

NIGERIAN LAW SCHOOL

BWARI - ABUJA

BAR EXAMINATION-PART II FINAL

CORPORATE LAW PRACTICE

WEDNESDAY 15TH JANUARY, 2020

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

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

WRITE YOUR EXAMINATION NUMBER ON EACH ANSWER BOOKLET.

SECTION A

QUESTION 1 (COMPULSORY)

After your Call to the Bar Ceremony, Koloka Sansiro, a renowned medical practitioner and a professor of Neurology who won the Nobel Prize in the year 2018 consulted you for the registration of his proposed Medical Research Center to be known as Kalika Centre for Medical Research and Innovation. The research finding and medical inventions from the centre will be made available to Teaching Hospitals in Nigeria.

The proposed Research Centre is Professors Kalika's modest contribution to humanity as a Nobel Prize Winner.

Answer the following questions:

(a) Name the two options for the registration of Kalika's Centre for Medical Research and Innovation under the Companies and Allied Matters Act (CAMA)

- (b) Advise Professor Kalika on the legality or otherwise of carrying out its objectives prior to registration under the two options identified in (a) above
- (c) Outline the advantages of each of the options in (a) above in CAMA.
- (d) Assuming that the research finding from the centre is intended to generate income of funds further research by the centre, what will be the most suitable registration option? Give reason(s).
- (e) Professor Kalika Sansiro is desirous of registering Kalika's Centre for Medical Research and Innovation with his wife, Hajia Kaka Sansiro and Aminu Sansiro, his son, aged 16 years. Advise him on the possibility of carrying out his instruction in respect of the two options identified by you in (a) above.
- (f) List the documents to be submitted to the Corporate Affairs Commission for the registration of the two options in (a) above.

QUESTION 2

At the 6th Annual General Meeting of Enebi Ebano Nig. Plc, Mrs Adamma Longe was absent because she was not served with the notice of meeting by the company Secretary, who reasoned that she will not attend the Annual General Meeting on the scheduled date as she was going for her swearing in ceremony following her appointment as a Minister of the Federal Republic of Nigeria.

Mrs Adamma is aggrieved and has threatened to sue and enforce her right as a share holder in the company. The members in the General Meeting also resolved to call another General Meeting before the next Annual General Meeting if need be to evaluate the outcome of the new policy introduced by the company.

Assuming you are the External Solicitor/Legal Adviser to the company, answer the following questions:

- (a) Comment briefly on the likely outcome of the suit contemplated by Mrs Adamma in view of the reason given by the company Secretary.

- (b) Comment on the possibility of the company holding another General Meeting before the next Annual General Meeting.
- (c) Outline the persons entitled to receive notice of the Annual General Meeting of Enebi Ebano Nig. Plc.
- (d) Identify (without drafting) the content of a notice of Annual General Meeting of Enebi Ebano Nig. Plc.
- (e) Briefly state the circumstances under which the following categories may call for the General Meeting of Enebi Ebano Nig. Plc.:
 - (i) Creditors of the company
 - (ii) Members of the company
 - (iii) Personal representatives of the shareholders of the company

QUESTION 3

Saba Baba International Limited is a proposed company to be incorporated with the registered address at No. 100 Bagauda Road, Kano, Kano State. The company is to carry on the business of production and sale of ICT equipment and computer accessories. The proposed share capital of the company is N100m divided into 10,000,000 ordinary shares of N10 each. Fifty (50) percent of the shares is to be subscribed and paid for in the proportion of 5:3:2 by Dr. Jackson Apapa, Mrs Beauty Apapa and Bolanle Apapa all of No. 13, Apapa Road, Apapa, Lagos. These subscribers will also serve as the first directors of the company. Mrs Beauty is to engage a solicitor and all needed professionals to handle all issues pertaining to the registration and commencement of business.

Answer the following questions:

- (a) Comment on whether or not Miss Beauty Apapa must retain a solicitor for the purpose of registration of Saba Baba International Limited. Give reason(s) for your answer.

- (b) List the documents you will submit to CAC for the accreditation of a legal practitioner at the Corporate Affairs Commission.
- (c) Outline the steps to be taken for the online availability check and reservation of the proposed name of the company.
- (d) Identify the legal status of Mrs Beauty Apapa's relationship with Saba baba International Limited. Give reason(s) for your answer.
- (e) List the documents you will file at the Corporate Affairs Commission for the registration of Saba baba International Limited.
- (f) Prepare only the subscription box of the memorandum of Association of the proposed company.

