



**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3: COMPANY LAW

DATE: WEDNESDAY 29, MAY 2024

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 **four 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) Ihame Ltd is a private company limited by shares registered in Musanze District from 2018. It has ten shareholders with different types of shares but many of them have ordinary and redeemable shares. For the registration of Ihame Ltd, its shareholders submitted to the Registrar General Office necessary documents such as Memorandum of Association, Articles of Association and power of attorney. They requested the Registrar General to allow them carry on the business of mining in Musanze District as detailed in its articles of association adopted by General Assembly, and that no any other business that shall be carried out by the company.

For the two years of operations, Ihame Ltd has increased its assets which, among them is ten hectares of land located in Nyabihu District that was projected for mining purposes. When the pandemic of COVID-19 broke out in Rwanda, different activities were suspended as the response of not spreading the virus.

The Managing Director of Ihame Ltd took a decision to take a loan of twenty million Rwandan francs from a bank and the money was to be used for the cultivation of potatoes in the concession of Musanze District and the land purchased in Nyabihu District. The Managing Director hoped to reimburse the loan using the money from the crops and the surplus would cover company 'administrative costs.

Unfortunately, twenty million Rwandan francs used to invest in agriculture got lost because he failed to get fertilizers as different borders were closed. When one of the shareholders (Miss Mutoni) heard the information that the company has invested in a business not recognized by Registrar General and articles of association, she requested for a General Assembly to discuss the scandal and the loss for the Company.

Required:

i) For the General Assembly, you are requested to draft a legal opinion on the issue including if the activity done can be invalidated by reason merely that the company does not have the capacity, the right, or the power to do the act? Comment on the case.

(4 Marks)

ii) Ihame Ltd defaulted to pay the loan and the bank started the formalities for filing the case before the court against the company and the General Assembly took a resolution that the Bank should sue the Managing Director himself because the investment is not recognized by Registrar General and its articles of association.

As a candidate of company law, do you think that the resolution of the General Assembly is legal? Justify your answer.

(6 Marks)

iii) The bank filed a case against Ihame Ltd for recovering the loan of twenty million and its interest at the Commercial Court of Nyarugenge. For the summons and the notification of the case filed in court against Ihame Ltd was sent to its branch of Nyarugenge informing it to respond to charges within 15 days. After 15 days without the response from Ihame Ltd, the case proceeded in absentia and the Court ordered Ihame Ltd to pay the bank a sum of sixty million Rwandan francs (FRW 60,000,000).

Required:

Discuss the legality of the judgment on the case without the presence of Ihame Ltd before the court based on the procedures of summoning and notification made on the case.

(7 Marks)

(b) According to article 33 of the Law N°007/2021 of 05/02/2021 governing companies, where the liability of shareholders of private company is limited, the registered name of the company ends with the word "Limited" or the abbreviation "Ltd". However, some companies are dispensed of this obligation.

Required:

i) **Explain which kinds of companies are exempted from the above requirement?**

(3 Marks)

ii) **Give the conditions provided by the law, in Rwanda, for a name to be reserved or registered by the Registrar General.**

(5 Marks)

(Total: 25 Marks)

QUESTION TWO

In the General Assembly of the shareholders of the company Umuhuza Ltd, a discussion was held to collect views on the issue of removing a company from the register of companies as one of the solutions of not getting into a huge loss. Mrs. Umunyana argued that really the General Assembly can take a resolution of requesting the Registrar General to remove it from the register of companies. After a long discussion, the General Assembly adopted the resolution that the company should be removed from the register of companies within the procedures provided for by the law and nominated a team to work on it and was requested to submit a proposal in five working days.

Required:

(a) You are approached to help the team for analyzing and proposing the procedures through which Umuhuza Ltd can be removed from the register of companies, **discuss the grounds for removal of a company from the register of companies and advise the company which ground can be used to request it?**

(7 Marks)

(b) Is it enough that the issue was discussed in General Assembly, and that the Chairperson of the Board of Directors on that basis can/cannot request for the removal. Explain your position? (3 Marks)

(c) XYZ Ltd as a private company limited by shares with 10,000 shares and each share being equivalent to FRW10,000. It has five shareholders having equal shares with a share capital of one hundred million Rwandan francs (FRW 100,000,000) and it focuses on agri-business. It has 2,000 hectares of land for that business in four districts of Eastern Province.

