CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

WEDNESDAY: 23 April 2025. Morning Paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

VINEYARDS COMMUNICATION LIMITED (VCL)

Vineyards Communication Limited (VCL), is a family-owned hotel in Kenya and has been in operation initially in Nairobi for the past three decades. The company was established in 1990 with its first CEO being Patel Kumar (PK) the son of the founder, Imran Vishram. VCL however, has spread its footprint beyond Nairobi City County to major hospitality regions across Kenya, including Mombasa, Naivasha, Nanyuki and Kisumu. As a family-owned business, VCL's board was heavily dominated by Vishram's family. In May 2021, an independent director (ID) was voted out while two others resigned. The boardroom upheavals culminating to the resignations and removal of independent directors and revelations leading to such actions, was a poiner to VCL's poor corporate governance practices and unfair remuneration policies.

VCL founder unfortunately passed away in June 2015 in a light aircraft accident. Under the leadership of Vishram's son, PK, the private company was converted into a public company in April 2018 in order to access more capital both locally and in international financial markets. PK assumed the role of the Chairman of the company upon its conversion. He ensured that VCL was listed in the City Securities Exchange (CSE). The family continued to control the company even after the listing.

To diversify the family-controlled business, PK led the company to venture into tours and travel business as well as restaurant business specialising in Asian cuisine. VCL opened several specialty restaurants and a food court to supplement its operations in hospitality management.

In addition to being the chairman of VCL, PK continued to hold the position of Chief Executive Officer (CEO). The shareholding comprised of four children of Vishram, three daughters' in-law of Vishram and four grandchildren. There were also two relatives of PK from his maternal side. In total, there were 13 shareholders directly or indirectly related to the Vishram's family, collectively owning 48% of the shares of VCL. The rest of the shareholding was distributed as follows; Second Avenue Capital, an investment firm (26%), Voi Trust, a private trust (11%) and the rest 15% was distributed among a handful of high net worth individual investors. The company directly employed 237 people and indirectly about 2,000 service providers and agents.

At the beginning of year 2021, VCL had three independent directors (IDs) on the board. Simon Kessy, with a working experience of more than sixteen years in the banking industry, was appointed as an independent director on 7 June 2019 and a month later as VCL's lead independent director. He served as the Chairman of the Audit Committee (AC) and a member of both the Remuneration Committee (RC) and Nominating Committee (NC). Simon held a Bachelor of Commerce degree from the University of Nairobi. He was also a member of the Institute of Accountants. Salim Yong joined as an independent director on 2 November 2020. He served as the Chairman of the Nominating Committee and a member of both the Audit Committee and Remuneration Committee. Salim held a Bachelor's Degree in Business Administration from the National University of Rwanda. He had more than ten years of working experience in the hotel industry. The third independent director, Robert Kiilu was appointed on 4 July 2021. He served as the Chairman of the Remuneration Committee and a member of the Audit Committee. Robert held a Diploma in Hospitality from Utalii University. He had more than thirty years of working experience in the hospitality industry.

The VCL Board neither had a board calendar nor a work plan. Meetings were ad hoc and on a need basis. Board papers were not circulated in advance and agendas were as "tabled" during the board and committee meetings. In the financial year (FY) 2022, the directors had three board meetings, the Audit Committee had two meetings, while the Remuneration Committee and Nominating Committee met once. All directors on the board attended every committee meeting. The annual report and financial statements also indicated that management staff were invited to attend board and committee meetings whenever they were available and make contributions. Therefore, despite PK not being a member of the Audit Committee and Remuneration Committee, he participated in all Audit Committee and Remuneration Committee meetings throughout the year.

Apart from the three Independent Directors, VCL's board had three other directors who were related family members. These directors wielded a lot of influence. PK, the Chairman and CEO, had a Bachelor's Degree in Commerce from the University of Southern Cape. He was also a member of the Institute of Accountants. Before joining his father's enterprise, he worked with a number of local and international audit firms. PK's responsibilities as Chairman included overseeing and spearheading the direction and development of the company. His duties as CEO involved extensive involvement in the company's corporate developments, such as the transformation of VCL into a fully-fledged hotel chain and the company's entry into the larger East African market.

Another executive director (ED), Singh Amrita, PK's sister, held a Bachelor's Degree in Business Management from a University in Western Kenya. She was also a member of the Institute of Accountants. In 2020, Amrita, joined the company as a Company Secretary and four years later, she became a director. Amrita was primarily responsible for the company's corporate affairs such as finance, treasury, company secretarial matters, human resource and administration.

Deepak Khan had served as an executive director of VCL since 2018. He was a brother-in-law of PK. Deepak was a member of the Audit Committee and Remuneration Committee. He held a Bachelor's Degree in Accountancy from New Oxford University and was a fellow of the Institute of Accountants.

On 26 March, 2024, VCL convened its Annual General Meeting (AGM), during which shareholders cast their votes on the re-election of Robert Kiilu as an independent director and as Chairman of the Remuneration Committee. However, the ordinary resolution to re-elect Robert was rejected by shareholders, with 80% voting against. Consequently, Robert retired at the conclusion of the AGM. On the same day, VCL announced the cessation of Robert as a company's Independent Director. Robert had voted "yes" on the question as to whether there were any unresolved differences in opinion on material matters between the person and the board of directors. He had earlier informed the meeting that there were outstanding material issues before the Remuneration Committee which were being investigated and yet to be resolved. During the AGM, it became apparent that there were huge disparities in the remuneration of directors even when they were playing similar roles. Directors related to PK were earning more than three times of what those who were perceived as outsiders earned.

Two months prior to the AGM, on 28 January 2024, Simon, who was then the lead Independent Director of VCL, announced his resignation from the board, effective one day after the AGM. He cited "preoccupations and personal reasons" for his resignation. With Roberts's removal from the board, VCL would be left with only one Independent Director after the AGM. Consequently, VCL failed to comply with City Security Exchange rules which required at least two Independent Directors. A provision of Code of Corporate Governance recommended that independent directors make up a majority of the board where the Chairman is not independent. Patel also highlighted that Salim, the remaining Independent Director, had also expressed his intention to step down from the board and Amrita, had written a letter to the Board Chair on her intention to step down as the company secretary at VCL.

Towards the end of year 2024, VCL indicated in its regulatory filings that it lacked the requisite number of Independent Directors among other governance lapses such as a vacancy in the position of the Company Secretary.

Required:

(a) Explain **SIX** governance challenges that family companies like VCL are likely to face as they move beyond the first or second generation. (6 marks)

(b) Discuss **FIVE** poor governance practices at VCL that affected the effectiveness of its Board. (10 marks)

(c) Examine **SIX** reasons why independent directors were important in the corporate governance of VCL, being a family owned business. (12 marks)

(d) Analyse **SIX** good board governance practices that VCL could adopt to improve corporate governance. (12 marks)

(Total: 40 marks)

QUESTION TWO

(a) Explain **FIVE** benefits of self-regulation in corporate governance. (5 marks)

(b) Boards establish and approve formal and transparent remuneration policies and procedures that attract and retain board members.

Analyse **FIVE** guidelines for remuneration of board members according to the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015. (10 marks)

(Total: 15 marks)

QUESTION THREE

(a) Summarise **FIVE** functions of an external audit to an organisation. (5 marks)

(b) Discuss **FIVE** ways in which an organisation could make a whistleblower policy more effective. (10 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Explain **FIVE** differences between the American model of corporate governance and Japanese model of corporate governance. (5 marks)

(b) Examine **FIVE** salient features of a consensus board model. (10 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Summarise **FIVE** contents of the Articles of Association of a company. (5 marks)

(b) Explain **FIVE** factors that organisations should put in place to ensure effectiveness of codes of ethics. (5 marks)

(c) Highlight **FIVE** reasons why organisations should carry out activities aimed at protecting the environment. (5 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

TUESDAY: 3 December 2024. Morning Paper. Time Allowed: 3 hours.

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

KILELE ENERGY LIMITED (KEL)

Kilele Energy Limited (KEL), a leading renewable energy company in Kenya, is listed in the Nairobi Securities Exchange (NSE) and specialises in solar, wind and geothermal power. Despite its mission to provide sustainable energy solutions, the company faces significant challenges in corporate governance and ethics. Concerns have arisen regarding board performance, ethical behaviour, compliance with regulations and adherence to Environmental, Social and Corporate Governance (ESG) standards, prompting the need for a comprehensive review of its governance practices.

The effectiveness of KEL's board has been questioned due to performance issues. A recent assessment by the regulator highlighted several challenges, including lack of strategic oversight, where the board was more reactive than proactive, often focusing on short-term rather than long-term planning. The board also lacked diversity in skills, particularly in risk management, sustainability and technology which are areas crucial to the company's growth. Poor attendance and limited participation in board meetings further impacted decision-making. Key committees, such as the Audit and Risk Committee, were ineffective due to unclear roles and there was no formal process for appraising individual board members' performance. Conflicts of interest were also identified, with some board members having undisclosed relationships with suppliers, raising ethical concerns. Additionally, inadequate succession planning threatened leadership continuity.

KEL also faced significant ethical challenges that called its commitment to ethical standards into question. Allegations of bribery and corruption surfaced, with senior managers accused of awarding contracts in exchange for kickbacks. The absence of a whistleblower mechanism meant that employees had no secure channel to report unethical behaviour, fostering a culture of silence. Instances of data misrepresentation were uncovered, with financial and operational information manipulated to present a favorable company image. Unethical labour practices, including unsafe working conditions and delayed wage payments for contract workers, were also reported. Leadership failed to model ethical behaviour, creating a disconnect between the company's values and practices. Furthermore, breaches of confidentiality and inconsistent enforcement of the code of conduct led to preferential treatment for some employees.

Compliance with laws and regulations was another major issue for KEL. The company faced multiple fines for environmental violations, including poor waste management and failure to meet emissions standards. KEL struggled with NSE listing requirements, frequently failing to report financial statements on time. The company's risk management framework was inadequate, particularly in areas like cybersecurity and data protection, leading to compliance gaps. Licensing issues arose, with some sites operating without proper permits, exposing the company to legal action. Violations of labour laws, particularly around employee contracts and working hours, were also noted, along with discrepancies in tax filings, raising accusations of underreporting income. Employees were not adequately trained on compliance, contributing to frequent unintentional regulatory violations.

KEL's commitment to ESG principles was inconsistent, posing reputational risks. Despite its focus on renewable energy, poor environmental practices, including inadequate waste management were identified. The company's engagement with local communities was minimal, leaving residents feeling excluded from decision-making processes. Social investment was limited and Corporate Social Responsibility (CSR) reporting lacked transparency, making it hard to assess the impact of CSR initiatives. Gender and diversity issues persisted, particularly in leadership roles, with no clear policies to promote inclusivity. Environmental audits were poorly conducted, failing to identify key risks and the company lagged in aligning with global ESG standards, affecting its appeal to international investors. Addressing all these issues is crucial for the company to enhance governance standards, rebuild stakeholder trust and position itself as a responsible leader in Kenya's renewable energy sector.

Required:

(a) Explain **FIVE** challenges affecting KEL's board performance and effectiveness. (10 marks)

(b) Discuss **FIVE** ethical challenges KEL faced that could have negatively impacted its integrity. (10 marks)

(c) Explain **FIVE** compliance problems that KEL faced in its operations. (10 marks)

(d) From the case study, ESG difficulties impacted KEL's sustainability and stakeholder relations.

Analyse **FIVE** of these difficulties. (10 marks)

(Total: 40 marks)

QUESTION TWO

(a) Describe **FOUR** benefits of effective corporate governance practices to an organisation. (4 marks)

(b) Summarise **FIVE** assumptions of the legitimacy theory. (5 marks)

(c) Analyse **SIX** benefits of an advisory board to an organisation. (6 marks)

(Total: 15 marks)

QUESTION THREE

(a) Strategic risks can significantly impact an organisation's ability to achieve its long-term objectives and maintain its competitive position.

In reference to the above statement, outline **FIVE** strategies that board of directors could use to mitigate these risks. (5 marks)

(b) Describe **FIVE** components of board procedures. (5 marks)

(c) Explain **FIVE** factors that organisations should consider to ensure effectiveness of code of ethics. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) The term, "Environmental, Social and Governance" first came to prominence in a 2004 report titled "Who Cares Wins", which was a joint initiative of financial institutions at the invitation of the United Nations.

In reference to the above statement, identify **FIVE** social factors that may be included in this framework. (5 marks)

(b) The Board of directors plays a crucial role in promoting and maintaining an ethical culture within an organisation.

In view of the above statement, highlight **FIVE** such roles. (5 marks)

(c) XYZ Ltd. has introduced a compliance strategy in its operations.

Explain **FIVE** benefits of this move. (5 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Identify **THREE** principles of professional ethics. (3 marks)

(b) Assessing the performance of a board of directors provides valuable opportunities to identify strengths, address weaknesses and enhance governance oversight.

In view of the above statement, explain **FIVE** areas of focus in a board evaluation. (5 marks)

(c) Strategic risk refers to potential threats or uncertainties that could significantly impact an organisation's ability to achieve its long-term objectives and overall mission.

With reference to the above statement, outline **SEVEN** such strategic risks. (7 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

TUESDAY: 20 August 2024. Morning Paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

FRESHI SUPERMARKETS

Freshi Supermarkets, established in 1989, rapidly ascended to become one of the preeminent retail chains in Kenya. With its competitive pricing strategy and extensive national presence, Freshi supermarkets cultivated widespread brand recognition and a diverse consumer base spanning socio-economic stratum. However, the supermarket's prosperous trajectory was short-lived, as lapses in corporate governance materialised in the early 2000s. Joe Msebi, the chief executive officer (CEO) since the supermarket's inception, was widely credited with upholding Freshi Supermarkets's ethical policy during his tenure at the helm. Upon Joe Msebi's exit as the CEO in 1999, he was promptly succeeded by Bob Owino, a close familial relation of the company's founder. In contrast to his predecessor, Bob Owino exhibited a notable dearth of managerial acumen and adopted an autocratic decision-making approach that marginalised input from other organisational stakeholders.

One of the primary governance issues that plagued Freshi Supermarkets during his tenure was lack of accountability from its board of directors. The board failed to maintain a proper balance between executive and non-executive members, with many directors having close ties to the management team. This scenario created an environment ripe for conflicts of interest and a lack of objective decision-making. Furthermore, the board lacked the necessary expertise and diversity to provide strategic guidance and challenge the decisions made by the management team. Directors remuneration exercise was opaque and muddled with favouritism. Board members were often appointed based on personal connections rather than their relevant skills and experience, compromising their ability to fulfil their fiduciary duties effectively.

Freshi Supermarkets suffered from a severe lack of internal controls and accountability mechanisms. The company's management team operated with little oversight, allowing for questionable transactions and misappropriation of funds to occur unchecked. Reports emerged of executives engaging in insider practices, awarding lucrative contracts to companies owned by their associates and misusing company resources for personal gain. The absence of robust internal controls and whistleblower protection mechanisms made it difficult for employees to raise concerns about unethical practices without fear of retaliation. This cultivated an environment of mistrust and enabled the perpetuation of governance failures.

Freshi Supermarkets' financial woes were compounded by poor financial management practices and a lack of transparency in its reporting. The company's accounting records were in disarray, with irregularities and discrepancies in financial reporting becoming increasingly evident. Auditors raised concerns about the accuracy of the financial statements, but their warnings went largely unheeded by the management team. Furthermore, the company embarked on an aggressive expansion strategy without proper feasibility studies or risk assessments. Lack of a risk appetite framework, led to unsustainable debt levels and cash flow problems, putting the company's financial stability at risk.

