UNIVERSITI UTARA MALAYSIA

PEPERIKSAAN AKHIR SEMESTER KEDUA SESI 2009/2010

FINAL EXAMINATION SECOND SEMESTER SESSION 2009/2010

KOD / NAMA KURSUS : BKAL3033 AMALAN KESETIAUSAHAAN SYARIKAT
COURSE CODE / NAME: BKAL3033 COMPANY SECRETARIAL PRACTICES

TARIKH : 25 APRIL 2010 (AHAD)
DATE : 25 APRIL 2010 (SUNDAY)
MASA : 9.00 PAGI – 12.00 TENGAHARI
TIME : 9.00 AM – 12.00 PM
TEMPAT : DSB K. MAS dan DSB K. TNWD
VENUE : DSB K. MAS and DSB K. TNWD

ARAHAN
INSTRUCTION

1. Buku soalan ini disediakan dalam Bahasa Inggeris dan Bahasa Malaysia.
   This book script is prepared in English and Bahasa Malaysia.

2. Buku soalan ini mengandungi EMPAT (4) soalan di dalam TIGA BELAS (13) halaman bercetak tidak termasuk kuit hadapan.
   This book script contains FOUR (4) questions in THIRTEEN (13) printed pages excluding the cover page.

   Answer ALL the questions in the answer sheets provided.

   In case of any discrepancies between English and Bahasa Melayu versions, the English version would prevail.

NO. MATRIK : 
MATRIC NO. (dengan perkataan i with word )

(dengan angka / with number )

NO. KAD PENGENALAN : 
IDENTIFICATION CARD NO.

PENSYARAH : 
LECTURER

KUMPULAN : NO. MEJA 
GROUP : TABLE NO.

JANGAN BUKA KERTAS SOALAN INI SEHINGGA DIBERI ARAHAN
PLEASE DO NOT OPEN THIS QUESTION BOOKLET UNTIL INSTRUCTED
QUESTION 1 (20 MARKS: 36 MINUTES)

Bina Darulaman Sdn Bhd (BDSB) was incorporated as a private limited company with initially four shareholders namely Najib, Ong, Saravanan and Bernard. Meanwhile, Raja Nong, Subramaniam, Kong and Anifah became the shareholders of BDSB after the incorporation. BDSB’s Memorandum and Articles of Associations (M & A) states that the principal activities are “building and road construction contractors, builders, carpenters, general decorators, civil, electrical and mechanical engineering”. Raja Nong who was also the owner of Cergas Jasa Sdn Bhd (CJSB), was awarded a contract by Jabatan Kerja Raya, Kedah (JKR) to build a shopping complex. He had subcontracted that project to BDSB. Najib who was the managing director of BDSB, was appointed as the project manager and together with Ong, he directly involved in day to day running of the entire project. Due to high expenditure of the project, BDSB decided to increase its authorised share capital.

BDSB was facing financial difficulties as CJSB failed to make the payment to BDSB as agreed. In March 2009, Najib was removed from his position as project manager without receiving his payment. BDSB also failed to submit its audited accounts for the last two years. Besides that, there were also moneys due and payable to the Inland Revenue Board for the assessment years 2007 and 2008.

Najib intends to initiate legal proceeding against CJSB and BDSB based on breach of agreement to deprive of his share in profits to be earned by BDSB from the said project. Najib contended that the said project was duly completed and the profits due, which he anticipated were in the region of RM20 million, should be distributed based on their ratio of shares in BDSB. Najib was also afraid that Raja Nong would dissipate the monies and deprive Najib and his friends of their shares. Najib also claimed that there was an understanding that BDSB was a partnership between the shareholders, and the company was a single-purpose company and has to be wound-up upon completion of the project. However, the M & A of BDSB was silent on this provision.

REQUIRED:

(a) Explain the effect and liabilities of shareholders joining the company after its incorporation.  

(4 Marks)

(b) Advise on the procedures to affect an increase in authorised share capital of the company.  

(4 Marks)

(c) Provide TWO (2) consequences of BDSB’s failure to pay the tax due to the Inland Revenue Board and the connection to the director’s duty and responsibility.  