For implementing its strategic plan of expanding business, the Board of Directors of XYZ Ltd decided to approach the DMJ Ltd which is a company limited by shares and specializes on manufacturing of the agricultural products for amalgamation. DMJ Ltd has ten shareholders with 20,000 shares and each share having the value of FRW100,000.

Before informing the shareholders, the Board of Directors of XYZ Ltd approached the Board of Directors of DMJ Ltd and they decided to make a deal, as it was beneficial to both companies and agreed to request the shareholders to decide on it.

The Board of Directors started to convince each shareholder so that they will call for the General Assembly as the only way of blessing the deal. It was realized that some shareholders do not want to merger the companies by the fact that they do not see any benefit they will get from the deal.

Required:

Many of the shareholders are ready to adopt a resolution for amalgamation but they do not know what is required to approve it. As a student known by one of the shareholders, **you are approached to provide a legal opinion on that issue and invited to a dinner with some of the interested shareholders. Advise them what to do in order for the amalgamation to be approved.** (10 Marks)

(d) Article 205 of the Law N°007/2021 of 05/02/2021 governing companies provides for creditors rights on amalgamation, that immediately after amalgamation becomes effective, an amalgamated company does not satisfy the solvency test, any creditor of any of the amalgamating companies may recover any loss he or she has suffered by reason of the amalgamation.

Required

Explain how the creditors' rights can be exercised. (5 Marks)

(Total:25 Marks)

QUESTION THREE

(a) Gadde Umuremye and Charity Rukundo are good friends and they have both just completed their university education from the University of Rwanda. During their study of company law, they learned that they can open either a public or a private company and run a good business through the combined efforts of financial contributions. In their discussion, on which would be the ideal company for them to open, they agreed that a public company will be the best.

Having agreed on the company to open, they proposed that they look out for three more members who will conceptualize the idea and then register the company. Gadde informed Charity that he has two friends namely Monica Uwimana and David Mpenzi while Charity also suggested one person named Uwimbabazi Grace. The two agreed on principle that they shall inform these three new members of their proposal of forming a public company. Charity informed Uwimbabazi Grace and she accepted but Gadde did not inform Monica Uwimana and David Mpenzi on the assumption that they are good friends and thus they will not refuse the proposal.

The next concern for the two to agree on was the type of business that the company will undertake. Gadde suggested that they open up a chain of bars and guest houses and work hard to smuggle young girls under the age of 18 years from the neighboring countries to entertain their customers. After a lengthy discussion they all agreed but suggested that they will register their company as Kigali Loyal Entertainment Joints.

Take note, that David Mpenzi and Uwimbabazi Grace have not attained the age of majority. Gadde and Charity eventually prepared all the documents required and they registered the company. After registering the company, they then proceeded to inform Monica Uwimana and David Mpenzi, who declined to be members.

Required:

- i) In your own opinion, **do you think that Kigali Loyal Entertainment Joints is a contract? Justify.** (4 Marks)
- ii) **Explain the three basic elements without which a company cannot be regarded as a contract.** (6 Marks)

(b) Adelithe Mugabo and Umurerwa Peace are final year students at the College of Business, University of Rwanda. After their studies, they intend to try business instead of running up and down looking for employment. In their discussion, they agreed that the best approach of engaging in business was through the formation of a company.

They came to a conclusion that each of them should spare time and do some research as to the category and type of a company that would serve them better. They agreed that in a week's time they should meet and each should table the proposal for further discussion and decision. Umurerwa was the first to table her proposal with the following features namely one or more shares with restricted rights of transfer, one or more shareholders with unlimited or limited liability and one or more directors of whom at least one must be ordinarily resident of Uganda. In addition, the company should limit the number of shareholders to one hundred (100) and should not prohibit any invitation to the public to subscribe for any shares or debentures of the company.

