CALABAR   State CROSS RIVER	No of shares 1,000,000	Type of shares ORDINARY
YE HASAN ANY ADDRESS State	No of shares 2,000,000	Type of shares ORDINARY
FELICIA GREEN ANY ADDRESS State	No of shares 1,000,000	Type of shares ORDINARY
_____ _____ State	No of shares	Type of shares

ANY SIGNATURE  
 Signature of Director  
 (2) OF THE 3 NAMES  
 Name of Director & Tel. No.

If there is insufficient space on the form to provide the information required in the prescribed format, an required, please attach a separate form containing the

Creditation Number: ANY NAME  
 Signature & Date: ANY ADDRESS

FIDELIS OKON  
 NEW OKON  
 OKON

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Name	FIDELIS OKON	No of shares	Type of shares
Address	NO. 10, YELLOW LAKE ST, CALABAR	5,000,000	ORDINARY
City	CALABAR   State CROSS-RIVER		

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CORPORATE AFFAIRS COMMISSION



FORM CAC 3

2 weeks

NOTICE OF SITUATION/CHANGE OF REGISTERED ADDRESS  
pursuant to Sections 35 & 630

Company Number

ANY NO.

Company Name

BEST PALM PRODUCE PLC (OR)  
KENT PALM PRODUCE PLC

Section A

The registered office of the above named company is situate at:

Number/Street Name	17 YELLOW DUKE STREET	P. O. Box	
City	CALABAR	State	CROSS RIVER

1/2ml

Section B (For change in Registered Office Address only)  
The registered office of the above named company is now changed to:

Number/Street Name	NO. 50 ATAMUNO STREET	P. O. Box	ANY BOX
City	CALABAR	State	CROSS RIVER

1/4m

ANY SIGNATURE  
Signature of Director

ANY SIGNATURE  
Signature of Secretary

ANY OF THE (3) NAMES  
ANY TEL. NO.

ANY NAME & TEL  
Name of Secretary & Tel. No.

No house/plot number or street name, address must be described in sufficient details for easy location

Filed for filing by:

ANY NAME Accreditation Number: ANY NO.

& E-mail:

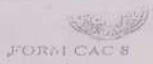
ANY ADDRESS & E-MAIL & TEL

Signature & Date: ANY SIGNATURE

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CORPORATE AFFAIRS COMMISSION



FORM CAC 8  
PARTICULARS OF CHARGE  
Pursuant to Section 197

3 M

Company Number: Any No.

Company Name: BEST PALM PRODUCE PLC (621)  
KENT PALM PRODUCE PLC

Director and Secretary of the above named Company certify that the Company executed an instrument creating the charge on the 2<sup>nd</sup> day of APRIL, 2016. The particulars of the charge are as described below.

Particulars of Charge:	<u>LEGAL MORTGAGE</u>
Date of creation of charge (or date of registration of property subject to the charge):	<u>2<sup>nd</sup> APRIL, 2016</u>
Amount of charge:	<u>₦ 5,000,000.00k</u>
Particulars of details and owners of the property charged:	<u>War House at NO. 25, Eddiem Isong Street, Calabar, Cross River State, belonging to BEST PALM PRODUCE PLC or KENT PALM PRODUCE PLC</u>
Names of persons entitled to the charge:	<u>Friendly Bank PLC</u>
Period of registration:	<u>Any date between 2<sup>nd</sup> APRIL and 3<sup>rd</sup> JUN 2016</u>

Any SIGNATURE  
Signature of Director

Any SIGNATURE  
Signature of Secretary

Any (1) of the three Names  
Name of Director & Tel. No. Any Tel No.

Any NAME  
Name of Secretary & Tel. No.

Presented for filing by:

Name: Any NAME Accreditation Number: Any NO.

Address: Any ADDRESS

Tel. No. & E-mail: Any TEL. NO. & EMAIL Signature & Date: Any SIGNATURE AND DATE

EE

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**COUNCIL OF LEGAL EDUCATION**  
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**BAR PT II EXAMINATIONS**  
**AUGUST 2016**  
**CORPORATE LAW PRACTICE**  
**MARKING SCHEME**  
**SECTION B**

**QUESTION 4:**

A.

