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**CERTIFIED PUBLIC ACCOUNTANT  
INTERMEDIATE LEVEL EXAMINATIONS**

**11.3: COMPANY LAW**

**DATE: WEDNESDAY 28, FEBRUARY 2024**

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**INSTRUCTIONS:**

1. **Time allowed: 3 hours 15 minutes** (15 minutes reading and 3 hours writing).
2. This examination has **two** sections **A&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) Kayonza Public Limited was incorporated in 2015 to deal with the buying and processing of coffee. Initially the business was doing very well and the company was looking forward to make great profits. Unfortunately, in 2019 the company performance started going down as a result of great competition coupled with the covid 19 restrictions.

The biggest competitor was Virunga Best Coffee Public Limited. By 2020 Kayonza Public Limited was at the verge of collapsing when Virunga Best Coffee Public Limited bought 80% of the shares of Kayonza Public Limited making it the largest single shareholder of Kayonza Public Limited.

With time the business of Kayonza Public Limited was doing well and the shareholders were very delighted with the returns over their investment. As the business was booming the board of directors in their sitting felt it was unfair for them to have a very large percentage in Kayonza Public Limited when they did not have even a single share in Virunga Best Coffee Public Limited. Accordingly, the company decided to allot 10% of its shares to Kayonza Public Limited.

Kayonza Public Limited was very delighted too for being made a shareholder of Virunga Best Coffee Public Limited. They were allowed to attend the meetings of Virunga Best Coffee Limited Company and not only participate in the deliberations but also to vote during the time of making resolutions.

Peter Nyamulinda and Alex Cubairo are the shareholders of Virunga Best Coffee Public Limited. When they received the information on the allotment of 10% of the shares in addition to voting rights to Kayonza Public Limited were very much disappointed because they strongly felt that the directors of Virunga Best Coffee Public Limited did not act in good faith as they have compromised the interest of its members. Nyamulinda and Cubairo are now contemplating to take the directors of Virunga Best Coffee Public Limited to court.

#### Required:

(i) On the basis of the information provided in the case scenario above, **do you think that Nyamulinda and Cubairo are justified to take the directors of Virunga Best Coffee Public Limited to court. Explain your answer.** (7 Marks)

(ii) **Explain to Nyamulinda and Cubairo the position of law on circular holdings.** (7 Marks)

(b) Gatsibo Public Limited was incorporated in 2010 with the sole objective of exporting the best quality Rwandan tea. Within a period of two years the company was doing very well and there was great demand for the shares from the public. When the company was enlisted in the stock market in 2011 the cost of the share was FRW 10,000 and as per the year 2020 the price was FRW 100,000. In the year 2023 the price of the shares doubled to FRW 200,000.

The articles of Gatsibo Public Limited provide that should there arise a need that the company may redeem its own shares there must be a resolution passed by its members in the Annual General Meeting of the company.

The directors of Gatsibo Public Limited without convening such a meeting and acting in good faith and for the interest of the company decided to recall the shares from the members because the price of the shares in the market was very high and there was great demand and therefore, they wanted to acquire all the shares and thereafter they circulate a prospectus with a good price and that the company will have more capital for further expansion of the business.

This act did not go down well with a section of the shareholders particularly Kaliwabo Felix and Gatete James who raised the concern that the directors ignored the requirements for general offers. Kaliwabo and Gatete are contemplating to sue the board of directors.

#### Required:

(i) From the case scenario above, **do you think the directors were justified in acquiring the shares of the company? Justify your answer.** (2 Marks)

(ii) **Explain the position of law on the requirements for general offers.** (4 Marks)

(c) Assuming that the directors of Gatsibo Public Limited did conduct an annual general meeting where the members decided to approve the acquisition of the shares by the company and also made alteration and removed the clause which required such approval. The directors then wasted no time and went ahead and gave the notification for the acquisition. Notwithstanding, the dissatisfaction of Kaliwabo and Gatete on the requirements they also felt that still the law has been violated regarding the said alteration of the articles of association.