SECTION B

PLEASE USE ANOTHER BOOKLET FOR THIS SECTION

QUESTION 4 (COMPULSORY)

The Federal Government of Nigeria in a bid to further shore up the capital Base of commercial banks in the Country and enhance their global competitiveness, has issued a directive through the Apex Bank for all commercial Banks to increase their minimum share capital to #500 billion before 31st January, 2020. A number of Banks run the risk of losing their operational license after the said date except strategic restructuring is undertaken. Three of the banks have advanced in their discussion towards corporate combination to avoid the Apex Bank's big hammer. They are:

- i. MoonBank Nig. Plc. with a turn over of 200 billion
- ii. Sun Bank Nig. Plc with a turn over of 250 billion

iii. Star Bank Nig. Plc with a turn over of 185 billion

Answer the following questions:

(a) Highlight five(5) relevant laws and five (5) regulatory bodies that will regulate the proposed restructuring in the scenario above.

(b) Identify with reasons the most suitable restructuring options available to the banks in (i), (ii) and (iii) above.

(c) With the aid of relevant statutory authority, explain the legal categorization of the option identified in (b) above.

(d) Enumerate three(3) basic stage you will go through to achieve the restructuring options you identified in (b) above.

(e) Assuming Sun Bank Nig. PLC. withdraws from the corporate combination arrangement in the above scenario with the hope of meeting the Apex bank's directive on January 31, 2020 but fails in the end, advise the bank on the most suitable option available under the extant laws to preserve depositor's funds, shareholders' investments and minimise job loses, among others.

QUESTION 5

In keeping with the global best practices on Good Corporate Governance, a number of Codes have been developed in Nigeria for the governance of companies along the line of organization for Economic Cooperation and Development (OECD) principles.

Answer the following questions:

(a) Identify five(5) indigenous code of Good Governance modelled on the OECD Code in Nigeria and state the sector of the Nigerian economy regulated by each code.

(b) Comment generally on the provisions of the Code of Good Corporate Governance for banks in Nigeria on:

- i. Combination of the office of chairman/ Managing Director
 - ii. Tenure of office of Managing Director/ Chief Executive Officer of Banks.
 - iii. Quantum of shareholding by individuals and corporate bodies in banks.
- (c) Discuss the principle of directors' retirement by rotation under CAMA.
- (d) Highlight the composition and functions of Audit Committee under the Companies and Allied Matters Act.
- (e) State the procedure for the removal of a company Secretary of a public company in Nigeria.

QUESTION 6

Sanni Soun International PLC is a bank registered under the Companies and Allied Matters Act with registered office in Maitama, Abuja. The company entered into a contract with Pikaz Sugar Limited for the supply of 100,000 cartons of sugar. Sanni Soun failed to supply the sugar despite full payment for the supply. It has also ignored Pikaz Sugar Limited's repeated receiving entreaties to supply the contracted goods or refund the sum.

Meanwhile the National Agency for Food and Drugs, Administration and Control (NAFDAC) has revoked the license of Sanni Soun International PLC to manufacture sugar after finding that its products are substandard. Sanni Soun is aggrieved and has threatened to sue NAFDAC. The company is also aggrieved by the decision of the Securities and Exchange Commission in refusing its application for the registration of a prospectus of fresh issue of shares.

Sanni Soun International PLC has therefore embarked on internal restructuring and downsizing of staff. The appointment of three (3) managers and twenty (20) staff were terminated without notice and without payment of disengagement entitlements.

COUNCIL OF LEGAL EDUCATION
NIGERIAN LAW SCHOOL
CORPORATE LAW PRACTICE MARKING SCHEME
BAR PART 11 JANUARY, 2020
SECTION A

QUESTION 1---COMPULSORY (25 MKS)

(a) The two options available for registration of Kalika Center for Medical Research and Innovation are:

- i. Company Limited by Guarantee and
- ii. Incorporated Trustees

(b) I will advise Professor Kaloka that if he elects Company Limited by Guaranty, it will be illegal to carry out its objectives without registration but if he elects to register Incorporated Trustees, it will be legal to carry on its aims and objectives prior to registration.

(c) Advantages of the two options suggested in A above:

Advantages of Company Limited by Guarantee:

- i. The whole company enjoys legal personality distinct from its members
- ii. It can engage in skeletal business solely for the purpose of promoting its object.
- iii. It is exempted from payment of tax.
- iv. It is not required to have share capital.

Advantages of Incorporated Trustees include:

- i. It can carry on its aims and objectives prior to its registration
- ii. It is more flexible to register since the requirement for consent of the Attorney General of the Federation is not applicable.
- iii. It is suitable for associations or organizations that might be anti-government.
- iv. It is also exempted from payment of tax.

