**INSTITUTE OF BANKERS IN MALAWI**

**DIPLOMA IN BAKING**

**LAW RELATING TO BANKING (IOBM-D216)**

**NOVEMBER 2014 EXAMINATIONS**

**SUGGESTED SOLUTIONS**

**QUESTION 1**

**(a) Mention five duties of the Reserve Bank of Malawi? (10 marks)**

**ANSWER**: These are

(i) To maintain currency stability

(ii) To act as a banker to the Government and commercial banks

(iii) It administers exchange control and acts as Registrar for local registered stock.

(iv) It also handles the issuance of treasury bills on behalf of the Malawi Government.

(v) It supervises banks and other financial institutions

(vi) It promotes development in Malawi.

**(b) It is said that the Reserve Bank of Malawi has the duty to influence the flow of money and credit. Mention two operations that the Bank will undertake to achieve that purpose.** **(5 marks)**

**ANSWER**: These are:

(i) Rediscount of domestic trade bills and bank drafts resulting from bona fide commercial transactions.

(ii) Rediscount of treasury bills, forming part of a public Government issue and maturity in ninety one days.

(iii) Rediscount of domestic trade bills and bank drafts drawn for the purpose of financing the transportation, marketing or processing of agricultural produce and minerals.

**QUESTION 2**

1. **Define control in relation to a company? (4 marks)**

**ANSWER:** Control means the power to appoint or remove, without the consent or concurrence of any other person, all or the majority of the directors. Control also means the power to prevent any director from being appointed without the consent of the person having such power.

**(b) What is the difference between a bank and a financial institution? (6 marks)**

**ANSWER**: A bank means a person who conducts banking business in Malawi, including the acceptance of funds withrawable by cheque or transferable by other means. While a financial institution means a person whose regular business consists of the granting of loans, advances and credit facilities, and investing funds by other means, and whose business is financed by own or borrowed funds or with funds not acquired by accepting or soliciting deposits from the public, and includes pension funds, insurance companies, investment funds and investment companies.

**(c) Under what circumstances will the Reserve Bank of Malawi revoke a banking licence? (5 MARKS)**

**ANSWER**: The Reserve Bank will revoke a licence if the bank supplied false information in its application. Further, a licence will be revoked if the bank fails to commence its business within a period of twelve months following the granting of the licence. A licence will be revoked if the bank ceases to conduct business for which the licence has been granted. A licence will also be revoked if the bank fails to comply with any condition of the licence or fails to comply with any provision of the Act and any other Act relevant to its business.

**QUESTION THREE:**

**(a) Mr Haswell is one of the directors in one of the local banks in town. Mr Haswell is contemplating to make certain decisions affecting the operations of the bank. He is not sure as to whether he is to obtain a prior written approval from RBM before he undertakes the decision. He has approached you to advise him on five matters that will need a written approval from RBM. (10 marks)**

**ANSWER**: The following will require a prior written approval from the Reserve Bank of Malawi:

(i) Appointment of executive officers

(ii) Change in articles of association

(iii) Reduction of its capital base by replacement of capital or distribution of reserves

(iv) Opening and closing of branches and static or mobile agencies

(v) Takeover of assets or liabilities of other banks or financial institutions

(vi) Participation in any other company to an extent in excess of ten percent of the paid up capital of such company

(Vii) Financial restructuring

(viii) Liquidation

(viv)arrangement or agreement for the sale or disposal of its shares or business.

(x) Arrangement or agreement affecting voting power, management or other matters that will result in a change in the control or management of the company.

**(b) Outline the duties of Directors of a bank? (5 marks)**

**ANSWER:** As directors of a bank, they are to observe good faith towards their shareholders, to exercise their powers with reasonable diligence and with a view to the benefit of the company as a whole. In discharging their duties, directors must act honestly, and must exercise such degree of skill and diligence as would amount to the reasonable care that an ordinary man might be expected to take, in the circumstances on his own behalf.

**QUESTION FOUR**

**(a) Ndaziona has been involved in a business of lending money popularly known as ‘katapila’ for almost twenty years. He even boasts that he is now a bank, looking at the number of people who come to him for assistance and the amount of money that he has invested. He has approached you to advise him with facilities that are normally associated with a bank before his business is considered as a bank. Advise him. (10 marks)**

**ANSWER:** Ndaziona has to know that the following are the facilities that are expected of an institution by customers and regulatory authorities before it is considered a bank:

(i) debtor/creditor relationship

(ii) the maintenance of current accounts

(iii) the honouring of cheques or other mandates

(iv) the issuing of cheques

(v) forms and the collection of cheques

(vi) the lending of money at a profit

(vii) the acceptance of any person as a customer

(viii) a relationship of confidence and secrecy

(viv) the reputation generally as a banker

**(b) Under what circumstances will a person answering an enquiry from a business enterprise about character, credit or solvency of a person with whom the enterprise proposes to have dealings, be excused from liability for defamation? (4 marks)**

**ANSWER**: The person will be excused from liability for defamation if he bona fides believes that the information he is giving is true and that the person making the enquiry has a justifiable interest in receiving the information.

**(c) Define a credit reference agency? (1 mark)**

**ANSWER:** A credit reference agency is a person carrying on a business comprising the furnishing of persons with information relevant to the financial standing of individuals being information collected by the agency for that purpose.

