

CHARTERED SECRETARIES SOUTHERN AFRICA ANSWERING SCENARIO-BASED QUESTIONS

INTRODUCTION

A scenario is a snapshot of an event, generally providing a brief overall description of a problem that you need to solve or give advice on.

COMPONENTS OF SCENARIO-BASED QUESTIONS

The key to answering such questions successfully is to realise that they consist of various components, as follows:

- (a) Knowledge
- (b) Practical application of that knowledge to the scenario
- (c) Writing your answer in a specific format

The knowledge component is found in the following documents:

- the syllabus for the module – see the Institute website
http://www.chartsec.co.za/index.php?option=com_content&view=article&id=48&Itemid=56
- the course manuals and/or the prescribed textbooks (see
<http://www.chartsec.co.za/documents/students/CSSA-and-Board-Textbook-List-2017-v2.pdf>
- past examinations papers, memoranda and examiners' reports (which can be obtained by logging in with your student number and downloading these from the website).
- permitted open book resources where applicable (see
<http://www.chartsec.co.za/documents/students/OpenBookExamPolicy2017v1.pdf>
- wider reading (e.g. Technical Newsletter, Business Day, Financial Mail)
- even prior knowledge (from previous subjects or degrees or practical knowledge from within your working environment – subject to it still being correct and appropriate)

If you examine the syllabuses you will see that each one consists of a number of “specific outcomes” – the key concepts. These outcomes are expanded by the associated assessment criteria which provide the details of what you are expected to know.

The secret, however, is to understand that the assessment of these outcomes and assessment criteria will in all likelihood be “integrated” – in other words, a question may cover more than one key concept. In such a case, you would need to break the question down into its component parts, provide the information for both (all) parts, and then synthesise the information in your answer.

In order to assist you to answer such questions, you can use a framework which asks 4 basic questions, as follows:

Key questions to ask yourself	Clues to answering these key questions – taken from the question
What is the question about? (Knowledge component)	
What resources can I use in the examination to help me answer this question?	
How must I present the answer?	
How do I apply my knowledge to the scenario presented?	

Let's look at some practical examples.

EXAMPLES

CORPORATE SECRETARYSHIP

Note: the key requirements are underlined for reference but this will not be given to you in the examination paper – this is a technique you should learn and apply.

QUESTION

Section 38 of the Company Act, 1973, which deals with a company giving assistance to acquire its shares, has recently been amended. The prohibition of making such assistance available is still in place, but an additional exception was created.

You are the company secretary of Responsible Guys Limited, a company that has decided to make such assistance available by means of a loan to a BEE group in terms of the new exception. The loan must be repaid within 5 years in equal annual instalments.

Required:

Draft the minutes of the relevant Board meeting in terms of which the Board complies with ALL the requirements of the exception.

Key questions to ask yourself	Clues to answering these key questions – taken from the question
What is the question about? (Knowledge component)	• a company giving assistance to acquire its shares • prohibition on such assistance • amendment to this prohibition • compliance with exception
What resources can I use in the examination to help me answer this question?	• The Companies Act (S38) • The Corporate Laws Amendment Act, 2006
How must I present the answer?	• Minutes of a meeting – see appendix • Resolution about decision to grant assistance – see appendix
How do I apply my knowledge to the scenario presented?	• Write the minutes about the decision that needs to be made by Responsible Guys Limited • See annexure for layout and format

CORPORATE GOVERNANCE

Let's look at a question from a Corporate Governance paper

QUESTION

You are the company secretary for Confused Limited, a non-listed widely held company. The Board has requested you to advise the directors regarding the restructuring of the Audit Committee because it presently consists of only the Managing Director and the Chairman of the Board. The Chairman was, until 2 years previously, a salaried employee of the company.

The Board wants to appoint to the committee Mr Fatcat, who is a substantial shareholder of and a supplier to the company and Ms Simper, the wife of the Managing Director, because she is a very well qualified auditor.

Furthermore, Confused Ltd has a number of subsidiary companies and the Board is concerned about the costs involved in appointing Audit Committees for each of its subsidiaries.

The Board also wants to know which reports the Audit Committee must include in the Annual Financial Statements.

Required:

Prepare a Memorandum to the Board in which you discuss all of the issues raised by the Board and your recommendations. Also include your opinions as to the advantages and disadvantages of your recommendations in terms of good governance practice.

Key questions to ask yourself	Clues to answering these key questions – taken from the question
What is the question about?	This is a three part question on issues pertaining to audit committees, namely • Audit committees and those who can be members of the audit committee • Audit committees of subsidiary companies • Reports of the audit committee
What resources can I use in the examination to help me answer this question?	Companies Act Corporate Laws Amendment Act
How must I present the answer?	Memorandum – see appendix
How do I apply my knowledge to the scenario presented?	• Consider the rules applicable to widely held companies to the Corporate Laws Amendment Act – ○ the requirement to have a committee (can a company apply for exemption? ○ consider changing from a widely-held company if possible ○ if not deemed possible, comply with the requirements, ○ who may be members (assess and discuss each present and proposed individual's eligibility for membership of this committee and emphasise when it became applicable.) • Refer to the relevant section of the Corporate Laws Amendment Act. (Sec 269A) (You will also have to rely on your knowledge of the King Report in this regard, but this is not one of your open book resources.) Do not simply say "in terms of good governance" as your reason. There are issues around i.e. independence criteria (stricter than that described in the CLAA), that need to be considered. • The Act says what reports must be included / functions to be performed – quote from the Act (Sec 270A) • Discuss the section 269A(2) exception from the requirement to the option of a holding company providing the audit committee function for subsidiaries. Give a considered opinion with reasons to indicate whether this would be the best option – i.e. financial considerations of appointing numerous expert NED's, difficulty in finding the appropriate NED's (show that you have applied your mind to the problem as if it was your own company you are recommending this for / forced to make the decision on). Opinions should be valid and exhibit an understanding of the practical effect of the legislation e.g. ○ Expensive to implement ○ Difficult in current economic climate ○ Few people available with industry skills

CORPORATE ADMINISTRATION

Finally, let's look at a question from a Corporate Administration paper.