On his part, Adelithe tabled his proposal with the following features namely one or more shares all of which must be fully transferable, shareholders whose liability is limited to the amount, if any, unpaid on the shares respectively held by each, one or more directors and a company with a company's secretary.

Additionally, the company in its incorporation documents should allow its members the right to transfer their shares in the company and its incorporation documents should not prohibit invitations to the public to subscribe for shares or debentures of the company and a company can be limited by guarantee or be unlimited company.

The two proposed to have a candid discussion on the best proposal to be adopted the following day; however, they suggested that Adelithe drafts a memorandum of association and Umurerwa drafts the articles of association in preparation for the incorporation process.

Required:

- i) As a student of company law, explain to the two, the categories of companies they have proposed with justification of their features. (2 Marks)**
 - ii) Outline to the two, the types of companies they can form on the basis of their proposal. (2 Marks)**
 - iii) Explain to the two, any three contents of the memorandum of association and articles of association. (6 Marks)**
- (Total:20 Marks)**

QUESTION FOUR

(a) Nyamagabe Public Ltd Company was formed in 2020 and it is one of the best performing companies in the Rwanda Stock Exchange (RSE). The company deals with dairy products ranging from processed milk, cheese, yogurt and other many related products. Notwithstanding its good performance its directors namely Peace Rukundo, Mbanda Innocent and Mbanzabigwi Queen are always very reluctant to pay the suppliers in time. As a result of this bad behavior, Uwera Mubirigi, the largest supply of milk warned the company that if it fails to pay her for the milk supplied then she will sue the company on the basis that it has ceased to be a going concern. She went ahead and wrote to the company a letter demanding for her payment. The directors ignored this letter and they did not pay prompting Uwera Mubirigi, to send a reminder after one month to which they also ignored. Uwera Mubirigi took the company to court arguing that the company is unable to pay her the outstanding arrears amounting to Rwandan Francs ten million and therefore the company should be dissolved and subsequently be removed from the register of companies.

Required:

- (i) From the above given scenario, do you think the court can issue an order to dissolve the company and remove it from the register of companies? Explain briefly the circumstances which can stop the registrar of companies from removing from the register of companies, a company incorporated or registered in Rwanda. (4 Marks)**
- (ii) Explain the legal position relating to a company which is unable to pay its debts (2 Marks)**

(iii) Where a notice is given of an intention to remove a company from the register, any person may deliver to the Registrar General, not later than the date specified in the notice, an objection to the removal of such a company from the register of companies. **Explain any four grounds for such objection.** (4 Marks)

(b) Diana Wantage, Mutijima Brington, Getty Zibie and Nzabamwita Honolie are all shareholders of Ndazaro Public Ltd Company. The company is not performing well and the directors of the company are contemplating to overhaul the company by changing the objectives contained in both the memorandum and articles of association with regard to the capital composition. They want to introduce new objectives, increase the capital base by increasing the shares. Diana Wantage and Mutijima Brington have got no objection to what the directors intend to do provided that the company becomes profitable. On the contrary Getty Zibie and Nzabamwita Honolie are very careful with the proposal and they are objecting it because the implication of such a proposal has got far reaching consequences which may lead to the dissolution of the company.

Required:

(i) Explain to Diana Wantage and Mutijima Brington the position of law on the power to alter incorporation documents of a company. (4 Marks)

(ii) Explain to the four members in the above case scenario the position of law on the notice of alteration of incorporation documents. (4 Marks)

(iii) Explain to the four the position of law on variation of shareholders rights in the event that the shares capital of the company is divided into different types of shares.