(2 Marks)

(d) Advise on the procedures to be complied by BDSB with regards to section 167 and the provisions under section 169 of the Companies Act 1965.  

(6 Marks)

(e) Explain to Najib on his understanding that the company is a single purpose company.  

(4 Marks)
SOALAN 1 (20 MARKAH: 36 MINIT)


Najib bercadang untuk mengambil tindakan undang-undang terhadap CJJS dan BDSB atas dasar pelanggaran perjanjian yang melucutkan haknya untuk berkongsi keuntungan yang akan diperolehi oleh BDSB daripada projek tersebut. Najib mendakwa bahawa projek tersebut hampir siap dan keuntungan yang beliau anggarkan sebanyak kira-kira RM20 juta, sepatutnya dibahagikan berdasarkan nisbah saham dalam BDSB. Najib juga sahaja Raja Nong akan menyalahgunakan keuntungan tersebut dan melucutkan hak Najib serta rakan-rakannya daripada saham mereka. Najib juga mendakwa terdapat perseteruapan di antara pemegang-pemegang saham bahawa BDSB adalah syarikat mufrad dan akan digulung setelah projek tersebut seterus. Walau bagaimanapun, tatausaha dan tatatadibir syarikat tidak mengandungi peruntukan tersebut.

DIKEHENDAKI:

(a) Terangkan kesan dan tanggungjawab pemegang-pemegang saham yang menyertai syarikat setelah tidak diperbadankan. 

(4 Markah)

(b) Terangkan langkah-langkah yang perlu diambil untuk menambah modal saham dibenarkan.

(4 Markah)

(c) Berikan DUA (2) akibat atas kegagalan BDSB untuk melunaskan bayaran tuntutankan kepada Jabatan Hasil Dalam Negeri dan hubungannya dengan tugas dan tanggungjawab pengarah.

(2 Markah)
(d) Berikan nasihat kepada BDSB mengenai langkah-langkah yang sepatutnya diambil untuk mematuhi seksyen 167 dan peruntukan dibawah seksyen 169 Akta Syarikat 1965.

(6 Markah)

(e) Terangkan kepada Najib atas dakwaaannya bahawa syarikat tersebut adalah syarikat mufrad.

(4 Markah)
QUESTION 2 (20 MARKS: 36 MINUTES)

Dr Maha and his wife, Dr Siti, who were the directors in Leela Ratos Sdn Bhd, wish to file two applications for, inter alia: (i) declaration that the 19th board of directors' meeting held on 25 April 2009 was null and void because insufficient notice had been given, ie the notice was received only on 20 April 2009; and (ii) injunction restraining the defendants from acting on the resolutions passed at the meeting. The agenda contained in the notice listed one of the items to be discussed as being the allegations of misconduct against Dr Maha and his removal as director, but the notice did not contain particulars of the allegations. The notice was left with Dr Maha's clerk at his clinic.

Dr Maha and his wife collectively owned 80% of the paid-up capital of the company. If Dr Maha were to be removed as director, 240,000 of their shares will be transferred to the other directors of the company, that are Dr Chua and Samy. Dr Maha and Dr Siti contended that the transfer is contrary to the regulations on transfer of shares.

REQUIRED:

(a) Decide, whether:
   i) Five days' notice is sufficient. (2 Marks)
   ii) Service on clerk is proper. (3 Marks)

(b) Section 153 of the Companies Act 1965 requires special notice for resolutions dealing with removal of director from office before the expiration of his term of office. Discuss. (5 Marks)

(c) Explain THREE (3) consequences of irregularities in proceedings of a meeting. (4 Marks)

(d) Discuss on the procedures to be complied if the company decided to proceed on the transfer of shares. (6 Marks)
SOALAN 2 (20 MARKAH: 36 MINIT)