While the Kenyan regulatory authorities attempted to intervene and address the governance issues at Freshi Supermarkets, their efforts were often hampered by a lack of cooperation from the company's management. The regulatory bodies struggled to obtain accurate and timely information, hindering their ability to take decisive action. Additionally, the regulatory infrastructure in Kenya at the time lacked teeth, with limited enforcement powers and penalties for companies that violated corporate governance principles. This created an environment where governance failures could persist without significant consequences.

The consequences of Freshi Supermarkets' poor corporate governance practices were severe and far-reaching. The company faced financial distress, accumulating massive debts and eventually defaulting on loan repayments. This led to the closure of numerous branches and the loss of thousands of jobs, impacting the livelihoods of employees and their families. The supermarket's company's reputation, once a source of pride for Kenyan consumers, was tarnished, making it difficult to regain public trust and loyalty. Shareholders suffered significant losses as the company's share price plummeted, eroding investor confidence and trust in the Kenyan capital markets. As the supermarket clung on hope, it tried restructuring using the management team model but it was too little too late. Liquidation was the only way out. However, even this liquidation process was marred by lack of a shareholders' agreement hence it was chaotic.

Required:

(a) Freshi Supermarkets encountered a particular governance issue during Bob Owino's tenure.

Describe **FIVE** strategies that the management of Freshi Supermarkets could have implemented to rectify this situation. (10 marks)

(b) Examine **FIVE** guidelines that should have been taken into consideration in carrying out the director's remuneration exercise that was opaque and muddled with favouritism at Freshi Supermarkets. (10 marks)

(c) Describe **FIVE** factors that Freshi Supermarkets should have considered in order to make the restructuring model a success. (10 marks)

(d) Evaluate **FIVE** challenges that Freshi Supermarkets faced due to lack of an agreement that could have facilitated the liquidation process. (10 marks)

(Total: 40 marks)

QUESTION TWO

(a) List **THREE** board performance evaluation mechanisms that could be used by a company to enhance its corporate governance. (3 marks)

(b) Juma has just been appointed as the chairperson of the board of directors of Jodax Company Limited.

Outline **FOUR** roles that he should undertake at Jodax Company Limited. (4 marks)

(c) Discuss **FOUR** differences between "ethics" and "law". (8 marks)

(Total: 15 marks)

QUESTION THREE

(a) Although they play a significant role in the global economy, family-owned enterprises have unique characteristics and challenges.

Identify **FOUR** factors that attract investors to these enterprises. (4 marks)

(b) Summarise **FIVE** benefits a company would acquire by adopting a workplace transparency policy. (5 marks)

(c) Resource dependence theory (RDT) has implications on companies.

Describe **FIVE** principles of this theory. (6 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Explain **FOUR** roles of the Board in enterprise risk management. (4 marks)

(b) Outline **FIVE** functions of a legal and compliance audit. (5 marks)

(c) Evaluate **SIX** techniques that can be adopted to manage stakeholder disputes. (6 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Identify **FIVE** guidelines that a board member must observe in exercising fiduciary duties. (5 marks)

(b) Analyse **FIVE** forms of ethical dilemmas. (10 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

TUESDAY: 23 April 2024. Morning Paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

DAIMA BANK LIMITED (DBL)

Once publicised as a rising star in the banking sector, the collapse of Daima Bank Limited (DBL) was not only a financial downfall but also an indicator of systemic failures in corporate oversight. An intricate web of events led to the lack of corporate governance at DBL, its profound implications and eventual end. Established in the 1990s, it initially carved a place for itself in Kenya's banking sector. The bank's rapid growth and expansion was fueled by ambitious lending practices and an increasing market presence. However, behind the facade of success lurked governance gaps that would eventually unravel, exposing its vulnerability.

A pivotal moment in the exposure of DBL's governance deficiencies was the revelation of fraudulent activities within the institution. The bank's management were engaged in a scheme to inflate its financial position, misrepresenting the true health of the bank. Such deceptive practices not only eroded investor and depositor confidence but also underscored the absence of internal controls and ethical oversight. At the heart of DBL's governance shortcomings was a failure of board oversight. The board, entrusted with the responsibility of ensuring the bank's adherence to ethical practices and regulatory compliance, faltered in its duties. Key decisions, particularly in risk management and loan approval processes were inadequately scrutinised, contributing to the bank's eventual financial turmoil. The provisions of the memorandum of association which was supposed to be used as the constitutive document were grossly violated.

DBL's lack of effective risk management mechanisms became a critical factor in its downfall. Risk assessments were superficial and warning signs were either ignored or not thoroughly investigated. The absence of a robust risk culture within the organisation allowed risky lending practices to flourish unchecked, leading to a significant buildup of non-performing loans.

Mr. Joe Cliff, the chairman of the bank, disbanded the audit committee so as to provide an enabling environment for siphoning finances from the bank. The collapse of DBL also raised questions about the effectiveness of regulatory oversight in the financial sector. Regulatory authorities, tasked with ensuring the stability and integrity of financial institutions, were criticised for lapses in supervision. The unfolding of events revealed that DBL had been able to operate with insufficient regulatory scrutiny, contributing to an environment conducive to malfeasance.

Lack of corporate governance at DBL had far-reaching consequences for various stakeholders. Fiduciary duties were deeply neglected by the Board. As a consequence, shareholders faced significant financial losses as the true extent of the bank's insolvency became apparent. Depositors, including individuals and businesses, saw their funds frozen, leading to a loss of trust in the broader banking sector. The reputational damage inflicted upon DBL reverberated throughout the industry, impacting Kenya's financial stability. The absence of good corporate governance practices at DBL prompted legal and ethical questions. Investigations revealed instances of insider trading that facilitated financial irregularities. The absence of a robust ethical framework within the institution allowed such practices to persist unchecked, highlighting the critical role that ethical guidelines and accountability mechanisms play in corporate governance.

In the aftermath of DBL's collapse, efforts were made to reform Kenya's banking sector and enhance corporate governance standards. The Central Bank of Kenya implemented measures to strengthen regulatory oversight and the government introduced reforms aimed at preventing a repetition of similar governance failures. These efforts emphasised the need for a comprehensive and vigilant approach to governance in the financial industry. DBL's downfall stands as a stark reminder of the perils associated with inadequate corporate governance. The aftermath of the DBL saga has prompted a re-evaluation of governance standards and regulatory mechanisms, serving as a catalyst for change and a testament to the enduring importance of corporate governance in safeguarding the integrity and stability of financial institutions.

Required:

(a) Analyse **THREE** components of the constitutive document that were grossly violated at DBL. (6 marks)

(b) Explain **FOUR** roles of the committee that was disbanded by Mr. Joe Cliff at DBL. (8 marks)

(c) Lack of corporate governance at DBL had far-reaching consequences to various stakeholders.

Identify **THREE** affected stakeholders and explain the level of effect. (6 marks)

(d) Certain duties were heavily neglected by DBL's board.

Describe **FIVE** of these duties. (10 marks)

(e) Investigations at DBL revealed instances of certain trading that facilitated financial irregularities.

Explain **FIVE** forms of this trading. (10 marks)

(Total: 40 marks)

QUESTION TWO

(a) In environmental, social and corporate governance (ESG) framework, the triple bottom line expands traditional notions of success beyond society solely focusing on financial profit.

Describe **FOUR** benefits of this triple bottom line. (4 marks)

(b) Examine **FIVE** types of performance evaluation tools useful in internal corporate's documentation. (5 marks)

(c) Evaluate **THREE** oversight models employed in Governance. (6 marks)

(Total: 15 marks)

QUESTION THREE

(a) Highlight **FIVE** demerits of policy board model. (5 marks)

(b) Explain **FIVE** models of corporate governance and ethics. (5 marks)

(c) Virtue theory is an ethical framework which states that, "we ought to focus not on what rules to follow, but on what kind of people (or organisations) we should be and what kind of ethical examples we ought to imitate".

Evaluate **FIVE** principles of this theory. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Chapter Six of the Constitution of Kenya 2010 outlines the guiding principles of leadership and integrity.

Outline **FIVE** of these principles. (5 marks)

(b) Identify **FIVE** roles of a board of directors in managing stakeholder relations within a company. (5 marks)

(c) An effective risk appetite framework (RAF) is crucial for good governance since it provides a clear roadmap for decision-making and aligning risks with strategic objectives.

Appraise **FIVE** components of this framework. (5 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Explain **FIVE** characteristics of mediation as a mechanism for alternative dispute resolution. (5 marks)

(b) Assess **FIVE** roles of board of directors in promoting ethical behaviour. (5 marks)

(c) Suggest **FIVE** considerations involved in conducting a legal and compliance audit. (5 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

TUESDAY: 5 December 2023. Morning Paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

SAFARILAND HOLDINGS LIMITED (SHL)

Safariland Holdings Ltd (SHL) is a leading multinational based in Nairobi dealing with diverse business interests ranging from telecommunications to renewable energy. SHL has embraced a stakeholder-oriented approach to corporate governance, inspired by the African communitarian philosophy. The Board of Directors, led by the Chairperson Amani Sawa, believes in balancing the interests of shareholders, employees, customers and the broader community. This approach aligns with stakeholder theory, ensuring that the company's decisions consider the impact on all parties involved.

Internally, SHL maintains a comprehensive Code of Conduct and Ethics manual that serves as a compass for employees, outlining the ethical standards and principles that guide their behavior within and outside the workplace. The manual is regularly updated to align with emerging global best practices and local regulatory requirements. Recognising the dynamic nature of its operating environment, the company has instituted a robust risk management framework. The Risk Oversight Committee, a subcommittee of the Board, regularly assesses and monitors the company's exposure to various risks. This proactive approach helps SHL adapt swiftly to changing circumstances, safeguarding its stakeholders' interests.

At the heart of SHL's operations is a commitment to ethical behavior. This extends from the executive suite to the entry-level positions. Employees undergo regular training sessions on ethical decision-making, strengthening the company's dedication to integrity. The company encourages a speak-up culture, allowing employees to report ethical concerns without fear of reprisal. To facilitate this, a whistleblowing policy is in place to take care of any integrity issues at SHL.

The company recognises the interconnectedness of business and society. The company has implemented various Environmental, Social and Corporate Governance (ESG) initiatives, including a comprehensive environmental sustainability programme and community engagement projects. The ESG Committee, headed by Chief Sustainability Officer Perwa Ruwewa, oversees the integration of these initiatives into the company's strategic planning.

Operating in a highly regulated environment, SHL places paramount importance on compliance with laws and regulations. The legal and compliance department, led by Ganya Mekwa, conducts regular audits to ensure adherence to local and international laws. The company maintains an open line of communication with regulatory bodies, fostering a cooperative relationship that goes beyond mere compliance. SHL's commitment to exemplary corporate governance and ethics positions it as a beacon of responsible business in Kenya. By embracing stakeholder-oriented governance, upholding ethical standards, managing risks effectively, championing ESG initiatives and ensuring legal compliance, SHL not only secures its own longevity but also contributes positively to the socio-economic fabric of the nation. This is a testament to the company's dedication to the principles that underpin sustainable and ethical business practices world-wide.

Required:

(a) Explain **FIVE** ways in which SHL could implement its stakeholder-oriented approach to corporate governance as influenced by the philosophy of African communitarianism. (10 marks)

(b) Describe **FIVE** SHL's possible approaches to environmental sustainability within its ESG initiatives. (10 marks)

(c) Appraise **FIVE** ways in which SHL could ensure effectiveness of its Code of Conduct and Ethics manual. (10 marks)

(d) A whistle blowing policy is in place to take care of any integrity issues at SHL.

Explain **FIVE** objectives of this policy. (10 marks)

(Total: 40 marks)

QUESTION TWO

(a) Highlight **FIVE** benefits of a Board Charter. (5 marks)

(b) Highlight **FIVE** roles of institutional investors in promoting corporate governance. (10 marks)

(Total: 15 marks)

QUESTION THREE

(a) Describe **FIVE** ways in which internal controls promote good corporate governance. (5 marks)

(b) Analyse **THREE** types of costs according to transaction cost theory. (6 marks)

(c) The Board should be constituted in a way that ensures it has different skills and expertise within itself.

Outline **FOUR** guidelines on how this may be achieved. (4 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Bylaws generally cover the areas of a corporation's internal management.

Identify **FOUR** provisions of these laws. (4 marks)

(b) Hesabika Trust has recently launched the Code of Governance for Churches in Kenya, with the support from the Institute of Certified Secretaries.

Outline **THREE** benefits that may arise from churches embracing this code in their operations. (6 marks)

(c) The Patron Board Governance Model is a system where the board of directors primarily consists of representatives elected or appointed by the organisations patrons or customers.

Propose **FIVE** demerits of this model. (5 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Utilitarianism is one of the prominent ethical theories that has relevance in the context of corporate governance and ethics as propounded by Jeremy Bentham and John Stuart Mill. It provides a framework for business to consider the ethical implication of their actions and the potential impact on various stakeholders.

As a governance and ethics consultant, advise ABC company on **FIVE** limitations of the theory. (5 marks)

(b) Highlight **THREE** types of compliance risk. (3 marks)

(c) An ethical policy serves as a guide for making ethical decisions, maintaining a culture of integrity and fostering trust among staff members and other stakeholders.

In view of the above statement, identify **SEVEN** components of an ethical policy. (7 marks)

(Total:15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

TUESDAY: 22 August 2023. Morning Paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

KAZI NZURI LIMITED (KNL)

Kazi Nzuri Limited (KNL) is a well-established Kenyan company operating in the telecommunications sector. The company was established in the year 1998 and its headquarters are based in Nairobi. KNL has four branches which are spread out across East Africa. The company has been listed on the securities exchange since year 2010. With a market presence spanning over two decades, the company has experienced substantial growth and has emerged as a key player in the industry. As a publicly listed company on the Nairobi Securities Exchange, KNL is subject to the regulatory requirements and guidelines set by the Capital Markets Authority (CMA) and the Code of Corporate Governance for Issuers of Securities to the Public. The company places a strong emphasis on board composition and independence to ensure effective corporate governance. The board consists of nine members, comprising a mix of executive and non-executive directors. The CEO and the Corporate Secretary also sit on the board. The non-executive directors bring diverse industry expertise and independence to the board. Additionally, the board includes a significant number of female directors, promoting gender diversity and inclusivity.

To strengthen corporate governance, Kazi Nzuri Ltd. has established several board committees responsible for specific areas of oversight. These committees include the Audit Committee, Compensation Committee, Nomination Committee, and Corporate Social Responsibility (CSR) Committee. Each committee is composed of independent directors with relevant expertise and plays a crucial role in ensuring accountability, risk management, and ethical decision-making within the company. KNL recognises the importance of transparency and timely disclosure of information to shareholders and the public. The company maintains a comprehensive investor relations program, ensuring regular communication and updates on financial performance, strategic initiatives, and corporate governance practices. Furthermore, KNL publishes an annual sustainability report, highlighting its commitment to good corporate governance, ethical conduct, environmental sustainability and social responsibility.

Ethics form a cornerstone of Kazi Nzuri Ltd's operations with a strong commitment to ethical behaviour embedded in its corporate culture. The company has a well-defined code of conduct and ethics that outlines expectations for employees and stakeholders. The code emphasises on integrity, honesty, and fairness. Regular training programs are conducted to raise awareness of ethical practices and ensure compliance throughout the organisation. To encourage the reporting of unethical practices, KNL has implemented a robust whistleblower mechanism. Employees and stakeholders are provided with a secure and confidential channel to report any concerns, violations, or breaches of the company's ethical standards. The company guarantees protection against retaliation for individuals who come forward with genuine concerns.

Kazi Nzuri Ltd recognises its responsibility towards society and actively engages in CSR initiatives. The company invests in sustainable development projects, focusing on education, healthcare, and environmental conservation. Through partnerships with local communities and NGOs, the company contributes to the well-being of society, aligning its business practices with ethical and socially responsible objectives.

