



CERTIFIED PUBLIC ACCOUNTANT

INTERMEDIATE LEVEL EXAMINATIONS

11.3: COMPANY LAW

DATE: WEDNESDAY 26, APRIL 2023

INSTRUCTIONS:

- 1. Time Allowed: 3 hours 15 minutes (15 minutes reading and 3 hours writing).**
- 2. This examination has two sections A and B.**
- 3. Section A has two compulsory questions, 1 & 2 and one choice question, (3 or 4) not both.**
- 4. Section B has two questions (5 & 6) to choose one.**
- 5. In summary answer 4 questions, three in section A and one in section B.**
- 6. Marks allocated to each question are shown at the end of the question.**
- 7. The question paper should not be taken out of the examination room.**

SECTION A

QUESTION ONE

a) Tuyizire Mbanda aged 14 years, Rehemah Rukundo aged 15 years and Uwera Kavara aged 18 years are good friends and students of Good Hope School in different classes. The three friends are very innovative and they want to do great things. During one of such great discussions Rehemah Rukundo informed the friends that they can form a company and that since they do not need to be physically present, the company can earn them profit while they are studying. The idea looked great but they did not know how. However, after a lengthy discussion they concluded that they need to form a public limited company and that the three shall be the promoters of the company. They made all arrangements and even raised money to start the company. As promoters they signed an agreement committing to respect the promises each had undertaken. When they approached the office of the Registrar General for the registration, he declined to register the company.

Required:

- i) As a student of company law, why do you think the registrar General of companies declined to register the company. (4 Marks)
- ii) Advise Tuyizire Mbanda, Uwera Kavara and Rehemah Rukundo what is required in order for their company to be registered. (4 Marks)
- iii) Explain the three elements which must be present in order for the agreement between Tuyizire Mbanda, Uwera Kavara and Rehemah Rukundo to be complete? (6 Marks)

b) Charity Shema and Susan Mbabazi are Certified Public Accountants in good standing. The two intend to establish a public company. Charity Shema is proposing that the company should not have shares nor should there be any prescription and rather allow only close confidants as members of the company. On the contrary Susan Mbabazi felt that it will be very difficult to share the profits if there are no shares. After some discussion the two accepted to consult a friend for clarification on the issue of shares and prescription of shares.

Required:

Assuming that you are such a friend, explain to Charity Shema and Susan Mbabazi the legal position on shares and prescription in relation to the formation of a company. (5 Marks)

c) Uwantege Jacky, Mutijima Brighton, Getty Jeannine and Solomon Aimee are all final year students of the University of Rwanda. Given that jobs are not there, the four friends are planning to start some form of business which can generate for them an income. In the process of the discussion on which would be the best kind of business, Solomon Aimee suggested that they can identify a good business and think of registering the company whereby the public can subscribe for the shares and therefore making the burden of raising enough capital light. Mutijima Brighton and Getty Jeannine felt that forming a partnership firm, they can individually and physically manage the business and that they can make more profit. Uwantege Jacky remains confused on which is the best option of investment between a partnership firm and a company.

Required:

Explain to Uwantege Jacky, any four advantages of doing business as a company as opposed to a partnership firm and other forms of business. (6 Marks)

(Total: 25 Marks)

QUESTION TWO

a) Nyamagabe Public Ltd is authorized by the objects clause in its memorandum to run hotels only. Without any amendment of the objects clause, the directors of the company want to buy some buses and build a cinema theatre for the facility and entertainment of the occupants of the hotel. They actually went ahead and bought ten buses and constructed a cinema theatre with a capacity to carry five thousand people. They fitted a lot of modern facilities in the cinema theatre and indeed the theatre is one of the greatest attractions in town. However, in the process of construction and fitting the ultra- modern facilities in the cinema theatre, money is misused and some receipts are not available. Some shareholders raised concerns but they were informed that their concerns shall be addressed when the auditor will submit his annual report. Prior to the buying and construction of the cinema theatre some shareholders were of the opinion that the directors did not have power on their own without a resolution from the shareholders to undertake the new venture.

Required:

i) As a student of company law, advise the company on what to do concerning the objection by other shareholders. (2 Marks)

ii) In your opinion did the directors of the company act within their powers in introducing the two new business (Support your answer). (3 Marks)

iii) The auditor's report must comply with applicable auditing and assurance standards. Explain any six contents contained in the auditor's report. (6 Marks)

iv) Assuming that the shareholders are not satisfied with the audit report because they feel that he is collaborating with the directors and thus misappropriating the company resources. Explain the position of law on removal, resignation or replacement of the auditor. (6 Marks)

b) Muhango Public Ltd was formed in the year 2018 and since then there has been a great demand for shares from the members of the public due to its good performance. Subsequently there was a demand to have the directors of the company be removed because they were not transparent in their operation. The directors on their part they are arguing that they are transparent because the audit report does not demonstrate any irregularity on the part of the said directors. The shareholders who are demanding the removal of the directors are sounding alarm that the company is on the path to collapse. These allegations are serious and require an urgent action.

