

EASY READ

STUDY SHOP



“KEY QUESTIONS AND ANSWERS”

Course: Corporate Law Practice

“Key questions and answers”

AREA OF CONCENTRATION

- 1. MEETINGS**
- 2. CORPORATE RESTRUCTURING**
- 3. DIRECTORS AND SECRETARY**
- 4. PARTNERSHIP**
- 5. COMPANY LIMITED BY GUARANTEE AND INCORPORATED TRUSTEE**
- 6. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)**
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SECTION A

QUESTION 1

In a bid to boost food security and create employment for the teeming unemployed youths in Nigeria, the Federal Government of Nigeria recently N50m interest free loan facility to any Company engaged in mechanized and commercial agro-allied business, with professional executive directors, preferably Expatriates, who could be designated Chief Farm Executive.

Obang Investment Limited which has been in transport and haulage business nevertheless intends to benefit from the scheme. Following a resolution of an Extra-ordinary General Meeting of the Company, it has obtained expert opinion, which recommended that it should change its name, alter its object clause and appoint an expatriate as an Executive Director. Alternatively, it would register a new company as its subsidiary, or issue a takeover bid to the moribund, Agro-Allied (Nig) Plc.

You have been consulted to undertake a number of transactions to achieve the objective.

Question 1(a)

- i. State the procedural steps be taken to effect the change of name of this company

ANSWER TO QUESTION 1 (A) (i)

1. Board of Directors proposes change of Name of the Company
2. Conduct availability of Name
3. The Company Secretary gives 21 days' Notice of Meeting to members
4. Members pass a special resolution
5. Send to CAC The relevant documents;
 - a) Alteration of the memorandum & articles of association
 - b) Consent for change of name
 - c) A copy of the special resolution
6. Obtain new certificate of registration & CTC of memorandum and articles of association

- ii. Outline the documents you will file at the Corporate Affairs Commission to change the name of the company.

ANSWER TO QUESTION 1 (A) (ii)

1. Form CAC 1A Availability Check & Reservation of name
2. Memorandum & Articles of Association
3. Application for consent for change of Name
4. Special Resolution
5. Old Certificate of Incorporation for cancellation
6. Updated Annual Return (if applicable)

- iii. Assuming that the Company alters its object clause to include the new line of business, draft a sample of the object clause.

ANSWER TO QUESTION 1 (A) (iii)

The business for which the company is established is –

To engage in mechanized and commercial agro-allied business

Question 1 (b)

The modern world summit of Nigerians in Diaspora Organization (NIDO) held in Dubai, U.A.E in July 2014. One of the main resolutions of the summit is the establishment of a commercial bank to give loan facilities to young Nigerian professionals depositing their certificates as collateral security

professional support bank, to stem their emigration abroad in search of greener pasture. They are bothered by the challenge of transparency in corporate governance and desire to know if there is any legal regulatory framework benchmarked on the Organization for Economic Cooperation and Development (OECD) and other modern codes for commercial banks in Nigeria.

- i. List the codes so far produced by regulatory institutions to compel Banks and other Financial Institutions to institutionalize good corporate governance in Nigeria.

ANSWER TO QUESTION 1 (B) (i)

1. Code of Corporate Governance for Banks and Other Financial Institutions in Nigeria issued by the Central Bank of Nigeria.
2. Code of Corporate Governance for Public Companies in Nigeria 2011 issued by SEC.

- ii. How has the codes identified above affected:

- a. The combination of the positions of Chairman and Managing Director/Chief Executive Officer in an individual?

ANSWER TO QUESTION 1 (B) (ii) (a)

To ensure transparency and avoid the dominance of an individual in the managing the affairs of companies including banks, code abolished the concentration or combination of the positions of Chairman and Managing Director/Chief Executive Officer in an individual.

- b. Tenure of office of a Bank's Managing Director; and

ANSWER TO QUESTION 1 (B) (ii) (b)

The Code limits the nature of office of a Bank's Managing Director to maximum of 10 years of 5 years each.

- c. The quantum of shares individuals may now hold in commercial banks in Nigeria.

ANSWER TO QUESTION 1 (B) (ii) (c)

An individual should not own 5% of the share capital of the bank.

Question 1 (c)

Dr. Tokunbo Alao, an American trained surgeon is a renowned philanthropist. He desires to register an organization that will assist eligible brilliant indigent students to study medicine in the University of Aristotle, his alma mater. This is his own way of contributing and giving back to the society.

- i. Advise Dr. Tokunbo Alao on the options available to him under the Companies and Allied Matters Act in order to achieve his aim.

ANSWER TO QUESTION 1 (C) (i)

The two options available to Dr. Tokunbo Alao under the Companies and Allied Matters Act to achieve his aim are;

1. Incorporated Trustee
2. Company Limited by guarantee.

- ii. Compare and contrast the two options identified by you in (i) above.

ANSWER TO QUESTION 1 (C) (ii)

1. Consent of Attorney General of the Federation is required to register a company Limited by Guarantee but this is not required to register incorporated trustee
2. b) A company limited by Guarantee can do business without profit among members but an incorporated article of association is required for a Company Limited by Guarantee.

3. Two printed copies of the Constitution are required to register incorporated trustee while memorandum and articles of association are required for a Company Limited by Guarantee.
 4. Trustees' declaration form is required for Incorporated Trustee but this is not required for a Company Limited by Guarantee.
 5. Impression of the Common Seal of a Company Limited by Guarantee is not required on the registration form but this is required for an Incorporated Trustee.
 6. Extracts of minutes of general meeting appointing trustees and adopting special clause in the constitution signed by the Chairman and Secretary is required for Incorporated Trustee but this is not required or a Company Limited by Guarantee.
 7. Notice of application for registration of Incorporated Trustee must be placed in two newspapers while this is not required for a company Limited by Guarantee.
 8. A company Limited by Guarantee and Incorporated Trustee both required Form CAC 1 for Availability Check and Reservation of Name.
 9. Notice of the situation of the address of the association and notice of situation of the registered office of the company must be filed with CAC.
 10. Both bodies (Limited by Guarantee & Incorporated Trustee) are administered by CAC.
 11. Both bodies (Limited by Guarantee & Incorporated Trustee) are non- profit oriented.
- iii. List the documents you will file at the Corporate Affairs Commission to register the organization, you consider more appropriate for Dr. Tokunbo Alao's purpose.