QUESTION

- 1.1 You are the company secretary of XYZ Limited. The company has registered and used the trademark "XYZ Products" for many years and has licensed the mark to other manufacturers.

It has come to your attention that a competitor has registered a new company with the name "XYZ (Pty) Ltd" and started using a label on its products that reads "XYZ". The competitor markets similar products and consumers using products labelled "XYZ" have addressed complaints to XYZ Limited.

Required:

Write a memorandum to the board of XYZ Limited in which you set out the applicable legislation, how it will be applied and outline each of the remedies available to XYZ Limited. (15)

- 1.2 The owner of a well known international trademark has decided to open an office in South Africa. When its employees visited South Africa, they discovered that a local company has been using an identical mark in relation to similar products.

Required:

Advise the international company on the requirements for protection of its trademark in South Africa. (5)

Key questions to ask yourself	Clues to answering these key questions – taken from the question
What is the question about?	Trademarks
What resources can I use in the examination to help me answer this question?	None – you have to rely on your memory of the course notes
How must I present the answer?	1.1 requires a memorandum – see appendix 1.2 just says "advise" so a short paragraph with a heading
How do I apply my knowledge to the scenario presented? Ask yourself questions – and write them down. Then answer those questions in a logical order. Look a bit wider (but don't go off at a tangent and discuss things that are unimportant or irrelevant)	1.1 Focus on the problem - Registered trademark - New company using similar trademark, name and products – what is the problem? - Is it infringement to the Trade Marks Act? - What are the remedies if it is infringement (section 34(1) of the TM act)? - Is there a possibility of applying to CIPRO for a change of XYZ (Pty) Ltd's name? 1.2 The key word here is "international" – this is really a straightforward knowledge question – relates to section 35 of the Trade Marks Act and what the requirements for protection of a well-known, unregistered mark are.

CONCLUSION

There is a saying that "if you fail to plan, you plan to fail". There is another saying that "if you aim at nothing, you will be sure to hit it every time." Before you start writing your answers to the questions, use the framework as presented above to plan your answers. This will also help you to stay calm, focus and produce answers that will give you good marks.

We trust that this simple approach to tackling scenario-based questions will assist you to be successful in the examinations.

APPENDIX

FORMATS YOU ARE EXPECTED TO KNOW

Format	Key Features
Informal report	• Report heading • Introduction • Sections with headings • Summary or conclusion • Recommendations
Briefing notes	• Report format • Bulleted or numbered lists within the report
Memo	• To and from • Date • Subject heading for each section of the report • Salutation (dear xxxx) • Paragraphed body text • Signatory
Letter	• Addressee information • Date • RE: Meeting • Salutation (Dear Sir/Madam –Yours faithfully – Dear Mr or Mrs – Yours sincerely) • Subject heading • Paragraphed body text • Signatory
Email	• To and from • Date • Subject heading • Salutation • Paragraphed body text • Signatory • Using proper English and not text English will be important. E-mails are formal documents and should not include any shorthand • Signatory is important. You should always make sure your name, date and position are included. Within e-mails, in particular, full contact details should be included directly below the signatory.
Minutes	Minutes have a specific structure which you can learn by heart. Minutes usually contain: • Name of company • Nature of meeting, date, time, venue • Names of those present • Names of visitors / invitees • Welcome and Apologies • Declarations of interests • Summaries of decisions and discussions • Date of next meeting • Time meeting ended • Signature section – Chairman and date and sometimes secretary signature as well Marks are allocated in the examination paper for the format of minutes and for the details.
Resolutions	Resolutions will form part of an agenda, and will then be included in the minutes of a meeting. Resolutions are formal proposals put forward to the meeting, for people to agree or disagree with. If some disagree, they are voted on. If passed, they become resolutions and therefore policy of the organisation. There should be a proposer and seconder of each resolution (but this does not have to be included in your minutes when you answer a

	question). Resolutions are a clear way to set out the policies and decisions of an organisation. Although they can differ in wording, the critical aspects should be correctly indicated. Usually a resolution has two parts to it (an introduction and the actual resolution): We start the resolution by saying, e.g: <i>The board considered the proposal tabled dealing with the provision of financial assistance to BEE Limited for the purchase of 300 of the company's shares. The Secretary discussed the requirements of the Company Act, 1973, as amended, which were to be met prior to the approval of the proposed transaction.</i> <u><i>The Board, having considered the contingent liabilities</i></u> RESOLVED that: <i>1. Subsequent to the transaction, the assets of the company are more than its liabilities, fairly valued; and</i> <i>2. Subsequent to the assistance given, the assets of the company are more than its liabilities, fairly valued.</i> <i>In compliance with the requirements of the Company Act, 1973, as amended, applicable to the transaction, the Board further RESOLVED that a <u>General Meeting</u> be convened and that the Company Secretary be authorised to circulate the notice of the meeting in order to sanction the transaction.</i>
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