Dr Maha serta isterinya Dr Siti, pengarah-pengarah kepada syarikat Leela Ratos Sdn Bhd, bercadang untuk memfailkan dua permohonan untuk: (i) deklarasi bahawa mesyuarat pengarah yang ke-19 yang diadakan pada 25 April 2009 adalah tidak sah dan terbatal disebabkan notis yang tidak memenuhi syarat telah diterima di mana notis tersebut hanya diterima pada 20 April 2009; dan (ii) halangan untuk defendan daripada mengambil tindakan atas resolusi yang telah diluluskan dalam mesyuarat tersebut. Agenda yang terkandung dalam notis mengandungi salah satu perkara untuk membincangkan tuduhan salahlaku terhadap Dr Maha dan pemecatannya sebagai pengarah. Walau bagaimanapun notis ini tidak mengandungi bukti terperinci mengenai tuduhan tersebut. Notis tersebut ditinggalkan kepada kerani klinik Dr Maha.

Dr Maha dan isterinya bersama-sama memiliki saham sebanyak 80% daripada modal berbayar syarikat. Sekiranya Dr Maha dilucutkan jawatannya sebagai pengarah, saham beliau sejumlah 240,000 akan dipindahkan kepada pengarah-pengarah lain, iaitu Dr Chua dan En. Samy. Dr Maha dan Dr Siti mendakwa peruntukan tersebut adalah menyalah peraturan-peraturan mengenai pindahan saham syarikat.

DIKEHENDAKI:

(a) Putuskan samada:
   i) Notis selama lima hari adalah mencukupi  
      (2 Markah)
   ii) Serahan notis pada kerani klinik adalah memadai.  
      (3 Markah)

(b) Seksyen 153 Akta Syarikat memperuntukkan bahawa notis khas perlu dikeluarkan untuk resolusi mengenai pemecatan pengarah yang dibuat sebelum tamat tempoh perkhidmatan. Bincangkan.
      (5 Markah)

(c) Terangkan TIGA (3) akibat ketidakpatuhan pada prosiding mesyuarat.
      (4 Markah)

(d) Bincangkan prosedur yang perlu dipatuhi sekiranya syarikat memutuskan untuk meneruskan iindakan pemindahan saham.
      (6 Markah)
QUESTION 3 (35 MARKS: 63 MINUTES)

Dato’ Albert Chong, a co-founder of Siarra Bhd has been the chairman since the company was incorporated. He was keen to succeed in political life as well as in business. As a busy man, he trained and appointed his nephew, Jimmy Lee, as a company secretary and also a director of the company. Over the years, the business was growing well and it began to buy companies and also establish joint-venture with various companies in various industries. In the last five years, Jimmy has gained full trust from Albert in running the business. Besides Jimmy, the board has five members who were nominated by Jimmy.

Returning from a two-month vacation in Switzerland, Albert was really shocked to know that Jimmy was charged for providing false auditor’s report for the financial statements for the financial year 2008. Albert desperately needs your help to find out what went wrong in the company.

In searching back of what had happened before, the followings were detected:

1. Loan of RM520, 000 to Dato’ Idris Sulaiman, the son of director Tan Sri Sulaiman Aziz, for his new residential house was approved in the Board meeting.
2. Jimmy owns 45% shares and holds a position of director in Aniezie Sdn Bhd, which has a contract to supply raw materials to Siarra Bhd.
3. The provision of Section 132C of the Companies Act 1965 is not adopted, where the Article has a regulation that the directors shall dispose company undertaking and property regardless the value of the undertaking and property.
4. All statutory registers were not updated.

After the incident, Albert has the intention to reduce the size of the company and change the status to private company. He even thought of going smaller and was so excited when he knew that the Companies Commission of Malaysia (CCM) had proposed a new concept of “Limited Liability Partnership (LLP)”

REQUIRED:

(a) Provide TWO (2) possible reasons to justify why the company should consider converting to LLP when it is implemented.

(b) Give explanation on the offence done by Jimmy under Section 364A (1)(e) of the Companies Act 1965 in providing false financial statements.