KNL's commitment to corporate governance and ethics is evident through its strong governance structure, independent board, transparent disclosure practices, and emphasis on ethical behaviour. By prioritising transparency, accountability, and responsible decision-making, the company sets a positive example for other East Africa-based companies. Through its continuous efforts to promote good governance and ethical conduct, KNL not only protects the interests of its stakeholders but also contributes to the sustainable growth and development of the East Africa business landscape.

Required:

(a) Kazi Nzuri Limited (KNL) conducts regular training programs to ensure compliance with regulatory requirements and industry standards.

Discuss **FIVE** additional measures the company could adopt to ensure compliance. (10 marks)

(b) KNL has implemented a robust whistle blowing mechanism.

Examine **FIVE** mechanisms that Kazi Nzuri Ltd. could have put in place to encourage whistleblowing and the reporting of unethical practices by its employees and other stakeholders. (10 marks)

(c) Appraise **FIVE** ways in which the company could monitor and assess risks against its defined risk appetite. (10 marks)

(d) Assess **FIVE** corporate social responsibility (CSR) initiatives that could be undertaken by Kazi Nzuri Ltd. (10 marks)

(Total: 40 marks)

QUESTION TWO

(a) Stakeholder theory of corporate governance and ethics defines how managers should understand and treat the stakeholders so that stakeholders' interests come above all other interests.

With reference to the above statement, highlight **FIVE** principles of this theory. (5 marks)

(b) The technical incompetence of Non-executive Directors has been identified as one of the key drivers for failure of organisations.

Assess **FIVE** characteristics a company would consider when recruiting such directors. (5 marks)

(c) Risk management is a key component of corporate governance as it helps to identify the possible future, and plan for negative possible effects either by transferring or mitigating them.

From the above statement, highlight **FIVE** risk management areas that business managers should focus on. (5 marks)

(Total: 15 marks)

QUESTION THREE

(a) Explain **FIVE** statutory duties of a company's board of directors. (5 marks)

(b) According to good governance principles, a conflict of interest register needs to be maintained for all directors.

Evaluate **FIVE** ways on how a director should handle potential conflicts. (5 marks)

(c) Analyse **FIVE** reasons why compliance is important to a company. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) There are several audits that a company engages in to have an independent assessment of its status.

Evaluate **FIVE** objectives of legal and compliance audit (5 marks)

(b) As a corporate governance and ethics consultant, give your advice on **FIVE** key issues to be covered during the training workshop of new board of directors. (5 marks)

(c) List **FIVE** corporate governance codes in Kenya, which apply to specific sectors. (5 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Every year, a Board needs to have an evaluation of its effectiveness carried out on the Chairman, individual Directors, and the Board as a whole.

Discuss **FIVE** reasons why board assessments often reveal that boards have failed to achieve their strategic objectives. (5 marks)

(b) The Organisation for Economic Co-operation and Development (OECD) has immensely contributed in the developing, recording and instilling good corporate governance in business and public operations.

Explain **FIVE** pillars of corporate governance recommended by OECD. (10 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

TUESDAY: 25 April 2023. Morning Paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

NAMIKHOLO SUGAR MILLS (NSM)

Poor governance, heavy borrowing and investments in projects that never give returns are some of the causes of trouble at the ailing Namikholo Sugar Mills (NSM). A report by a taskforce on the revival of the giant miller also blames the high cost of production and a poor farming model. The taskforce had been appointed by Jones Waragi, the Governor of Namikholo County.

The report by the taskforce further points out at malpractices by staff at the miller that resulted in loss of millions as another cause of the financial turmoil, the once premier sugar miller is currently facing. The malpractices include double procurement, single sourcing, overstating of books of account, inflated commercial activities and printing of books and fliers by faceless fraudulent companies compounded by poor record keeping.

"The Namikholo Sugar Mills Board, management staff, and suppliers have over time engaged in unprofessional malpractices that contributed immensely to the current state of the miller. The board did not have an audit committee and the internal audit functions were performed by the accounts division. The commercial department diverted ethanol meant to be sold in a neighboring country and also the imported molasses tankers never arrived at the milling factory," reads the report on page 10. The report further reveals that the agriculture department fraudulently acquired fields, some of which only existed on paper, paid ghost farmers in collaborations with the Information Technology (IT) staff, and overstated acreage farm inputs in collusion with the survey section. The management staff also diverted farm inputs meant for farmers.

The staff sold sugar to black markets, defrauding the miller. They inflated prices, offered sugar discounts beyond acceptable limits and participated in the purported sugar export of year 2018 to 2021. The report further reveals that the miller's financial status started dwindling in year 2017 largely due to mega projects that the miller engaged in and whose return on investment has never been realised. This took away the much-needed cash to pay cane farmers for their deliveries, leading to delays in payment that demoralised them to the extent of uprooting the crop from their farms. Farmers received delayed payments due to the collusion by staff who paid ghost farmers instead of the real farmers. All these were made possible by the management's failure to institute performance measurement, evaluation and control tools.

The report also reveals that the company's management started projects they could not complete. These include CCTV surveillance, Enterprise Resource Planning (ERP), Ethanol production, new sugar bagging machine procurement and Hyper Transport (HT) clocking system. The management also recruited staff unprocedurally, failed to control board of directors' expenditure and colluded with board members to open an account oversees that was used to deposit illegally acquired customer funds.

While receiving the report, the Governor agreed with the findings, saying that it unearthed what the management had already noted and handed the matter to relevant County authorities for action. "We are working together and complementing each other to revive the miller because Namikholo is bigger than the board or management," he said. The miller is technically insolvent as per the audited accounts for 2021/2022 financial year which puts the current liabilities at Sh. 190 million with the assets base at Sh.100.5 million.

The report recommended a raft of interventions to turn around the once vibrant miller. Among the recommendations is the involvement by the county government in the development of cane and promotion of an ethical culture at NSM and appointment of an audit committee of the board. The report also recommended lodging a caveat on community land hosting assets of the miller to prevent them from being grabbed.

In its last paragraph, the report concluded that the sugar mill could only be revived if the revival plan prioritises change of governance, investment in cane development, engagement with lenders and creditors on viable debt payment plan and pursue of capital injection for key areas of operation.

Required:

(a) Examine **FIVE** roles of NSM Board in managing the Miller's staff ethical behavior. (10 marks)

(b) Among the recommendations was the appointment of an audit committee at NSM.

Advise the board on the role of the recommended committee. (10 marks)

(c) Evaluate **FIVE** dysfunctional characteristics of NSM board. (10 marks)

(d) NSM was not conducting performance appraisals.

Analyse **FIVE** benefits they could have acquired from conducting such appraisals. (10 marks)

(Total 40 marks)

QUESTION TWO

(a) The two-tier board model is a governance structure in some jurisdictions where a company has two separate boards: a supervisory board and a management board.

With reference to the above statement, outline **FOUR** characteristics of this board model. (4 marks)

(b) The universality of ethics refers to the belief that certain moral principles are valid and apply universally, regardless of cultural, individual, or historical differences.

With reference to the above statement, explain **FIVE** principles of universality of ethics. (5 marks)

(c) Legitimacy theory and stakeholder theory are both frameworks used to understand the relationships between organisations and their stakeholders. However, there are some key differences between the two.

Analyse the **THREE** distinctions. (6 marks)

(Total: 15 marks)

QUESTION THREE

(a) Good corporate governance dictates that the Board shall establish and put into effect a whistle blowing policy for the organisation.

Highlight **TWO** purposes of this policy. (2 marks)

(b) Explain **TWO** differences between ethics and morals. (2 marks)

(c) An external auditor is an independent professional hired by an organisation.

In view of the above statement, evaluate **FIVE** roles that he plays with regard to corporate governance. (5 marks)

(d) Analyse the triple bottom line concept in the context of corporate governance. (6 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Outline **THREE** types of corporate social responsibility activities that an organisation could engage in. (3 marks)

(b) Summarise **THREE** compliance strategies that may be adopted by organisations in adherence to corporate laws and regulations. (6 marks)

(c) A tainted reputation can cripple even the most well-known establishments.

With reference to the above statement, explain **SIX** factors that contribute to the overall corporate reputation of a company. (6 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Identify **FIVE** considerations involved in effective management of risks. (5 marks)

(b) Explain **FIVE** benefits which could accrue to an organisation from regular risk reporting. (5 marks)

(c) Summarise **FIVE** stakeholder dispute management techniques. (5 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

TUESDAY: 6 December 2022. Morning Paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

LONG PIPELINE LTD (LPL)

The lucrative nature of oil business and a thriving siphoning syndicate could be at the centre of many job losses at management level at Long Pipeline Ltd (LPL) in the recent past. The struggle to control the multi-million-dollar State agency which handles the core energy stocks for the country has made LPL to have a record four Managing Directors in three years.

Festo Kinde, the Managing Director (MD) of LPL, has had a tough time defending tender awards and dealing with controversies involving business rivalries and political power plays since the company does not have key policies to guide it. The company has failed to develop a risk policy despite being involved in a volatile business. The latest case of mysterious fuel losses at LPL systems disguised as "pipeline losses" has pitted him against oil marketers displeased with the volumes being lost, which they believe is stolen and sold in the same market they intend to sell their products.

Insiders say his action to suspend one stock analyst caused a stir in the inner circle of the staff at the core of the siphoning syndicate. This circle is willing to go to any length to protect its interests. Those familiar with the affairs point to political intrigues involving push-and-pull between two factions of the ruling party, each keen on controlling the giant organisation.

None of the Managing Directors at the firm has had a smooth exit. Festo Kinde's predecessor, Janet Moguina, held the position for less than one year before she was sent on compulsory leave and her position advertised under unclear circumstances. Before then, LPL had suspended another MD, Peter Salas, who was later charged with abuse of office including irregularly awarding a Sh.29 million contract for the installation of auto-transformers. Preceding Peter Salas was Charles Mwadime who was fired by the board in the year 2018 on grounds of nepotism and abuse of office.

To calm the latest jitters, Festo Kinde released a memo last Wednesday assuring the staff that all was well save for the investigations on the suspended staff. The memo was worded as follows:

"Management's attention has been drawn to reports appearing in sections of the print media to the effect that there is panic amongst staff owing to the investigations following theft of fuel in the organisation. In this regard, management wishes to inform staff that so far, only one member of staff (name withheld), a Stock Control Analyst, was suspended from duty for in-depth investigations to be carried out."

The suspended member of staff is suspected to have accessed the advances table in the system and advanced Kam Ochiel 300,000 litres of petroleum without authorisation. A number of job losses at LPL have left the organisation with many bitter ex-workers who hold sensitive information on illegal deals, further deepening woes within the company.

Required:

(a) Managing Directors were not lasting long at LPL. With reference to stewardship theory, explain **FIVE** fundamental values the previous MDs may have lacked. (10 marks)

(b) To minimise controversies involving business rivalries, power plays and fuel losses, LPL should develop a risk appetite framework.

Explain **FIVE** considerations to make the framework effective. (10 marks)

(c) Analyse **FIVE** ethical issues that might have affected LPL staff and board of directors. (10 marks)

(d) Suggest **FIVE** possible reasons why good corporate governance practices are necessary for companies like LPL. (10 marks)

(Total 40 marks)

QUESTION TWO

(a) Examine **FOUR** roles of the nomination committee in Board appointments. (4 marks)

(b) Policy Governance is a comprehensive set of integrated principles that, when consistently applied, allows governing boards to realise owner-accountable organisations.

Analyse **FIVE** of these principles. (5 marks)

(c) Summarise **SIX** recommendations of the Cadbury Report on good corporate governance. (6 marks)

(Total: 15 marks)

QUESTION THREE

(a) According to the Code of Corporate Governance Practices for Issuers of Securities to the public, 2015, the Board of a listed company is expected to establish clear roles and responsibilities in discharging its fiduciary duties.

Evaluate **SEVEN** of these duties. (7 marks)

(b) Assess **FOUR** causes of principal-agent problems in organisations. (8 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Highlight **FIVE** roles of the board of directors. (5 marks)

(b) The interests of current shareholders should be protected from cases of abuse by future management. Such protection can be achieved through shareholder agreement.

Describe **FIVE** elements of such an agreement. (5 marks)

(c) In the course of executing its mandate, the Board of Directors is expected to undertake risk management.

Explain **FIVE** benefits of regular risk reporting. (5 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Evaluate **FIVE** drawbacks of undertaking Corporate Social Responsibility. (5 marks)

(b) Illustrate **FIVE** criticisms of Carver's governance board model. (5 marks)

(c) Explain **FIVE** benefits of developing a compliance programme. (5 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

THURSDAY: 4 August 2022. Morning paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

ZENITH BANK LIMITED (ZBL)

In January 2021, the East African business community was shocked by unforeseen board developments at Zenith Bank Limited (ZBL). The Chairman at the time, Roy Keen had announced a pre-mature exit from ZBL eleven months before the end of his second tenure at the helm of the first-tier regional bank. For many years, ZBL was the most respected company in the whole of East Africa contributing more than 5% of the region's gross domestic product (GDP). The announcement of the exit of Roy Keen on the mainstream media resulted to ZBL's succession plan to be brought into the limelight. Due to the key position of ZBL in the regional financial markets, a never before seen public power struggle developed. Speculation in the media and the financial sector arose on whether the CEO at the time, Green Wood or one of the senior managers in the group would ascend to the top job. However, a chaotic succession debacle ensued which seemed to undermine the hitherto impeccable bank reputation for orderly succession management. The succession war risked damaging the reputation of ZBL's Board as well as that of the company

ZBL's governance had for a long period been characterised by orderly board and senior management succession. This was as a result of clear conscious and documented succession plans. These plans were regularly reviewed and they informed human resource and board development plans. The independent non-executive directors were charged with the responsibility of reviewing the plans and recommending the best ways on how to make them more effective. This entailed benchmarking internal candidates against external candidates to ensure the best candidate would get the job. Institutional shareholders also would give their input and ZBL would engage independent consultants in the search process. This has for a long time ensured that past succession of the board chairman was a low-key affair with minimal disruption to the business and public concern. Past succession has also been based on consensus and unanimous support by the board of directors.

The board succession which took place in the year 2012 when Tee Mapeu replaced Roy Keen as the CEO of ZBL and Roy Keen was promoted to Chairman. ZBL got bad press for its tradition of promoting the CEO to chairman which was perceived to prevent the Chairman from independently and objectively monitoring the bank against the increasingly important concept of good corporate governance.

Traditionally the Chairman of ZBL functioned more as a CEO while the CEO served as a deputy. Following his promotion to Chairman, Roy Keen agreed with governance professionals that operational management and oversight roles should be separate and distinct. In his term as Chairman, Roy Keen took steps to redefine the roles and transferred the responsibility for strategy development from the chairman to the CEO. The bank also engaged a full time Corporate Secretary and created a Corporate Services Department that was to focus more on corporate governance.

News that Roy Keen was stepping down from the position of Chairman within a year leaked to the media suggesting that ZBL board was ready for transition and had for two years been grooming a successor. It was alleged that the bank was stopping the tradition of promoting the CEO to chairman and naming Redd Okre, a non-executive director as Chairman. However, ZBL denied such as rumours.

Roy Keen had been regarded and admired as one of the most influential corporate leaders in the financial industry and news of his departure caused the price of the shares of ZBL, which was listed at the Securities Exchange to dip. With no official communication from the bank, there was media speculation that insiders including management and staff wished the CEO to succeed the Chairman as was the tradition. Green Wood's resume ticked all the right boxes with a solid track record and excellent employee relations. Sections of the regional media commented that there were certain emerging factors that would complicate the ZBL succession. Firstly, some investors felt that Green Wood was an effective executive but not good as a strategic leader. Secondly good corporate governance guidelines recommended that CEOs should not be elevated to Chairs. The Board seemed sold to the idea of breaking the tradition and appointing a non-executive chairman. This would leave Green Wood out of the race. This made the appointment of the chairman very unpredictable given the long speculative list of possible candidates generated and reported by the media. This was also complicated by the divided opinion of internal stakeholders, investors and the public.