(2 Marks)

(Total:20 Marks)

SECTION B

QUESTION FIVE

(a) The Memorandum of association of Muhanga Public Ltd Company stipulates the objective of the company to undertake all business or businesses related to construction and further gives the directors power to borrow money from the bank should it be necessary for purposes of achieving the company objects. However, the Articles of association requires that before the company should expand and move outside the company objects, an Annual General Meeting (AGM) should be convened to approve such expansion of the objective clause. Further the articles of association provide that in case the directors want to borrow money from the bank they should seek the approval from the shareholders through a meeting backed with a resolution to the effect. Given that the directors of the company are operating from Bujumbura, Burundi and they saw an opportunity to manufacture Covid 19 related material as a result of the outbreak of Covid 19 they approached the bank and borrowed thirty million Rwandan francs (FRW 30,000,000) for the said purpose. After they commenced the business of manufacturing face masks and the related products, they called the extra ordinary meeting of the company and informed the members about its decision. Unfortunately, the business did not yield any profit and all the money invested was lost. Muvara James who is a shareholder of the company is wondering whether the company and the shareholders shall be made liable for the actions of this directors.

Required:

(i) As a student of company law, **explain to Muvara James as to who is responsible for the payment of thirty million Rwandan francs (FRW 30,000,000) borrowed from the bank (Justify your answer).** (3Marks)

(ii) From the above case scenario, **explain the company's capacity in exercising the powers vested to it by law.** (3Marks)

(iii) Citing Law N° 007/2021 of 05/02/2021 governing companies in Rwanda and from the above case scenario, **explain the Validity of incorporation documents in relation to the acts of the company.** (4Marks)

(iv) Citing Law N° 007/2021 of 05/02/2021 governing companies in Rwanda and from the above case scenario briefly, **explain the implication of law on Registered office and registered address.** (4 Marks)

(v) From the scenario above, **explain if the acts of the directors are ultra vires (Justify your answer).** (4Marks)

(b) Nyabarongo Public Ltd Company was registered in 2015 with the share capital of five billion Rwandan francs (FRW 5,000,000,000) divided into one hundred thousand shares (100,000) of fifty thousand Rwandan francs each (FRW 50,000). The company through a prospectus invited the public to subscribe for all one hundred thousand shares but the company asked the subscribers to only pay half of the price of each share (FRW 25,000). Subsequently the company commenced the business and for four consecutive years the company was doing extremely well and there was much demand for more shares from the public. In the year 2021

the company in a resolution in the Annual General meeting decided to redeem all the shares from its shareholders and hence forth the capital of the company will not be denoted by shares. Notwithstanding the abolition of shares the company still remained a limited company. Munyaneza Elzie is a shareholder of the company and holding ten thousand shares which have been full paid for but he does not fully understand the resolution redeeming the shares from the shareholders

Required:

(i) Is the above resolution within law? As a student of company law explain to Munyaneza Elzie if he has any liability of the company on the passing of the resolution redeeming the shares from the members. (4 Marks)

(ii) In the above scenario there are two types of companies that are envisaged. Point out the two types of companies and explain the liability of all those other members who had paid half way for all the shares held by them. (4 Marks)

(iii) Is it possible from the above scenario that member's liability towards the company may be in two ways and thus forming yet again another type of a company. If your answer is yes point out that type of company with two distinctive liabilities and explain briefly how it works. (4 Marks)

(Total: 30 Marks)

QUESTION SIX

(a) Phoenix Ltd is a private company operating in Rwanda since 2007. It is registered by RDB as a company specializing in the supplies of office equipment. It has a capital of FRW 200 million divided into 2,000 shares worth FRW100,000 each. The company has 35 shareholders and four directors. In 2012 The financial statements presented to the shareholders indicated that the company generated revenues in the amount of FRW 167,922,000 with total expenses of FRW 59,390,000. KPMG was appointed by the general meeting of shareholders as the auditor of the company's annual accounts.

