



**NATIONAL OPEN UNIVERSITY OF NIGERIA**  
**FACULTY OF LAW, DEPARTMENT OF COMMERCIAL LAW**  
**Plot 91, Cadastral Zone, Nnamdi Azikiwe Express Way, Jabi – Abuja**

**OCTOBER 2019\_2 EXAMINATION**

**COURSE CODE:** CLL 804

**COURSE TITLE** BUSINESS AND COMPANY LAW

**CREDIT UNITS:** 3

- INSTRUCTIONS:**
- (a) Indicate your Matriculation Number clearly
  - (b) Attempt Question one (1) and any other three (3) questions
  - (c) Question one (1) is compulsory and carries 25 marks; while the other questions carry 15 marks each.
  - (d) Using appropriate statutory and judicial authorities, present all your points in a straightforward, coherent and orderly manner.

**TIME ALLOWED:** 3 Hours

**Question 1a**

Pre-incorporation contract has been defined as “the various types of agreements which a proposed company enters into before its eventual registration”. However, this definition can be misleading as it gives the impression that the non-existent company entered into such a contract. To put it in proper perspective, it is promoters that enter into such a contract as an event necessary to bring the company into being.

- i) With the use of the relevant section of Companies and Allied Matters Act 2004, define a promoter (3 marks)
- ii) With the aid of relevant judicial authorities, discuss the position of common law with respect to pre-incorporation contracts (5 marks)
- iii) Bearing in mind your answer in (ii) above, explain the position of pre-incorporation contracts under the Companies and Allied Matters Act 2004 (5 marks)
- iv) Identify the situation where a person who joined in the formation of a company is not deemed to be a promoter of such a company. (2 marks)
- v) Prior to ratification of a pre-incorporation what is the position of the law as regards the interest of the person who acted on behalf of the company and third parties with whom he contracted on behalf of the company? (5 marks)

**Question 1b**

With the use of statutory authorities, define “promoter”. List no less than four obligations or responsibilities of a promoter. (10 marks)

**Question 2**

The constitutional document of a company prescribes the essence and the basis of its existence and further delineates the structural as well as authority patterns of the company. The idea behind this is to avoid friction, discourage a case where governance is sacrificed on alter of self-interest and misbehaviour by officers of the company; and to promote efficiency and accountability, the necessary ingredients, without which the economic function of the company will be lost.

- (a) Identify and list at least five subject matter areas of the Articles. (5 marks)
- (b) With the help of statutory authority, what is the effect of memorandum of association and articles of association of a company? (2 marks)
- (c) List and explain no less than five clauses or contents of the memorandum. (8 marks)

**Question 3**

The World Bank released the Doing Business Report 2019 which happened to be the 16<sup>th</sup> edition in a series of annual reports investigating the regulations that enhance business activity and those that constrain it. Some of the elements that determines a country’s score include getting electricity, starting a business and registering property and enforcing contracts and resolving insolvency. This year was Nigeria’s best showing as it was ranked 146 (with Ease of Doing Business (EODB) score of 52.89). However, this is behind such other African countries as Kenya (61 with EODB score of 70.31), South Africa (82 with EODB score of 66.03), and Ghana (114 with EODB score of 59.22). Attempt the following questions.

- (a) To what extent does the Nigerian law permit infants as members of a company? (5 marks)
- (b) While it is now easy to register a company in Nigeria, what is the state of the law with respect to personal representatives of a deceased shareholder of a company? (5 marks)
- (c) Is there any limit under the Nigerian law to the right of married women to join in the formation of a company, own property and enforce contracts? (5 marks)

#### **Question 4**

- (a) With apt authorities, differentiate between a director and a shadow director (2 marks)
- (b) Briefly explain the extent of powers of members in general meeting (4 marks)
- (c) The powers to govern the company are vested in the directors. In fact, while acting in keeping with such powers they are bound to take instructions from the members in general meeting or any other person. Do you agree with this statement? (5 marks)
- (d) Discuss "Notice" in the context of general meetings of a company. (4 marks)

#### **Question 5**

- (a) In Nigeria, a company may be wound up by (a) the court; (b) members' voluntary winding; (c) creditors' voluntary winding up; or (d) subject to the supervision of the court. Yet, no form of winding up is welcome action. Identify and state the steps leading up to the presentation of the petition in a court-ordered winding up. (6 marks)
- (b) Meetings are good governance mechanisms ordained by law. List the various types meetings under Companies and Allied Matters Act 2004 and state at least one governance role of each one. (6 marks)
- (c) Write a short note on the "rights attached to classes of shares". (3 marks)

#### **Question 6**

The institutional arrangement for superintending the incorporation and post incorporation activities of companies formed and registered, including foreign companies, is the Corporate Affairs Commission. However, questions have been asked, whether the presence of the Commission has really impacted on the country's ranking on the World Bank ease of doing business index. Answer the following:

- (a) What is the legal character or nature of Corporate Affairs Commission? (5 marks)
- (b) Who are the patrons of Corporate Affairs Commission? (5 marks)
- (c) List the statutory functions of the Commission (5 marks)