#### Required:

**Do you think that the law has been violated as alleged by the two? Explain the position of law on powers to alter incorporation documents and notice thereof.** (5 Marks)

**(Total: 25 Marks)**

### QUESTION TWO

(a) Nyabihu Public Limited was incorporated in the February 2015 with its main activity being the production of the best ceramics for local consumption and export. In its first two years the business was booming and the company was making huge profits and the members were very happy on the dividends they received yearly.

In 2018, the company started to experience stiff competition and the business started to experience a decline in its profits. The directors called for the annual general meeting on December 2018 to discuss the way forward for the company. Some of the directors of the company wanted the company to diversify its portfolio while others were advocating for a status quo but find ways of outsmarting the competitors. As the directors were explaining the respective position a division arose in the Annual General Meeting (AGM) with two factions divided in the middle.

The meeting went out of control and the two factions engaged themselves in a physical tussle which was later quelled by the police. For four years nothing tangible has taken place in the company since the two factions they don't want to see each other as the directors too are at loggerhead. In the meantime, the liabilities of the company are greater than the company assets and capital put together.

Munyangabo Emma and Mahoro Peace who are the shareholders of Nyabihu Public Limited are confused on what to do to get the amount invested in this company so that they can invest them elsewhere.

**Required:**

- (i) Advice Munyangabo Emma and Mahoro Peace what can be done under the prevailing circumstances in order for them to get back their investment. (2 Marks)**
- (ii) Advice Munyangabo Emma and Mahoro Peace on the position of law on the appointment of the insolvency practitioner. (6 Marks)**

**(b)** Assuming that in the AGM of Nyabihu Public Limited, the members resolved unanimously that there was nothing that the company can practically do to eliminate the great competition and the best way out therefore is to call it a quit. Before calling a quit, the creditors had moved to court and asked the court to declare Nyabihu Public Limited bankrupt.

**Required:**

- (i) Making reference of Law N° 075/2021 OF 06/12/2021 Relating to Insolvency explain the position of law on the Registrar General responsibilities in the insolvency proceedings. (4 Marks)**
- (ii) Explain any four persons who can make application for the commencement of insolvency proceedings. (4 Marks)**
- (c)** In the meantime, Munyangabo Emma and Mahoro Peace discovered that during the period when the company was being incorporated, three promoters had sold land to the company and thereby making good profit out of the sale and some members had promised to take them to court. There are also some members who have received some arrears of their dividends for the last six years as well as recovering extra dividends paid to other members during the same period. Within the same period, it had been discovered that members of the board of directors were involved in actions not authorized by the memorandum which occasioned a loss to the company but nothing done, so six years down the line. Munyangabo Emma are of the few that court proceedings should be initiated to recover the monies.

**Required:**

- (i) Explain the position of law on the matters raised above by Munyangabo and Mahoro. (4 Marks)**
  - (ii) Explain the position of law regarding the position of law on limitation of time on initiating a legal action in court. (5 Marks)**
- (Total: 25 Marks)**

**QUESTION THREE**

**(a)** Munyangabo Gisele, Nyinawimana Divine, Ndugutse Vedaste, Rubangisha Jean Mugabo Emmanuel and Uwingabo Christine, were all final year students at the Institute of Certified Public Accountants of Rwanda (ICPAR). During the entire period of study, they have been discussing seriously how after completing their studies they can mobilise resources and form a Public Limited company to which all of them shall become members of the board of directors.

They have already identified the business they will undertake and they have talked with many friends who will join them once they register the company. They identified as the business of Real Estate Development.

They have over time consolidated over one hundred million francs (FRW 100,000,000) and the said amount safely kept by Nyinawimana Divine who they fully trust. Unknown to them the moment the money was deposited in Nyinawimana Divine account in December 2018, she took a loan of five hundred million (FRW 500,000,000) from the Bank of Kigali and she secretly registered a Real Estate Development Company.