(c) To what extent can a director of Siarra Bhd rely on the auditor’s report provided by Jimmy? Under section 132(1C) of the Companies Act 1965, whose advice, opinion, report, and information can a director rely on in exercising his duties?
(d) Advise Albert on the following matters:
   i. Loan to Dato' Idris Sulaiman for his new residential house.  
      (4 Marks)

   ii. Jimmy's shareholding and position in Azienie Sdn Bhd.  
       (4 Marks)

   iii. Not adopting the provision of Section 132 of the Companies Act 1965 on the disposal of undertaking and property in the Articles.  
        (3 Marks)

   iv. The process of nomination of director in practicing good corporate governance.  
       (4 Marks)

(e) Explain the procedures in updating the Register of directors' shareholdings, debentures and interests.  
    (4 Marks)

(f) Section 131B was introduced in the Companies Act 1965 to recognise the functions of the board of directors to manage the business and affairs of a company. Explain the meaning of this statutory duty and give TWO (2) examples where the management powers are restricted or limited either as stated in the Companies Act 1965 or the Memorandum or Articles of the company.  
    (4 Marks)
SOALAN 3 (35 MARKAH: MINTI)


Perkara-perkara berikut telah ditemui hasil daripada siasatan:

1. Pinjaman RM520, 000 kepada Dato’ Idris Sulaiman, anak kepada pengarah Tan Sri Sulaiman Aziz, untuk pembelian rumah kedioman telah diluluskan di dalam mesyuarat pengarah.
2. Jimmy memegang 45% saham dan memegang jawatan pengarah di Aniezie Sdn Bhd, di mana syarikat tersebut mempunyai kontrak membekal bahan mentah kepada Siarra Bhd.
4. Semua daftar statutori tidak dikemaskini.

Selepas apa yang terjadi, Albert berharsat untuk mengecilkan syarikat dan menukarnya ke status syarikat persendirian. Malah beliau bercadang untuk mengecilkan perniagaan dan amat teruja bilamana SSM mencadangkan konsep baru “Perkongsian Liabiliti Terhad”.

DIKEHENDAKI:

(a) Nyatakan DUA (2) alasan kenapa syarikat perlu mempertimbangkan untuk menukar ke Perkongsian Liabiliti Terhad” bila ianya dilaksanakan nanti.

(4 Markah)

(b) Terangkan kesalahan Jimmy di bawah Seksyen 364A (1)(a) Akta Syarikat 1965 dalam memberi laporan audit palsu.

(4 Markah)

(c) Setakat manakah pengarah Siarra Bhd boleh bergantung kepada laporan audit yang diberikan oleh Jimmy? Di bawah seksyen 132(1C) Akta Syarikat 1965, nasihat, pendapat,
laporan dan maklumat daripada siapakah yang pengarah dibolehkan bergantung dalam menjalankan tugas mereka?

(4 Markah)

(d) Nasihatkan Albert mengenai perkara berikut:

i. Pinjaman kepada Dato' Idris Sulaiman untuk pinjaman rumah kediaman beliau

(4 Markah)

ii. Pegangan saham dan kedudukan Jimmy di dalam Azienie Sdn Bhd.

(4 Markah)

iii. Tidak menerima pakai peruntukan seksyen 132C Akta Syarikat 1965 mengenai pelupusan harta syarikat oleh pengarah.

(3 Markah)

iv. Proses pencalonan pengarah dalam mengamalkan tadbir-urus syarikat yang baik.

(4 Markah)

(e) Terangkan prosedur untuk mengemaskini daftar pegangan saham, debentur dan kepentingan pengarah.

(4 Markah)

(f) Seksyen 131B telah diperkenalkan di dalam Akta Syarikat 1965 untuk memperakui fungsi pengarah bagi mengurus perniagaan dan hal ehwal syarikat. Terangkan maksud fungsi pengarah ini dan nyatakan DUA (2) contoh di mana kuasa pengurusan pengarah dihadkan seperti yang terdapat di dalam Akta Syarikat 1965 atau di dalam Memorandum dan Artikel Syarikat.

(4 Markah)
QUESTION 4 (25 MARKS: 45 MINUTES)

A. In an economic downturn, many companies may find themselves in a position of not being able to pay their debts when they are due. Being in their position is precarious, as there is a risk of the companies being wound up, causing hardship to employees, creditors and shareholders. In addition to that, creditors will rush to enforce the debts owing to them, which is a disorderly state of affairs. This may eventually lead to the demise of the companies. However, there are mechanisms in place to address the inability to pay debts, depending on what the cause is. In Malaysia, section 176 of the Companies Act 1965 allows a company to propose a compromise with its creditors.