In December 2021 one of the local business dailies reported that Green Wood had indicated that he would resign if not given the chairmanship position. This claim was refuted by ZBL but the public was skeptical and believed that there was a power struggle within the ZBL board. It was becoming apparent that ZBL had not communicated the succession plan and managed the expectations of both internal and external stakeholders. Hence the immense pressure on ZBL to get a solution as quickly as possible to reassure investors and restore the public image of the financial institution.

ZBL Board Nomination Committee found itself facing a dilemma. It noted that Green Wood had been an excellent CEO with cumulative experience in the banking industry in the region and his loss would be disastrous to ZBL. To complicate matters even more, with Roy Keen leaving the bank, this would be a double tragedy. If Green Wood succeeded Roy Keen, this would lead to investor discontent and undermine ZBL's attempts to align itself to best practices in corporate governance. It appeared that no decision would satisfy the interests of both management and shareholders. The key issue was how to get a speedy decision that would stop public speculation on board succession and balance the interests of the company with those of the stakeholders.

In late December 2021, four days after the story on the dailies about ZBL's boardroom power struggle, the bank called for a press conference where it unveiled a new leadership team. Taking into account a number of factors, the board appointed Keller Pen, a non-executive director as the Chairman. The Board also created a new position of Group Chief Executive Officer who would oversee the group's activities in the region and appointed Green Wood to the position.

On the day the leadership changes were announced, the price of ZBL shares rose by 3 percent. The appointments seemed to appease investors as well as management by retaining Green Wood and appointing a non-executive director to the position of chairman. However institutional investors were not happy about the poor succession planning and its execution and some expressed views that the non-executive directors should be replaced to take blame for the unpreparedness in succession planning and management in the company.

Required:

(a) Discuss five benefits that could accrue to ZBL from an effective succession planning policy. (10 marks)

(b) Illustrate five elements of a comprehensive succession plan. (10 marks)

(c) Summarise five problems that arose as a result of ZBL's Chairman succession. (5 marks)

(d) Assess the impact of poor succession planning on ZBL and its stakeholders. (5 marks)

(e) Evaluate five disadvantages of ZBL practice of having the CEO being promoted to the position of the Chairman. (10 marks)

(Total 40 marks)

QUESTION TWO

(a) With reference to corporate governance, distinguish between "law" and "ethics". (6 marks)

(b) Suggest four ways in which the resource dependency theory could aid decision makers in promoting good corporate governance. (4 marks)

(c) Discuss five benefits that might accrue to an organisation as a result of having an advisory board in place. (5 marks)

(Total: 15 marks)

QUESTION THREE

(a) Describe five statutory duties of directors of a company. (5 marks)

(b) Highlight five reasons why a company by special resolution may alter the objects in its memorandum of association. (5 marks)

(c) Explain five grounds of altering a company's capital clause in the Memorandum of Association. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Identify five factors to consider before accepting a gift from a client. (5 marks)

(b) Explain five obstacles an organisation is likely to face when carrying out a social audit. (5 marks)

(c) Highlight five challenges facing corporate governance in developing countries. (5 marks)

(Total: 15 marks)

QUESTION FIVE

(a) With reference to companies, discuss five objectives of developing a code of ethics. (5 marks)

(b) With regard to capital markets, suggest five strategies that could be employed to minimise insider trading. (5 marks)

(c) Discuss five roles of the Board in ensuring compliance. (5 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

WEDNESDAY: 6 April 2022. Morning paper. **Time Allowed: 3 hours.**

Answer ALL questions. Marks allocated to each question are shown at the end of the question. Do NOT write anything on this paper.

QUESTION ONE

MILLENIUM CARNATIONS LIMITED (MCL)

Millennium Carnations Limited (MCL) was founded in the year 1985 in Naivasha, one of the largest flower farming regions in Kenya. Its headquarters are in Naivasha although it has satellite offices and farms in the suburban areas of Nairobi such as Kajiado and Athi River. Although MCL produces flowers mostly for export with Europe being its largest market, it also markets its flowers locally to the hospitality industry mostly to hotels and event organisers. Despite its world class flowers being the best-known products to consumers, MCL also operates a horticultural training institute in Naivasha. Currently, MCL directly employs about 7,000 employees and indirectly contributes to the employment of more than 20,000 people through its value chain. MCL also supports a rehabilitation center for gender based violence (GBV) victims run by a consortium of local faith-based organisations. The company is dedicated to advancements in horticultural productivity and commits approximately 5% of its total revenue each year to research and development in collaboration with local universities and public sector agricultural institutions. MCL is consistently one of the top companies to be awarded the greatest number of local and international horticultural awards and actively participates in local and international flower fairs. In the year 2018, MCL's net sales were estimated at Sh.120 million but this declined to Sh.65 million in the year 2020 due to a difficult trading environment occasioned by the outbreak of the COVID-19 pandemic.

MCL invests a lot of effort into corporate social responsibility (CSR) and its associated reporting. It publishes a sustainability report annually. Additionally, the company makes public a lot of information in relation to its compliance with different local and international standards, regulatory requirements and adherence to the Code of Ethics and Governance of the Flower Council, an industry association to which MCL is a member. This information is found in MCL's annual reports, most corporate literature and can also be found on its website. However due to the difficult prevailing economic conditions, MCL had to review its budget on CSR activities which saw a reduction of about 45%. In 2015, MCL introduced a CSR strategy themed: "MCL and the Community: Working together for Prosperity". The company has a CSR policy and a specialist unit within the corporate relations department with its own CSR mission statement. To ensure organisation wide commitment to CSR, MCL has instituted as part of its terms of reference to both external financial and governance auditors a requirement to report on MCL's CSR activities and compliances. The external auditors are required to use MCL's CSR reports and performance as a basis for developing their opinions. MCL's sustainability reports cover four main areas namely; reduction of greenhouse gases, stakeholders engagement, environmentally-friendly agriculture regulatory compliance and CSR.

In the year 2021, MCL restructured and changed work processes in order to be better aligned to the changing operating environment and especially the effects of Britain's exit from the European Union (Brexit), the COVID-19 pandemic, rising energy prices affecting international freight costs and declining profits. Soon a pattern of stress related health problems started being reported in MCL's farms and processing centres. Preliminary investigations by the human resources department aided by health professionals were able to establish a correlation with changes in the organisation internal systems and increasing pressure to perform. Restructuring had also resulted in a number of job losses and anxiety, fear and low morale could be noticed in some of the employees. This caused many challenges for farm managers, business managers, human resources and increased the workload for other employees leading to MCL initiating the development of a policy on workplace stress management. While carrying out research for the policy and unrelated with what was happening at MCL, the government through the Ministry of labour was also carrying out a national study on the impact of the COVID-19 pandemic on occupational health and effect of change in work practices on business performance. MCL took advantage of this development to work with the government and gain wider insights on the challenges it was facing.

To improve throughput in its farms and processing centres, MCL introduced a number of workplace practices. Smoking breaks were reduced from three in a day to one. The elevated seats used by packers in its processing centres were removed and employees were required to stand during their work. It was reasoned that making employees stand not only saved money but increased productivity and enhanced employee interactions. The investigations commissioned by MCL after the reported illnesses called into question whether making employees to stand while working enhanced productivity in the long run. Preliminary findings showed that employees felt under pressure when not allowed to sit down or when allowed less time to rest as indicated by the reduction in smoking breaks. The investigations also indicated that work-related stress had a negative effect on MCL's working process and that good management should be focused on preventing stressful situations at the work place. This was the same conclusion that was communicated to MCL by the trade union representing the employees.

While the health concerns were coming to light, a fishermen association had gone to the Environment Court to petition the government to close all flower farms discharging untreated effluent into the lake leading to mass deaths of fish and at the same time endangering livelihoods. The main cause was believed to be runoff from flower farms containing residual pesticides. MCL was one of the respondents in the suit as well as the environmental management agency.

Since its founding and cognisant of the importance of chemicals in the horticulture industry, MCL has promoted 'Health Me' as one of its principles by adopting responsible chemical usage. Even in the MCL sustainability report of year 2019, it was reported that MCL carried out sensitisation workshops for its employees and suppliers on occupational and noncommunicable diseases. With the government emphasis on health-promoting policies and laws, MCL conducts health checks and tests for its employees at periodic intervals. Based on the incidences of reported workplace health concerns and fish poisoning claims, MCL has set out to review its workplace and environmental management practices. Based on the investigations results, all MCL farms and processing centres have set common numerical targets with the aim of preventing workplace-related diseases. The focus of MCL is on prevention, rather than the treatment of problems. A clear shift from reactive to proactive management has been made. This is clearly evidenced by the communication in the MCL website. MCL has taken the opportunity to develop action-based policies to enhance sustainability. The company has also created the position of a community representative in its Board. In October 2021, MCL launched a new policy that covered areas such as: Work-life balance, health and safety at the workplace, stress management, respect and tolerance, nutrition and exercise.

The sustainability report of year 2021 indicates that MCL organised workshops for managers on best workplace practices, community engagement and regulatory compliance. MCL has also initiated a review of its CSR policy in light of financial challenges facing the company and shareholder pressure to show a business case for CSR. One of the proposed interventions for MCL is to register a charitable foundation to coordinate its CSR activities.

Required:

(a) Assess five benefits to MCL of registering a charitable foundation to manage its Corporate Social Responsibility (CSR) activities. (10 marks)

(b) Discuss MCL's directors' responsibilities in respect to sustainability in light of the challenges facing the organisation? (10 marks)

(c) Examine the three ESG components that MCL needs to address in developing its sustainability strategy. (6 marks)

(d) Predict four ethical dilemmas MCL is likely to face in implementing its CSR programmes. (8 marks)

(e) Assess six good governance practices by MCL. (6 marks)

(Total 40 marks)

QUESTION TWO

(a) Identify five objectives of a code of corporate practice and conduct in promoting good corporate governance. (5 marks)

(b) Capital Market Regulators play an important role in sensitising investors.

With regard to the above statement, explain the importance of investor education in promoting governance. (5 marks)

(c) "All boards are not created equal. There are fundamental differences in how they work and how people in them work. Defining the type and role of your board is essential to its functioning since its governance features vary according to the model you choose".

With reference to the above statement, suggest five factors to consider while selecting a board governance model. (5 marks)

(Total: 15 marks)

QUESTION THREE

(a) Analyse five common law and equitable duties of directors of a company. (5 marks)

(b) Summarise five methods that an organisation could use to manage risks. (5 marks)

(c) Identify five qualifying disclosures that an employee could use as a defense in case of unfair dismissal for whistleblowing. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Discuss the process of stakeholder management in corporate governance. (5 marks)

(b) Highlight five principles of stakeholder theory. (5 marks)

(c) Explain five contents of articles of association. (5 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Examine five principles of good corporate governance. (5 marks)

(b) (i) Explain the term "oversight" as used in corporate governance. (2 marks)

(ii) Summarise three oversight roles of the Board of governance. (3 marks)

(c) You have been appointed as a member of the nominating and governance committee of your organisation.

Required:

Design a framework of issues to be included in the Board evaluation report. (5 marks)

(Total: 15 marks)

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CS INTERMEDIATE LEVEL

CORPORATE GOVERNANCE AND ETHICS

FRIDAY: 17 December 2021. **Time Allowed: 3 hours.**

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

QUESTION ONE

PIE BITES LIMITED (PBL)

Pie Bites Limited (PBL) established in the year 2000 is one of the most successful franchise food retailers in the Kenyan market with over 300 outlets in major towns in the country. However, lately PBL has experienced negative publicity and has rarely been out of the news in the last two years. In July 2019, the Franchisor carried out a forensic audit of PBL due to a whistle-blower's claim that PBL had been routinely understating sales with the aim of defrauding the franchisor of royalties. PBL admitted in October 2019 that there could have been accounting irregularities and that it had launched internal investigations into the matter. Preliminary results of the investigation indicated that revenues could have been higher than reported. This implied that the Franchisor had been underpaid in royalties.

The admission of the accounting irregularities raised serious questions about board governance and specifically the structure and the composition of the company's board of directors, their financial reporting responsibilities and the use of inappropriate accounting policies. The PBL Board had a Chairperson and a Chief Executive Officer in charge of the day to day operations of the company. The Board carries out an annual self-evaluation of its performance.

In a hurriedly convened meeting in December 2019, the shareholders appointed two directors who were not part of the management of PBL. Prior to the appointment of the two new non-executive directors, PBL's board did not have independent directors. A skills audit conducted revealed that prior to the appointment of the two non-executive directors, the directors of PBL did not have any directors with financial or accounting expertise. This weakness in financial knowledge suggested the board was unlikely to have had the necessary knowledge and expertise to effectively question and challenge the company's executives on financial and accounting matters. This also extended to the top management team where the Finance Department was headed by an Economist without financial and accounting qualifications. PBL books of accounts and financial reports were prepared by an outsourced accounting firm.

In the most recent external financial audit for the year 2018, the external auditors of PBL's company Annual report and financial statements discussed the "risk of manipulation" and incomplete records in the recognition of commercial income. However, this did not prevent the company's first -half figures treating a contingency liability as having crystallised and being treated as a cost and reducing the anticipated profits of the company in the financial year 2019. The accounting treatment adopted was accepted by the Board which also lacked financial accounting expertise and the profit figures subsequently emerged when one of the company's own employees questioned the accounting treatment under the company's whistle blowing policy.

An investigative journalist writing about PBL in a business journal suggested that the issues of board composition and income recognition point to failures in the current system of corporate governance of PBL. He pointed out that the Codes of Corporate Governance and the Board Charter of PBL did not require the Board to have non-executive directors neither did it explicitly state that the Board needed members with accounting and financial experience. The journalist noted that the adoption of inaccurate estimates of commercial income reflected a 'failure to establish adequate regulatory mechanisms for curbing abuses of corporate power'. He suggested that reforms were urgently needed and regulators needed to move in with speed. He recommended the immediate constitution of a Board Audit Committee with the requisite expertise.

On 28 February 2020, PBL held an extraordinary general meeting to reassure and update investors on its financial status and the reconstituted governance structures including the establishment of an Audit and Risk Committee of the Board and recruitment of a Certified Public Accountant and Finance Manager regulated by their respective professional bodies. Together with updating investors on its financial results after restatement, the company announced that the Chairman of the Board and CEO would be stepping down from their positions and that the Chief Operating Officer would take over in an acting capacity until a new substantive CEO was recruited.

On 4 April 2020 the Securities Regulator and the Economic Crimes Unit announced it had launched a criminal investigation into the alleged accounting irregularities at PBL. In the meantime, the shareholders appointed a Governance Consultant to carry out a comprehensive governance audit into the governance practices of PBL with the aim of making recommendations on how to improve governance at PBL.

Required:

(a) Advise the shareholders and management of PBL on how good and effective Corporate Governance could guarantee commercial success and the going concern of the company. (10 marks)

(b) Discuss five directors' responsibilities on financial reporting for PBL. (5 marks)

(c) Explain five ways of how Non-Executive Directors (NEDs) could be made more independent. (5 marks)

(d) Summarise five typical roles of Audit Committee in PBL. (10 marks)

(e) Discuss five ways in which PBL could promote shareholders' rights. (5 marks)

(f) Outline five good corporate governance practices adopted by PBL. (5 marks)

(Total: 40 marks)

QUESTION TWO

(a) Discuss five features of the cooperative model of corporate governance. (5 marks)

(b) Analyse five barriers to implementing a successful whistle blowing policy in an organisation. (5 marks)

(c) Boards of directors are required to exert due diligence in ensuring that the organisations they govern are achieving their missions effectively and efficiently.