Conditions precedent to the successful issue of Federal Govt (sovereign) bonds are:

- i. The feasibility report on the specific project to be financed
- ii. The total loan outstanding including the proposed bond shall not exceed 50% of the annual revenue of the issuer ( in this case the Federal Government) for the preceding year.
- iii. Publication in a gazette

- iv. The internally generated revenue of the issuer shall not be less than 60% of its total revenue for the preceding year
- v. Creation of sinking fund
- vi. Investment in the bond issue not backed by an irrevocable letter of authority shall be restricted to qualified institutional investors and high net worth individuals as defined in the rules.
- vii. The guarantor's rating shall not be below investment
- viii. In addition to the issuer's internally generated revenue, the issuer shall provide a third party guarantee from a bank, insurance company, Supranational institutions, international financial institutions or any other acceptable to the commission to cover payment of the principal and interest in the event of default
- ix. The guarantor shall be the primary banker of the issuer for the purpose of its IGR (internally generated revenue) through the tenure of the debt issue
- x. The Redemption shall not exceed 25 years
- xi. Registration with SEC

**Identification of areas of seeming conflict.**

**Section 251(1)(C) Constitution of the Federal Republic of Nigeria 1999 (as amended)** conferred exclusive jurisdiction on the Federal High Court in relation to an action or proceeding arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies

incorporated under CAMA. On the other hand, section 284 1SA conferred exclusive jurisdiction over capital market disputes on the Investment and Securities Tribunal.

Secondly, **Section 251(1)(r) Constitution of the Federal Republic of Nigeria 1999 (as amended)** conferred exclusive jurisdiction on the Federal High Court in relation to an action or proceeding for a declaration or injunction affecting the validity of an executive or administrative action/decision by the Federal Government or any of its agencies. However, by section 284(1)(a) (i)-(iv), the Investment and Securities Tribunal has the exclusive jurisdiction to hear and determine a decision of the Securities and Exchange Commission (which is an agency of the Federal Government) in the operation of the Investment and Securities Act between the commission and other capital market operators and self regulatory organisations.

Therefore there are apparent conflict between the jurisdiction of IST and Federal High Court (FHC). The resolution lies in using the transaction to determine whether to file the action in FHC or IST. Capital Market transaction is and related matters should be confined to the IST.

### **(C) The head Protective reliefs available to minorities in Nigeria under CAMA:**

1. Reliefs for Members' Direct action (personal action)
2. Reliefs for Representative action
3. Reliefs for Unfairly Prejudicial and oppressive conducts

4. Reliefs for Derivative action

5. Reliefs for Investigation of Company's affairs

**1 mark each**

D. The options available to them are:

1. Arrangement on sale

2. Purchase and assumption

Arrangement on sale because the company can no more operate legally and so should be liquidated to enable the members use the proceeds to invest in shares of an operational bank in the ratio of their shareholding in New Generation Bank Plc

Purchase and Assumption because the company is now moribund (inoperational). Therefore, exploring this option will enable a viable Commercial bank to purchase the company's assets and assume its liabilities while its members will now hold shares in the purchasing company.

### **REGISTRATION PROCEDURE:**

Take instructions

Availability check and reservation of name

Complete relevant incorporation forms and Memorandum and

Articles of Association

Stamping of Memorandum and Articles of Association

Obtain the Attorney-General's consent

Fling of the documents at CAC

Obtain Certificate of incorporation and CTC of relevant incorporation documents

## **QUESTION 5**

a. Statutory letter of demand pursuant to S. 409 CAMA.

**RC NO:**

**(ANY ADDRESS)**

**Date: (31/8/16)**

**The Managing Director**

**(Citrus Pharmaceutical Nig. Plc.**

**(ANY ADDRESS)**

Dear Sir,

**STATUTORY LETTER OF DEMAND PURSANT TO S.409 CAMA**

**RE-LOAN OF TEN MILLION NAIRA**

The loan of Ten Million Naira (1 0,000.00) which your company obtained from our company, refers.

We have noticed that the principal sum and the accrued interest on the loan which became due since 2nd November, 2015 is yet to be paid, despite repeated demand.

TAKE NOTICE that unless payment of the outstanding loan and accrued interest is received by us within three weeks after the receipt of this letter we shall commence winding up proceedings against your company.

Dated this 31st day of August 2016

**Yours faithfully**

**(Signature)**

**Company Secretary**

**3 marks**

B)

**CITRUS PHARMACEUTICAL NIG. PLC**

**(ANY ADDRESS)**

**RC NO:**

**Date: 31/8/16**

The Registrar General

Corporate Affairs Commission

Abuja.



Dear Sir,

**APPLICATION TO INVESTIGATE THE AFFAIRS OF CIRTRUD  
PHARMACEUTICAL NIG. PLC PURSUANT TO S. 314 CAMA**

**WE THE UNDERSIGNED**, being holders of more than  $\frac{1}{4}$  of the shares of the above named company, hereby apply for the appointment inspectors by the CAC to to investigate the affairs of the above named company and to report thereon in such manner as the C.A.C may direct.

This need to investigate the affairs of the company became neccessary due to mismanagement of the company's funds.

Yours faithfully,.

Sign

Any name.