**Required:**

- (i) In your opinion and from the reading of the case study above, do you think there is a contract between Munyangabo Gisele, Nyinawimana Divine, Ndugutse Vedaste, Rubangisha Jean Mugabo Emmanuel and Uwingabo Christine, (justify your answer). (2 Marks)**
- (ii) Has Nyinawimana Divine breached any contractual obligation by taking a loan of FRW 500,000,000 on the background of the saving of FRW 100, 000,000 in her account. (3 Marks)**
- (iii) What are the three basic elements upon which a company is considered a contract. (3 Marks)**

**(b)** By the year 2022 Nyinawimana Divine had made a profit of one billion and five hundred million francs (FRW 1,500,000,000) after the repayment of the loan using the ideas generated over a period of time in the discussions. In January 2023, the company by the name Kibagabaga Real Estate Development Limited (KREDL) was formed with a working capital of eight hundred million francs (FRW 800,000,000) inclusive of the FRW 100,000,000 kept by Nyinawimana Divine. The said capital is divided into 8000 shares of FRW 100,000 each and thus each of them holds 1,130 shares on an equal basis. The company is yet to invite the public to subscribe for the shares. In the first 6 months after the registration with the help of Nyinawimana Divine the company made very good profits. However, Nyinawimana Divine started diverting the company business to her secret company.

It was in January 2024 when Nyinawimana Divine secret company was exposed to the shock and surprise of the colleagues. It has been realized that during the period of diversion the company lost FRW 2 billion to Nyinawimana Divine. The colleagues are still in shock and they do not know what to do.

**Required:**

- (i) Explain to Munyangabo Gisele, Ndugutse Vedaste, Rubangisha Jean Mugabo Emmanuel and Uwingabo Christine on the legal action they can take and the basis for such legal action. (2 Marks)
- (ii) How can the provided made be shared on the basis of the discovery of the secret company by Nyinawimana Divine. (2 Marks)

(c) Gasasira James owned a business of timber of high quality for hard wood. His business has been doing very well and as a result he has opened offices in many countries and he had made great fortune from the business. As his age was advancing, friends advised him to form a limited company and get more investors but more importantly to have a dedicated team of directors to run the business professionally. He accepted the advice and registered his business as Kabuga Hardwood Timber Limited (KHTC) in which he was the largest shareholder with 90% of the shares and only 10% of the shares was held by others. After many years of business, the company performance went down and the company assets were reducing drastically. At one point, the directors requested Gasasira to provide a company with a loan of FRW 100,000 000 which was secured by debenture. Ultimately two years back the creditors who are owed FRW 500,000,000 took the company to court and the company was declared bankrupt. Its total assets were FRW 300,000,000 against the debt of FRW 600,000,000 (FRW 100,000,000 secured and FRW 500,000,000 unsecured) the unsecured creditors are contending that since Gasasira is a very rich man and was the largest shareholder and for sure the owner of the company he cannot be paid first as other creditors are staring at a loss.

**Required:**

- (i) Do you agree that Gasasira is the owner of the company and he is very rich and hence he cannot be paid first? Justify your answer. (4 Marks)
- (ii) From the above case study explain the position of law on the legal status of KHTC. (4 Marks)

**(Total: 20 Marks)**

**QUESTION FOUR**

(a) Bategeka Bushoro is in a business buying land believed to having minerals for exploitation together with other two friends, Nteziryayo Celestin and David Nyirimana. In January 2019 Bategeka and his friends were called to buy a land at Bugesera which was believed to have substantial amounts of minerals underground. They negotiated and they eventually bought the land for fifty million francs. After the purchase of the said land, they formed a public limited company and sold the same land for one hundred million francs. Thereafter the company circulated the prospectus and many people subscribed for the shares but six months after the commencement of business the company went under since after payment of FRW 100,000,000 it was discovered that there were no minerals as alleged. In the process of liquidating the liquidator sued Bategeka Bushoro because he was the one who entered the contract on behalf of the company for the refund of the profit.