Required:

Discuss the above statement by highlighting fives areas in which due diligence assessments need to be carried out by the board. (5 marks)

(Total: 15 marks)

QUESTION THREE

(a) Discuss five roles of the board towards effective stakeholders relations. (5 marks)

(b) Analyse five ways in which an organisation would fail in implementing an ethics program. (5 marks)

(c) Highlight five objectives of good corporate governance reporting. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Procurement as a function in the organisation might result in both ethical and conflict of interest issues as relates to the role of the board of directors.

Required:

With reference to conflict of interest, discuss three ethical issues that might arise during procurement. (6 marks)

(b) "Successful chairmen are leaders". This was the observation made by "John Harper" in his book "chairing the board".

Required:

In relation to the role of the chairman of the board of directors, explain four reasons why you might agree with the observation made by John Harper. (4 marks)

(c) Assess five key reasons why succession planning in organisations must continually get the attention of the board of directors. (5 marks)

(Total: 15 marks)

QUESTION FIVE

(a) (i) Explain why you consider a stakeholders' policy necessary in an organisation. (1 mark)

(ii) Identify four key areas that stakeholders' policy should address. (8 marks)

(b) Describe six key steps that are undertaken in the process of adopting Environmental Social and Governance (ESG) investment for an organisation. (6 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 24 November 2016. **Time Allowed: 3 hours.**

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

QUESTION ONE

ELIXIR BANK LTD. (EBL)

Elixir Bank Limited (EBL) is a middle tier bank operating in the East African region and internationally. EBL provides financial services in four main areas; retail banking, corporate banking, small and medium-sized enterprises (SMEs) banking and insurance.

The bank adopts a service differentiation strategy and uses its research and development capabilities to introduce innovative banking services leveraging on technology.

The board of directors consisted of seven directors, with three independent directors (IDs); John Smith, James Roy and Jill Wallen. John Smith was appointed as the lead independent director. He sat on the boards of five other listed companies and also held other key positions, such as being a director of the National Trade Union Congress (NTUC). James Roy sat on the boards of other listed companies and was a senior executive in a healthcare group of companies, holding senior positions such as Executive Director (ED) and Chief Executive Officer (CEO) in hospitals and companies in the group. Jill Wallen had no prior experience as a director. All the three IDs were members of the remuneration committee, nominating committee and audit committee of the bank.

The four executive directors held key management positions in EBL as follows: Ted Rich was the Executive Chairman and CEO. Tim Kelly the Chief Operating Officer (COO), Tom Molly the Chief Technology Officer (CTO) and Theof Steve, Chief Financial Officer (CFO).

The board had diverse competences in business management, finance, accountancy, economics and healthcare. The board held meetings four times in a year, while the committees of the board held several meetings.

The troubles at the bank started when Ted Rich. the CEO and Chairman of the bank, pledged his entire stake of 56.29 per cent in the bank as collateral for a personal loan from Scotch Bank, an international bank. A loan default of shillings 3 billion by London Holdings (LH) an investment firm wholly owned by Ted Rich triggered the unravelling of the ownership of EBL. LH was a controlling shareholder of EBL, a fact that was unknown to many.

When Ted Rich defaulted on the loan in March 2016, Scotch Bank seized his shares in EBL and sold off the entire stake in the open market, causing Ted Rich to lose control of the bank. The forced sale of his shares triggered a premature redemption of convertible bonds worth shillings 1.2 billion, as the bond agreement included a covenant which required Ted Rich to remain in control of the bank.

The severity of the issue emerged when PVC, the bank's auditors issued an audit disclaimer on EBL financial statements due to going concern issues. TPL, a corporate advisory firm was then appointed as EBL's independent financial advisor to assess the implications of the default, as well as to recommend measures to be implemented in order to guarantee the going concern of EBL.

When EBL failed to produce its first quarter financial results in April 2016. PVC was engaged to review significant cash transactions between the months of January and March 2016 which were connected with Ted Rich's loan default. The CFO's resignation at the end of April 2016 on "personal reasons" raised eyebrows among the board members. No action was taken by the management to appoint a new CFO.

The other executive directors, the CEO, CTO and COO caused a shock in the market when on 5 May 2016 they tendered their resignation without giving any reasons. The independent directors pleaded with the executive directors to remain on board to ensure continuity. On May 29, 2016 they rejoined EBL. However it emerged that, when they were away, the key management had retained control of overseas branches and had access to the overseas branches bank accounts.

The audit report revealed that, at least shillings 1 billion worth of cash transactions were made without any prior approval or authorisation from the board. The audit report also exposed other dubious transactions which included siphoning money from the bank.

The individuals responsible for the dubious transactions made it difficult for PVC when the firm went to conduct audits in the branches overseas. Accounting branch officers were advised not to cooperate with the auditors and therefore forced them to leave the bank premises. They were unwilling to verify statements from the auditors and it appeared that two sets of books of account were maintained. PVC could not continue with the audit as a result of frustration.

The key management traded accusations and counter accusations in public where IDs accused EDs of misusing their power as directors. The EDs responded by claiming that the financial controller appointed by the board had misused the bank's funds through paying of professional fees to PVC and TPL instead of repaying the corporate bond.

To protect the interests of depositors and other creditors, the financial regulator placed the bank under statutory management and closed all its branches.

Required:

(a) Analyse the composition of the board of Elixir Bank Ltd. (EBL), citing four ways in which it complies with the best practices in good governance. (8 marks)

(b) Discuss three potential conflicts of interest existing within EBL. (6 marks)

(c) Examine eight roles that the lead independent director was expected to discharge in EBL. (8 marks)

(d) Propose five governance measures that EBL could adopt in order to overcome the challenges it was facing. (10 marks)

(e) (i) Summarise to the board of EBL four mandatory matters that the audit committee is required to review. (4 marks)

(ii) Advise EBL audit committee on four powers they could exercise in order to improve the bank's operations. (4 marks)

(Total: 40 marks)

QUESTION TWO

(a) Examine four likely challenges encountered in protecting confidential business information from potential security risks. (8 marks)

(b) Arcute Company Ltd. was established in mid 2016, and has recently constituted a board comprising new and inexperienced members.

Assuming that you have been hired to train and induct the members, propose seven topics that you would include in your training manual. (7 marks)

(Total: 15 marks)

QUESTION THREE

(a) One of the best practices in corporate governance is conducting a formal and rigorous evaluation of the performance of board of directors.

Citing three reasons, highlight the significance of board evaluation. (3 marks)

(b) Evaluate four roles of ethical theories in regulating behaviour of members of an organisation. (4 marks)

(c) Examine four ways through which corporate organisations may implement corporate social responsibility (CSR) initiatives to address environmental issues. (8 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Outline five objectives of investor education programmes. (5 marks)

(b) In an enterprise risk management seminar, one of the facilitators noted that "Enterprise risk management consists of interrelated components that are derived from the way management runs an enterprise and are integrated with the management process".

With reference to the above statement, discuss five components of enterprise risk management. (10 marks)

(Total: 15 marks)

QUESTION FIVE

(a) In the context of legitimacy theory, explain the following types of organisational legitimacy:

(i) Normative. (1 mark)

(ii) Pragmatic. (1 mark)

(iii) Cognitive. (1 mark)

(b) Many countries today have put in place institutional and regulatory frameworks to promote good governance in organisations. Despite this fact, many firms continue to be faced with financial frauds and scandals.

With reference to the above statement, suggest four adverse consequences of poor corporate governance. (4 marks)

(c) The board of XYZ Ltd. has approached you as the company secretary for advice on the various internal governance controls that the board should put in place.

Advise the board of XYZ Ltd. on four internal governance controls. (8 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

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

KITE LINK LTD. (KLL)

Kite Link Ltd. (KLL) was incorporated on 29 October 2007 as a business to business (B2B) and was listed in the Common Security Exchange (CSE) in 2009. In 2010, KLL added the real estate development and related services to the group's core business with an emphasis on the Kenyan property market. Through its subsidiaries and associated companies, KLL businesses spanned from property development, project management to customised housing in Kenya, Uganda and Tanzania. The company's three main areas of investment are development projects for both commercial and industrial purposes, corporate capital investments and provision of consultancy services.

KLL's board of directors comprised seven members, five of whom were non-executive directors. Three of the five non-executive directors of KLL were considered as independent directors, whose appointment was renewed annually by the nominating committee. The directors possessed diverse experience and skills with majority holding business management degrees from reputable universities and relevant professional qualifications.

The board of KLL was chaired by Luka Mose. The finance and accounting unit was headed by Eric Tolo, an executive director who was also a partner at Tolo and Associates, the accounting firm that has been providing accounting services to KLL for an undisclosed number of years. The board of directors in KLL were compensated in the form of directors fees, committee attendance fees and share options. Executive directors were not paid directors fees but instead were entitled to salary, allowances, bonuses and share options.

The audit committee of KLL comprised three directors; two of whom were non-executive independent directors including the chairman of the audit committee. Members of the audit committee had a background in accounting and finance. The audit committee held meetings several times in a year. According to the company's corporate governance report, the audit committee reviewed a wide range of reports and relevant papers from the management and external auditors. Management staff and the company's auditors were invited from time to time to attend such meetings in order to provide additional information as appropriate.

KLL's Nominating Committee (NC) comprised two non-executive independent directors, including the chairman of the nominating committee and one executive director. The nominating committee made recommendations to the board for the re-election of directors and appointment of potential candidates as directors and members of the committees. The nominating committee also evaluated the performance of the board.

One of the issues faced by the KLL board was the review and oversight of the accounting practices of the company. Eric Tolo would prepare the accounts, which would then be approved by the staff of Tolo and Associates. Luka Mose, the chairman of the board in consultation with the audit committee authorised Eric Tolo, the head of finance and accounting unit to perform internal audit roles in KLL without informing the Nomination Committee or seeking board approval.

In September 2014, EZ Certified Public Accountants, KLL auditors since 2008 raised concern for lack of timely communication and sharing of information between the finance and accounting unit and Tolo and Associates. The issues of inadequate accounting knowledge and non-compliance from its reporting entities in Uganda and Tanzania were also raised.

Investment proposals by KLL in Uganda and Tanzania were not presented to the KLL board for evaluation and approval. In addition, the budget report of a project in Kenya did not include proper detailed budgeting and projections and there were no timely cash flows and project reporting by KLL. Further, an inter-company loan of Sh.100 million taken to finance its operations in Tanzania which matured in May 2015, was signed and extended by Luka Mose, the Chairman without notifying the board of KLL.

Successive resignation of members of KLL's senior management became a matter of concern in July 2015 with the resignation of the deputy managing director. On 2 October 2015, EZ Certified Public Accountants gave notice to the company of its intention to resign as the company's auditor, just three days after being reappointed in the Annual General Meeting (AGM) of the company. In November 2015, Eric Tolo resigned from KLL.

KLL directors while drafting the governance report for the year ended 31 December 2015, acknowledged the existence of several conflicts of interest including duality of roles and inadequacy of management controls. It also admitted to lack of prompt disclosures of project cash flows and lack of board approvals.

Required:

(a) Analyse five good governance practices adopted by Kite Link Limited (KLL). (10 marks)

(b) Evaluate five governance challenges faced by KLL. (10 marks)

(c) Discuss five responsibilities of KLL's board towards:

(i) The management. (5 marks)

(ii) Board members. (5 marks)

(d) Propose five ways through which the directors and management of KLL could manage instances of conflict of interest. (10 marks)

(Total: 40 marks)

QUESTION TWO

(a) In the context of good governance, discuss the following policies adopted by various companies:

(i) Whistle blower policy. (3 marks)

(ii) Chinese wall policy. (4 marks)

(b) Analyse four features of a good ethics and compliance programme implemented by companies in your country. (8 marks)

(Total: 15 marks)

QUESTION THREE

(a) Citing three reasons, justify the importance of an independent and balanced board of directors. (3 marks)

(b) Outline six propositions of resources dependence theory. (6 marks)

(c) Companies undertaking corporate social responsibility must take ethical issues into consideration.

Analyse six ethical issues that should be considered while undertaking corporate social responsibility. (6 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Examine four roles of the board in relation to enterprise risk management. (8 marks)

(b) Suggest seven items that should be included in the report on corporate governance, in the annual report of companies. (7 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Suggest four ways in which non-disclosure of accurate financial statements might negatively impact the company. (4 marks)

(b) Argue five cases in favour of board committees. (5 marks)

(c) Evaluate six ways in which a certified secretary (CS) could contribute to the efficiency of the board. (6 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

PILOT PAPER

September 2015. **Time Allowed: 3 hours.**

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

QUESTION ONE

MAHIGA LIMITED

Mahiga Limited is a large diamond mining company providing employment to more than 10,000 people directly and approximately 100,000 people indirectly. The Northern part of the County where Mahiga Limited is located and has been operating from for the last fifty years is a rural setup where members have few opportunities. The County is the poorest in the country in terms of average income with two-thirds of the County's population living in extreme poverty. Although the company has a policy of employing at least 30% from the local community, this has been difficult to implement since majority from the local community are uneducated and therefore do not meet qualifications as required by Mahiga Limited. For this reason, the company has been getting most of its employees from the southern part of the country from where all its shareholders and directors come from. In comparison with other companies, the employees of Mahiga Limited are highly paid. However, the company has been experiencing extremely high turnover. In addition, several employees have either died or suffered from work related ailments. The earnings of Mahiga Limited have been increasing for the last fifty years partly because of the high price of diamond in the global market. The company is among the highest tax payers and employers in the country.

As part of its Corporate Social Responsibility, the company has been financing political parties as well as political activists. For a political party or activist to qualify for such financing, such group has to convince the Board of Mahiga Limited that it has a good manifesto and policies that would improve the lives of citizens as well as promote governance in the County. Last year, the local communities took the company to court complaining that their health and those of their livestock were adversely affected by the gases, dust and chemicals discharged by the company. The High Court ruled in favour of the company. This year, local politicians started inciting the local communities to vandalize property of the company citing among others the above complaints. The company sued the said politicians and some of them are already in police custody. However, the conflict seems to be escalating with the local community turning to attack employees of the company. Not only has this conflict led to the stalling of the company's operations but it has resulted into political fallout at the Northern County.

(a) Critically anlayse the governance concerns in Mahiga Limited. (10 marks)

(b) You have recently been appointed as the company secretary of Mahiga Limited. As a governance expert, advise the company on the best way of improving governance practices. (10 marks)

(c) Advise the Board of Mahiga Limited on three alternative methods of solving conflicts other than through the courts. (10 marks)

(d) Outline advantages and disadvantages of the above identified methods of solving conflicts. (10 marks)
(Total: 40 marks)

QUESTION TWO

(a) Explain the meaning of the term "ethics". (3 marks)

(b) Discuss the importance of good corporate governance to the achievement of a country's development agenda. (12 marks)
(Total: 15 marks)

QUESTION THREE
"Corporate Governance is a myth not a reality; it is an unnecessary cost with no significant corresponding benefits to an organisation". This was a remark by a Chief Executive Officer of a listed company.

Critically analyse the above statement. **(15 marks)**

QUESTION FOUR
Explain the roles of the following in promoting the practice of good governance in an organisation:

(a) Board of Directors. (3 marks)

(b) Board Chairman. (3 marks)

(c) Audit Committee. (3 marks)

(d) Company Secretary. (3 marks)

(e) External Auditor. (3 marks)
(Total: 15 marks)

QUESTION FIVE
(a) Describe the role of information communication in the practice of corporate governance. (8 marks)

(b) Discuss the advantages of having independent directors in the Board of a company. (7 marks)
(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 26 November 2015. **Time Allowed: 3 hours.**

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

QUESTION ONE

MAGARI INTERNATIONAL LTD. (MIL)

In 2007, two business associates came together and bought a controlling interest in a listed company. The company, then known as Magari International Ltd. (MIL) was one of the leading companies in its area of operations. Indeed, there were products in the market which the company distributed on behalf of the manufacturer that reflected its identity in the market.