Required:

i) From the case scenario and as a student of company law, which action do you think can be undertaken urgently? (4 Marks)

ii) Explain any four circumstances upon which the Registrar General of Companies can order an investigation of a company. (4 Marks)

(Total: 25 Marks)

QUESTION THREE

a) Kayonza Public Ltd was formed and registered in the year 2015. For five years the company performed very well and in fact, due to its super performance many members of the public took up the shares of the company. From the year 2021 there has been no progress which is going on in the company because there is a serious conflict among the directors and the shareholders causing a division in the company in such a way that there is no resolution which can be passed. Efforts have been made to solve the conflict but without success. There is no business that can be transacted now, nor in future. This being the situation, some shareholders are wondering as to which mechanisms can be used to address the conflict.

Required:

i) If the shareholders desire to liquidate the company based on the aforesaid conflict, advise these shareholders on how the company can be liquidated and eventually dissolved. (3 Marks)

ii) Explain any other three factors which may occasion the dissolution of the company. (3 Marks)

b) Nyagatovu Public Limited was registered in the year 2014 and undertook business for four years and later on there was a conflict in the company and shareholders through a resolution put a company into liquidation and the creditors were paid and there were no assets left after the liquidation. However, the company still is in the register of companies and some shareholders are thinking of reviving the company.

Required:

Explain the grounds for removal of a company from the register of companies (2 Marks)

c) Rubirizi Public Ltd which is a limited life company was formed in the year 2000 and in its incorporation document the company will achieve its objectives within twenty years. In January 2021 a resolution was passed to the effect of dissolving the company after liquidation on the basis of the objectives having been achieved and the time frame set has lapsed. Some few members objected arguing that the resolution contravened the law governing companies in Rwanda.

Required:

Explain the position of law on dissolution of limited life company (6 Marks)

d) Assume that Kayonza Public Ltd will be unable to solve the conflict for a period of ten years upon which some good progress towards solving the conflict is shown and can allow the company to progress with its core business. However, the period that this new approach will take is unknown. Five members are contemplating of going to court to have the company dissolved.

Required:
Advise the five members on the position of law on prescription or limitation of time with regard to the above conflict. (6 Marks)
(Total: 20 Marks)

QUESTION FOUR

a) A registered company, Kicukiro Safe Products Ltd, has its registered office at Kicukiro. Due to some reasons favorable to the company, it wishes to change its domicile clause and to have its registered office at Nyamata.

Required:
Can Kicukiro Safe Products Ltd change the registered office to Nyamata? (3 Marks)

b) The principal business of Nyarugunga Public Ltd was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the managing director of the Company acquired the knowledge of arranging finance for the development of land. The Nyarugunga Public Ltd introduced a financier to another company, Nyabugogo Public Ltd. and received an agreed fee of two million Rwandan francs (FRW 2,000,000) for arranging the finance. The Memorandum of Association of the company authorizes the company to carry on any other trade or business, which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business.

Required:
Making reference to the provisions of the law governing companies in Rwanda, examine the validity of the contract carried out by Nyarugunga Public Ltd and Nyabugogo Public Ltd. (4 Marks)

c) The directors of Gatsibo Public Ltd and Kirehe Public Ltd, which both deal with the manufacture of the best coffee in the region, and due to the complications brought about as the result of the outbreak of COVID-19, decided that for the good interest of the shareholders of the companies to amalgamate so as to avoid an imminent collapse of the two companies. The directors of the said companies, after thorough discussion approved the amalgamation and even signed the documents approving the amalgamation. Before the start of the business of the amalgamated company the directors of the two companies communicated to their respective shareholders the changes that have been undertaken in amalgamating the two companies. The shareholders of Kirehe Public Ltd did not have any problem with the amalgamation process but the shareholders of Gatsibo Public Ltd objected the amalgamation exercise on the basis that the law governing companies in Rwanda was not followed.

Required:
i) The incorporation documents for authorization of an amalgamation are in the prescribed form and in particular state. Outline this form and state. (7 Marks)
ii) Explain the position of law in Rwanda regarding the manner of authorizing amalgamation (6 Marks)
(Total: 20 Marks)

SECTION B

QUESTION FIVE

a) Nkubala John, Mbabazi Rose and Rukundo Pierre are the promoters of Ngoma Public Ltd which was incorporated in the year 2018. During the process of the formation of the company Nkubala John entered into a contract on behalf of the company which was to be formed for the purchase of five hectares of land for the construction of the premises of the company from one Dassin Kababa for twenty million Rwandan Francs (FRW 20,000,000), Mbabazi Rose and Rukundo Pierre also entered into a contract on behalf of the proposed Ngoma Public Ltd for the purchase of two used Prado model cars for the use of the company officers for sixty million Rwandan francs for each (FRW 60,000,000). Upon the formation of the company and in its first statutory meeting of the proposed shareholders it was established that the actual market price for the land was ten million Rwandan francs (FRW 10,000,000) and not Twenty million (FRW 20,000,000). It was equally established that the actual cost of the Prado model cars were thirty million francs (FRW 30,000,000) each. The vendors for the land and the vehicles when they were informed about the amount of money the company will pay for the land and the vehicles respectively, they refused to accept and they are contemplating of taking the company to court.