**SECTION B 40 Marks**

**QUESTION 5**

**(a) Under what four circumstances will acceptance of a bill of exchange be qualified? (10 marks)**

**ANSWER**: These are:

(i) by inclusion of a condition

(ii) by being partial

(iii) by specifying at one place only

(iv) by specifying a time for payment different from that expressed in the bill

(v) on a bill addressed to joint drawees, if one or more of them do not accept.

**(b) Discuss the case of GREENWOOD V MARTINS BANK (1933) and its relevance to banking law? (10 MARKS)**

**ANSWER:** G opened an account with the M Bank in the names of his wife and himself, and was agreed that cheques would be signed by both of them. Later G opened another account with the same bank but this time in his sole name. However, the cheque books and pass books for both accounts were kept by Mrs G. Subsequently, G discovered that there was no money in either account, because cheques had been forged to withdraw the bank balances, which G believed to exist. While not admitting that she herself had forged the cheques, Mrs G told her husband she knew who had done so. She led G to believe it had been necessary for her to lend the money to her sister to meet the cost of legal proceedings, but eight months later G discovered that his wife had been lying. He then told his wife that he was going to report the forgeries to the bank, whereupon Mrs G. killed herself. G then brought an action against the bank in respect of the forged cheques. It was held that, by not reporting the forgeries as soon as he discovered them, G had prevented the bank from bringing an action against Mrs G in respect of the forgeries. G was therefore now estopped from denying the regularity of the signature on the cheques, and he accordingly failed in his action.

The principle in this case is that a person whose signature has been forged or used without authority must denounce the worthless signature on discovery, otherwise he may be estopped from denying that it is his or her signature.

**QUESTION 6**

**(a) Define a cheque and from the definition, outline the characteristics of a cheque? (12 marks)**

**ANSWER**: A cheque is an unconditional order in writing drawn on a banker signed by the drawer requiring the banker to pay on demand a sum certain in money to, or to the order of a specified person or to bearer, and which does not order any act to be done in addition to the payment of money. From the above definition, the following are the characteristics of a cheque:

(i) it is payable on demand.

(ii) it is drawn on a banker

(iii) the amount payable is a sum certain so that interest may be provided for but payment may not be by instalments because a cheque is payable on demand.

(iv) if a cheque contains a requirement that a receipt has to be signed, the document is a conditional order and not a cheque, but if the requirement to sign the receipt is expressed as an instruction to the payee then the cheque is valid because the order contains no condition.

**(b) Certain payments of cheques are deemed not to be in the ordinary course of business. State four circumstances where encashment of cheques will not be in the ordinary course of business? (8 marks)**

**ANSWER**: These are:

(i) Outside normal banking hours except to only those who are in banking hall at that time.

(ii) Of a large sum in cash to a suspicious looking stranger

(iii) By sending cash through the post to pay a cheque apparently indorsed to the person requesting payment. Such a payment would be so unusual that it could not be in the ordinary course of business.

(iv) Payment of money believed to be proceeds of money laundering

**QUESTION 7**

Write brief notes on the following:

(a) Revocable letter of credit: an revocable letter of credit is a credit whose conditions allow for amendments, modifications and cancellations of the terms outlined in the letter of credit at any time and without the consent of the exporter or beneficiary. **(5 marks)**

(b) Unconfirmed letter of credit: an unconfirmed letter of credit is one where the operative instrument bears the guarantee of the issuing bank alone. The advising bank merely informs the exporter of the terms and conditions of the letter of credit without adding its obligations to pay.**(5 marks)**

(c) Acceptance of a bill: acceptance means indication by the drawee of a bill that he assents to the order of the drawer. The only valid way of indicating acceptance is by writing it on the bill. The signature of the acceptor is essential and an acceptance may consist of the acceptor’s signature only. Acceptance may be qualified but must not express that the drawee will perform his promise by any other means than the payment of money. **(5 marks)**

(d) Consideration in contract of guarantee: except when it is given as a deed under seal, a guarantee is unenforceable unless given for consideration. The written guarantee need not specify what consideration has been given for it. But the standard forms of guarantee always do state the consideration. The bank must take care that the consideration described in the guarantee corresponds with the facts of the transactions. The consideration must be legal and the debt guaranteed must itself be enforceable. **(5 marks)**

**QUESTION 8**

**(a) Differentiate between general and special crossing of cheques? (7 marks)**

**ANSWER**: A general crossing consists of two parallel transverse lines across the face of the cheque, either with or without the words:’ and company and not negotiable. A special crossing consists of the name with or without the address or a banker, written or stamped across the face of a cheque, and with or without parallel transverse lines, the words ‘not negotiable’, the words ‘and company’ and the words ‘account payee.’

If a cheque is crossed generally, it means payment to a banker, while if a cheque is crossed specially, it means payment to the banker to whom it is crossed or a banker acting as that banker’s agent for collection.

**(b) How is notice of dishonour dispensed with?** **(10 marks)**

**ANSWER**: These are:

(i) By waiver, whether express or implied

(ii) Where after reasonable diligence has been exercised, notice is not possible

(iii) as regards the drawer, where the drawer and drawee are the same person.

(iv) as regards the drawer, where the drawee is a fictitious person, or has no capacity.

(v) as regards the drawer, where the drawee is under no obligation to the drawer to accept or pay the bill.

**(c) State three things that a bank’s status opinion must comply with?(3 marks)**

**ANSWER**: These are: any three

(i) Honest

(ii) Given in a standard form of words

(iii) Given only at request of another bank or a recognised trade protection society

(iv) Based on information immediately available to the official making it.

**-THE END-**