(d) If the Kalika Center intends to make profit, the best registration option would be Company Limited by Guarantee. This is because Company Limited by Guarantee is allowed in law to do skeletal business but any profit realized must be put towards the actualization of its objects.

(e) I will advise Professor Kaloka that for a Company Limited by Guarantee, his son (a minor) can join as a member if there are two other adults; **section 20 Companies and Allied Matters Act 2004 (CAMA)**. However, for incorporated Trustees, a minor is totally prohibited from being appointed as a trustee; **section 592 CAMA**

Therefore, his intentions will be possible for Company Limited by Guarantee but not possible for Incorporated Trustees.

(f) List the documents required for the registration of the two options:

Documents required for registration of Company Limited by Guarantee:

- i. CAC 1 Availability Search and Reservation of Name 8

- ii. CAC 1.1 Application for Registration of Company
- iii. Memorandum and Articles of Association duly stamped
- iv. Valid means of identification of each director and secretary
- v. Letter of consent from the Attorney General of the Federation approving the Memorandum and Articles of Association.
- vi. Receipts for the payment of the necessary fees and stamp duties.

Documents required for Incorporated Trustees:

- i. Form CAC I-Availability check and reservation of name with the name stated as “Incorporated Trustees of ...”
- ii. Duly filled CAC form I.T 1
- iii. Copy of the resolution adopting the special clause into the constitution signed by the chairman and secretary.
- iv. Two printed copies of the Constitution of the organization
- v. Impression of the proposed Common Seal of the body.
- vi. Evidence of ownership of land or an undertaking in lieu to own a land within two years of incorporation.
- vii. A copy of the Newspapers advertisement in three National dailies calling for objections to the registration of the Association within 28 days.
- viii. Two passport photographs of each of the Trustees
- ix. Copy of the extract of the minutes of the meeting where the Trustees were appointed, having the list of members present.
- x. Trustees Declaration Form duly sworn to by each trustee⁹

QUESTION 2

(a) The position of the law is that failure to give notice of meeting of the company to any person entitled to it shall invalidate the meeting unless the omission was accidental on the part of the person giving the Notice; **section 221(1) of Companies and Allied Matters Act 2004 (CAMA)**. In the instant case, the secretary deliberately omitted to give Notice of the meeting to Mrs. Adama, therefore the action contemplated by her is likely to succeed.

(b) A company may before its next Annual General Meeting (AGM) hold an Extra-Ordinary General Meeting (EGM) to transact any business which cannot conveniently wait till the next AGM; **section 215(1) of CAMA**. Therefore, it is possible for a company to hold another meeting before the next AGM.

(c) The category of persons entitled to receive notice of meeting are:

- i. Every member/shareholder of the company
- ii. Legal representative, receiver or a trustee in bankruptcy of a member.
- iii. Every director of the company.
- iv. Every auditor of the company
- v. Company Secretary; **section 219 of CAMA**

(d) The contents of the Notice of meeting include the following:

- i. Letterhead of the company
- ii. Title/type of meeting
- iii. The place, date and time of the meeting; (Venue)
- iv. Agenda/Business to be transacted in the meeting

- v. Date of the notice
- vi. It should be expressed to be „By Order of the Board’.
- vii. Signed by Company Secretary.
- viii. Provision should be made for proxy attendance.

(e) Circumstances when the creditors, members and personal representatives of the shareholders may call for the meeting of Enebi Ebeano Nigeria PLC.

i. The Creditors can only call the meeting of Enebi Ebeano Nigeria PLC where all the directors and members of the company dies at the same time and the personal representatives fails to apply to the court for an order to convene a meeting of the company; **section 248(2) CAMA**

ii. The Members of the company can requisition an extra-ordinary general meeting of the company under **section 215 of CAMA**. The members can also apply to CAC or to the Court to direct the company to hold its Annual General Meeting.

iii. The Personal Representatives can convene a meeting of the company where all the directors and members of the company dies at the same time by applying to the court for an order to convene a meeting of the company where directors will be appointed; **section 248(2) CAMA**

QUESTION 3

(a) Due to the new CAC policies and practice, anybody being a proposed director of a company can apply to incorporate the company. Therefore it is no longer compulsory that it must be an accredited legal practitioner that will incorporate a company. However, the above notwithstanding, the column for statutory declaration of compliance with the provisions of CAMA must be sworn by an accredited legal practitioner.