ANSWER TO QUESTION 1 (C) (iii)

The documents to be filed at CAC to register an Incorporated Trustee which is a more appropriate organization are the following;-

1. Availability Check and Reservation of Name – CAC
2. Duly completed set of Incorporated Trustee form – CAC/IT/1
3. Formal application for registration by the Chairman and Secretary of the Solicitor
4. Extracts of minutes of general meeting appointing the Trustees and adopting the special clause in the constitution signed by the Chairman and Secretary.
5. Two printed copies of the Constitution
6. Trustees declaration from duly deposed to by each trustee in the High Court
7. Impression of the common seal of the association on the application form
8. Notice of the situation of the Address of the Association or any changes therein
9. Payment of Filing Fee

QUESTION 2

Dangote Nig Limited. was incorporated on March 11, 2015 with the object of processing Yam flour for export purposes. The Directors of the Company are: Chief Donald, Chief Fola Oyinda and Chief Dami all of No.1, Agbani Road, Enugu. After one year of incorporation of the Company the board of directors of the Company discovered that one of the directors, Chief Dami, a life director was revealing some trade secrets of the Company to a rival company for a fee. A meeting of the Board of Directors was summoned the same day and Chief Dami was removed as a Director of the Company, while Mr. Laudis green was appointed as a Director to fill the casual vacancy.

At the first Annual General Meeting of the Company held on 15th August, 2017, it was resolved that the Share Capital of the Company be increased from Five Million Naira (N5,000,000:00) divided into Five Million ordinary shares of One naira each to Twenty Million Naira (N20,000,000:00) divided into Twenty Million ordinary shares of One Naira each. The shareholding equilibrium is to be maintained.

Answer the following questions:

- a) Who appoints the first Directors, additional directors and directors to fill casual vacancy under the Companies and allied Matters Act Cap C20 LFN 2004?

ANSWER TO QUESTION 2 A

First directors are appointed by subscribers to the memorandum of association, additional directors are appointed by members at general meetings and casual vacancy are filled by board of directors where the members fail to appoint a director upon removal. S.247, 248, 249 CAMA Respectively

- b) Explain in details the rules guiding retirement by rotation of directors under the extant laws(s) in Nigeria.

ANSWER TO QUESTION 2 B

The rule on rotation of Directors as provided for under **Section 259(1), (2) & (3) CAMA** to the effect that except as stated in the Articles of Association of the Company, at the first Annual General Meeting of the Company, all Directors shall retire from office except for life directors and shadow directors (**S. 255 and 245 CAMA Respectively**) and subsequent Annual General Meetings, 1/3 or the number nearest to 1/3 of the directors will retire. Note; after ascertaining the numbers that would retire, they retire by those appointed first in office. Also, where the directors were appointed on the same day, they have must agree among themselves who should retire failing which, the question should be decided by lot.

- c) When is the first Annual General Meeting of the Company in the above scenario supposed to hold? Draft the notice of the first Annual General Meeting of the Company.

ANSWER TO QUESTION 2 C

The first Annual General Meeting of the Company must be held within 18 month of incorporation. **S.213 CAMA**. Therefore from the above scenario the Annual General Meeting of the Company should have been held not later than 10TH September 2016.

DANGOTE NIG. LIMITED

RC NO 0867

NOTICE OF 1ST ANNUAL GENERAL MEETING

NOTICE IS HEREBY GIVEN that the First Annual General Meeting of members of Donald Nig. LIMITED, will be held at the Conference/Banquet Hall, Sheraton Hotels and Towers, Maitama, Abuja on 27TH June 2017 at 9.30 am to transact the following business.

Ordinary Business

1. To receive and consider the financial statement for the year ended 31st December together with the Directors and Auditors' Report thereon. (To receive the Report of the Audit Committee)
2. To declare a final dividend.....

Special Business

- 1) To approve the remuneration of the Directors.

Dated this 27th Day of June 2017

By Order of the Board Company Secretary

Worlu Rachael .A Esq.

Company Secretary

Registered Office, 135, Marina, Lagos

- d) Advise Chief Dami on the propriety or otherwise of his removal as a director of the Company.

ANSWER TO QUESTION 2 D

Generally, a life director is not subject to retirement by rotation as provided in **S. 259 CAMA**, but he may be removed in accordance to **S. 262 CAMA**.

Hence his removal by the board of directors is inappropriate as such removal ought to be done at the general meetings by members.

My advice is that he institutes an action in court for his wrongful removal and he should be reinstated and if the company is still desirous of his removal it should be done by members at general meetings

- e) Who is an alternative director

ANSWER TO QUESTION 2 E

An Alternative Director is a director appointed under the articles to act in place of a substantive Director whenever he is absent for the purpose of attending board of directors meetings.

- f) From the scenario, mention the returns the Company secretary will make to the Corporate Affairs Commission and the prescribed period of making that said returns

ANSWER TO QUESTION 2 F

The company secretary must make the following returns to Corporate Affairs Commission;

1. Notice of Change of Director in the prescribed form within 14 days- **S.292(4) CAMA**
2. Notice of Increase in Share Capital In prescribed form within 15 days- **S.102 CAMA**
3. Resolution for increase in share capital within 15 days- **S.102 CAMA**
4. Returns of Allotments in the prescribed form within 1 month – **S. 129 CAMA**

g) Outline five matters to be transacted at the first board of directors meetings

ANSWER TO QUESTION 2 G

The matters to be considered by the Board of Director at the first Board of Directors meetings are;

1. Appointment of Company Secretary
2. Appointment of Auditor
3. Appointment of Managing Directors
4. Adoption of the Common Seal
5. Adoption of the certificate of incorporation

QUESTION 3

Mr. Koko Bashir a chartered accountant, recently graduated with a second class upper division degree from the Faculty of Law, University of Toronto. He was denied admission into the Nigerian Law School as a result of an adverse report against him by the Dean of the Faculty of Law, University of Toronto.