**Required:**

- (i) What is the position of law regarding the decision of the liquidator to sue Bategeka Bushoro to recover the profit. (4 Marks)
- (ii) Explain the position of law on pre-incorporation contracts as provided by law governing companies in Rwanda. (4 Marks)

(b) The company secretary of Muyaga Public Limited (MPL) together with one shareholder entered into an oral contract with on Munyangabo Felicien to supply the company with 3 tonnes of printing paper. On 15<sup>th</sup> August 2023 Munyangabo delivered the goods as agreed upon, but upon arrival the company secretary was not around nor the other shareholder with who he had entered into the contract. He went to the office and found one director John Kabera who informed Munyangabo that he was not aware of such a contract and that he will not accept the goods. Munyangabo was very shocked and surprised because he had already incurred very huge cost to deliver the goods to the company premise. He left those goods in the store of MPLC and they keep calling him to go and pick his goods or else he will start paying warehouse charges.

**Required:**

- (i) As a student of company law, do you think that the contract entered between Munyangabo and the company secretary of MPL is binding? Justify your answer. (2 Marks)
- (ii) Explain the position of law governing companies in Rwanda to method of contracting. (6 Marks)

(c) Ngendahimana Regis and Nkurunziza Yezu went to the office of the Registrar General of companies to make application for the reservation of a company name. Having completed the search, they settled for the name Chinamba Holding Mind Boiling Public Limited (CHMPL). They provided the office of the registrar with their email address for communication. In a period of five working days the Registrar General wrote an email confirming that the name was good and has not been taken. The two did not see the email as it entered in the spam and not mail box. After four months they went to the office of the Registrar General to check and they were surprised that an email had been send but they never responded. They asked the Registrar General to issue with the certificate but he refused and asked them to start the process a fresh. The two are very annoyed and they are contemplating of taking legal action against the office of Registrar General.

**Required:**

- Do you think that Ngendahimana and Nkurunziza are justified to take legal action? Explain to them the position of law on application for a name reservation. (4 Marks)
- (Total: 20 Marks)**

## **SECTION B**

### **QUESTION FIVE**

(a) Burera Public Limited was incorporated in May 2013 with a sole purpose of mining and exporting rare mineral available only in the Northern Province. The company from its very inception has performed extremely well and it has become a household name for investors.

In September 2018 the company embarked of a major expansion of the business by constructing the one only mineral processing factory in the whole of the east and central parts of Africa. As a result of this project the company went into great debts and even the company's operation was threatened.

The directors tried their best to keep a breast and ensure that they remain on focus. Unknown to them all creditors ganged together and they were looking for a lawyer so that they can take the company to court and ask for the company to be declared bankrupt.

However, the directors of the company with the company lawyer sat down and developed a plan of payment which will run for three years and called the creditors into a meeting and share with them the drafted payment plan. The arrangement will entail the disposal of 15% of the total assets of the company. The creditors accepted the plan and promised to abide by it. For purposes of keeping with the requirements of law the parties took the payment plan to court for approval and it was thus approved.

#### **Required:**

- (i) From the above case scenario, **point out the nature of the arrangement and explain the context against which such kind of an arrangement is undertaken.** (4 Marks)
- (ii) **Explain in your own opinion who consider the kind of arrangement you have identified in (i) above.** (6 Marks)
- (b) From the case scenario above, **explain any five rights of the creditors.** (10 Marks)

(c) Keroche Wines and Spirits Public Limited is a company registered in Kenya dealing with high quality wine and spirits. Keroche was incorporated in Kenya in 2012. Keroche learned there is a potential market in Rwanda and if they enter the market, it will be very easy for them to access even a bigger market in the Democratic Republic of Congo. Keroche Wines and Spirits Public Limited was informed that before they would operate in Rwanda, they are required to submit an application for the registration of the company in Rwanda before it commences its business.