REQUIRED:

Explain the procedures that should be taken by a company to obtain power to compromise with creditors and members in accordance with section 176 of the Companies Act 1965. (8 marks)

B. Following the decision from the Board Meeting on striking off companies pursuant to Section 308 of the Companies Act, 1965, as the company secretary, you have prepared the announcement draft to be made to the Bursa Securities as shown in the table below. After looking through the announcement draft, an account officer, Mr Yazid Ismail, came to see you for further clarification on several issues:

1. Are there any differences between striking off and winding up?
2. How is it possible to strike off SNL and GSB when they have RM100,000 and RM250,000 paid-up capital respectively?
3. What are the conditions for striking off a company?
4. Can the application of striking off be withdrawn?
5. What are the processes involved in striking off a company?

REQUIRED:

Prepare a written report to the account officer (cc to the chairman) to explain the matters raised by him. (17 Marks)

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WORLD PACIFIC BERHAD (Co. No. 4069-K)
ANNOUNCEMENT MADE TO BURSA SECURITIES

Date of Announcement : 10 APRIL 2010
Subject : WORLD PACIFIC BERHAD ("WPB" OR "THE COMPANY")

STRIKING OFF OF DORMANT SUBSIDIARY COMPANIES PURSUANT TO SECTION 308 OF THE COMPANIES ACT, 1965

The Board of Directors of WPB would like to announce that the following dormant wholly-owned subsidiaries had on 10 April 2010 submitted applications to Companies Commission of Malaysia ("CCM") for striking-off pursuant to Section 308 of the Companies Act, 1965 :-
1. Square Nursery And Landscaping Sdn Bhd ("SNL")
2. Gemilang Sdn Bhd ("GSB")
3. Marina Hotel Sdn Bhd ("MHSB")
4. Platinum Sdn Bhd ("PSB")

**Background Information on SNL**
SNL is a private limited company incorporated in Malaysia on 22 November 1996. It has an authorized share capital of RM100,000 comprising 100,000 shares of RM1.00 each and issued and paid-up share capital of RM100,000 comprising 100,000 ordinary shares of RM1.00 each. The principal activities of CSNL are nursery and landscaping. As at to date, SNL is a dormant company.

**Background Information on GSB**
GSB is a private limited company incorporated in Malaysia on 16 July 1998. It has an authorized share capital of RM500,000 comprising 500,000 shares of RM1.00 each and issued and paid-up share capital of RM250,000 comprising 250,000 ordinary shares of RM1.00 each. GSB has not commenced operation since the date of its incorporation.

**Background Information on MHSB**
MHSB is a private limited company incorporated in Malaysia on 4 January 1991. It has an authorized share capital of RM25,000 comprising 25,000 shares of RM1.00 each and issued and paid-up share capital of RM2 comprising 2 ordinary shares of RM1.00 each. The principal activity of MHSB is property investment. As at to date, MMH is a dormant company.

**Background Information on PSB**
PSB is a private limited company incorporated in Malaysia on 16 August 2001. It has an authorized share capital of RM100,000 comprising 100,000 shares of RM1.00 each and issued and paid-up share capital of RM2 comprising 2 ordinary shares of RM1.00 each. PLSB has not commenced operation since the date of its incorporation.

**Rationale of the exercise**
GSB and PSB have been dormant and inactive since the date of incorporation whilst SNL and MHSB have ceased operations and are dormant. These companies have no intention to commence any business activities in the future. Thus, the Directors view it in the best interest of the Group and proposed to strike-off the abovementioned companies to reduce cost, streamline and align entities within the Group and to create a leaner, efficient and flexible corporate structure.

**Financial Effects**
The proposed strike-off of dormant subsidiary companies will not have any material effect on the share capital and shareholdings of the substantial shareholders, earnings and net assets per share of WPB for the financial year ending 30 June 2010.

**Approval**
The proposed strike-off of dormant subsidiary companies is not subject to the approval of the shareholders of WPB.