Recently, Elimi Oil (Nig) Plc, a newly incorporated company advertised the vacant post of a Company Secretary. Mr. Koko Bashir was shortlisted because of his academic qualifications, but is unsure of his chance of being appointed. Answer the following questions:-

- a. Advise Mr. Koko Bashir of his chances of being appointed the Company Secretary of Elimi oil (Nig) Plc.

ANSWER TO QUESTION 3 A

Koko Bashir is a chartered Accountant and qualified under S. 295 CAMA and therefore he can be appointed as Company Secretary.

- b. Assuming that Miss Smart Adaobi was appointed Company Secretary instead of Mr. Koko Bashir, identify four duties incumbent on her.

ANSWER TO QUESTION 3 B

Duties of a Company Secretary

1. Attending meeting of the company, board of directors and committee meetings, rendering all necessary secretarial services and giving advice on compliance by the meetings with rules and regulations.
 2. Maintaining registers and other records required to be kept under the law.
 3. Rendering proper returns and giving notifications to the CAC as required under the law.
 4. Carrying out such administrative and secretarial duties as directed by the directors or the company. See s. 298 (CAMA)
- c. Mention five returns that Miss Smart Adaobi must make as the Company Secretary. State the regulatory agency(s) to which the return(s) must be made.

ANSWER TO QUESTION 3 C

1. Notice of Change of Name – CAC
 2. Notice of Change of Directors – CAC
 3. Notice of Change of Secretary – CAC
 4. Notice of Change of Registered Office – CAC
 5. Increase in share capital – CAC
 6. Notice of Consolidation – CAC
 7. Notice of Merger – CAC & SEC
 8. Notice of change of object – CAC
 9. Notice of Appointment of Auditor – CAC
 10. Removal of Auditor – CAC
- d. Identify five (5) statutory records that Miss Smart Adaobi must keep as the Company Secretary.

ANSWER TO QUESTION 3 D

Statutory of Records

1. Register of members
2. Index of members
3. Register of Directors & Secretaries

4. Register of Directors Shareholding
 5. Register of Substantial interests in shares
 6. Register of charges
 7. Register of Debenture Holders
 8. Minutes Book
 9. Record of Instruments
- e. Assuming that Miss Smart Adaobi is appointed, but found guilty of gross misconduct two (2) years after her appointment, outline the procedure for her removal.

ANSWER TO QUESTION 3 E

1. The Board of directors shall give notice to Adaobi stating as follows:-
 - a. That is intended to remove her
 - b. Setting out the grounds under which is intended to remove her
 - c. Giving her at least 7days within which to make a defence or resign
2. if the secretary does not resign or make a defence within the time given, the Board shall remove her and shall make a report (to the next general meeting)
3. Where the secretary makes a defence and the Board does not consider it sufficient, the Board shall remove her from office but shall report to the next general meeting.
4. The Company Secretary will be removed from the Register of Directors & Secretaries.

SECTION B

QUESTION 4

Brass Construction Nigeria Limited is a company with a large debt burden which has hindered its operations since 2011. 70% of the company's profit after tax in 2014 financial year was used to pay interest on loans it secured from five financial institutions. The debt burden is becoming unsustainable. The company must either agree with the creditors to adjust the terms of the debt to make payments easier, or go into liquidation.

- (a) In order to avoid collapse, what type of corporate restructuring will you advise the company to adopt to enable it adjust the terms of the debt? Give reasons for your answer.

ANSWER TO QUESTION 4 A

I will advise the company to consider Arrangement and compromise. My reason is because it is most suitable for internal restructuring without aid of a third party, and it is an arrangement among concern member and creditor to take less

- (b) State the procedure for the corporate restructuring option recommended by you in (a) above.

ANSWER TO QUESTION 4 B

1. Issuance of Notice of meeting to concerned creditors and preparation of the Scheme of Arrangement & compromise
2. Application to Federal High Court for holding of the meeting of concerned creditors of the company (Court ordered meeting)
3. Holding of meeting of the concerned creditors to approve the Scheme of Arrangement & compromise
4. Special Resolution to be passed at the meeting of concerned creditors to approve the Scheme of Arrangement compromise.
5. Reference of the Scheme Arrangement & Compromise to Securities and Exchange Commission by the Federal High Court to investigate the fairness of the Scheme.
6. Application to Federal High Court for sanctioning of the Scheme of Arrangement & Compromise
7. Registration of Certified True Copy of the Order sanctioning the Scheme of Arrangement & Compromise with CAC and SEC.

- (c) Assuming the board of directors of Brass Construction Nigeria Limited resolves to acquire the company's equities to steer it off its current financial trauma, describe the restructuring open to them.

ANSWER TO QUESTION 4 C

The restructuring option open to board of directors of Brass Construction Nigeria Limited to acquire the company's equities to steer it off its current financial trauma is to adopt the option of Management Buyout wherein the existing management of the company will buy out the shares and other equities of the shareholders of the company.

- (d) Explain why you consider arrangement on sale an inappropriate option for Brass Construction Nigeria Limited

ANSWER TO QUESTION 4 D

The reasons why Arrangement on Sale may not be appropriate option for Brass Construction Nigeria Limited are:

1. Adjustment of terms of debt with creditors in an arrangement and compromise with the company while arrangement on sale resolves sale of assets and undertakings to another company.
2. The company wants to avoid collapse, which means it is not interested in voluntary winding up which is in an initial component of Arrangement on Sale.

(e) Assuming that the creditors of Brass Construction Nigeria Limited opt for compulsory winding up, at what stage would it be said that the process has commenced?