Required:

- i) In your own opinion from the above case scenario, do you think that the contract entered by Nkubala John, Mbabazi Rose and Rukundo Pierre was within the law governing companies in Rwanda. (4 Marks)**
- ii) Do you think that the vendors of the land and vehicles can sue the company or the promoters? (Support your answer). (3 Marks)**
- iii) Explain any four contents of the memorandum of association. (6 Marks)**
- iv) Explain the position of law on the method of contracting. (6 Marks)**

b) The name of the appellant company (Bugesera Public Ltd) was struck off the register of companies by the Registrar General of Companies, as the company had not been carrying on business or nor in operations for two immediately preceding financial years and the company had not obtained the status of dormant company under the law governing companies in Rwanda. The appellant filed the appeal before the Rwanda Commercial High Court claiming that it had not been served with Notice under the company's Act and the Registrar of Companies had proceeded to issue notice under the company's Act and the name of the appellant company was then struck off the register. The appellant claimed that the company had been doing business and was in operation and audited financial statements for the financial year 2012-13 to financial year 2016-17 were filed. The Registrar General of Companies filed a reply and, in his affidavit, he claims that the appellant company had not filed financial statements from the financial year ending 31 March 2004 till 31 March 2011. The balance sheet and annual returns was filed for the year ending 31 March 2012 and thereafter again there was no filing and according to Registrar General of Companies, subsequently the notice was duly issued to company on 21 March 2017 and the copy of the same has been filed in the court.

According to the Registrar General of Companies, the appellant did not respond to the notice and further steps to strike off the company were taken.

Required:

- i) From the case scenario above, do you think the Registrar General acted within law in striking off the company from the register of companies? (Support your answer). (5 Marks)**
 - ii) Explain any two general causes that can lead to disappearance of the legal personality of a company. (6 Marks)**
- (Total: 30 Marks)**

QUESTION SIX

a) Kibuye Public Ltd was registered in the year 2018 and it is attracting many shareholders because of its good performance. The company has got different types of shares, and members of the public are given the option from among those shares to choose those that they can afford. Those who take up shares whose value does not exceed fifty thousand Rwandan francs (FRW 50,000) will have no right of voting in the meetings of the company. Those members who take up shares worth more than fifty thousand Rwandan Francs (FRW 50,000) but less than one hundred thousand Rwandan francs (FRW 100,000) shall have limited voting rights. Those members who are able to take up shares which are worth more than one hundred thousand Rwandan francs (FRW 100,000) but less than three hundred thousand Rwandan francs (FRW 300,000) shall have special voting powers, in addition they shall be entitled to earn a preferred profit notwithstanding the availability of the same. Finally, those members who will take up shares which are worth more than three hundred thousand Rwandan francs (FRW 300,000) shall have the first priority in sharing the profit after such profit has been made. Muvara Joan and Muburigi Kavara took up each share worth fifty thousand Rwandan francs (FRW 50,000) but they did not bother to understand the rights attached to it. In one of the annual General Meeting of the company which required that members vote, Muvara and Kavara were surprised to learn that they would not vote in the meeting and they saw this as discrimination and a violation of the constitution of Rwanda.

Required:

- i) Explain to Muvara and Kavara whether their constitutional right has been violated by restricting their right to vote in the company meetings. (3 Marks)**
- ii) Explain to Muvara and Kavara the types of shares provided by the company as highlighted above. (4 Marks)**
- iii) Explain any four characteristics of a share. (6 Marks)**
- iv) Distinguish a share from a debenture. (4 Marks)**

b) Nyarutarama Public Ltd was formed in the year 2020 with the sole objective of dealing with real estate development. The company started with fifty thousand shares each costing ten thousand Rwandan francs (FRW 10,000). This therefore, being a company limited by shares and all shares being bought and paid for, the directors felt the need for more capital to expand the business. The directors after their discussion agreed that the company approach the bank and borrow one billion Rwandan francs (FRW 1,000,000,000) for the said expansion. The directors further felt that in order to be safe the members should be asked to give a guarantee over and above the shares. Given that the opportunity for investment was ripe there was a feeling that a meeting which cannot wait until the end of the year be convened to discuss the arising matters as highlighted. One of the directors suggested, that as a meeting is planned the matter of the liability limited by guarantee can be undertaken without necessarily convening the meeting of the company.

Required:

- i) Explain the position of law on the exercise of shareholders powers by resolutions. (6 Marks)**
 - ii) Assuming that Nyarutarama Public Ltd was a private company and there was a need for more capital urgently and it has shares which has not been issued out. Do you think that it will be right for Nyarutarama Private Company to issue/offr these shares to the public? Explain any restrictions placed on private companies on public offers. (4 Marks)**
 - iii) Write brief notes on pre-emption rights. (3 Marks)**
- (Total: 30 Marks)**

End of question paper