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CPA

Company law

April 2026

Level: Intermediate Level

Question 1

 Formation of companies

(a) State FOUR legal consequences of registering a company

(b) Explain THREE legal consequences of incorporation of a company.

(c) Renewable Vision Ltd. was recently formed by a group of investors intending to manufacture solar-powered irrigation equipment. Before the company was incorporated, the promoters entered into the following transactions in the name of the proposed company:

1. A contract for lease of factory premises.
2. A contract for supply of specialist machinery.
3. A contract for employment of a technical manager.

After incorporation, a dispute arose as to whether the company was bound by the transactions entered into before registration. One of the shareholders also claimed that the company had started undertaking activities not contemplated in its constitute documents.

Required:

(i) Advise the parties on THREE legal effects of contracts entered into on behalf of a company before its incorporation.

(ii) Explain the legal significance of the articles of association.

✓ Answer for Question 1

(a) Legal consequences of registering a company

Once a company is registered, the following legal consequences arise:

1. **The company becomes a legal entity** capable of suing and being sued.
2. **It acquires perpetual succession**, meaning it continues to exist despite changes in membership.
3. **It can own property in its own name**, separate from its members.
4. **Members' liability becomes limited** (in companies limited by shares or guarantee).
5. **The company can enter into contracts** in its own capacity.
6. **It can borrow money and create security** over its assets.
7. **It gains the ability to invest and carry on business activities** as permitted by its constitution.
8. **It must comply with statutory requirements**, including filing returns and maintaining records.

(b) Legal consequences of incorporation of a company

Incorporation gives rise to deeper legal effects that define the nature of a company:

1. **Separate legal personality**
   The company is distinct from its shareholders and directors.
2. **Limited liability**
   Members are only liable up to the amount unpaid on their shares or guarantee.
3. **Perpetual succession**
   The company's existence is not affected by death, insolvency or

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Company law

December 2025

Level: Intermediate Level

Question 1b

 Company Directors

With reference to types of directors, explain the following terms:

(i) De jure director.

(ii) De facto director.

(iii) Shadow directors.

✓ Answer for Question 1b

(i) De Jure Director

Definition:
A *de jure* director (Latin for "in law") is a person who has been formally and legally appointed as a director in compliance with the company's constitution and the Companies Act.

Key Characteristics:

- **Formal Appointment:** They are appointed through a proper resolution of the board or members, and their appointment is recorded in the statutory registers (e.g., Register of Directors).
- **Legal Validity:** They hold the office in strict compliance with the law.
- **Liability:** They are fully liable for all statutory duties, fiduciary obligations, and acts of the company, including liability for wrongful trading or breaches of the Companies Act.

Example:
A person whose name is entered in the company's register of directors and who was appointed during a duly convened annual general meeting (AGM) is a *de jure* director.

(ii) De Facto Director

Definition:
A *de facto* director (Latin for "in fact") is a person who has not been formally or validly appointed as a director but nonetheless acts as a director. They assume the role and perform the functions of a director without legal authority.

Key Characteristics:

- **No Formal Appointment:** There is no valid resolution or compliance with procedural formalities regarding their appointment.
- **Holding Out:** They "hold themselves out" as a director or are held out by the company as such. The company treats them as a director, and they

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Level: Intermediate Level

Question 1c

 Formation of companies

In relation to formation of companies in your country, discuss FIVE differences between a memorandum of association and articles of association.

✓ Answer for Question 1c

The Memorandum of Association (MOA) and Articles of Association (AOA) are the two most critical constitutional documents required to form a company. While they are often filed together, they serve fundamentally different purposes.

Core Concept: The "Why" vs. The "How"

A simple way to remember the difference is:

- The **Memorandum of Association** is the company's **external charter**. It defines the company's relationship with the outside world and states **"why"** the company exists and what it is allowed to do.
- The **Articles of Association** are the company's **internal rulebook**. They govern the internal management of the company and dictate **"how"** the company will be run.

Memorandum of Association (MOA)

The MOA is the foundational document that brings the company into existence. It is a mandatory document for registration and is often considered the supreme document of the company.

Key Purposes:

1. **It acts as a deed of covenant:** It signifies the subscribers' (the initial shareholders) intention to form the company and their agreement to take shares in it.
2. **It defines the company's powers and scope:** It informs the public, investors, and creditors about the fundamental nature and permitted boundaries of the company's activities.

Standard Clauses (as per many companies' acts, e.g., The Indian Companies Act, 2013):

- **Name Clause:** States the name of the company with "Limited" or "Ltd." at the end (for public companies).

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April 2025

Level: Intermediate Level

Question 2a

 Shares

(i) Explain the meaning of a Central Depository.