Therefore, Mrs. Beauty Apapa must not retain a solicitor for the registration of Saba Saba International Limited but must do so for the statutory declaration of compliance.

(b) The documents I will submit to CAC for accreditation as a legal practitioner are:

- i. Duly filed application form
- ii. A copy of the qualifying and Call to Bar Certificate
- iii. Passport photograph
- iv. Valid means of identification
- v. Receipt for payment of current practicing fee
- vi. Evidence of payment of accreditation fee of N5000 for individuals or N10,000 for firms

(c) The procedure for conducting availability search and reservation of name online is as follows:

- i. Log onto the CAC portal www.services.cac.gov.ng;
- ii. Select the tab marked “new reservation” and enter the preferred name and the alternative name (if any);
- iii. Click on the next page to select type of company i.e. whether limited, GTE, I.T or Business name;
- iv. Click on preview and make on-line payment through remita or any other means
- v. Check e-mail after 24 hours for status of the availability.

(d) The legal status of Mrs. Beauty Apapa’s relationship with Saba Saba International Limited is that she is a „PROMOTER“ of the company. This is

because she has taken steps to bring the company into existence; section **61 CAMA; Garba v. Sheba Intl. Ltd.** She is therefore in a fiduciary relationship with the company with a duty to observe utmost good faith towards the company; **section 62(1) CAMA**

(e) The documents I will file to CAC for registration of Saba Saba International Limited includes:

- i. CAC 1 Availability Search and Reservation of Name
- ii. CAC 1.1 Application for Registration of Company
- iii. Memorandum and Articles of Association duly stamped
- iv. Valid means of identification of each director and secretary
- v. Receipts for the payment of the necessary fees and stamp duties.

(f) Draft of only the subscription box of the Memorandum of Association¹³

Name and address of Subscriber¹³	Description¹³	Number of Shares¹³	Signature¹³
1. Dr. Jackson Apapa, of No 13 Apapa Road, Apapa, Lagos 13	Medical Doctor¹³	5,000,000 13	
2. Mrs. Beauty Apapa, of No 13 Apapa Road, Apapa, Lagos 13	Business woman¹³	1, 500,000¹³ 13	

3. Bobanla Apapa of No 13 Apapa Road, Apapa, Lagos 14	Business man14	1,000,000	
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CORPORATE LAW PRACTICE MARKING SCHEME
BAR PART 11 JANUARY, 2020

SECTION B

QUESTION 4 (COMPULSORY) 25 MARKS

- (a) The Five (5) relevant laws that will regulate corporate restructuring include:
- i. Federal Competition and Consumers Protection Commissions Act 2019
 - ii. Companies and Allied Matters Act 2004

- iii. Investment and Securities Act 2007
- iv. Central Bank of Nigeria Act;
- v. Federal High Court Act.

The five (5) relevant regulatory bodies in corporate restructuring include:

- i. Federal Competition and Consumers Protection Commissions (FCCPC)
- ii. Corporate Affairs Commission
- iii. Securities and Exchange Commission
- iv. Central Bank of Nigeria
- v. Federal High Court

(b) The most suitable restructuring option available to the Banks is „Merger“. This is because merger will allow the amalgamation or business combination of the three Banks to become one and by combining their various turnovers to meet the CBN directives of N500 Billion Share Capital.

(c) The legal category of the merger in (b) above is „Large Merger“. This is because the threshold is above N1 Billion. **Section 96 of the FCCPC Act**. It can also be classified as a „Horizontal Merger“ since the merging companies are in the same line of business (Banking).

(d) The three basic stages for large merger is summarized as follows:

1. Pre-merger notification to FCCPC
2. FCCPC Formal approval of the Merger
3. Post-merger notification of compliance to the FCCPC.

(e) I will advise Sun Bank (Nig.) PLC that the most suitable option that will be available to it at this stage is Purchase and Assumption. This is because Purchase and Assumption is a device in contemporary corporate investment to save ailing companies so that their investments will not be totally lost. It allows other company/investors to purchase the liabilities of the failing company and assume ownership of its assets.¹⁶

QUESTION 5

(a)¹⁶The five (5) indigenous Codes of Corporate Governance in Nigeria and its sectors are:

- i. Code of Corporate Governance for Public Companies 2011 released by SEC to regulate all public companies
- ii. Code of Corporate Governance for Pension Operators 2008 regulates the pension industries.
- iii. Code of Corporate Governance for Telecommunication Companies.
- iv. Code of Corporate Governance for Banks, Discount Houses and other Financial Institutions 2014 by CBN
- v. Code of Corporate Governance for Insurance Industries