ANSWER TO QUESTION 4 E

If the creditors of Brass Construction Nigeria Limited opted for Compulsory Winding Up, the Winding Up process will be deemed to have commenced from the day the petition is filed at the registry of Federal High Court

QUESTION 5

In 2005, Mr George Otunba commenced private legal practice with two other lawyers Mr Prince and Mr Laudis under the name and style of George Otunba & Partners.

As at July 2017, thirty partners have been admitted into the firm, apart from twenty who are associates. The firm has a partnership agreement binding all partners.

Mr Prince, a partner has undertaken some finance deals using the firm's letter head and has incurred a liability for about N35 million. The other parties are insisting that they are not liable.

Mr George Otunba plans to relocate to USA in December 2017 and have given notice of intention to resign from the partnership with effect from November 2017.

Answer the following questions

- a. Mention any four clauses that should be included in the partnership agreement in order to avoid the consequences of partnership law and briefly explain.

ANSWER TO QUESTION 5 A

- 1) **Profit and loss:** Mode of determining net profit and the proportion of sharing profit and loss will be shared in equal shares by the partners (s.25 (a) Partnership Law Lagos). When profit will be shared should also be provided for i.e. monthly, quarterly or yearly.
- 2) **Payment of Salaries:** Payment of salaries to partners must be provided for. Unless this is done partners are not entitled to salary or remuneration for participating in the management of the business – (s. 25(f) Partnership Laws Lagos)
- 3) **Property of Partnership:** Partnership must be applied exclusively for the purpose of the partnership and in accordance with partnership agreement. Any property bought with the money of the firm is deemed to the firm unless the contrary appears.
- 4) **Duration:** Partnership will be presumed to be partnership at will. If duration is stated it determines the life span of the partnership and mode of dissolution (ss.27(1) 33(a)(b) and (c) Partnership Law Lagos).
- 5) **Retirement:** if the partnership is to be continued after the retirement or resignation of a partner it must be provided for, if not, the partnership may have to dissolve.
- 6) **Dissolution:** non-inclusion of this clause presupposes that the death or resignation of any of the partners signifies the end of the partnership.
- 7) **Expulsion and Suspension:** expulsion and suspension may be necessary if a partner acts in breach of the partnership agreement. It may be provided that a majority can expel or suspend in a specific situations if not there will not be any power to expel (s.26 Partnership Law Lagos)

- b. Comment on the liability or otherwise of the partnership in respect of the finance deals made by Mr Prince.

ANSWER TO QUESTION 5 B

Each partner is an agent of the partnership within the scope of the partnership business and so each partner can act for the partnership in transactions within the scope of the partnership if there is no express contrary provision profit and loss will be shared in equal proportion by the partners. (s.25(a) Partnership Law Lagos). Consequently, if the finance deal falls within the ambit of their legal practice, all the partners will share the profit and loss equally. Otherwise Chris will be personally liable for any obligation arising from the financial deal.

- c. Draft the Notice of resignation of Mr George Otunba from the firm

ANSWER TO QUESTION 5 C

NOTICE OF RESIGNATION
TO: GEORGE & PARTNERS

(ADDRESS)

I hereby give notice under Clauseof our partnership agreement (or deed of partnership) dated theday of Of my intention to resign from the partnership subsisting between us with effect from December 2017

Dated Day of20.....

Signed:
GEORGE

- d. What steps would you have advised the firm as at July 2017, if they were not a firm of legal practitioners.

ANSWER TO QUESTION 5 D

A partnership is made up of a minimum number of two persons and maximum number of 20 persons except for a firm of lawyers, accountants and cooperative societies (s. 19 CAMA). A business association that consists of not more than 20 persons and does not fall within the exceptions under s.19 CAMA must be incorporated as a company.

- e. Mention three ways in which a partnership can be dissolved.

ANSWER TO QUESTION 5 E

- 1) By act of the parties:
 - 2) By operation of law
 - 3) By order of Court
- f. State the procedure for dissolution of partnership by the partners

ANSWER TO QUESTION 5 F

- 1) Notice of requirement, dissolution, or expulsion is served on another partner referring to the appropriate clause in the partnership agreement.
- 2) The partners prepare the dissolution agreement.
- 3) Notice of dissolution is given to Corporate Affairs Commission, if registered

QUESTION 6

Fish Tale Plc. was incorporated on January 22, 2014 with an authorized minimum share capital of two million Naira (N2, 000,000.00) the company's main object is to manufacture modern mobile fish ponds for cottage fish farming.

Mr. Bode Adesiyon is the Managing Director of the company. Mr. Adesiyon appointed Mr. Jonah Adams, a chartered accountant with ten years field experience as the first and only Auditor of the company.

Answer the following questions:-

- (a) Comment on the propriety or otherwise of the appointment of Mr. Jonah Adams.

ANSWER TO QUESTION 4 A

The appointment of Mr. Jonah Adams as the first auditor is irregular because the law provides that the first auditor of a company is to be appointed by the board directors at any time before the commencement of business. s.357 (5) CAMA. A chartered accountant with 10years experience is qualified to be appointed as an auditor. S.358 CAMA.

The appointment of the first auditor by the managing director is irregular, not being in line with the provisions of the law since he was not appointed by the board.

- (b) Assuming that Mr. Adams refused to vacate his position as an auditor, list the procedure, if any, to be followed for his removal.

ANSWER TO QUESTION 4 B

- 1) Board Resolution
- 2) 28 days special notice would be given to the Auditor.
- 3) The Auditor would be given opportunity to make his defence
- 4) The company would convene an Extra-Ordinary General Meeting by giving a 21 day notice to members.
- 5) An ordinary resolution shall be passed by the members
- 6) Returns would be made to CAC within 14 days S. 362 CAMA

- (c) **Draft the resolution** removing Mr. Adams as the auditor of the company.

ANSWER TO QUESTION 4 C

FISH TALE PLC

(ADDRESS)

RC NO. _____

ORDINARY RESOLUTION PURSUANT TO S.362 CAMA

At an Extra-Ordinary General meeting of the company held at _____ venue _____ on the _____ day of _____ 2018, it was resolved as follows:-

'That Mr. Jonah Adams be removed and is hereby as the Auditor of the company'.