(ii) Highlight SIX duties of a Central Depository.

✓ Answer for Question 2a

(i): Explain the meaning of a Central Depository

A **Central Depository** is an institution established under the **Central Depositories Act** to facilitate the **electronic holding and transfer of securities** such as shares and bonds.

- It eliminates the need for **physical share certificates** by maintaining ownership records in electronic form.
- In Kenya, this role is performed by the **Central Depository and Settlement Corporation (CDSC)**, which works with the Nairobi Securities Exchange (NSE).
- Investors hold securities through **depository accounts**, similar to bank accounts, enabling faster and safer trading.

(ii): Highlight duties of a Central Depository

The main duties of a Central Depository include:

1. **Dematerialisation of Securities**
    - Converting physical share certificates into **electronic records**.
2. **Safe Custody of Securities**
    - Holding securities in **electronic form** on behalf of investors, ensuring security and accuracy.
3. **Settlement of Transactions**
    - Facilitating the **transfer of ownership** of securities once trades are executed on the stock exchange.
4. **Maintaining Investor Accounts**
    - Operating **central depository accounts (CDAs)** for investors, brokers, and other participants.

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Level: Intermediate Level

Question 2b

 Membership of a company

Explain FIVE ways that a person can cease to be a member of a company in your country.

✓ Answer for Question 2b

Ways a Person Can Cease to Be a Member of a Company (Kenya)

A person may cease to be a member of a company under the following circumstances:

1. **Transfer of Shares**
    - When a member sells or transfers their shares to another person and the transferee's name is entered in the register of members, the transferor ceases to be a member.
2. **Transmission of Shares**
    - On death of a shareholder, shares are transmitted to personal representatives or heirs. Once transmission is registered, the deceased member ceases to be a member.
3. **Forfeiture of Shares**
    - If a member fails to pay calls on shares and the shares are forfeited by the company according to the Articles, the person loses membership.
4. **Surrender of Shares**
    - A member may voluntarily surrender shares back to the company (with approval), thereby ceasing to be a member.
5. **Redemption of Shares**
    - In case of redeemable preference shares, once the company redeems them, the holder ceases to be a member.
6. **Buy-back of Shares by the Company**
    - Where the company purchases its own shares in line with the Companies Act, the selling member ceases membership.
7. **Death of a Member (Individual)**

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Question 2c

 Membership of a company

Discuss SIX ways in which a person might acquire membership in a company.

✓ Answer for Question 2c

1. Purchasing Shares (The Most Common Method)

This is the standard way to become a shareholder in a for-profit company.

- **Public Companies (Plc/Ltd):** An individual can purchase shares through a stock exchange (e.g., NYSE, NASDAQ, LSE) via a stockbroker. This is a straightforward transaction between the buyer and a selling shareholder; the company itself is not directly involved in the sale after the initial public offering (IPO).
- **Private Companies (Ltd/LLC):** Shares or membership interests are purchased directly from the company (a **new issuance**) or from an existing shareholder (a **transfer**). This is often governed by a shareholders' agreement that may include rights of first refusal for other shareholders.

2. Subscription to a New Issue (Primary Market)

When a company is first formed or seeks to raise additional capital, it can issue new shares. A person can subscribe to this offering by:

- Filling out an application form.
- Paying the agreed price per share (which could be at par value or a premium).
- Being entered into the company's register of members (shareholders).

3. Through Employment: Employee Stock Options (ESOPs) and Equity Compensation

Many companies use equity as a tool to attract, incentivize, and retain talent.

- **Stock Options:** Employees are granted the *option* to buy a certain number of shares at a fixed price (the "strike price") after a vesting period. Exercising this option turns them into a shareholder.
- **Restricted Stock Units (RSUs):** Employees are granted shares directly, but they vest over time. Upon vesting, the shares are transferred to the employee.

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April 2024

Level: Intermediate Level

Question 3a

 Receivership, Administration, Liquidation and Dissolution of companies

Outline the priority of distribution of assets of a company after dissolution.

✓ Answer for Question 3a

Priority of Distribution of Assets After Dissolution

When a company is dissolved, its assets are distributed according to the **Companies Act, 2015 (Kenya)** and general principles of company law. The priority ensures that **creditors and stakeholders are paid in a legal order**.