(b) The provisions of the Code for Good Corporate Governance for Banks in Nigeria are:

- i. Combination of office as Chairman/Managing Director: the Code has abolished the dual position of the office of the Chairman and Managing Director from being held by one person.
- ii. Tenure of office of Managing Director/Chief Executive Officer of Banks: the Code provides for only two (2) tenures of five (5) years each for Managing

Directors/CEO"s of Banks. So the MD/CEO can hold office for 5 years and may be reappointed for another 5 years only.

iii. Quantum of shareholdings by individuals and corporate bodies in Nigerian Banks: the Code provides that no single individual or corporate body shall hold more than five percent (5%) of the total shares of a Bank.

(c) The principle of retirement of directors by rotation is as follows:

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

1. At the first Annual General Meeting (AGM), all the directors (excluding life directors)are to retire.

2. In any subsequent AGM, one-third (1/3) of the directors must retire to the nearest whole number in their order of appointment (i.e. first to be appointed retires first).

3. Where two or more directors are appointed the same day, retirement shall be by casting a lot unless they agree among themselves who should retire. **Section 259 of the Companies and Allied Matters Act (CAMA) 2004**

(d) The composition and functions of the members of the Audit Committee is as follows:

i. Membership of Audit Committee-section 359 (4) CAMA; Audit Committee shall consist of an equal number of directors and representatives of the shareholders of the company subject to a maximum of six members. That is three (3) directors and three (3) shareholders.

ii. Functions of The Audit Committee are: 17

1. To examine the auditor"s report and make recommendations thereon-**S. 359(4) CAMA**

2. To ascertain that the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices.

3. To make recommendations on the appointment, removal and remuneration of the Auditor.

(e) The procedure for the removal of the secretary of a public company is as follows:

1. Give the affected secretary a Notice of Intention to remove him as the company secretary stating:

- i. The proposed grounds for his removal;
- ii. That he can respond to the grounds within 7 working days or
- iii. That he has an option to resign within 7 working days.

2. At the expiration of the 7 working days;

- i. The Board may pass a Resolution for his removal if there was no reply from the Secretary or
- ii. The Board will remove him straight away on the grounds of fraud or gross misconduct and report it to the next Annual General Meeting.

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

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

QUESTION 6

(a) The disputes in the above scenario and appropriate court that will entertain same are:

- i. The dispute between Pikaz Sugar Ltd. and Sanni Sonn International PLC will be filed at the High Court of the Federal Capital Territory, Abuja. This is because it is a simple contract which occurred in the FCT; **Onuorah v KRPC; 7up Bottling Co. Ltd. v Abiola & Sons**

ii. The dispute between Sanni Sonn International PLC and NAFDAC will be instituted at the Federal High Court. This is because, NAFDAC is a federal government agency; **section 251 of the Constitution of FRN as amended.**

iii. The dispute between Sanni Sonn International PLC and The Securities and Exchange Commission will be filed at the Investments and Securities Tribunal (IST). This is because all disputes arising from securities (shares and debentures) or investment disputes are within the exclusive jurisdiction of the IST; section 274 Investments and Securities Act 2007

iv. The dispute between Sanni Sonn International PLC and its sacked employees will be filed before the National Industrial Court (NIC). This is because all disputes arising from employment, labour or trade union are within the exclusive jurisdiction of the NIC; section 254C of the 1999 Constitution of FRN as amended

(b) The originating processes to be used in commencing each of the actions above are:

i. The dispute between Pikaz Sugar Ltd. and Sanni Sonn International PLC will be commenced by Writ of Summons

ii. The dispute between Sanni Sonn International PLC and NAFDAC will be commenced by Originating Summons

iii. The dispute between Sanni Sonn International PLC and The Securities and Exchange Commission will be commenced by Originating Applications.

iv. The dispute between Sanni Sonn International PLC and its sacked employees will be commenced by Writ of Summons.

(c) The originating processes will be served on Sanni Sonn International PLC by giving it to any director, secretary or any other principal officer of the company or leaving it at its registered head office or place of business within the jurisdiction of the court; Wimpey v Balogun; Bello v NBN; section 78 of Companies and Allied Matters Act

(d) The procedural Rules/Rules of Court that will regulate the actions above are:

1. Companies Proceedings Rules;
2. Federal High Court (Civil Procedure) Rules, 2018;
3. Securities and Exchange Commission Rules, 2013; and
4. Investments and Securities Tribunal Procedure Rules
5. National Industrial Court (Civil Procedure) Rules 20