Keroche Wines and Spirits Public Limited, accordingly submitted their application upon which they provided the particulars like their permanent address, principal place of its business, a declaration indicating the authorized representatives of the company. After three days of the submission, the Registrar General of companies declined to register Keroche Wines and Spirits Public Limited on the grounds that the application provided was incomplete.

#### **Required:**

- (i) As a student of company law, **assess the above application and explain to Keroche Wines and Spirits Public Limited whether the information provided was sufficient for them to have their company registered.** (4 Marks)
- (ii) **If the information provided is not sufficient elaborate to Keroche Wines and Spirits Public Limited the position of law on the application for the registration of a foreign company in Rwanda.** (6 Marks)

**(Total: 30 Marks)**

### **QUESTION SIX**

(a) Reference is made with regard to Keroche Wines and Spirits Public Limited in question 5(c) above. Assuming that Keroche Wines and Spirits Public Limited was finally registered commenced its business in Rwanda but they are not following the law as they sometimes sale the wines and spirits to minors. Allegation has been made indicating that they are evading tax and in other circumstances they circumvent taxation. The customers also allege that quality is compromised and the wines and spirits do not conform to standards set by quality assurance.

#### **Required:**

- (i) In lieu of the above allegation, **what action to you think can be taken against Keroche Wines and Spirits Public Limited Company.** (4 Marks)
- (ii) **Explain the position of law on cessation of a foreign company in Rwanda.** (6 Marks)

(b) Ngororero Public Limited was incorporated in 2020 as grocery processing for export company. Notwithstanding the challenges that were posed by the COVID 19, the company was resilient and performing well. During that period of turmoil, the company borrowed extensively. With the subsiding of the movement restrictions, the company started to pick up and it was having an upward trajectory. Unknown to them, some creditors of the company had written to the Registrar General of companies alleging that the company had ceased to operate and it even never commenced the business and there were no sufficient funds which were collected and that in addition of the situation took advantage of the turmoil and borrowed extensively and thus rendering the company bankrupt and that it should be removed from the register of companies. Upon receiving this letter, the Registrar General sent one of his officers to go and counter check. The officer was compromised by the same creditors and he brought the report affirming the allegation upon which the Registrar General struck off the company from the register of companies. When the directors received the information, they were shocked and now contemplate to go to court against the decision of the Registrar General.

#### **Required:**

- (i) As a student of company law, **assess the case study and advice Ngororero accordingly if they are justified to take legal action.** (2 Marks)
- (ii) **Explain to Ngororero the position of law on the removal of a company from the register of companies and its effect thereof.** (3 Marks)

**(c) Explain the position of law on the pertinent provisions of law on the removal of a company from the register of companies.** (5 Marks)

**(d)** Rubavu Public Limited was incorporated in April 2011 with the objective of making good quality basket for export abroad. The business started small but with time it started to expand and the shareholder were very much excited. There was great demand for the shares and the company started to diversify its business activities so that the company can continue to make good profit. Because of the increase on the volume of trade, the directors connived and started also doing business within the company business and making huge profits at the expense of the company and its shareholders. As if it was not enough, they also started siphoning the money from the company and the audit report had shown some irregularities which cannot be explained. When the directors were confronted and asked about the allegations, they strongly defended themselves arguing that the company is strong and progressing well. Because of the many complaints which were within the domain of the public the Minister in charge of companies has ordered for mandatory investigation.

**Required:**

**(i)** As a student of company law, explain the position of law on the investigation ordered by the minister based on the allegations brought out in the above case scenario. (4 Marks)

**(ii)** What is the position of law on the investigation ordered by the Registrar General. (4 Marks)

**(iii)** What is the position of law on the appointment of an inspector of the business of a company. (2 Marks)

**(Total: 30 Marks)**

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