The two business associates formed two private companies through which they acquired controlling interest in MIL. Between these two companies, their other individual nominees and themselves, they controlled over 85% of the issued and paid up capital of MIL.

At the time of acquisition by the two business associates, MIL assets base was extremely healthy. The assets included commercial property from which MIL was earning rental income.

The two business associates soon began to differ on business decisions taken by the board of directors which they had appointed comprising of seven members. None of the two sat on the board, but their appointed nominees formed the board membership. Indeed, in the first five years, three Chief Executive Officers (CEOs) had left the company. The board itself did not appear to have the final authority and powers over the business of the company.

Being a listed company, the regulator questioned the board on more than one occasion, why there was such a large turnover of senior management, including the CEOs.

In 2012, their differences reached a breaking point and they sought the court's intervention. While they were busy fighting in court corridors, the board operations in terms of major business decisions stalled, because the nominee board members could not agree on a common direction. They took sides with the individuals who put them on the board. Management was unable to operate effectively, business suffered with key staff opting to seek employment elsewhere. Suppliers were not paid on time, and most of them opted to take legal action to recover their money. The organisation engaged a number of lawyers to deal with the legal cases.

The court after considering all the grievances and the concerns of all the parties, and the effect of any decision on other shareholders and stakeholders, decided not to award a winding up order, but instead directed them to seek the help of a consultant in corporate governance in an effort to salvage MIL.

In 2013, they engaged the services of a corporate governance consultant who advised them on the need for good corporate governance, objectives of corporate governance, how the composition and the structure of the board should be and ways of eliminating the barriers to visionary board leadership so that MIL could be able to achieve its vision. They were also informed on the various roles that their nominee directors should perform in order to promote good governance in MIL.

The parties considered the views, advice and the recommendations of the consultant and unanimously agreed to implement them. This marked the beginning of MIL turnaround. The board started operating effectively, staff morale and revenue increased culminating in improved shareholders and stakeholders confidence.

Required:

(a) Identify five governance issues that require to be addressed by management in order to help Magari International Ltd. (MIL) to operate as a viable business. (10 marks)

(b) Discuss five barriers to visionary leadership, that the board of MIL could eliminate in an effort to achieving its goals. (10 marks)

(c) Analyse five roles that the nominee directors of MIL were expected to perform in promoting good governance. (10 marks)

(d) Citing five reasons, justify the need for good corporate governance to the management and board members of MIL. (10 marks)

(Total: 40 marks)

QUESTION TWO

(a) Propose five reasons why companies get involved in corporate social responsibility (CSR) activities. (10 marks)

(b) Discuss the assertion that divulging confidential information is not necessarily harmful. (5 marks)

(Total: 15 marks)

QUESTION THREE

(a) Explain the following theories of good governance:

(i) Stewardship theory. (3 marks)

(ii) Agency theory. (3 marks)

(iii) Stakeholder theory. (3 marks)

(b) Examine six benefits of separation of the roles of the chairman of the board and the Chief Executive Officer (CEO) in a company. (6 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Suggest five model questions that could be used during performance evaluation of the board of directors. (5 marks)

(b) (i) Explain the term "reputation risk" as used in enterprise risk management. (2 marks)

(ii) It is believed that the saying "image is everything" is true, with respect to managing reputational risks facing the organisation.

In relation to the above statement, analyse four threats to reputational risk that an organisation might be exposed to. (8 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Summarise seven contents of a board charter. (7 marks)

(b) Citing four reasons, justify why good ethical practice is necessary for the business. (8 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 2 September 2021. **Time Allowed: 3 hours.**

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

QUESTION ONE

MJENGO CONSTRUCTION COMPANY LTD. (MCCL)

Mjengo Construction Company is one of the leading construction company in real estate in Kenya. The company was incorporated as a private limited company in the year 2019 after its leading directors agreed to an expansion of the company with the hope of setting up operations in the rest of the East African region.

MCCL recently appointed a finance director Goodwin Hasibu. MCCL won a government tender to construct 3,000 housing units. This government contract saw the share price of MCCL rise in value significantly. The finance director Goodwin Hasibu bought the MCCL shares using a proxy in small batches.

The finance director sold all his shares on the day the housing contract was made public and made some supernormal profits in a short period of time. Once MCCL noticed the engagement of it's finance director, Goodwin Hasibu was taken to court and he was found guilty of insider trading. The court found out that Goodwin Hasibu had used his inside knowledge at MCCL to personally profit thereby abusing his position in the MCCL as a finance director.

Goodwin Hasibu was committed to a jail term for his actions. The judge in his ruling stated that Goodwin Hasibu had shown a clear breach of the trust placed on him by MCCL. The judge went on to state that insider trading had the potential of eroding public confidence in the integrity of the market.

The public relations manager stated that the internal controls in MCCL were adequate and that is why they were able to provide all the necessary information to the authorities that culminated in successful conviction of the finance director Goodwin Hasibu and that, the insider trading did not raise any major governance concerns.

During an extra ordinary meeting that was convened to discuss the incident, a resolution was passed that external governance auditors be engaged to conduct a governance audit of MCCL. They further resolved that the board of directors set up among other committees, an ethics committee and an audit committee.

Required:

(a) In relation to the operations of Mjengo Construction Company Ltd. (MCCL), analyse three features of insider trading. (6 marks)

(b) Citing five reasons, justify why MCCL should set up an audit committee. (10 marks)

(c) Explain four strategies that MCCL would put in place to minimise insider trading. (4 marks)

(d) Discuss six ways in which MCCL would benefit by establishing an ethics committee. (6 marks)

(e) Analyse four benefits of having a diversified board of directors at MCCL. (4 marks)

(f) Explain five ways through which MCCL would have removed Goodwin Hasibu as a director of the company. (10 marks)

(Total: 40 marks)

QUESTION TWO

(a) Examine five possible reasons which would lead to failure of virtual organisations. (5 marks)

(b) Analyse three disadvantages of institutional investment. (6 marks)

(c) Discuss four drawbacks of the advisory board model of governance. (4 marks)

(Total: 15 marks)

QUESTION THREE

(a) Explain the role of the board in Enterprise Risk Management (ERM). (5 marks)

(b) Discuss five reasons why boards pursue succession planning. (5 marks)

(c) Evaluate five factors that could influence organisations to concentrate on corporate social responsibility. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Discuss the role of the board in ensuring legal and regulatory compliance. (5 marks)

(b) Explain six agency costs that organisations might incur due to separation of ownership and management. (6 marks)

(c) Highlight four challenges facing private and public sector corporate governance in Africa. (4 marks)

(Total: 15 marks)

QUESTION FIVE

(a) "Good governance goes beyond legal compliance".

Discuss the above statement by highlighting six benefits of good corporate governance in organisations. (6 marks)

(b) Discuss the duties of directors with regard to conflict of interest and disclosure in promoting corporate governance. (5 marks)

(c) Evaluate four factors that could influence a positive corporate image of an organisation. (4 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 20 May 2021. **Time Allowed: 3 hours.**

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

QUESTION ONE

ROCK ATHI LIMITED (RAL)

Rock Athi Limited (RAL) was incorporated in August 2014 as a business to business (B2B) company. RAL had applied for listing in Securities Exchange (SE) in 2017 but was not successful. The company deals with real estate and asset property. The company deals in construction of commercial, industrial and residential housing units.

RAL is made up of seven directors, five of whom are non-executive, three of the five non-executive are considered independent directors whose status are reviewed annually by nominating committee. The Board consist of directors with diverse experience and background. The chairman of the board, James Tall also owns an auditing firm, James Tall and Company which provided external auditing services to RAL.

Directors fee policy included basic retainer fee, committee attendance fee and share options. Executive directors did not receive directors fee but a mix of a good salary and allowances. In 2017, the company approved a share option scheme to employees and directors where the combination on shares they held was 40 percent of the company share capital. The new owners demanded a fresh audit conducted by a different firm other than James Tall and Company. Motshi and Company were appointed and conducted an audit on the company accounting records and practices, which revealed the following: that the finance manager and the accountant did not have the requisite accounting knowledge and experience and had failed to adhere to a number of accounting standards. Financial reports did not reveal the true financial position for the last two years. Budget reports did not capture main projects undertaken, projection and expected cash flows.

The company did not have a whistle-blowing policy and a comprehensive human resource policy. The finance manager was the son-in-law to one of the directors and the Human Resource Director was also the daughter of another director, all were recently hired. Peter Wahomeh who joined the company as the project manager with a diploma in project management recently resigned after the company had spent huge amounts in his training and development abroad. After completing an 18 months training, he tendered his resignation unexpectedly.

In March 2018, the company spent 200 million shillings in corporate social responsibility. The employees had not been paid upto five months salaries in arrears. The Chief Executive Officer (CEO) also bought himself a luxurious car costing Sh.10 million. The CEO contract expired in September 2019 and the organisational culture allowed the CEO to retire with his or her vehicle as an appreciation. A few directors were involved in some contracts which they did not disclose their interest.

Devine Company supplied RAL with construction materials and had signed a secret agreement with the finance and procurement officers that once their bids were approved they would get 20% kickbacks. Inspite of Devine Company materials prices being high and products quality not meeting the exact specifications, they continued to be the dominant suppliers. The officers were worried that accumulation of large sums of money in their accounts would attract attention and scrutiny from the banks and therefore they opened several accounts in the names of close relatives where Devine Company would transfer the loot. To conceal the scheme, the company set up two other different firms and opened bank accounts using business names; where they would receive illicit payment. A few board members were privy to this and continued to dance to the tune of corruption.

Required:

(a) Whistle-blowing arrangements that were missing in Rock Athi Limited (RAL) were increasingly seen as an important component of an organisation's corporate governance framework.

Required:
Draft a whistle-blowing policy for RAL that could help deter and uncover the prevailing instances of fraud and corruption in the company. (10 marks)

(b) Citing five key potential conflicts of interest highlighted in the case, examine how they undermine corporate governance in RAL. (10 marks)

(c) Evaluate eight roles that the Board of RAL was expected to discharge in defining the organisation's ethical environment. (8 marks)

(d) Outline six characteristics of an independent director, that the Board of RAL was required to consider during the appointment of independent directors. (6 marks)

(e) Analyse information that the directors of RAL were required to disclose to the new company auditors and other board members. (6 marks)

(Total: 40 marks)

QUESTION TWO

(a) Distinguish between a "Unitary Board" and a "Two Tier Board". (4 marks)

(b) Propose six best practices relating to audit committees. (6 marks)

(c) Outline five responsibilities of the board in relation to shareholders rights. (5 marks)

(Total: 15 marks)

QUESTION THREE

(a) Analyse how legitimacy theory could be applied in enhancing the corporate social responsibility (CSR) of a company. (5 marks)

(b) Premier Decor signed a non-disclosure agreement with Arcute Consultants. Examine four circumstances under which Arcute Consultants would not be held liable for disclosure and use of confidential information. (4 marks)

(c) Explain three ways which institutional investors could use to improve corporate governance of their companies. (6 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Outline five items that should be included by company directors when preparing a board work plan for the organisation. (5 marks)

(b) In a corporate governance seminar, one of the facilitators noted that, "most of the directors in different companies ignore symptoms of poor corporate governance".

With reference to the above statement, discuss five symptoms of poor corporate governance. (10 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Cyber security is today's most pressing corporate governance issue, but one which boards of directors and management find challenging to address.

With reference to the above statement, propose four ways of managing cyber security threats currently affecting many companies. (8 marks)

(b) Examine seven challenges faced by professional bodies in their roles in promoting governance and ethics in developing countries. (7 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

FRIDAY: 27 November 2020. **Time Allowed: 3 hours.**

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

QUESTION ONE

LAKESIDE FERRY LIMITED (LFL)

Lakeside Ferry Limited (LFL) is a public limited company that provides both vehicle and passenger ferry services on a border lake connecting two landlocked Countries in Central Africa. The company was established in Maloa, a landlocked country in 1946 during the colonial period to promote commerce and international relations between Maloa and its neighbours.

LFL has had a good corporate governance reputation and has received a number of governance awards over the years. In 2016, LFL was ranked fourth in a Corporate Governance Index administered by the Country's Corporate Secretarial Professional Body. The award assessed participating institutions; corporate governance, transparency, stakeholder relations, legal compliance and compliance with varied codes of corporate governance, structure of the board, directors compensation, integrated reporting and corporate social responsibility.

LFL believes in effective board and executive management, board composition, diversity and experience are key parameters in the appointment of board members. LFL believes that board diversity brings in new skills and perspectives to the board. Term limits also ensure board members are constantly changed to ensure an independent and diverse board. The board is led by a Chairman and other non-executive board members who hold directorships in other organisations and bring a wealth of board experience.

In 2016 LFL had a board of nine members, six executive and three non-executive and four board Committees. These were Audit Committee, Remuneration Committee, Finance Committee and Nomination Committee.

In the past couple of years LFL board has experienced significant changes in board and executive management. Four senior managers have left the Company. They held key positions such as Chief Finance Officer, Chief Maintenance Officer, Chief Operating Officer and Chief Manager Corporate Communications.

In the financial year 2017/2018 two non-executive directors resigned citing personal reasons and there was no reappointment leaving LFL with only seven directors. Despite being a public organisation, LFL had a good financial performance and safety track record. However, it had its own challenges the most pressing being overcrowding on the ferries. Other customer complaints have been on long queues, lateness and pick pockets on the ferries. In 2018, LFL announced a fare hike of 3% citing rising costs of fuel in international oil markets. The previous fare hike had been in 2010. Commuters grudgingly accepted the fare hike but on the other hand expected better services. The commuters felt that despite the hike, there was no improvement in service delivery leading to increased discontent among them.

On the morning of 17 November 2018, LFL services experienced a major disruption. Two ferries, one on the South-West service and another on the Middle Service stalled Mid-lake leaving passengers stranded on the ferries and onshore. Engineers were dispatched and were able to carry out repair after two hours, after which the ferry services resumed. Again on 8 December 2018 ferry services were disrupted on the East-North service when two ferries collided mid-lake. There were no fatalities but a number of passengers were injured and two vehicles were tossed overboard and sunk. The management reassigned one ferry from the Middle line to serve the East-North service as salvage and recovery activities went on. After three days of transport chaos and public outcry, LFL contracted one of the small private ferry to ease services. Commuters complained that this was too little too late. Also during the crisis, the company issued a number of contradictory statements and inaccurate information which it later corrected.

Due to these mishaps, State Department of Transport and Infrastructure appointed a 7 member taskforce to investigate the recent incidents. This led to the withdrawal of the affected ferries for inspection and repairs, causing major disruptions again. The task force reported that the ferries were not maintained and serviced according to the manufacturers' service schedules and by authorised service dealers, and that LFL was using unlicensed and inexperienced Coxswains. It also established that the Coxswains were overworked due to staff shortages. The taskforce established that the LFL response to the emergencies was slow, haphazard and unplanned. The task force further established that the budget allocated for maintenance and repairs was inadequate.

The incidents at LFL led to a public outcry with the demand that the CEO, should step down. He called a press conference and communicated that he was not ready to step down. However, due to mounting Public Pressure for accountability he resigned on 18 January 2019. This created a succession challenge to LFL due to the fact that there were no senior managers qualified to be appointed to the position on acting capacity until a substantive CEO was recruited. Following the CEO's resignation, the board resolved to appoint the remaining non-executive director to assume executive responsibility while the board recruited a new CEO.

Required:

(a) Evaluate five duties of the directors of Lakeside Ferry Limited (LFL) in relation to stakeholder relationship management. (10 marks)

(b) Analyse four weakness of the risk management and crisis management procedures at LFL. (8 marks)

(c) Citing four reasons, justify whether the board of directors of LFL should be held responsible for the challenges before, during and after the ferry services disruptions. (8 marks)

(d) "There was a number of resignations of senior management staff over a very short period of time prior to the ferry services disruptions threatening the sustainability of LFL business processes".