(On behalf of the applicants)

(C)

The managing director is appointed by the board of directors

and can only be removed by the board. However, the members can first remove him as a director of the company under **S. 262** which automatically removes him as a managing director of the company per **Longe-v- First Bank PLC**

The procedure under S. 262 is as follows:

1. Special Notice to the company
2. Company Secretary sends a copy of the notice with the accusation against the director to the director Concerned.
3. Company Secretary issues a notice of meeting along with the representation by the director concerned any)
4. If no representation sent, at the meeting the director shall be allowed to defend himself orally.
5. At the meeting an ordinary resolution is passed removing the director.
6. Fill and file Form CAC 7A
7. Update register of directors and secretaries.

D. The procedure for the removal of the secretary of a public company is as follows:

1. Give the affected secretary a Notice of Intention to remove him as the company secretary stating:
  - i. The proposed grounds for his removal;
  - ii. That he can respond to the grounds within 7 working days or
  - iii. That he has an option to resign within 7 working days.
2. At the expiration of the 7 working days;

i. The Board may pass a Resolution for his removal if there was no reply from the Secretary or

ii. The Board will remove him straight away on the grounds of fraud or gross misconduct and report it to the next Annual General Meeting.

3. If the grounds for the removal are on any other ground except fraud, the Board will only suspend him and await the approval of the next General meeting for his removal..

4. The company will notify CAC of the removal within 14 days and alter the Register of Directors and Secretaries; section 296(2) of CAMA.4.  
Update the register of directors and secretaries

3. File new form CAC 2.1 (particulars of company secretary and change therein),

See: S. 296 CAMA.

(E)

Procedure for compulsory winding up by the court:

1. File a Petition at the Federal High Court

2. File affidavit verifying the Petition

3. Service of the Petition

4. Advertisement of the Petition

5. Filing of the Memorandum of Compliance

6. Filing of Notice of Intention to Appear

7. Appointment of provisional
8. Filing of Affidavit in opposition and Affidavit in opposition and Affidavit in Reply
9. Filing of Summons for Security for Cost for Security for Costs
10. Filing of List of Persons Appearing
11. Hearing of Petition
12. Making a Winding Up Order
13. Service of Winding Up Order
14. Delivery of Statement of Affairs
15. Official Receiver's Preliminary Report
16. First Meeting of Creditors and Contributories
17. Appointment Liquidator
18. Advertisement of Appointment of Liquidator
19. Appointment of Committee of Inspectors
20. Final meeting of liquidator with the creditors and members
21. Application to court for dissolution
22. Making of dissolution order by court
23. Filing of dissolution order at CAC
24. Removal of the company's name in the Register of Companies at CAC

## QUESTION 6 (A)

(i)

The retirement and rotation rule is to the effect that unless the articles provides:

If no provision on the retirement or rotation of directors is made in the Articles of Association of a company, the retirement of directors will be as follows

1. At the first Annual General Meeting (AGM), all the directors (excluding life directors) are to retire. 2. In any subsequent AGM, one-third ( $\frac{1}{3}$ ) of the directors must retire to the nearest whole number in their order of appointment (i.e. first to be appointed retires first). 3. Where two or more directors are appointed the same day, retirement shall be by casting a lot unless they agree among themselves who should retire. **Section 259 of the Companies and Allied Matters Act (CAMA) 2004.**

**In the circumstances of Optoum Constriction Ltd, there is no evidence that**

Articles of Association of a company **excludes the rule. There are 10 Director the company held its 3rd AGM(subsequent) so the number of  $3(\frac{1}{3}$  of 10)**

(ii) The contention of Otunba Gbedu that he would not retire being a founding member is not tenable in law.

(B)

(i) By S. 259 CAMA, a retiring Director is automatically reelected upon retirement at an AGM unless

i. there is resolution not to fill vacancy at the meeting

ii. His re-election has been put to vote and he lost

iii.. Some other person(s) have not been recommended or nominated to Contest the vacant position of a Director

(ii) First Directors are appointed by the subscribers to the Memorandum and Articles of Association or named in the Articles to the MenfOrndham and

(iii) Subsequent Directors are appointed by the General Meeting.

--248(1) CAMA

**By S. 214 CAMA, Ordinary Business of AGM of a company are:**

- i. Declaration of Dividend,
- ii. Presentation of the Financial Statements- the Reports of the Directors and Auditors,
- iii. Election of Directors to replace those retiring.
- iv. Appointment of Auditor and fixing of the remuneration of the Auditors
- v. Appointment of the members of the Audit Committee for Public companies under **S. 359 CAMA**

(c)

D The consequentual records/returns to keep and deliver to CAC upon change of Directors are:

- Copy of the resolution
- Form CAC 7A