**Expected time of completion** Barring any unforeseen circumstances, the exercise is expected to be completed upon the receipt of the notification for strike-off from CCM whereupon further announcement will be made by the Company.
SOALAN 4 (25 MARKAH: 45 MINIT)


DIKEHENDAKI:

Terangkan prosedur yang perlu dilakukan oleh sesebuah syarikat bagi mendapatkan kuasa untuk kompromi dengan kreditor-kreditor dan ahli-ahli berdasarkan peruntukan di bawah seksyen 176 Akta Syarikat 1965.

(8 Markah)

B. Berikut daripada keputusan Mesyuarat Lembaga membatalkan syarikat di bawah seksyen 308, Akta Syarikat 1965, sebagai setiausaha syarikat, anda telah menyediakan draf maklumat untuk dihantar kepada Sekuriti Bursa seperti di jadual di bawah. Selepas meneliti draf makluman tersebut, En Yazid Ismail, seorang pegawai akaun, telah datang bertemu anda bagi mendapatkan penjelasan ke atas beberapa isu:

1. Adakah terdapat perbezaan-perbezaan di antara pembatalan dan penggulungan syarikat?
2. Bagaimanakah pembatalan SNL dan GSB boleh dibuat sedangkan mereka memiliki jumlah syer berbayar sebanyak 100,000 dan 250,000 masing-masing?
3. Apakah syarat-syarat bagi pembatalan sesebuah syarikat?
4. Bolehkah permohonan yang dibuat untuk pembatalan syarikat ditarik balik?
5. Apakah proses yang terlibat dalam pembatalan sesebuah syarikat itu?

DIKEHENDAKI:

Sediakan satu laporan bertulis (sk kepada Pengerusi) bagi menjelaskan perkara-perkara yang ditimbulkan oleh pegawai akaun tersebut.

(17 Markah)

WORLD PACIFIC BERHAD (Co. No. 4069-K)
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Background Information on SNL
SNL is a private limited company incorporated in Malaysia on 22 November 1996. It has an authorized share capital of RM100,000 comprising 100,000 shares of RM1.00 each and issued and paid-up share capital of RM100,000 comprising 100,000 ordinary shares of RM1.00 each. The principal activities of CSNL are nursery and landscaping. As at to date, SNL is a dormant company.

Background Information on GSB
GSB is a private limited company incorporated in Malaysia on 16 July 1998. It has an authorized share capital of RM500,000 comprising 500,000 shares of RM1.00 each and issued and paid-up share capital of RM250,000 comprising 250,000 ordinary shares of RM1.00 each. GSB has not commenced operation since the date of its incorporation.

Background Information on MHSB
MHSB is a private limited company incorporated in Malaysia on 4 January 1991. It has an authorized share capital of RM25,000 comprising 25,000 shares of RM1.00 each and issued and paid-up share capital of RM2 comprising 2 ordinary shares of RM1.00 each. The principal activity of MHSB is property investment. As at to date, MHSB is a dormant company.

Background Information on PSB
PSB is a private limited company incorporated in Malaysia on 16 August 2001. It has an authorized share capital of RM100,080 comprising 100,000 shares of RM1.00 each and issued and paid-up share capital of RM2 comprising 2 ordinary shares of RM1.00 each. PSB has not commenced operation since the date of its incorporation.

Rationale of the exercise
GSB and PSB have been dormant and inactive since the date of incorporation whilst SNL and MHSB have ceased operations and are dormant. These companies have no intention to commence any business activities in the future. Thus, the Directors view it in the best interest of the Group and proposed to strike-off the abovementioned companies to reduce cost, streamline and align entities within the Group and to create a leaner, efficient and flexible corporate structure.

Financial Effects
The proposed strike-off of dormant subsidiary companies will not have any material effect on the share capital and shareholdings of the substantial shareholders, earnings and net assets per share of WPB for the financial year ending 30 June 2010.

Approval
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Barring any unforeseen circumstances, the exercise is expected to be completed upon the receipt of the notification for strike-off from CCM whereupon further announcement will be made by the Company.

END OF QUESTIONS/SOALAN TAMAT