Required:

(i) Define what an audit is and demonstrate its importance to a company. (4Marks)

(ii) Explain the difference between financial statements and annual reports of a company. (4Marks)

(b) Huye Tea Ltd is a company operating in the production and sale of tea bags, and coffee. It has various plantations in the southern province of Rwanda. In the year 2000, Habimana the promoter, incorporated that company and conveyed all his estates to it. All the shares of the company were held by him and the members of his family. In the year 2002, The company borrowed FRW 5 million from the Bank of Kigali. The loan was to be repayable by March 15, 2005. From the year 2003, the company which was experiencing financial issues was keen on

selling the estates, but none of the offers materialized. In 2004, there was a slump in tea and coffee price and there was a possibility of a further slump. this situation lasted until April 2005. The Bank of Kigali was pressing for the payment of its dues and the company was not in a position to repay the bank loan without selling the estates. The company tried unsuccessfully to raise loans. At an extraordinary meeting of the company's shareholders, it was agreed that the company was no longer able to operate. The shareholders are coming to you to address their concerns.

Required:

(i) Identify and explain the process of termination of a company in a non-litigious manner. (4 Marks)

(iii) Mr. Gakyre, one of the directors of the company has been appointed as liquidator of the company. Analyze whether this appointment is valid under the law governing companies in Rwanda. (4 Marks)

(c) Mr. IRIBAGIZA is a shareholder of a company specialized in the sale of computer products. The company named UBUMWE Phoenix Ltd is registered in the RDB since October 2007. Being the leader in its field for many years, this company has experienced a period of decline since 2015. Following the Covid pandemic, sales have dropped by more than 99.7% and loan repayment requests were becoming more and more pressing. Thereafter, the company has completely fallen and is on the verge of bankruptcy. Thus, since 2020, the company does not receive any form of income. The directors of the company recommended its termination. Mr. IRIBAGIZA, aware of this situation, nevertheless believes that this is only a bad period, and does not wish to close the company. He therefore comes to ask you for advice on an intermediate solution to the termination of his company.

Required:

(i) Advise on the appropriate process for his situation while presenting two of its advantages (3 Marks)

(ii) Explain the procedure for a company to be dormant in Rwanda. (4 Marks)

(d) Mr. Mukiza is a Rwandan investor specialized in the production and distribution in wholesale of plumbing tools on a large scale. He has partners all over the world, whose personal activity is the sale of his products in retail. However, Mr. Mukiza has decided to enter this new type of retail market, and intends to do so in his home country, here in Rwanda. He plans to open branches in all provinces of the country in order to become the market leader. After some advice, he finally decided to create a commercial company. Thus, the incorporation documents were filed with the RDB on 20th February 2019, but the business will start operating while waiting for the issuance of the certificate of incorporation. On 20th May 2019, the certificate of incorporation was finally issued with the name Amahoro Ltd. Mr. Mukiza was the sole shareholder and Mr. CYANE the managing director. Following the vision of its

shareholder, the company decided to open all its branches at once, in order to be fully operational throughout the country. To this end, the company needed a lot of financial resources. Therefore, Amahoro Ltd, under the impetus and negotiations of its shareholder, took out various loans from Mr. Mukiza's financial partners to make the vision come true.

On 21st May 2019, the trucks left the factory to make deliveries as usual. On Nyagatare road, one of the delivery trucks made a wrong turn and hit a car coming in the opposite direction. The driver, Mr. CYUZUZO, suffered several broken ribs and had his left foot amputated. He, therefore, decided to bring the case before the courts for compensation for the damage suffered. Thereafter, the company experienced numerous difficulties, linked to cash flow, numerous delays in deliveries, and a lack of good organization. In addition, the various creditors, some of whom were Mr. Mukiza's partners, intend to seize his personal assets to reimburse the sums due. This is on the grounds that the company belongs to him and that it is in consideration of the business relations they have with Mr. Mukiza that they agreed to lend their money.

Required:

- (i) State and briefly explain the consequences of the legal status of a commercial company.** (2 marks)
- (ii) Identify two irregularities committed by Mr. Mukiza in the exercise of his business activity in Rwanda.** (2 Marks)
- (iii) Explain whether Mr. Mukiza's partners can proceed with the seizure of Mr. Mukiza's assets for the reasons mentioned in the case.** (3 Marks)

(Total:30 Marks)

End of Question Paper

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