Order of Priority

1. **Costs and Expenses of Winding Up:**
   - All **expenses incurred in the liquidation process** are paid first.
   - This includes:
     - Fees of the liquidator.
     - Legal and administrative costs.
     - Court fees related to the winding-up process.
2. **Secured Creditors:**
   - Creditors holding **secured charges** over company assets are paid next.
   - Secured creditors are usually **banks or financial institutions** with charges on specific assets.
   - Payment is limited to the proceeds from the **secured assets**.
3. **Preferential Creditors:**
   - These include **statutory claims** such as:
     - Employee wages and salaries (up to a statutory limit).
     - Certain tax liabilities (like PAYE, VAT) owed to the government.
   - The Companies Act and Employment Act specify these amounts.

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Level: Intermediate Level

Question 3b

 Debt capital

Distinguish between “convertible debentures” and “non-convertible debentures”.

✓ Answer for Question 3b

1. Convertible Debentures

- **Definition:** Debentures that **can be converted into equity shares** of the issuing company after a specified period or on specific terms.
- **Purpose:** Offers the holder the option to **become a shareholder**, benefiting from potential capital appreciation.
- **Interest Rate:** Usually **lower than non-convertible debentures**, since the conversion option adds value.
- **Example:** A company issues debentures that can be converted into 100 shares after 3 years.

---

2. Non-Convertible Debentures (NCDs)

- **Definition:** Debentures that **cannot be converted into shares**; holders remain creditors throughout the term.
- **Purpose:** Provides **fixed income through interest** without the risk or benefit of ownership.
- **Interest Rate:** Typically **higher than convertible debentures** to compensate for lack of conversion option.
- **Example:** A company issues 5-year NCDs paying 10% interest per annum.

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Question 3c

 Formation of companies

With reference to incorporation of companies:

(i) Explain the doctrine of adoption.

(ii) Describe how the doctrine of adoption relates to pre-incorporation contracts.

✓ Answer for Question 3c

(i) Doctrine of Adoption

The **doctrine of adoption** is a legal principle under company law which provides that:

- After a company is **legally incorporated**, it may **adopt contracts entered into on its behalf before incorporation**.
- The company becomes **liable on those contracts as if it had entered into them itself**, provided it explicitly agrees to adopt them.
- Adoption usually occurs through a **resolution of the board of directors or shareholders**.

Key Points:

1. The company **cannot be bound** by contracts entered into before incorporation unless it adopts them.
2. The adoption creates a **retroactive legal effect**, making the company liable from the date of adoption, not the date of the original contract.
3. The doctrine protects **third parties** who contract with promoters on behalf of the company.

(ii) Relation to Pre-Incorporation Contracts

Pre-incorporation contracts are agreements entered into **on behalf of a company that is not yet legally formed**. Under common law:

1. A company **cannot be bound** by contracts signed before it exists.
2. The **promoter** who enters the contract is personally liable until the company adopts the contract.
3. Adoption under the doctrine of adoption allows the company to:
    - **Ratify the contract** after incorporation.

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Level: Intermediate Level

Question 4a

 Company Directors

Highlight FIVE main responsibilities of a board of directors in a company.

✓ Answer for Question 4a

Main Responsibilities of a Board of Directors

1. **Strategic Direction**
   - Formulating, approving, and monitoring the company's strategic objectives, policies, and long-term goals.
2. **Fiduciary Duties**
   - Acting in good faith and in the best interests of the company and its stakeholders, avoiding conflicts of interest.
3. **Oversight of Management**
   - Hiring, supervising, and, where necessary, removing senior executives (e.g., CEO, CFO).
   - Ensuring effective delegation without abdicating accountability.
4. **Compliance with Laws and Regulations**
   - Ensuring the company adheres to the **Companies Act, 2015 (Kenya)**, industry regulations, and internal governance rules.
5. **Financial Stewardship**
   - Approving annual budgets, financial statements, and dividend policies.
   - Safeguarding company assets and ensuring proper accounting records.
6. **Risk Management**
   - Identifying, assessing, and mitigating financial, operational, and legal risks facing the company.
7. **Corporate Governance**
   - Ensuring transparency, accountability, and ethical conduct in company operations.

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August 2023

Level: Intermediate Level

Question 4b

 Receivership, Administration, Liquidation and Dissolution of companies

Highlight SIX offences relating to liquidation of companies.

✓ Answer for Question 4b

Under the **Companies Act, 2015 (Kenya)** and insolvency law, several **offences may be committed during the liquidation process**. These offences aim to protect creditors, contributories, and the integrity of the liquidation procedure. They include:

---

1. Fraudulent Disposal of Company Property

- Officers or contributories who **conceal, destroy, falsify, or fraudulently dispose of company property or books** commit an offence.

2. False Statements

- Any officer who knowingly makes a **false entry, misrepresentation, or material omission** in statements relating to the company's affairs.

3. Failure to Disclose Property

- Officers who fail to fully **disclose or deliver company assets, books, or records** to the liquidator.