DATED THIS _____ DAY OF _____ 2018

DIRECTOR

SECRETARY

- (d) Mention the contents of the financial statement of Fish Tale Plc. and state any two content of the financial statement that need not be include assuming Fish Tale is a private company.

ANSWER TO QUESTION 4 D

- 1) Statement of Accounting Policies
- 2) Balance sheet as at the last day of the year.
- 3) Profit and loss account
- 4) Notes on the account
- 5) The auditor's report
- 6) The directors report
- 7) Statement of source and application of fund
- 8) Value added statement for the year
- 9) Five year financial summary

A **financial statement of a private company (LTD/ LIMITED) NEED NOT INCLUDE** the following 4(four) document –

- 1) Statement of the accounting policies;
 - 2) Statement of the source and application of fund;
 - 3) Value added statement for the year;
 - 4) A five year financial summary. See section 334(3) of CAMA.
- (e) Assuming that Fish Tale Plc intends to increase its authorized minimum share capital to twenty million Naira (N20,000,000.00)

i. Mention the procedure to be followed in order to increase the said share capital.

ANSWER TO QUESTION 4 E (i)

- 1) Board Resolution proposing the increase
 - 2) A 21 day notice of General Meeting to be given to members
 - 3) Passing of an ordinary resolution at the General Meeting
 - 4) Completion of Form CAC 2.4 – Notice of Change in Authorised Share Capital
 - 5) Payment of stamp duties in respect of the increase.
 - 6) Filing of a copy of the resolution and Notice of Increase – CAC 2.4 at the CAC. Payment of the filing fees within 15 days of passing of the Resolution.
 - 7) Obtain Certificate of Increase of Share Capital from CAC and attach to the Memorandum of Association.
 - 8) Within 6 months of filing the Notice of Increase at the CAC, ensure that not less than 25% of the new authorized share capital of the company has been issued and delivered to CAC a statutory declaration verifying that fact.
- ii. Draft the **notice of meeting** of the company where the resolution for increase will be passed.

ANSWER TO QUESTION 4 E (ii)

FISH TALE PLC

(ADDRESS)

RC NO _____

NOTICE OF EXTRA-ORDINARY GENERAL MEETING PURSUANT TO S.215 OF CAMA

NOTICE IS HEREBY GIVEN that an Extra-Ordinary General Meeting of the company will be held on the ____ day of ____ 20__ at ____ venue ____ at ____ (time) to transact the following business.

SPECIAL BUSINESS

To increase the Authorised Share Capital of the company from N2,000,000 to N20,000,000 by the creation of additional share capital of N18,000,000 ordinary share of N1 each ranking parri passu with the existing shares in the share capital of the company.

Dated this ____ day of ____ 20__

BY THE ORDER OF THE BOARD

Signature

COMPANY SECRETARY

QUESTION 7

The Federal Government of Nigeria is desirous of transforming the Yakubu Gowon Airport in Jos, Plateau State into an international airport. To this end, the Federal Government has entered into a contract with Best Airports Developers Inc., a US-based company, to execute the project.

Eleven months into the execution of the project, the Benue State government engaged the company to survey lands earmarked for the development of an airport in Benue State. The company is to develop, designs and plans for the proposed airport and to manage the importation of conveyor belts and escalators for use in the proposed airport. The Federal Government was not party to this contract and has no knowledge of its contents.

(a) Draft the application for exemption on behalf of Best Airports Developers Inc.

ANSWER TO QUESTION 7 A

[Insert the External Solicitor's letterhead using address in Nigeria]

[Insert Date]

The President

Federal Republic of Nigeria,

Through:

The Secretary to the Government of the Federation,

Three Arms Zone,

Abuja.

Dear Sir,

RE-BEST AIRPORTS DEVELOPERS INC
APPLICATION FOR EXEMPTION FROM INCORPORATION
(PURSUANT TO SECTION 56 (1) (A) CAMA)

We are solicitors to the above named company (our client). On our Client's instructions, we humbly apply for an exemption from the obligation to obtain the incorporation of our Client as a company under Nigerian law.

Our application is predicated on the fact that our client has been invited by the Federal Government to re-model, build and develops the Yakubu Gowon Airport in Jos, Plateau State into an international airport.

We undertake to pay any administrative fees that may be required for the grant of the exemption.

Yours faithfully,

For: [Insert Name of External Solicitor's law office]

[Insert signature]

[Insert name]

Encls;

- 1) The name and place of business of the company/our client outside Nigeria.
- 2) The proposed name and place of business of the company/our client in Nigeria
- 3) The name and address of each director and other principal officers of the company/our client
- 4) A certified copy of the Corporate and Constitutional documents (Memorandum and Articles of Association of company/our client
- 5) The name and address of our/our client's correspondence agent resident in Nigeria duly authorized to receive services of process and any notices on our/our client's behalf

- 6) The proposed business of the company/our client in Nigeria and the duration of the business
- 7) Particulars of projects previously carried out by the company/our client in Nigeria and as an exempted foreign company

(b) Can the company validly execute the contract with the Benue State Government? What steps must the company take before it can execute the contract with Benue State?

ANSWER TO QUESTION 7 B

Generally, the company cannot execute a contract outside the term of their exemption. Therefore the company cannot validly execute the contract with the Benue State Government unless they incorporate with Corporate Affairs Commission. This is because by default, an exempted company has the status of an unregistered company and if it carries on any other business outside the head and/or scope of its exemption, it will necessarily be in contravention of the provisions of section 54(1) CAMA. See section 58 CAMA.

The step the company must take before it can execute the contract with Benue State is to incorporate with Corporate Affairs Commission.

(c) Advise on the categories of companies business that are exempted from Incorporation in Nigeria and the consequences of carrying on business in Nigeria without first Incorporation as a Nigerian company.