Advise the board of LFL on five steps that it should take in implementing oversight of corporate sustainability. (10 marks)

(e) Propose four benefits of succession planning strategy to LFL. (4 marks)

(Total: 40 marks)

QUESTION TWO

(a) Analyse five obligations of the shareholders towards the management of a company. (5 marks)

(b) As a governance consultant, advise on six key issues to be covered during the training and development workshop of a new board of directors. (6 marks)

(c) Summarise four objectives of conflict of interest register. (4 marks)

(Total: 15 marks)

QUESTION THREE

(a) Citing five reasons, justify the need for investors education in promoting good corporate governance. (5 marks)

(b) Describe the "policy board model" for non-profit organisations. (4 marks)

(c) A board charter helps the board in directing the organisation to maximise long-term value of services provided to all stakeholders.

Citing six benefits of a board charter, support the above statement. (6 marks)

(Total: 15 marks)

QUESTION FOUR

(a) With reference to the shift in corporate governance practices, describe the following terms.

(i) Outward accountability. (2 marks)

(ii) Collaborative governance. (2 marks)

(iii) e-governance. (2 marks)

(b) Social audit is one of the ways through which companies manage risks. Argue four cases against social audit. (4 marks)

(c) Examine five merits of the stakeholder theory of good corporate governance. (5 marks)
(Total: 15 marks)

QUESTION FIVE

(a) Outline six components of an effective compliance programme. (6 marks)

(b) Propose five strategies that could be employed to minimise insider trading. (5 marks)

(c) Suggest four advantages of the virtual organisation model that is currently embraced by many organisations. (4 marks)
(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

WEDNESDAY: 27 November 2019. **Time Allowed: 3 hours.**

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

QUESTION ONE

STETHO HEALTHCARE LIMITED (SHL)

Stetho Healthcare Limited (SHL) is one of the leading medical insurers in this region. Established 35 years ago in Kenya, the company has steadily grown to have a presence in over seven countries in East and Southern Africa. Over the years the company has experienced very minimal changes in the top management. John Mooley, the current Executive Chairman has decided to retire having served in the combined role for over ten years out of the full 35 year career at SHL. Succession planning at SHL has not been considered an issue since Don Smith had been operating as the Chief Operating Officer (COO) for a number of years and everyone has opined that he is the next in line as he is progressing very well, very promising and he enjoys board support.

Don Smith has trebled the size of the company through an aggressive acquisition strategy, taking the company into lucrative markets around the region where he bought, restructured and turned around struggling small medical insurers. The Board of Directors is quite pleased with their Chief Executive Officer (CEO) and COO's performance. The board has eleven members with seven being company executives and the other four being prominent personalities sourced from the regional markets where SHL operates in. The four non-executive directors were sourced by the Executive Chairman due to their key expertise in SHL's regional markets. None have regular contact with shareholders and fellow board members. The board meets irregularly and mainly meets to review current financial performance. Don Smith, as the COO has complete freedom to act and this is widely seen as the reason for the company's positive trading position in a highly competitive medical insurance industry.

Shareholders of SHL are also pleased with performance. However, apprehension and reservations are being felt and expressed by some shareholders due to the impending retirement of the Executive Chairman who was seen as the moderating influence on the COO's ambitions. Some institutional investors have expressed their concerns about the sustainability of the corporate governance structures and corporate strategy, especially whether adequate financial resources exist within SHL to support it in case of any risk, and whether risks associated with unknown markets make the company overexposed and vulnerable. The Corporate Secretary has also advised the Board of Directors (BOD) on the inadequacies of the current board structure, remuneration of directors which appears haphazard and determined solely by the Executive Chairman and the need for board members reappointments to be performed based as determined through formal board evaluation. The board has only one committee, that is the Executive Committee composed of the Executive Chairman, COO and other executive directors which only meets to discuss those issues the board feels need to be allocated more time than what is available during its infrequent board meetings.

While the company has recognised the need to have foreign directors who have influence in their own countries, the Corporate Secretary has pointed out that the board needs to be directly accountable to the shareholders of SHL. He has recommended the establishment of a two-tier board structure, the main board and an advisory board and creation of a remuneration committee.

Required:

(a) Discuss five changes to the governance structure that you would recommend for Stetho Healthcare Limited (SHL). (10 marks)

(b) Assuming SHL creates an advisory board as advised by the Corporate Secretary, explain five roles it could execute in its governance structure. (5 marks)

(c) Propose five ways through which the board of SHL could address the sustainability and corporate strategy issues raised by the institutional investors. (5 marks)

(d) Advise the board of SHL on five oversight roles that it was expected to discharge to enhance good governance in operations of the company. (10 marks)

(e) Citing five reasons, justify to the board of SHL the need for conducting board evaluation. (5 marks)

(f) Summarise the responsibilities of a remuneration committee that the SHL corporate secretary advised the board to constitute. (5 marks)

(Total: 40 marks)

QUESTION TWO

(a) Your organisation has adopted a performance measurement system based on the concept of tripple bottom line.

Explain how this approach might benefit the organisation. (3 marks)

(b) The general position in matters of ethics could lie around the challenges in legislating it. Yet, ethical conduct is a desirable characteristic in people's conduct in business.

Discuss two aspects giving rise to the challenge in legislating ethics. (4 marks)

(c) In a corporate governance seminar, one of the facilitators noted that "It appears that organisations are strangled with too many accountability overseers that comprise; the board audit committee, the internal audit function, the external audit function and in some cases the regulator and finally the shareholders".

Required:

Justify whether there is need of the above listed oversight functions in the context of value to the organisation. (8 marks)

(Total: 15 marks)

QUESTION THREE

(a) Analyse how the resource dependency theory could aid decision makers in promoting good corporate governance. (5 marks)

(b) Explain the importance of stakeholder management in corporate governance. (5 marks)

(c) A major risk facing organisations currently is non-compliance with laws and regulations.

Evaluate five roles of the board in ensuring compliance. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Summarise two disadvantages of a patron board model. (2 marks)

(b) Examine five aspects of integrated reporting. (5 marks)

(c) Discuss four major impediments that stand in the way of corporate governance convergence among different countries. (8 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Describe five duties of directors in relation to conflict of interest and disclosure. (5 marks)

(b) In a professional practice environment one may be able to identify three major barriers to error disclosure, probably with clear consequences to the professional practitioner.

With reference to the above statement, analyse the impact of the following barriers to error disclosure from a professional perspective:

(i) Legal action. (2 marks)

(ii) Loss of trust. (2 marks)

(iii) Loss of professional reputation. (2 marks)

(c) Organisations which are committed to an active corporate social responsibility (CSR) have adopted the provision of CSR services through registered foundations.

Assess how this practice could help to promote greater value to the recipients. (4 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 23 May 2019. **Time Allowed: 3 hours.**

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

QUESTION ONE

KENLY BUS TRANSPORTERS (KBT)

Kenly Bus Transporters (KBT) is a leading transport company in Kenya and operates four subsidiary companies. KBT was incorporated as a private limited company in 2011 and went public in 2017 through a conversion. KBT has consistently performed well as reflected in its reported net revenue of Ksh.353 million in 2018.

As a leading passenger transport company in Kenya, KBT currently has a fleet of more than 1,000 vehicles, serving more than 1 million passengers per month, on more than 35 different routes throughout Nairobi metropolitan city. KBT core business lines include regular bus services, taxi services, car rental services and charter bus services. The company plans to expand both its taxi and non-taxi businesses through geographical expansion and new business activities while continuing to invest in improving efficiency across all business segments.

Following its initial public offer (IPO), KBT approached Lilly Registrars, a leading certificate secretarial and corporate governance consultancy firm to support the company's efforts to strengthen its corporate governance (CG) framework and policies. KBT targeted to go beyond compliance with local regulations and align the company's governance with international leading practices and standards.

The decision to engage Lilly Registrars was a strategic move which was in line with KBT's overall growth strategy. KBT groups dramatic transformation from a modest family owned business into a professionally managed listed company and became one of the country's leading transport service providers that required a significant reconfiguration in the company's governance structure and practices.

The company wanted to set an example at the top that highlights the importance of corporate governance. However, since many of the members of the Board of Directors (BOD) were relatives, the leadership knew they needed to develop formal board charters and terms of reference (TORs) for Board Committees to clearly articulate the roles of the BOD and clarify the responsibilities of each governance body within the organisation.

In terms of internal controls, KBT's internal audit function needed improvement and dedicated resources to monitor systemic corporate risks. Regarding the treatment of shareholders, the company did not have policies to address conflicts of interest, insider trading or related party transactions, which was problematic since family members were represented in the BOD of both KBT and affiliated companies. The founders of KBT understood that better governance would bring added value and that value creation would come from better management of risks. By spearheading a review of its CG, KBT showed its proactive stance and foresight.

In April 2015, Lilly Registrars conducted a governance and secretarial audit of KBT's CG practices and developed a practical, action-oriented plan to help the company improve its governance structures and practices. In collaboration with Lilly Registrars, KBT developed a comprehensive CG manual to clearly outline how the company should be governed. To enhance the effectiveness of its board and clearly delineate their roles and responsibilities from management, TORs were created for BOD members as well as board-level committees and the corporate secretary. The composition of the BOD was reviewed to ensure that boards would be led by capable, independent members equipped with expertise necessary to steer the company moving forward. The company also committed itself to establish a "whistle blowing" policy in the organisation to ensure accountability and transparency on the part of the board and executive management.

To improve the capacity of monitoring risks, the company strengthened its Internal Audit Unit and established a more formal risk management framework. With expectations of transforming from a privately held family business to a rapidly growing public company, restructuring was needed. The founders explored the development of a best practice family governance framework, including a family constitution in order to set the vision, values and policies regulating the family relationships with the business and ensure continuity of KBT for generations to come.

The governance audit carried out by Lilly Registrars identified challenges in the following key governance areas facing the company:

- Commitment to corporate governance.
- Board effectiveness.
- Management control.
- Disclosure and transparency.
- Shareholder and stakeholders relations.
- Risk management.

In their report to the KBT board, Lilly Registrars have made recommendations on how to address the above challenges.

Required:

(a) Discuss five ways in which Kenly Bus Transporters (KBT) could improve board effectiveness. (10 marks)

(b) One of the challenges facing KBT is risk management. Analyse five responsibilities of the KBT's board in risk management. (10 marks)

(c) Advise the board of KBT on eight obligations of shareholders of KBT as a listed company. (8 marks)

(d) Regulators of capital markets provide for the minimum threshold in the regulation of listed companies, otherwise self regulation is encouraged.

With reference to the above statement, outline six benefits of self-regulation to the board of KBT and the transport industry. (6 marks)

(e) Propose six strategies that the board of KBT could employ to minimise insider trading. (6 marks)

(Total: 40 marks)

QUESTION TWO

(a) Explain the following corporate governance models:

(i) Consensus board model. (2 marks)

(ii) Competency board model. (2 marks)

(b) Summarise three disadvantages of an advisory board. (3 marks)

(c) Examine four benefits that could accrue to a company that engages in corporate social responsibility (CSR). (8 marks)

(Total: 15 marks)

QUESTION THREE

(a) Distinguish between "transaction cost theory" and "agency theory" of governance. (2 marks)

(b) Impactful social investment requires the conduct of a social audit.

Analyse five challenges an organisation could face when conducting a social audit. (5 marks)

(c) Corporate disclosure and transparency, whether imposed on the firm by regulators or supplied voluntarily by the firm, is beneficial to shareholders if it creates value.

Required:

With reference to the above statement, discuss four mechanisms for enhancing corporate disclosures and transparency in a firm. (8 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Explain three benefits of having a whistle blowing policy. (3 marks)

(b) Analyse four objectives of stakeholder mapping in corporate governance. (4 marks)

(c) Examine four functions of the Ethics and Anti-Corruption Commission (EACC) or similar body in your country. (4 marks)

(d) Evaluate four objectives of a legal and compliance audit. (4 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Recent times have witnessed spectacular corporate failures despite financial auditors issuing unqualified audit reports.

With reference to the above statement, suggest five measures that a governance auditor could recommend for adoption to improve corporate audits. (5 marks)

(b) Discuss five governance and ethical issues surrounding the pervasive adoption of information communication technology (ICT) in organisations. (10 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 29 November 2018. **Time Allowed: 3 hours.**

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

QUESTION ONE

MOONSHINE COMPANY LIMITED (MCL)

Incorporated in 2008, Moonshine Company Limited (MCL) produced tomato puree concentrate for sale to multinational and local companies in the food and beverages industry. It had two subsidiaries, plastic and paper packaging for the food industry.

Since listing its shares in the securities exchange at a price of Sh.17 per share in March 2009, MCL had issued a number of profit warnings and had been plagued by corporate governance and audit issues.

In March 2010, MCL became the first company (since August 2009) to close below its Initial Public Offer (IPO) price at Sh.9 per share. Analysts attributed MCL's low market share price to inherent problems with its business model – a single product business which was highly leveraged.

As of 30 June 2011, many lead companies at the securities exchange began to issue profit warnings. As MCL did not issue a profit warning, its reported net loss of Sh.9.4 million for the six months period ended 30 June 2011 shocked the market. In a statement to the securities exchange authority, MCL directors attributed the financial loss to increase in administrative expenses, selling and distribution expenses and finance costs.

The independent directors (IDs) were unaware of the financial loss until four days before the release of the financial results. In reaction, the IDs commissioned a special audit and investigation carried out by Lituma Accounting Firm to review the circumstances surrounding the financial loss.

The special audit uncovered numerous accounting and governance irregularities which included:

- Understatement of cost of sales and stock, asset overvaluation and prepaid freight charges classified as receivables.
- Loans to directors were classified as accounts receivables and unauthorised loans were advanced to management, although the Articles of Association expressly prohibited management and board awarding themselves loans.
- The company did not file returns.
- The company did not have a corporate secretary.
- Dividends had been paid out of a capital reserve.
- Board minutes authorising key policy decisions and changes were not maintained.
- MCL board operated without board committees.

The IDs called an urgent meeting to review the special audit findings. The meeting resolved, among other things, to suspend the Managing Director (MD) and the Chief Finance Officer (CFO) and to appoint the General Manager as the acting Managing Director. The Managing Directors of the subsidiaries were also suspended. However, within the same month, the MD and the CFO were reinstated by the executive directors. The IDs did not cast their votes in the decision to reinstate the officers as they had realised that their votes could not influence the decisions made as the executive directors held the majority of the group shares.

To make matters worse, the group company reported that it might suffer an estimated loss of Sh.10 million in the second half of the year due to the shortage of raw materials and unfavourable weather conditions. The external auditors, XYN CPA, also raised a red flag on whether MCL was a going concern. The profit warnings continued into the first half of year 2012 with a reported net loss of Sh.15 million.

In 2013, the MD implemented a major restructuring strategy across the firm in the hope of turning operations around. The two loss making subsidiaries were sold.

The MD's efforts in rebuilding the company initially appeared to be effective and the company returned to marginal profitability in 2013 and 2014. Good news came in July 2015 when a foreign based company Starshine Company Limited (SCL) decided to invest its manufacturing assets valued at Sh.17 million in MCL thereby acquiring a 24% stake in MCL.

However, the joint venture with SCL did not turn around the situation. More profit warnings came in 2016 and 2017. MCL's financial statements raised a serious red flag with net current liabilities reported at Sh.54 million and negative operating cash flows of Sh.12.74 million. This prompted the newly appointed auditors KLM CPA to warn investors of potential going concern risks. Amid the mounting cash flow problems, the CFO resigned on July 2017. With a net loss of Sh.36 million in 2018, mounting debts and lawsuits, the situation got out of control. MCL was placed under statutory management and the shares were officially suspended from trading at the securities exchange.