4. Fraudulent Preference of Creditors

- Where, prior to liquidation, the company gives **undue advantage to certain creditors** (e.g., paying one in preference to others) with intent to defraud.

5. Misapplication of Company Property

- Directors or officers who **misapply or retain company money or assets** for personal use.

6. Absconding to Defeat Creditors

- An officer or contributory who **attempts to abscond or conceal himself/herself** to avoid investigation or settlement of debts.

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Level: Intermediate Level

Question 4b

 Auditors, Audit of Company Accounts

Outline THREE items contained in a company’s auditor report.

✓ Answer for Question 4b

Items Contained in a Company’s Auditor’s Report

A standard **auditor’s report** provides an independent opinion on the company’s financial statements. It typically includes the following items:

---

1. Title and Addressee

- The report must have a **clear title** indicating it is an auditor’s report.
- It is usually addressed to the **members (shareholders) of the company**.

---

2. Introductory Paragraph

- States the **financial statements audited**.
- Specifies the **period covered** by the financial statements.
- Confirms that the responsibility of preparing the accounts lies with the **company’s directors**, not the auditors.

---

3. Scope of Audit

- Describes the **nature and extent of the audit procedures** performed.
- Confirms that the audit was conducted in accordance with **International Standards on Auditing (ISA)**.
- Clarifies that the audit provides **reasonable, but not absolute, assurance** that the financial statements are free from material misstatement.

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Level: Intermediate Level

Question 4c

 Receivership, Administration, Liquidation and Dissolution of companies

Summarise the following in relation to company administration:

(i) THREE objectives of administration.

(ii) THREE persons who are entitled to make an application to the Court for an administration order.

(iii) Highlight FOUR powers exercised by an administrator appointed by the Court.

✓ Answer for Question 4c

(i) Objectives of Administration

The **main objectives** of administration are:

1. **Rescue the Company**
   - To enable the company to **continue as a going concern** wherever possible.
2. **Maximise Returns for Creditors**
   - Achieve a **better outcome for creditors** than immediate liquidation.
3. **Realisation of Assets**
   - Manage and **realise company assets efficiently** for the benefit of stakeholders.
4. **Corporate Reorganisation**
   - Facilitate **restructuring or refinancing** to restore financial stability.

(ii) Persons Entitled to Apply to Court for Administration Order

The **following persons** may apply for a court-appointed administration order:

1. **The Company Itself**
   - Usually represented by directors or authorized officers.
2. **Creditors of the Company**
   - Secured or unsecured creditors seeking to protect their interests.
3. **Members / Shareholders**

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Company law

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Question 5a

 Debt capital

Outline six charges that must be submitted to the registrar of companies for registration.

✓ Answer for Question 5a

Charges to be Submitted to the Registrar of Companies for Registration

The following charges must be delivered to the Registrar for registration under the Companies Act:

1. A charge for the purpose of securing any issue of debentures.
2. A charge on uncalled share capital of the company.
3. A charge on immovable property such as land or buildings.
4. A charge on book debts of the company.
5. A floating charge on the undertaking or property of the company.
6. A charge on calls made but not paid.
7. A charge on ships, aircraft, or other registered movable property.
8. A charge on goodwill, patents, trademarks, or copyrights.

Workings for Question 5a

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Level: Intermediate Level

Question 5b

 Company meetings

In relation to company meetings, outline six documents which might be annexed to the notice of an annual general meeting.

✓ Answer for Question 5b

Documents That Might Be Annexed to the Notice of an Annual General Meeting (AGM)

When a company issues a notice of its AGM, certain documents are typically attached to provide members with full information to make informed decisions. These include:

1. **Audited Financial Statements**
    - Annual accounts of the company, including profit & loss account, balance sheet, and cash flow statement.
2. **Directors’ Report**
    - Report prepared by the board highlighting the company’s performance, key developments, and future plans.
3. **Auditor’s Report**
    - Independent auditors’ opinion on whether the financial statements show a true and fair view.
4. **Proxy Form**
    - Form enabling members to appoint another person to attend and vote on their behalf if they cannot attend.
5. **Agenda of the Meeting**
    - Detailed list of business items to be discussed at the AGM, including ordinary and special business.
6. **Notice of Special Business**
    - Supporting documents or resolutions for any special business requiring members’ approval (e.g., issuance of new shares, dividend declaration, director appointments).
7. **Explanatory Statement**

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Question 5c

 Company Investigation

Describe five powers of an inspector appointed to investigate the affairs of a company.