ANSWER TO QUESTION 7 C

The categories of foreign business/companies that are exempted from incorporation in Nigeria include;

- i. Foreign companies invited into Nigeria by or with the approval of the federal government to execute any specified individual project.
- ii. Foreign companies in Nigeria for the execution of a specific, individual loan project on behalf of a donor country or international organization.
- iii. Foreign government owned companies in Nigeria solely for export promotion activities.
- iv. Engineering consultants and technical experts engaged on any individual specialist project under a contract with any of the governments in the federation or any of their agencies or with anybody or persons, where such contract has been approved by the federal government. See section 56(1) (a) – (d) CAMA.

The legal consequences that attend a foreign company carrying on business in Nigeria without first obtaining incorporation as a separate legal entity in Nigeria include:

- i. Such a company cannot lawfully carry on business in Nigeria, cannot lawfully exercise the powers of an incorporated company in Nigeria, and cannot lawfully have a place of business or an address for service of documents/processes in Nigeria. Where any such company does any of the above, such act or conduct is void. Section 54(1) and (2) CAMA.
- ii. It is also illegal because a fine is prescribed for its breach: See section 55 CAMA.

(d) Best Airports Developers Inc. sees prospects in the Nigerian market and intends to make its business presence in Nigeria permanent. It is, however, apprehensive of the volatile Nigerian business environment, particularly because the money for the proposed investment is to be

obtained through loan from banks in the Netherlands. Also the investments are to be made in rural areas and low income neighbourhoods.

As part of Best Airport's corporate social responsibility (CSR), they are proposing to provide uninterrupted power supply by installing a new transformer on Adeola Odeku A Street, Victoria Island, Lagos which is to be its headquarters in Nigeria.

- i. Advise the company on the incentives available to foreign investors in Nigeria.

ANSWER TO QUESTION 7 D (i)

The incentives available to foreign investors in Nigeria are:

- 1) Tax holiday of 3-5 years upon issuance of Pioneer Status Certificate
- 2) Employment Tax Relief; Work Experience Acquisition Programme Relief and Infrastructure Tax Relief under COMPANIES INCOME TAX (EXEMPTION OF PROFITS) ORDER S.I 38 of 2012.
- 3) Rural investment allowance
- 4) Tax relief on interest on foreign loans
- 5) Tax relief on double taxation treaties
- 6) Investment tax credit
- 7) Local raw material utilization
- 8) Tax exemptions if company is located in a free zone.
- 9) 20% Investment Tax to companies that are engaged in R & D activities for commercialization.
- 10) Relief from tax paid in a country that has double taxation bilateral treaty with Nigeria

- ii. Advise on the kind of incentives, if any, that may be available to the company on its proposed corporate social responsibility project and business operations.

ANSWER TO QUESTION 7 D (ii)

The Incentives available to the company on its proposed corporate social responsibility project and business operations are:

- 1) Gas utilization incentive
- 2) Pioneer status (electric transformer)
- 3) Tax relief on foreign loans s 34 CITA**
- 4) Rural Investment Allowance
- 5) Infrastructure Tax Relief

- iii. Identify four (4) major regulatory bodies that will be involved in the Best Airports Developers business operations and outline four (4) functions for each of the regulatory bodies.

ANSWER TO QUESTION 7 D (iii)

Four (4) major regulatory bodies that will be involved in the Best Airports Developers business operations and four (4) functions of each of the regulatory bodies are as follows:

1. Corporate Affairs Commission

- a) Administration of the Act including the regulation and supervision of the formation, incorporation, registration, management and winding up of companies.
- b) Establishment and maintenance of Companies Registry and offices in all the States of the Federation.
- c) Conduct of investigations into the affairs of any company where the interests of the shareholders or the public so demand.

- d) Administration of business names and Incorporated Trustees under Part B and C of the Act.

2. Nigerian Investment Promotion Commission

- a) Registers foreign companies as enterprises in Nigeria
- b) Administers the Pioneer Status incentive
- c) Assist Best Airports as an incoming investor by providing support services
- d) Initiate and support measures which shall enhance the investment climate in Nigeria for both Nigerian and non-Nigerian investors.

3. Securities and Exchange Commission

- a) Regulates investments and securities businesses in Nigeria
- b) Registers the securities of all public companies
- c) Regulates all offers of securities by public companies and entities
- d) Keeps and maintains a register of foreign portfolio investments

4. National Office for Technology Acquisition and Promotion

- a) Registers all contracts for the importation of foreign technology, whether by way of technical expertise, basic or detailed engineering.
- b) Monitors, on a continuous basis, the execution and implementation of any technology transfer agreement registered by the NOTAP.
- c) Encourages the development of more efficient processes for the adaption of imported technology
- d) Ensures that the terms of technology transfer agreements are not too onerous and prevents the importation of substandard or outdated technology.

QUESTION 8

Oriental Nigeria Limited was incorporated on May 19, 2012. The shareholders and directors of the company are Chike Ogu, Ibiam Olakunle and Useni Idris, who holds 10%, 40% and 50% of the shares of the company respectively. In March 2014, Ibiam Olakunle and Useni Idris conspired and shut out Chike Ogu from the management of the company. Chike Ogu has not been invited to both board and general meetings of the company and has not been refused entry into the premises of the company since then. Ibiam Olakunle and Useni Idris have been paying themselves all entitlements and have bought expensive cars too. No car was bought for Chike Ogu and no allowances or dividends were paid to him.

The company is no longer doing well and has also failed to keep accounting records and minutes of the meetings of the company. Financial statements have not been prepared since 2014. The company also failed to file Annual Returns since then.

Answer the following questions:-

- (a) Mention the remedies available to Chike Ogu, as a authority shareholder of the company under the Companies and Allied Matters Act, Cap C20, LFN 2004.

ANSWER TO QUESTION 8 A

The remedies available to Chike Ogu, as a minority shareholder of the company under the companies and Allied Matters Act, Cap C20, LFN 2004 are the following:

- i. Members' Direct Action or Personal/Representative Action.
- ii. Derivative Action.
- iii. Relief on grounds of unfairly prejudicial and oppressive conduct
- iv. Investigation of the company by CAC
- v. Winding up of the company on just and equitable ground

- (b) Chike Ogu has decided to apply to the Corporate Affairs Commission to investigate the affairs of the company, draft the application to the commission on his behalf.

ANSWER TO QUESTION 8 B

KENE HASSAN & CO

PLOT 12, ADEOSUN STREET, VICTORIA ISLAND LAGOS

[Insert DATE]

Registrar-General,
Corporate Affairs Commission
Abuja
Dear Sir,

**APPLICATION FOR INVESTIGATION OF ORIENTAL NIGERIA LIMITED – RC NO.
PURSUANT TO SECTION 314 OF CAMA**

We write on behalf of Chike Ogu, a shareholder of the above named company (our client), who holds one quarter of the total shares of the company.

Our client is applying for the investigation of the above-named company on the following grounds:

1. Refusal to invite him to both board and general meetings of the company.
2. Failure to keep accounting records of the company
3. Failure to have any records of minutes of the company
4. Failure of the directors to prepare Financial Statements of the company since 2014
5. Failure to file Annual Returns since 2014.

We look forward to your favourable response.

Thank you
Yours faithfully
KENNE HASSAN & CO
Signature
Kene Hassan Esq

- (c) Other than a member of the company, who else can apply to the Corporate Affairs Commission to investigate the affairs of the company?

ANSWER TO QUESTION 8 C

The only person that can apply to the Corporate Affairs Commission other than a member of the company to investigate the affairs of the company in this circumstance is the company itself.

- (d) Chike Ogu wants to know the grounds on which a company may be wound up by the court. Advise him.

ANSWER TO QUESTION 8 D

I will advise Chike Ogu that the following are the grounds on which a company may be wound up by the Court.

- i. The company has special resolution resolved that the company be wound up by the court.
- ii. Default is made in delivering the statutory report to the CAC or in holding the statutory meeting
- iii. The number of members is reduced below two
- iv. The company is unable to pay its debts; and
- v. The court is of the opinion that it is just and equitable that the company should be wound up.

QUESTION 9

Amaco Nigeria Limited is a company operating in Ikire, Osun State. The share capital of the company is N100, 000,000.00 (Ten Million Naira) divided into 10 million ordinary shares of N1.00 each. The company has not done well since its incorporation in 2008. Its assets do not represent the true and fair financial position of the company. The company resolved in 2012 to reduce its share capital from N10, 000,000.00 (Ten Million Naira) to N5, 000,000.00 (Five Million Naira) in order to reflect its true financial position.

Since then, the company has not picked up and is considering options that will enable it raise money to re-capitalise. Some of the options it is considering are: converting the company to a public company in order to enable it offer its shares to members of the public, issue debentures and borrow money from the Bank. The company has retained your services.

Answer the following questions:-

- (a) State the procedure the company will adopt to reduce its share capital from N10,000,000.00 to N5,000,000.00

ANSWER TO QUESTION 9 A

The company must follow the following procedures to reduce its capital

1. Board meeting where a decision will be taken to reduce the capital will be convened.
2. The scheme of reduction shall be prepared
3. Notice for general meeting shall be issued accompanied with a copy of Scheme of Reduction
4. General meeting will be convened to pass a special resolution to reduce the share capital.
5. Application will be made to Federal High Court to confirm the reduction with extract of the Minutes of meeting approving the reduction and Scheme of Reduction.
6. Within 15 days file Form CAC 2.4 – Notice of Reduction of Share Capital with the Corporate Affairs Commission accompanied with the following documents:
 - a. Certified True Copy of court order sanctioning the reduction of share capital
 - b. Court approved minutes of meeting of company shall be filed with CAC
 - c. Duly stamped memorandum and articles of association reflecting reduced share capital
 - d. Updated Annual Return
 - e. Evidence of payment of FRC annual dues
 - f. Evidence of payment of filing fees

- (b) Assuming that the company successfully converted from a private company to a public company, mention four consequential alterations to be made in the:

- i. Memorandum of Association, and

ANSWER TO QUESTION 9 B (i)

Consequential alterations to be made in the Memorandum of Association consequent upon the conversion of the company from private to public include the following;

- a. The name in the heading must end with PLC
- b. The name clause must end with PLC instead of LTD
- c. The status (type of company) must change to Public Company

- (c) The Board of Directors of the company wants to know the different types of debentures they may issue to the public as provided under the law. Advise them.

ANSWER TO QUESTION 9 C

1. **Perpetual debentures**-These are debentures that are irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long. **See s. 171 of CAMA.**
 2. **Convertible debentures**-These are debentures issued on the terms that they are convertible to shares of the company in lieu of redemption and at the option of the holder upon such terms as may be stated in the debentures. **See s.172 of CAMA. Secured and naked debentures**- A debenture is secured when it is secured by a charge over the properties of the company. Whilst, the debenture is naked when it is not secured by any property of the company. **See s. 173 of CAMA.** The security may be a fixed charge or a floating charge, or by both a fixed charge on a certain property and a floating charge.
 3. **Redeemable debentures**- These are debentures that are liable to be redeemed at the option of the company. **See s. 174 of CAMA.**
 4. **Registered Debentures**-These are debentures registered in the register of debenture holders and payable only to the registered holders. It can be transferred and the transfer becomes effective after registration in the register of debenture holders.
 5. **Bearer Debenture**-These are negotiable instruments and payable to the bearer. Bearer debentures do not require the company to maintain a register of debenture holders.
- (d) Assuming that the company obtained a loan of N40,000,000.00 (Forty Million Naira) from Habib Bank Plc creating a charge dated March 27, 2014 on its property at 20 Kebbi Road, Ikire, Osun State, explain the consequences of non-registration of the charge under the Companies and Allied Matters Act Cap C20 LFN 2004.

ANSWER TO QUESTION 9 D

Failure to register a charge as required will render it void against the liquidator and any creditor of the company. See s. 197(1) of CAMA. The obligation to pay the debt is, however, not thereby discharged.

- (e) Outline the conditions for government/ sovereign bond

ANSWER TO QUESTION 9 E

1. The amount to be raised and outstanding loans should not exceed 50% of the actual revenue of the body concerned for the preceding year. **See s. 223(1) (b) ISA**
2. The bond must be registered with SEC by the issuer filing an application for approval made in prescribed form
3. When application is made there are certain documents that are to be annexed.
 - i. A copy of the law authorizing the issue of the bond.
 - ii. A copy of rating report by an accredited rating agency registered by the commission
 - iii. An irrevocable letter of authority issued by the accountant-general of the state or any person performing such function in FCT to the accountant-general of the federation to deduct from statutory allocation upon failure or default by the government to meet its obligations.
4. The date of redemption of any registered bond shall not be later than 25 years from the date of the issuance of the registered bond.
5. Every registered bond shall be signed by the minister, commissioner or chairman or such other appropriate officer of a body and shall when issued, bind the issuer to pay the principal sum and the interest on the sum in accordance with the provisions of this Act at the rate and on the dates specified in the trust deed.

6. Every bond holder is entitled to receive a bond certificate within 2 months of allotment issued by the registrar – **s. 232 ISA**

A bond certificate is to be printed, stamped, in engraved form. The crest of the body concerned if any, signature of appropriate officer of the body and that of the registrar.

QUESTION 10

The Acting President of the Federal Republic of Nigeria recently came up with a string of Executive Orders which have charged the business and investment landscape in Nigeria. The Corporate Affairs Commission in furtherance of this has now rolled out registration platform to ease the bottlenecks associated with incorporation of companies in Nigeria.

A client has approached you expressing his desire to incorporate a company with the following details:

1. Promoters/Directors personal details:
 - i. Samuel Abu of No. 24 Jos Road, Abuja, aged 30 years.
 - ii. Ajayi Isa of No. 10 Abeokuta Lane, Kaduna, Kaduna State, aged 40 years.
 - iii. Emeka Onye of No. 20 Ibrahim Taiwo Road, Kano, Kano State. Aged 40 years
2. Proposed names of the Company: Dimples Nigeria Limited or Dimples Concept Limited.
3. Types of Company: Private
4. Object: Hospitality, Management and Training
5. Share Capital: N10 Million divided into 10,000,000 Ordinary Shares of N2.00 each
6. Registered address: Nop. 24 Bukin Road, Jos, Plateau State.
7. Particulars of Company Secretary: Adebayo & Co of No 1 Zaria Road, Zaria, Kaduna State. With BN/RC No. 100,000.

Answer the following questions:-

- (a) Prepare the Memorandum of Association in readiness for stamping and filing.

ANSWER TO QUESTION 10 A

FEDERAL REPUBLIC OF NIGERIA
COMPANIES AND ALLIED MATTERS ACT
CAP C20, LAWS OF THE FEDERATION OF NIGERIA, 2010
COMPANIES LIMITED BY SHARES
MEMORANDUM OF ASSOCIATION
OF

DIMPLES NIGERIA LIMITED/DIMPLES CONCEPT LIMITED

1. The name of the company is Dimples Nigeria Limited/Dimples Concepts Limited
2. The registered office of the company is situate in Nigeria
3. The object for which the company is established is to carry on the business of Hospitality, Management and Training
4. The company is a private company
5. The liability of the members is limited by shares
6. The authorized share capital of the company is N10million divided into 10,000,000/5,000,000 ordinary shares of N2.00/N1.00 each

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

NAMES AND ADDRESSES OF SUBSCRIBER	DESCRIPTION OF SUBSCRIBER	NUMBER OF SHARES TAKEN BY SUBSCRIBER	SIGNATURE OF SUBSCRIBER
Samuel Abu No. 24 Jos Road, Abuja	Businessman	-	Signature
Ajayi Ise No. 10 Abeokuta	Businessman	-	Signature

Lane, Kaduna, Kaduna State			
Emeka Onye No. 20 Ibrahim Taiwo Road, Kano, Kano State	Businessman	-	Signature

DATED THE ___ DAY OF ___ 2018
WITNESS TO THE ABOVE SIGNATURES
NAME: _____
ADDRESS: _____
OCCUPATION: _____

TAKE NOTE

REQUIREMENTS FOR REGISTRATION OF BUSINESS NAME/ PARTNERSHIP

1. 2 Copies Application Form (FORM 1-FIRMS) and (FORM 2 –INDIVIDUALS);
2. Form CAC 1-Availability and Reservation of Name
3. CAC/BN/A1-Form of application for registration of Business Name
4. 2 Passport photographs of each individual
5. Tax Clearance Certificate of each individual;
6. Qualifying Certificate; and
7. Registration Fees

ROLES OF LEGAL PRACTITIONERS (THE SOLICITORS) IN MERGERS

1. Conducts legal due diligence
2. Participating in the negotiation process
3. Drafting the memorandum of understanding, transaction implementation agreement, merger agreement and other agreements that may be drafted such as exclusivity agreements.
4. Review legal documentation and provide a legal opinion on actual and/or threatened litigation
5. Securing all necessary approvals
6. Ensure the passing of all necessary resolutions required to effect the merger

ROLE OF SOLICITOR IN PUBLIC OFFER OF SECURITIES-

1. Ensuring the company is a public company. If it is a private company, the solicitor must ensure the proper procedures is followed for conversion from private to public company.
2. Ensure that the shares to be issued are within the nominal share capital of the company.
3. Ensure that all requirements of the Regulatory bodies are duly complied with.
4. Make sure the shares to be issued are registered with the SEC.
5. Prepare the appropriate prospectus.
6. Ensure that the Prospectus make all the required disclosures.
7. Getting all written consents, including his own and that of other experts that may be mentioned in the Prospectus.
8. Ensuring that the Prospectus carry the signature of all directors named in the Prospectus as directors.
9. Register the prospectus.

10. Make sure there are no untrue or misleading statements in the prospectus.
11. Advising on the opening of subscription lists before any allotment.
12. Seeking the initial and final approval of SEC and the stock Exchange to the issue.
13. Ensuring that the issue conforms to all necessary laws and regulations.