Required:

(a) Analyse five challenges that were faced by independent directors of Moonshine Company Ltd. (MCL). (10 marks)

(b) Justify five actions that MCL shareholders or the board could have taken after the special audit findings, to salvage the company from imminent failure. (10 marks)

(c) Discuss three areas where the board and management of MCL failed in terms of compliance with the rule of law, governance and ethics. (6 marks)

(d) Advise the board of MCL on five responsibilities that they failed to discharge in relation to:

- (i) Financial reporting. (5 marks)
- (ii) Internal controls. (5 marks)

(e) Propose four terms of reference that could have guided the board of MCL in appointing the various committees of the board that were inexistent. (4 marks)

(Total: 40 marks)

QUESTION TWO

(a) Analyse five roles of the board in relation to stakeholder engagement. (5 marks)

(b) Propose four guiding principles for an effective board succession planning. (4 marks)

(c) Summarise six differences between "agency theory" and "stewardship theory". (6 marks)

(Total: 15 marks)

QUESTION THREE

(a) Explain the components of the "Triple Bottom Line" accounting framework in corporate sustainability. (3 marks)

(b) Suggest three ethical dilemmas that might be faced in corporate social responsibility (CSR). (3 marks)

(c) The concept of sustainability and social investment brings together the following types of governance:

- Economic governance.
- Corporate governance.
- Environmental governance.

Required:

Highlight three roles of each of the above types of governance. (9 marks)

(Total: 15 marks)

QUESTION FOUR

(a) In a corporate governance seminar, one of the facilitators noted that, "it is not always possible to foresee every situation that could give rise to real, or potential conflict of interest. However, there are certain ways that the board member or an employee is expected to react in instances where conflict of interest arises".

With reference to the above statement, suggest seven actions that the board member or an employee should take in instances where conflict of interest arises. (7 marks)

(b) Information technology (IT) risk management is a critical component of corporate governance. The chief information officer (CIO) is required to identify key areas of risk in order to discuss, strategise and budget for, with the support of management and the board of the organisation.

In relation to the above statement, propose four key areas of risk that the CIO needs to discuss, strategise and budget for. (8 marks)

(Total: 15 marks)

QUESTION FIVE

(a) (i) In the context of corporate governance models, explain "carver board model". (2 marks)

(ii) Organisations in the non-profit sector are increasingly adopting the advisory board model of governance.

Outline five roles of an advisory board. (5 marks)

(b) Discuss the following current trends in corporate governance:

(i) Social media governance. (2 marks)

(ii) Women on corporate boards. (2 marks)

(iii) Shareholder social activism. (2 marks)

(iv) Corporate compliance risks. (2 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 24 May 2018. **Time Allowed: 3 hours.**

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

QUESTION ONE

SOLAR BANK LIMITED (SBL)

Solar Bank Ltd. (SBL) was incorporated on 12 January 2015 and headquartered in the capital of a developing country. SBL's core business is to provide personal and business financial services including digital banking. It has established a branch network in major towns in the country. The organisational structure of the bank allows risk management responsibility on business development and internal operational processes to be delegated to smaller units with varying layers of supervision, monitoring and reporting procedures to be followed. Ultimately, the audit and governance committee of the board is responsible for risk management and other aspects of corporate governance compliance.

In April 2017, an employee of SBL revealed anonymously to the Chief Executive Officer (CEO) that there were intermittent cases of fraud and money laundering involving briefcase companies and staff of the bank. Two months later, the internal audit unit also reported to the management that during a routine check on operational and compliance risks, it had noted breaches of procedures in opening new business accounts with huge deposits from sources which were highly suspect in terms of ethical business practices. The funds deposited would be withdrawn by the new customers immediately in form of cash or transferred electronically to individual and business accounts in other banks. It was apparent that the risk management policy and operational procedures were not being followed. The management seemed to have informally consented to these types of "new business transactions" since nothing was done to stop them. The bank did not have a whistle blowing policy. In the absence of management response on issues raised by the internal audit unit, the matter was not reported at the quarterly audit and governance committee meeting held in June 2017.

The media reports on 15 July 2017 were a big shock to the board and management of SBL. It was reported that SBL was involved in laundering the proceeds of corruption. The matter had come to the attention of the regulatory authority through a case filed in court by a government agency which had lost colossal sums of money wired to briefcase companies as payments for goods and services provided to the agency. The regulatory authority had in turn requested the Corruption Eradication Commission (CEC) to move with speed and investigate the bank.

The management had simply kept the directors in the dark. The directors trusted the management and relied heavily on management reports presented at board meetings. The board hardly sought independent external professional advice on any matter. During the last board meeting, the risk management report as presented by the chairman of the audit and governance committee was inconclusive.

Required:

(a) Discuss five dysfunctional characteristics of the board of Solar Bank Ltd. (SBL) citing appropriate remedial action in each case. (10 marks)

(b) Examine the following types of risks likely to be faced by SBL as a result of management's excessive focus on short-term results:

(i) Reputational risk. (4 marks)

(ii) Compliance risk. (3 marks)

(iii) Operational risk. (3 marks)

(c) (i) Evaluate the role of the audit and governance committee in ensuring effective internal control environment of SBL. (5 marks)

(ii) Advise the board of SBL on the importance of the internal control environment in the organisation. (3 marks)

(d) (i) Citing four reasons, justify why SBL should embrace corporate compliance practices. (8 marks)

(ii) Propose four measures that SBL should put in place to enhance compliance practices within the company. (4 marks)

(Total: 40 marks)

QUESTION TWO

(a) Discuss four fundamental principles usually incorporated in professional codes of ethics. (4 marks)

(b) Explain three qualifying disclosures that an employee could use as a defense in a court case relating to unfair dismissal for whistle blowing. (3 marks)

(c) Analyse four ways in which insider trading could be conducted in an organisation. (8 marks)

(Total: 15 marks)

QUESTION THREE

(a) Examine four ways through which a company could promote shareholders' rights. (4 marks)

(b) Explain five reasons why good governance is important to organisations. (5 marks)

(c) Argue six cases against companies engaging in corporate social responsibility (CSR) activities. (6 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Evaluate three guiding principles in regard to board remuneration. (3 marks)

(b) Analyse five activities that companies could engage in to ensure environmental sustainability. (5 marks)

(c) Corporate governance reporting requires the directors of a company to include a corporate governance statement in the annual report.

With reference to the above statement, summarise seven contents of the corporate governance statement. (7 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Citing four reasons, explain why many organisations do not carry out board performance evaluation exercise. (4 marks)

(b) Discuss five assumptions of deontological theory of ethics. (5 marks)

(c) In an international governance seminar, one of the facilitators noted that "The board should be assisted by a suitably qualified, competent and experienced corporation secretary. Therefore, the board should empower the corporation secretary to efficiently and effectively execute his or her duties and responsibilities".

With reference to the above statement, analyse six principle duties of the corporation secretary. (6 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 30 November 2017. **Time Allowed: 3 hours.**

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

QUESTION ONE

HAPPY VALLEY CLUB (HVC)

Happy Valley Club (HVC) is a private members club that was established in 1957 and registered as a company limited by guarantee. The club's board is made up of 15 directors who are all members of the club. The club has the following committees; membership committee, finance committee, nomination committee, banqueting committee, recruitment committee, governance committee, disciplinary committee and recreation committee. Each committee is made up of 5 members who also serve in more than one committee. Some of the committees have not met in the last 18 months. The chairperson of each committee determines the agenda, procedure of conducting meetings and frequency of meetings. Most committee meetings have been adjourned due to lack of quorum.

The governance committee made changes to the Articles of Association and the company secretary requested to file the amended Articles with the Registrar of Companies. The financial performance of the club in the last three years has been in decline. The club posted a deficit in the last financial reporting period. A number of members have resigned from the club citing poor service delivery. The club has been sued by a number of suppliers due to non-payment for supplies delivered to the club.

The foregoing challenges have caused infighting within the board and the Annual General Meeting for the year 2016 was not held as scheduled and as per legislation hence the company has defaulted in filing the annual returns.

The Registrar of Companies caused the club to convene a general meeting. During the general meeting, members voted out the previous chairman for failing to provide leadership to the club. They resolved to appoint a business consultant to investigate the club's affairs. The consultant's report to the club highlighted the following key observations:

- The club lacked a strategic plan.
- The club obtained a credit facility through the chairman and the general manager acting as guarantors without board approval.
- The board members did not have appointment letters, pre-requisite skills and experience.
- Three senior staff members were recruited without the participation of the recruitment committee and they are related to the chairman.
- Formulation of procurement policy and selection of vendors for major contracts that exceeded the Chief Executive Officer's limit was done by the General Manager.
- The board held only two meetings in the last financial period.
- Three directors had borrowed money from the club and this fact had not been disclosed in any report.

The consultant also made a number of recommendations under the following topics:

- Composition of the board.
- Members education.
- Risk management.
- Transparency and disclosure.
- Board charter.
- Board work plan.

The board and management have resolved that the consultant's report be implemented fully.

Required:

(a) Advise the board of Happy Valley Club (HVC) on four best practices on an effective board composition. (8 marks)

(b) As part of sensitisation to members of HVC, examine six responsibilities of shareholders of a company. (6 marks)

(c) Explain three actions that were undertaken in HVC that were reserved for the board and not management. (6 marks)

(d) Explain three areas in which the board of HVC has failed in its responsibility to the members. (6 marks)

(e) Analyse how implementation of the recommendations made by the consultant under the following topics could help in improving the corporate governance of HVC:

(i) Board charter. (4 marks)

(ii) Board work plan. (4 marks)

(f) Citing six reasons, justify to the board of HVC the need for a code of corporate practices and conduct. (6 marks).

(Total: 40 marks)

QUESTION TWO

(a) In the context of good governance. explain the meaning of the phrase "market based corporate governance system". (2 marks)

(b) Suggest five characteristics of an effective measurement tool for enterprise risk management. (5 marks)

(c) Citing four reasons, justify why the roles of the chief executive officer and that of the chairman should be split. (8 marks)

(Total: 15 marks)

QUESTION THREE

(a) Summarise four merits that could accrue to an employee from adhering to professional standards and personal integrity. (4 marks)

(b) Suggest six factors that an individual should consider before accepting a gift from a client. (6 marks)

(c) Good corporate governance requires all companies to have a code of ethics.

Propose five ways on how a company could demonstrate commitment to the code of ethics. (5 marks)

(Total: 15 marks)

QUESTION FOUR

(a) Outline three ways on how the resource dependency theory could promote good corporate governance. (3 marks)

(b) Analyse four objectives of social audit. (4 marks)

(c) Discuss four principles of stakeholder management suggested by Max Clarkson (1922-1998). (8 marks)

(Total: 15 marks)

QUESTION FIVE

(a) Analyse five possible risks an individual could face as a whistleblower. (5 marks)

(b) In an international governance seminar, one of the facilitators noted that "Most of the developing countries are currently facing governance and ethical challenges in public service".

With reference to the above statement, discuss five factors underlying governance and ethical challenges in public service. (10 marks)

(Total: 15 marks)

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CS PART III SECTION 5

GOVERNANCE AND ETHICS

THURSDAY: 25 May 2017. **Time Allowed: 3 hours.**

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

QUESTION ONE

NENKAS LAND LIMITED (NLL)

Nenkas Land Limited (NLL) was incorporated on 25 October 1999 as a Business to Business (B2B) company and listed at Nolland Securities Exchange (NSE) on 12 January 2001. In 2004 the company added to its product line real estate and related property market, corporate investment, transport and logistics. The company also expanded its operations to East and Central Africa.

The NLL board of directors was made up of seven directors, five of them being non-executive directors. Five of the directors had background in engineering and operations management. The chairman Levy Turdor was the only one with relatively diverse background in financial and security markets. The directors did not possess adequate knowledge and experience in board matters and there was no induction or training programme for the directors. There was also no formal process of board evaluation and there was no nominations committee. In 2009 the audit committee of the company reviewed a wide range of reports and relevant papers and gave the company a clean bill of health. Soon after, the external auditor, Racy Young and Associates raised the following issues:

- Lack of timely communication to the shareholders.
- Financial statements did not adhere to accounting standards and compliance.
- A major investment worth shillings 700 million was approved by the Chief Executive Officer and the board chair without NLL's board involvement.
- The company secured a loan of shillings 170 million charged on the company's assets without the consent of the board and the knowledge of shareholders.

In 2012 upon realising that the company's performance was declining, four of its directors resigned. Racy Young and Associates also tendered notice of intention to resign as the company's auditor. Behind the scene, Durya Molly, the company engineer entered a secret deal with two former college mates Hussein Levy and Erick Tolly to start a similar business under the name HED Holdings. Hussein Levy was to pump in family finances, Erick Tolly to provide the leadership and Durya Molly who had access to his employer's confidential information and other intellectual data like production forecasts, emerging housing designs, pricing, favourable suppliers, customer listings and product specifications was to support the new business with this data. Durya Molly promised his partners in the newly established company, constant supply of customers in return for a share of 20% of the proceeds paid as kickbacks. The communication in emails was coded to avoid suspicion and a number of clients were directed by NLL marketing manager in collusion with Durya Molly to HED Holdings as part of the wider scheme.

The performance of NLL continued to worsen whereas HED Holdings registered growth of 25% in two successive years. In March 2014, NSE delisted NLL shares citing bad governance, negative working capital and non compliance with the listing requirements. Two months later, Durya Molly and the marketing manager resigned to pursue their lucrative business, citing poor remuneration, existence of severe conflict of interest, inadequate controls and directors lack of prompt and accurate disclosures and self dealing. Within five months after the exit of Durya Molly, NLL management unearthed the fraudulent scheme. Investigations began in 2015 with an aim of instituting a civil suit against Durya Molly and the marketing manager.

Required:

(a) Highlight eight corporate governance weaknesses in Nenkas Land Limited (NLL). (8 marks)

(b) Advise the board of directors of NLL on five matters reserved for the board. (10 marks)

(c) Propose six ways of enhancing committee effectiveness at NLL. (6 marks)

(d) Summarise five responsibilities the board of NLL was expected to discharge towards its stakeholders. (5 marks)

(e) Citing six roles, justify to the board of NLL the need for establishing a nomination committee. (6 marks)

(f) The board is required under corporate governance framework to ensure that timely and accurate disclosures are made on all material matters regarding the company.

In relation to the above statement, examine five matters that the board of NLL was required to disclose. (5 marks)
(Total: 40 marks)

QUESTION TWO

(a) Many organisations prefer self regulation as opposed to legislative regulation.

In reference to the above statement, highlight five benefits of self regulation. (5 marks)

(b) With reference to corporate governance, discuss reasons why stakeholder mapping is important to an organisation. (6 marks)

(c) Analyse four challenges an organisation could face while carrying out a social audit. (4 marks)
(Total: 15 marks)

QUESTION THREE

(a) Propose six measures that companies could put in place to protect confidential information. (6 marks)

(b) Analyse six benefits of corporate environmental responsibility. (6 marks)

(c) Examine three criticisms against stakeholder theory. (3 marks)
(Total: 15 marks)

QUESTION FOUR

You have been contracted by XYZ to carry out an induction training for its newly appointed board.

Required:

(a) Explain to the board three potential areas of liability to the directors. (6 marks)

(b) Summarise five duties of XYZ Ltd. directors in relation to conflict of interest and disclosure. (5 marks)

(c) Advise the directors of XYZ Ltd. on four consequences of a weak risk management system in the company. (4 marks)
(Total: 15 marks)

QUESTION FIVE

(a) Analyse five hindrances to regular and effective board evaluation. (5 marks)

(b) Recent times have witnessed spectacular corporate failures despite auditors issuing unqualified audit reports.

Suggest five measures that could be adopted to improve corporate audits. (5 marks)

(c) Examine five potential impacts of an adverse corporate governance report to an organisation. (5 marks)
(Total: 15 marks)

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