✓ Answer for Question 5c

Powers of an Inspector Appointed to Investigate the Affairs of a Company

An inspector appointed under the Companies Act to investigate the affairs of a company is vested with extensive statutory powers to enable them to carry out their mandate effectively. These include:

1. **Power to demand production of documents**
   - May require officers, employees, or agents of the company to produce books of account, records, papers, or any other relevant documents for examination.
2. **Power to examine persons on oath**
   - Can summon company directors, officers, employees, and even third parties connected to the company's affairs to be examined under oath.
3. **Power to require explanations**
   - May compel directors, managers, or officers to provide explanations regarding any document, transaction, or matter under investigation.
4. **Power to access company property**
   - Entitled to enter the company's registered office or other premises to inspect records and assets.
5. **Power to investigate related companies**
   - If deemed necessary, the inspector may extend investigations to holding companies, subsidiaries, or associated companies connected to the matter under inquiry.
6. **Power to seize documents (with authority)**
   - With leave of the court or written authority, inspectors may seize and retain documents where there is a risk of tampering or destruction.

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Company law

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Question 6a

 Corporate restructuring

Enumerate six most common reasons why companies might want to reduce their capital.

✓ Answer for Question 6a

Common Reasons Why Companies Might Want to Reduce Their Capital

Companies may undertake **capital reduction** for several strategic, financial, or operational reasons. The most common reasons include:

---

1. Elimination of Accumulated Losses

- To **write off past losses** from the company's balance sheet and restore financial health.
- Helps improve the **appearance of solvency** and attract investors or lenders.

---

2. Return of Surplus Capital to Shareholders

- When the company has **excess capital that is not needed for business operations**, it can be returned to shareholders.
- Provides a **direct benefit to shareholders** without affecting operations.

---

3. Adjustment of Capital Structure

- To achieve an **optimal debt-to-equity ratio**.
- Reducing share capital may allow the company to **take on debt or attract new investors** more efficiently.

---

4. Facilitation of Share Consolidation or Subdivision

- Reducing capital may precede **consolidation (reverse split) or subdivision (stock split)** of shares.
- Helps **simplify shareholding or increase marketability** of shares.

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Level: Intermediate Level

Question 6b

 Company Investigation

Explain which court appoints an inspector to investigate a company’s affairs and what circumstances may lead to such an appointment.

✓ Answer for Question 6b

(i) Court with Power to Appoint an Inspector

In Kenya (under the **Companies Act, 2015**), it is the **High Court** that has the authority to appoint one or more competent inspectors to investigate the affairs of a company.

(ii) Circumstances Leading to Court Appointment of an Inspector

The High Court may order the appointment of an inspector in the following circumstances:

1. **On Application by Members**
   - If members holding **not less than one-tenth of the issued share capital** (or at least one-fifth in number of the members, if the company has no share capital) apply for an investigation.
2. **Evidence of Fraud, Misfeasance, or Mismanagement**
   - Where there is credible evidence suggesting **fraudulent, unlawful, or oppressive conduct** by directors or management.
3. **Failure to Provide Information**
   - Where a company **refuses to produce documents or information** required by members, auditors, or regulators, creating suspicion of concealment.
4. **Deadlock or Mismanagement**
   - Where there is a **deadlock in management** or conduct of affairs in a manner prejudicial to members or the public interest.
5. **Public Interest**
   - If the court is satisfied that investigation is necessary to protect the **interests of the public, creditors, or investors**.

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September 2021

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Question 7a

 The Company Secretary

(i) Indicate four instances when a public company's register of secretaries might not contain particulars of a person's former name.

(ii) Outline five contents ofthe register of company secretaries of public companies.

✓ Answer for Question 7a

(i) Instances When a Public Company's Register of Secretaries Might Not Contain Particulars of a Person's Former Name

The register of company secretaries is required to maintain certain particulars of current and past secretaries. However, the register **may not contain former names** in the following instances:

1. **First Appointment of a Secretary with No Prior Name Change**
   - If the secretary has **never changed their name**, there is no former name to record.
2. **Voluntary Omission Due to Privacy**
   - In some jurisdictions, the individual may **request not to disclose former names**, subject to law.
3. **Secretary Appointed After Re-registration or Amalgamation**
   - If a company has undergone re-registration or merger, former names may not be transferred or recorded in the new register.
4. **Clerical or Administrative Oversight**
   - In some cases, the register may **omit former names due to administrative error**, though this is not compliant with statutory requirements.

   Note: The Companies Act generally requires particulars of former names if applicable, but omission is allowed if there is none or if not legally required.

(ii) Contents of the Register of Company Secretaries of Public Companies

The register of company secretaries serves as an official record of the company's officers. The register typically contains the following details: