



CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS
11.3: COMPANY LAW
DATE: WEDNESDAY, 30 NOVEMBER 2022
MARKING GUIDE AND MODEL ANSWERS

SECTION A

QUESTION ONE

Marking guide

Marks

a) A company and its advantages over other forms of business (2Marks) = 1mark for definition and 0.5 marks for any two well explained advantages

i) Definition of a company

• Corporate body composed of one or more persons for making profit. A company is an association of individuals who contribute capital or capital worthy for a company purpose which is profit maximization. **1**

The following are the advantages of doing business through a company as opposed to other forms of business.

- Management **0.5**
- Continuity **0.5**
- Profitability **0.5**
- insolvency **0.5**

Maximum Marks **2**

ii) Given that the members are now convinced that doing business as a company is good, outline to them the various categories of companies and explain briefly their features/characteristics (8 Marks) =outlining the categories 1mark each (2) and, outlining and explaining any 3 characteristics in each category 1 mark (6)

Two categories of companies are:

- Public company. **1**
- Private company. **1**

The features of private company are the following:

- Restricting the right to transfer its shares and debentures. **1**
- Limiting the number of its shareholders to one hundred, persons employed or formerly employed by the company not included. **1**
- Prohibiting any invitation to the public to subscribe for any shares or debentures of the company. **1**

The features of public company are:

- Its incorporation documents allow its members the right to transfer their shares in the company. **1**

- Its incorporation documents do not prohibit invitations to the public to subscribe for shares or debentures of the company. 1
- Its certificate of incorporation states that it is a public company. 1

Maximum marks 8

iii) What are the documents required to apply for incorporation of a company? Explain briefly at least two such documents. (2 Marks) = 1mark each for any 2 documents

Documents required to apply for incorporation of a company are:

- Incorporation documents in the form prescribed by the Registrar General and signed by every shareholder or member or by each applicant, if any 1
- Consent in the prescribed form signed by each of the persons named as the company’s directors and secretary in the incorporation documents 1
- Consent in the prescribed form signed by each member or shareholder of the company or by his or her agent who has been authorized thereto in writing 1
- The memorandum of association of the company 1
- Where the company has articles of association, a copy of the articles of association 1
- Beneficial ownership information where applicable 1

Maximum marks 2

iv) Explain any five legal consequences or implications of incorporation of a company. (10 Marks) = 2, Marks each for any 5 well explained legal consequence or implication

The following are the consequences of legal personality are that the commercial company possesses:

- a name;
- domicile;
- nationality;
- patrimony.
- One or more shares
- Limited or Unlimited liability
- One or more directors
- A business occupation

Maximum marks 10

b) Discuss briefly the position of law on pre-incorporation contracts. (3 Marks) =1 mark each for any three legal positions

- A pre-incorporation contract may be ratified by the company after its incorporation and thereupon the company is bound by it and entitled to the benefit of it as if the company was in

existence at the date of the pre-incorporation contract and as if the company had entered into the contract.

- A pre-incorporation contract may be ratified within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.
- Before ratification by the company, the person who purported to act in the name or on behalf of the company is, in the absence of express agreement to the contrary, personally bound by the pre-incorporation contract and entitled to the benefit of it.
- A pre-incorporation contract is ratified by a company in the same manner as a contract or other enforceable obligation may be entered into by a company under the Law governing company. A party to a pre-incorporation contract that is not approved in all or a part of its provisions by the company after its registration may file a claim to the competent court.

Maximum marks

3

Total marks

25

Model answers

a)
i) **The candidate is expected to show knowledge of the notion of a company and how Rwandan law defines it.**

- In Rwanda, companies are governed by the Law n° 007/2021 of 05/02/2021 governing companies.
- This Law however does not define the concept “Company”. But by generalization, a company may be defined as a corporate body composed of one or more persons for making profit.
- A company is an association of individuals who contribute capital or capital worthy for a company purpose which is profit maximization.
- Indeed, it is a legal entity whose legal personality is guaranteed by the Law governing companies.
- It may be noted that legally, a company is regarded as a person, which has rights and obligations at law.
- It is a legal person, recognized by the law. Since, the company is created by the law i.e., by registration under the law, it is known as a legal person, and as it has no body, no soul or conscience, no physical existence except in the eyes of law.
- A company is created through the process of incorporation where “one or more persons may form a company by pooling together resources or services for business purposes and filling out an appropriate form or by complying with the provisions of the Law governing companies, a right which is exercised by filling out an appropriate form developed by the Registrar General.

ii) The candidate is expected to know categories of companies and how they differ each other

There are two categories of companies which are public company and private company:

The features of private company are the following:

- Restricting the right to transfer its shares and debentures
- Limiting the number of its shareholders to one hundred, persons employed or formerly employed by the company not included
- Prohibiting any invitation to the public to subscribe for any shares or debentures of the company

The features of public company are:

- Its incorporation documents the company allow its members the right to transfer their shares.
- Its incorporation documents do not prohibit invitations to the public to subscribe for shares or debentures.
- Its certificate of incorporation states that it is a public company

iii) Documents required to apply for incorporation of a company are:

- Incorporation documents in the form prescribed by the Registrar General and signed by every shareholder or member or by each applicant, if any;
- Consent in the prescribed form signed by each of the persons named as the company's directors and secretary in the incorporation documents;
- Consent in the prescribed form signed by each member or shareholder of the company or by his or her agent who has been authorized thereto in writing;
- The memorandum of association of the company;
- Where the company has articles of association, a copy of the articles of association;
- Beneficial ownership information where applicable

iv) Explain any five legal consequences or implications of incorporation of a company

✓ **The company has a name**

- All commercial companies must have a name. Commercial companies of which the liability of its partners is unlimited i.e., partnerships (general and limited partnerships) have a firm name which comprises the names of all the partners or of some of them. As regards commercial companies having shares the name of the company must be followed Limited or Ltd.
- Note that although the owners of a commercial company are at liberty to choose a name for their company, the name must not be identical or too similar to the name of an already registered company.

✓ **The company has a domicile**

- A commercial company also has a domicile, which is distinct from that of its individual members.
- The domicile is the place where the commercial company has its principal place of business i.e., its registered office.

- The registered office is the place where the company has, principally, its legal, administrative, financial and technical office as opposed to where it merely does business (irrespective of its importance and the presence of a secondary administrative or exploitation unit).
- ✓ **The company has a nationality**
- A commercial company has a nationality, which is determined by the laws of the country, which regulates its organization and functioning (definition of powers of management, procedure of shareholders meetings, rules as to liquidation etc.).
- ✓ **The commercial company has a patrimony**
- The commercial company has a patrimony, which is constituted by its assets and liabilities distinct from that of its members.
- Although the members of the company make a contribution which constitute the patrimony of the company, they do not have ownership rights over company property, all they have during the life time of the company is a right to a claim during the distribution of the assets of the company.
- Note that the patrimony of a company serves as security to its creditors.
- ✓ **The commercial company acts through its legal representatives**
- Although the commercial company possesses a legal personality, as it is not a human being, it cannot act for itself.
- It is represented in its daily activities by human beings - managers. It is through these persons that the company can acquire and dispose of property, institute legal proceedings as well as defend an action against the company. However, the company is liable for the wrongful acts committed by its legal representative as far as civil matters are concerned.
- Contractual customs are not mandatory; they may be discarded by agreement of the parties.
- For this reason, it is said that they derive their authority from the theory of contractual freedom. Accordingly, if the parties have not expressly excluded a custom, they are deemed to have adopted it.
- Note that a custom will supplement a contract when the law is silent on a point.

b) Position of law on pre-incorporation contracts.

- A pre-incorporation contract may be ratified by the company after its incorporation and thereupon the company is bound by it and entitled to the benefit of it as if the company was in existence at the date of the pre-incorporation contract and as if the company had entered into the contract.
- A pre-incorporation contract may be ratified within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.
- Before ratification by the company, the person who purported to act in the name or on behalf of the company is, in the absence of express agreement to the contrary, personally bound by the pre-incorporation contract and entitled to the benefit of it.

- A pre-incorporation contract is ratified by a company in the same manner as a contract or other enforceable obligation may be entered into by a company under the Law governing company.
- A party to a pre-incorporation contract that is not approved in all or a part of its provisions by the company after its registration may file a claim to the competent court.

QUESTION TWO

Marking guide

Marks

a) A company registered under the law no 007/2021 of 05/02/2021 governing companies has its own legal personality separate from that of its shareholders”. Explain the statement. (2Marks) = 1 mark for explaining the meaning of legal personality and 1 mark for explaining difference between the legal personality of the company and the shareholders.

- A company enjoys rights, powers, obligations and liabilities. It is taken as person (artificial person) who can sue anyone to court or to be sued on its name. 1
- It is a body corporate and a legal entity in its own rights and obligations separate from its shareholders or members. 1

Maximum marks

2

b) How is a company an institution? (3 Marks) =1 mark each for any 3 explanations demonstrating clear that the student has a grasp of the concept.

- Once formed and incorporated, a company becomes a body corporate separate from its owners. 1
- Its management, operations and existence are run separately from its owners although its objective is to make profits for its shareholders. 1
- In order to achieve that, the company is provided with organs to allow it decide without requiring its shareholders consensus. 1
- What is evident is that the company contract doesn't have for main effect to create the subjective rights and obligations, but rather create that of its shareholders and issues rules to such group. It is that organization that is referred to as an institution. 1
- The institutional theory is enshrined by the law under its article 26 which provides for the capacity of the company has full capacity and as such a separate legal entity. 1
- It is necessary to underline however that neither of these two theories, contractual or institutional, is satisfactory enough in itself to exclude the other. This is how the legislator took into consideration both aspects. 1

Maximum marks

3

c) Explain how is a company a moral personality. (3 Marks) = 1 mark each for any 3 explanations demonstrating clear that the student has a grasp of the concept.

- Upon incorporation, a company acquires moral personality. The legal world is convinced that a corporation refers to an artificial but legal entity which, right from the date of its incorporation, it is a separate person and is authorized to perform all acts that any other person can perform including the engagement to contract with other persons. 1
- One of the consequences of the incorporation is the creation of 'limited liability' concept. Limited liability refers to the concept that shareholders of a company ordinarily are not liable for the corporation's obligations and debits. 1
- Members or shareholders therefore enjoy the benefits of incorporation as the company shall be doing its business, indirectly on their behalf though, but without their direct intervention. 1
- Even when it comes to liabilities, shareholders are shielded and it will be the company to respond. 1

Maximum marks 3

d) i) List any seven (7) companies' records that can be inspected by shareholders. (7 Marks) =1 mark each for any seven records which can be inspected
The companies' records that can be inspected by shareholders are:

- Its incorporation documents; 1
- The share register; 1
- The index of shareholders; 1
- The accounting records; 1
- A register of interests of directors; 1
- Minutes of all general meetings and resolutions of shareholders; 1
- Minutes of all meetings and resolutions of directors and board committees 1
- Certificates given by directors 1
- Copies of all annual accounts, auditors and directors' reports 1
- The register of beneficial ownership 1
- Copies of all written communications to all shareholders or all holders of the same class of shares, including annual reports 1
- All documents related to the management of the company. 1

Maximum marks 7

iii) In the process of inspection, Mulisa discovered important documents that he needs to support the findings. Discuss the procedure required for getting a copy of the companies' records. (3 Marks) =1 mark each for each procedure

- A shareholder may require a copy of a record that he or she is entitled to inspect or of any part of it. 1
- In case of a shareholder the inspection is done on payment of a fee prescribed by the Registrar General or such lesser sum as the company may require and the company sends the copy so required to such person within ten (10) working days from receipt of the request. 1

• If the company does not allow a shareholder to inspect and copy the documents provided, the shareholder may apply to the competent court for the purpose of allowing inspection of such documents 1

Maximum marks 3

e) Discuss the legality of the decision made by Kamanzi and Umutesi on the variation of their rights without involvement of Kamali. (7 Marks) = 1 mark on legality, 2marks for process of variation of rights, 2marks for explaining the threshold of the special resolution and 2marks for remedies

- The decision is not legal 1
- The variation of rights is approved by a special resolution of shareholders having such a class of shares. 2
- Kamanzi and Miss Umutesi does not reach to special resolution because the decision was taken by 69% while it is required at least to be approved by 75% 2
- The holder of a share of that class, who did not consent to or cast any vote in favor of the resolution for the variation, may apply to a competent Court for an order against acts that are prejudicial to a shareholder, or he or she may require the company to purchase those shares 2

Maximum marks 7

Total marks 25

Model answers

a) The candidate is expected to know the difference between the legal personality of the company and that of its shareholders.

- The statement saying that a company has its own legal personality separate from that of its shareholders means a company enjoys rights, powers, obligations and liabilities in its own.
- It is taken as person (artificial person) who can sue anyone in court or to be sued on its name.
- In other words, it is a body corporate and a legal entity in its own rights and obligations separate from its shareholders or members.

b) A company as an institution

i) The candidate is expected to know what it means for the company to be an institution.

- Once formed and incorporated, a company becomes a body corporate separate from its owners.
- Its management, operations and existence are run separately from its owners although its objective is to make profits for its shareholders.
- In order to achieve that, the company is provided with organs to allow it decide without requiring its shareholders consensus.

• What is evident is that the company contract doesn't have for main effect to create the subjective rights and obligations, but rather create that of its shareholders and issues rules to such group. It is that organization that is referred to as an institution.

• The institutional theory is enshrined by the law under its Article 26 which provides for the capacity of the company has full capacity and as such a separate legal entity.

• It is necessary to underline however that neither of these two theories, contractual or institutional, is satisfactory enough in itself to exclude the other. This is how the legislator took into consideration both aspects.

ii) The candidate is expected to know the required documents to submit to the Registrar General when applying for incorporation of a company

The following is submitted to the Registrar General when applying for incorporation:

• Incorporation documents in the form prescribed by the Registrar General and signed by every shareholder or member or by each applicant, if any

• Consent in the prescribed form signed by each of the persons named as the company's directors and secretary in the incorporation documents

• Consent in the prescribed form signed by each member or shareholder of the company or by his or her agent who has been authorized thereto in writing

• The memorandum of association of the company

• Where the company has articles of association, a copy of the articles of association

• Beneficial ownership information where applicable

c) • The candidate is expected to know how the company is a moral person and the implications of moral personality.

• Upon incorporation, a company acquires moral personality. The legal world is convinced that a corporation refers to an artificial but legal entity which, right from the date of its incorporation, it is a separate person and is authorized to perform all acts that any other person can perform including the engagement to contract with other persons.

• One of the consequences of the incorporation is the creation of 'limited liability' concept. Limited liability refers to the concept that shareholders of a company ordinarily are not liable for the corporation's obligations and debits.

• Members or shareholders therefore enjoy the benefits of incorporation as the company shall be doing its business, indirectly on their behalf though, but without their direct intervention.

d) i) The companies' records that can be inspected by shareholders are:

• Its incorporation documents

• The share register

• The index of shareholders

• The accounting records

• A register of interests of directors

• Minutes of all general meetings and resolutions of shareholders

- Minutes of all meetings and resolutions of directors and board committees
- Certificates given by directors
- Copies of all annual accounts, auditors and directors' reports
- The register of beneficial ownership
- Copies of all written communications to all shareholders or all holders of the same class of shares, including annual reports
- All documents related to the management of the company.

ii) The procedure required for getting a copy of the companies' records are:

- A shareholder may require a copy of a record that he or she is entitled to inspect or of any part of it.
- In case of a shareholder the inspection is done on payment of a fee prescribed by the Registrar General or such lesser sum as the company may require and the company sends the copy so required to such person within ten (10) working days from receipt of the request
- If the company does not allow a shareholder to inspect and copy the documents provided, the shareholder may apply to the competent court for the purpose of allowing inspection of such documents.

e) The candidate is expected to know the procedure in which variation of shareholders' rights can be enjoyed or exercised

- The decision taken by Kamanzi and Umutesi on the variation of their rights without involvement of Kamali is not legal
- The law provides that where the share capital of a company is divided into different classes of shares, a company does not take any action which varies the rights attached to a class of shares
- There can be no variation of shareholders rights unless such variation is approved by a special resolution of shareholders having such a class of shares.
- The decision which was taken by the two members constitute of 69% approval while the law specifies that special resolution must be approved by at least 75%.
- The law provides also that where the variation of rights attached to a class of shares is approved and the company becomes entitled to take the action concerned, the holder of a share of that class, who did not consent to or cast any vote in favor of the resolution for the variation, may apply to a competent Court for an order against acts that are prejudicial to a shareholder, or he or she may require the company to purchase those shares.

QUESTION THREE

Marking guide

Marks

a) Assuming you are Ngabo, discuss five (5) rights of shareholders (5 Marks) =1 mark each for any 5 shareholders rights well explained

The following are the rights of the shareholders:

- Right to share in the distribution of the dividends of the company 1
- Right to share in the distribution of the surplus assets of the company upon its liquidation 1
- In accordance with other rights and privileges and subject to such limitations or conditions on such rights as may be provided for in the company's incorporation documents, the right to vote on shareholders' resolutions 1
- With respect to the right to share in the distribution of the dividends of the company, the right to an equal share 1
- With respect to the right to share in the distribution of the surplus assets of the company upon its winding up, the right to an equal share. 1

Maximum marks

5 Marks

b) Explain the different types of companies so as, if possible, to convert Icyerekezo Plc from public limited company to private limited company (10 marks)

The liabilities of shareholders are based on types of companies. The types of companies that are recognized by Rwandan Company Law are the following:

✚ Protected cell company 1

A company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities 1

✚ Company limited by shares and by guarantee 1

A company in which liabilities of the shareholders are limited to paid or unpaid amount on their shares, there may also be limited by guarantee, where liabilities of members are limited to the amount that the members undertake to contribute to the assets of the company in case of winding up 1

✚ Company limited by shares 1

A company in which the liability of its shareholders is limited to the amount paid or unpaid on the shares held by them 1

✚ Company limited by guarantee 1

A company used primarily for non-profit organizations and having the liability of its members limited to the amount as the members may agree 1

✚ Unlimited company 1

A company for which the legal liability of its members or shareholders is not limited, where all members or shareholders have total and joint liability to cover all contingent debts

Maximum marks

1
10

c) Discuss the five (5) matters in which a shareholder has rights to vote on? (5 Marks) = 1 mark each for any 5 matters well elaborated

Some of the matters that a shareholder has right to vote are the following:

- Appointing or removing an auditor or director
- Approving a major transaction
- Adopting or altering articles of association
- Dissolving the company
- Approving an amalgamation

1 Maximum marks

1
1
1
1
1
5

Total marks

20

Model answers

a) The candidate is expected to know the rights of shareholders

- Rights of shareholders are the following:
 - Right to share in the distribution of the dividends of the company
 - Right to share in the distribution of the surplus assets of the company upon its liquidation
 - In accordance with other rights and privileges and subject to such limitations or conditions on such rights as may be provided for in this Law or the company's incorporation documents, the right to vote on shareholders' resolutions
- With respect to the right to share in the distribution of the dividends of the company, the right to an equal share
- With respect to the right to share in the distribution of the surplus assets of the company upon its winding up, the right to an equal share

N.B: The list is not exhaustive and the maker can consider other relevant rights

b) The candidate is expected to know the types of companies and the liability of shareholders based on the type of a company they choose to incorporate

The liabilities of shareholders are based on the types of companies. The types of companies that are recognized by Rwandan Company Law are the following:

✓ **Protected cell company:**

A company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities

✓ **Company limited by shares and by guarantee:**

A company in which liabilities of the shareholders are limited to paid or unpaid amount on their shares, there may also limited by guarantee, where liabilities of members are limited to the amount that the members undertake to contribute to the assets of the company in case of winding up

✓ **Company limited by shares:**

A company in which the liability of its shareholders is limited to the amount paid or unpaid on the shares held by them

✓ **Company limited by guarantee:**

A company used primarily for non-profit organizations and having the liability of its members limited to the amount as the members may agree

✓ **Unlimited company:**

A company for which the legal liability of its members or shareholders is not limited, where all members or shareholders have total and joint liability to cover all contingent debts

c) The candidate is expected to know the matters in which shareholders have rights to vote for.

Some of the matters that a shareholder has right to vote are the following:

- Appointing or removing an auditor or director
- Approving a major transaction
- Adopting or altering articles of association
- Dissolving the company
- Approving an amalgamation

QUESTION FOUR

Marking guide

Marks

a) **Explain the procedures for the Board of Directors to call an annual general Assembly of shareholders? (6 Marks) = 1 mark each for every well elaborated procedure**

The Board of Directors calls an annual general Assembly of shareholders to be held:

- Once a year and not later than fifteen (15) months after the last preceding meeting 1
- Not later than six (6) months after the date of approval of the company's balance sheet 1
- A newly incorporated company may hold its shareholders' meeting within eighteen (18) months of its incorporation 1
- The company holds a General assembly of shareholders on the date agreed upon by directors 1
- Notice of each meeting is sent to all shareholders not less than twenty-one (21) days before the date of the general assembly 1
- The notice states, at a minimum, the agenda for the meeting and information regarding directors to be elected at the General assembly including biographies, a statement of their business experience, and any directorships held by them in other companies 1

Maximum marks

6

b) **Under which condition(s) can an extra ordinary meeting be organized? (4 Marks) =1 mark each for identifying the 2 conditions and 1 mark each for explaining the 2 conditions**

Extra-ordinary meeting can be organized when:

- The Board of Directors or any other person so authorized in the company's incorporation documents, may convene a shareholders' extraordinary meeting 1
 - If the articles of association have provided a time frame within the year when the extra ordinary meeting can be held then such meeting can be held at such time 1
- Upon the request made by written notice served on the company signed by one or more persons holding the right to exercise not less than five per cent (5%) of the votes entitled to be cast on the issues to be discussed at the meeting as set out in the notice 1
- If there is urgent matter that which cannot wait until the end of the year to be addressed then upon the request made by written notice served on the company signed by one or more persons holding the right to exercise not less than five per cent (5%) of the votes entitled to be cast on the issues to be discussed at the meeting as set out in the notice 1

Maximum marks

4

c) **Discuss how shareholders exercise their powers by resolutions? (4 Marks) =1mark each for the 4 ways through which shareholders powers are exercised**

Powers reserved for shareholders by the Law governing companies in Rwanda or by a company's incorporation documents are exercised by shareholders' resolution:

- At a shareholders' annual general meeting 1
- At a shareholders' extraordinary general meeting 1
- By shareholders' written resolution in lieu of general meeting 1
- By a unanimous shareholder agreement 1

Maximum marks 4

d) Define the following concepts and name, at least, one transaction or matter, in the company, which is approved through those concepts:

- i) Special resolution of shareholders (2 Marks) = 1mark for the definition and one mark for the transaction or matter approved**
- ii) Unanimous resolution shareholders (2 Marks) = 1mark for the definition and one mark for the transaction or matter approved**
- iii) Ordinary resolution shareholders. (2 Marks) = 1mark for the definition and one mark for the transaction or matter approved**

✓ **Special resolution of shareholders:**

- This resolution is passed by a majority of seventy-five percent (75%) or such higher majority as may be specified in the company's incorporation documents of the votes of shareholders entitled to vote and voting on the question, or passed by all shareholders if so, specified in the company's incorporation documents. 1

The situation or transaction in which requires a special resolution is one of the following:

Marks

- Adopt, alter or revoke the company's incorporation documents; 1
- Adopt a special resolution 1
- Authorize a proposal to change the status, category or type of the company 1
- Authorize an amalgamation 1
- Put the company in liquidation 1
- Apply for the company, when solvent, to be removed from the register of companies 1
- Any decision made by special resolution may be rescinded only by special resolution 1

Maximum marks 2

✓ **Unanimous resolution:**

This is a resolution which has the assent of all shareholders entitled to vote on the matter which is the subject of the resolution, by virtue of this Law or the company's incorporation documents 1

The situation or transaction in which requires a unanimous resolution is one of the following:

- Opting out of the requirements to have their annual accounts audited and have an auditor's report for private companies 1
- Prohibit the transfer of any share or other interest of a shareholder of the company absolutely or may provide that the transfer of any share or other interest of a shareholder 1

Maximum marks 2

✓ **Ordinary resolution:**

- This a resolution passed by a simple majority of the votes of members 1

The situation or transaction in which requires an ordinary resolution is one of the following:

- Divide or subdivide its shares into shares of a smaller amount if the proportion between the amount paid, and the amount, if any, unpaid on each reduced share remains the same as it was in the case of the share from which the reduced share is derived 1
- Consolidate its existing shares into shares of a larger amount 1
- Removal of an auditor 1
- Removal of one or more directors 1
- Approval of the remuneration and any other benefits payable to directors and any allowances to a former director, including any allowances for loss of membership 1

N.B Award 1 mark for any other valid point on matters that can be approved by this resolution

Maximum marks 2

Total marks 20

Model answers

a) The candidate is expected to know the procedures in which an annual meeting of shareholders can be organized

The Board of Directors calls an annual general Assembly of shareholders to be held:

- Once a year and not later than fifteen (15) months after the last preceding meeting;
- Not later than six (6) months after the date of approval of the company's balance sheet; However, a newly incorporated company may hold its shareholders' meeting within eighteen (18) months of its incorporation.
- The company holds a General assembly of shareholders on the date agreed upon by directors.
- Notice of each meeting is sent to all shareholders not less than twenty-one (21) days before the date of the general assembly.
- The notice states, at a minimum, the agenda for the meeting and information regarding directors to be elected at the General assembly including biographies, a statement of their business experience, and any directorships held by them in other companies.

b) The candidate is expected to know the procedures in which an extra ordinary meeting can be organized

- The Board of Directors or any other person so authorized in the company's incorporation documents, may convene a shareholders' extraordinary meeting.
- The Board of Directors convene a shareholders' general extraordinary meeting upon request made by written notice served on the company signed by one or more persons holding the right to exercise not less than five per cent (5%) of the votes entitled to be cast on the issues to be discussed at the meeting as set out in the notice.

- Notice of each extraordinary general meeting is sent to all shareholders not less than fifteen (15) days before the date of the meeting, and notice states the agenda for the meeting.
- If after twenty-one (21) days from the date of service of the notice to convene a shareholders' extraordinary general meeting, directors have not convened the general meeting, the signatories to the notice or any of them may convene the meeting, but such meeting is not held more than three (3) months after the date of service of the notice.

c) The candidate is expected to know the powers reserved for shareholders to take resolutions

Powers reserved for shareholders by the law or by a company's incorporation documents are exercised by shareholders' resolution:

- At a shareholders' annual general meeting;
- At a shareholders' extraordinary general meeting;
- By shareholders' written resolution in lieu of general meeting;
- By a unanimous shareholder agreement.

d) The candidate is expected to know the situations in which a decision will require a given percentage of approval to order to be legally adopted

i) Special resolution of shareholders: This is a shareholders' resolution which, by virtue of this Law or by the company's incorporation documents, is passed by a majority of seventy-five percent (75%) or such higher majority as may be specified in the company's incorporation documents of the votes of shareholders entitled to vote and voting on the question, or passed by all shareholders if so, specified in the company's incorporation documents.

The situation or transaction in which requires a special resolution is one of the following:

- Adopt, alter or revoke the company's incorporation documents;
- Adopt a special resolution;
- Authorize a proposal to change the status, category or type of the company;
- Authorize an amalgamation;
- Put the company in liquidation;
- Apply for the company, when solvent, to be removed from the register of companies
- Any decision made by special resolution may be rescinded only by special resolution.

ii) Unanimous resolution: This is a resolution which has the assent of all shareholders entitled to vote on the matter which is the subject of the resolution, by virtue of this Law or the company's incorporation documents.

The situation or transaction in which requires a unanimous resolution is one of the following:

- Opting out of the requirements to have their annual accounts audited and have an auditor's report for private companies
- Prohibit the transfer of any share or other interest of a shareholder of the company absolutely or may provide that the transfer of any share or other interest of a shareholder

iii) Ordinary resolution: This is a decision taken by a simple majority of the votes of those shareholders entitled to vote on a decision taken by a simple majority of the votes of those shareholders entitled to vote on.

The situation or transaction in which requires an ordinary resolution is one of the following:

- Divide or subdivide its shares into shares of a smaller amount if the proportion between the amount paid, and the amount, if any, unpaid on each reduced share remains the same as it was in the case of the share from which the reduced share is derived
- Consolidate its existing shares into shares of a larger amount
- Removal of an auditor
- Removal of one or more directors
- Approval of the remuneration and any other benefits payable to directors and any allowances to a former director, including any allowances for loss of membership

N.B The list is not exhaustive and the maker can consider any other transaction

SECTION B

QUESTION FIVE

Marking guide

Marks

a) i) Define the term “company secretary” and explain at least five (5) duties of a company secretary. (12 Marks) =1 mark for defining who is a company secretary and 1 mark for explaining the role of the company secretary,1 mark each for 5 any duties identified and 1 mark each for explanation of the 5 duties

- A company secretary is a company’s employee appointed by a competent authority 1
- The company secretary is responsible, among other things, for ensuring that the company’s business activities comply with the legal provisions 1

A company secretary has the following duties:

- Advise directors on their responsibilities and powers 2
- Inform directors about all the necessary regulations or those which may affect the meetings of shareholders and of the Board of Directors, reports thereof and submission of all company documents required by the law to relevant organs as well as consequences due to the failure to comply with such regulations 2
- Ensure that minutes of the meetings of shareholders or the Board of Directors are well prepared and that registers provided for by the incorporation documents are accurately kept. 2
- Ensure that annual balance sheet and other required documents are submitted to the Registrar General as provided for by this Law. 2
- Ensure that copies of annual balance sheet and activity reports are transmitted to relevant destinations in accordance with this Law and to any person as provided by the Law 2

Maximum marks 12

ii) Explain any two registers that a company Secretary is in charge of keeping (4 Marks) =1 mark each for any 2 registers and I mark for explaining the 2 registers

Two registers that a company Secretary is in charge of keeping are

- Register of interests 2
- Register of shareholders or holders of debentures 2
- Register of beneficial ownership 2

Maximum marks 4

b) i) Explain the legality of requesting the company to pay the cost of legal proceedings in a case against herself based on her liability. (4 Marks) = I mark for putting the case study in perspective, 1 mark for the position of law on any costs incurred by the company secretary

in the business of the company,1 mark who can raise the issue of the costs incurred and 1 mark for the circumstances that the company secretary can incur the costs
Liability and indemnity for a company secretary

- A company may indemnify a company secretary of the company in respect of any liability or costs incurred by him or her in any legal proceedings 1
- The company secretary can be indemnified when the matter is brought by any person other than the company against them in their respective capacities 1
- The matter above should not result from a failure by the director, company secretary, auditor or employee to act in good faith in a manner that he believes on reasonable grounds to be in the best interests of the company 2

Maximum marks 4

ii) Explain how company secretary is appointed and removed from office. (4 Marks)
=1mark each for explaining the position of law on company secretary for both public and private company and 1 mark each for the nature of appointment and 1 mark for removal

- A public company must have a company secretary 1
- A private company may have a company secretary 1
- Subject to the company's incorporation documents, the company secretary may be appointed by the directors for such term, at such remuneration and upon such conditions as they think fit; 1
- A company secretary so appointed may be removed by the appointing authority 1

Maximum marks 4

iii) Discuss the fiduciary duty of a company secretary. (6 Marks) =2marks each for explaining any 3 ways in which the fiduciary duty is maintained

- Company secretary's fiduciary duty to the company is to be loyal to the company 2
- Always act for the interest of the company (avoid conflict of interest) 2
- Complies with the law, memorandum of association and articles of association if any 2

Maximum marks 6

Total marks 30

Model answers

a)

i) The candidate is expected to know the definition and the duties of a company secretary

• A company secretary is a company’s employee appointed by a competent authority and responsible, among other things, for ensuring that the company’s business activities comply with the legal provisions

A company secretary has the following duties:

- Advise directors on their responsibilities and powers
- Inform directors about all the necessary regulations or those which may affect the meetings of shareholders and of the Board of Directors, reports thereof and submission of all company documents required by the law to relevant organs as well as consequences due to the failure to comply with such regulations
- Ensure that minutes of the meetings of shareholders or the Board of Directors are well prepared and that registers provided for by the incorporation documents are accurately kept
- Ensure that annual balance sheet and other required documents are submitted to the Registrar General as provided for by the Law
- Ensure that copies of annual balance sheet and activity reports are transmitted to relevant destinations in accordance with this Law and to any person as provided by the Law

ii) The candidate is expected to know the registers that are provided for by the law to be kept by a company secretary

Registers that a company Secretary is in charge of keeping are:

- Register of interests
- Register of shareholders or holders of debentures
- Register of beneficial ownership

b) i) The candidate is expected to know the liability of a company secretary and how to be indemnified

• Rwandan Company law provides in its article 174 paragraph 4 that a company may indemnify a company secretary of the company in respect of any liability or costs incurred by him or her in any legal proceedings when:

- It is brought by any person other than the company against them in their respective capacities
- Which do not result from a failure by the director, company secretary, auditor or employee to act in good faith in a manner that he believes on reasonable grounds to be in the best interests of the company

ii) The candidate is expected to know ways of appointment and removal of a company secretary

- A public company must have a company secretary, and a private company may have a company secretary.
- Subject to the company's incorporation documents, the company secretary may be appointed by the directors for such term, at such remuneration and upon such conditions as they think fit; and any company secretary so appointed may be removed by the appointing authority.

iii) The candidate is expected to know the fiduciary duty of the company secretary

- Company secretary's fiduciary duty to the company is to be loyal to the company
- Always act for the interest of the company (avoid conflict of interest) and
- Comply with the law, memorandum of association and articles of association if any.

QUESTION SIX

Marking guide

Marks

a) i) Advise on who can make application before the Courts of Law and where to file such application to initiate the insolvency proceedings in Rwanda? (7 Marks) = 0.5mark each for 3 persons who can make application, 0.5 mark of mode of appointment by liquidator

A liquidator is appointed by the following:

- Shareholders by a special resolution 0.5
- The directors or any other person, if the company's incorporation document so requires or permits 0.5
- The court 0.5
- A person's appointment as liquidator is of no effect unless that person has consented in writing to the appointment 0.5

The application for commencement of insolvency proceedings may be carried out by the following persons:

- Creditors 1
- Debtor 1
- Members of the Board of Directors or one of them 1
- Registrar General 1
- A creditor's application is admissible if he or she has an interest and if he or she shows his or her claim as well as the reason why insolvency proceedings should be commenced 1

A Commercial court of Nyarugenge is the competent court to hear the case

1

Maximum marks 7
b) State the grounds (reasons) required for requesting insolvency proceedings as provided by the Law n° 23/2018 of 29/04/2018 relating to insolvency and bankruptcy and link it with the case study. (6 Marks) =1 mark each for 2 grounds and 1 mark each for linking the grounds to the case study and 2 marks for explaining the person who can apply for insolvency proceeding.

Business insolvency proceedings commence when the debtor:

- Is unable to pay the debts when they are due 2
- Is over-indebted and is not in the position to pay the debts by the due date 2
- From what is provided for by the law as the grounds for the commencement of insolvency proceedings, it is shown that the required person who will apply for insolvency proceedings against Bwiza Private Limited on the basis that Bwiza Private Limited is unable to pay the debts that is either Equity Bank or Ineza Private Ltd 2

Maximum marks 6

c) Discuss the duties of a liquidator in insolvency proceedings. (5 Marks) =1 mark each for any five well elaborated duties

A Liquidator has the following duties:

- To collect, realize and distribute assets or the proceeds of the assets of the company 1
- To take custody and control of all the company's assets 1
- To keep the company's money, separate from other money which he or she holds or is under his or her control 1
- To keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the liquidation and retain the accounts and records of the liquidation of the company for not less than six (6) years after the liquidation ends 1
- To permit the accounts and records of the company to be inspected by any committee of inspection, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation or to be inspected by any creditor or shareholder if the court so orders. 1

Maximum marks 5

d) Advise how a liquidator can be appointed. (4 Marks) = 1 mark for the AGM appointment by default,1 mark each for any 3 ways of appointment

The liquidator(s) are, in default of their designation by the articles of association appointed by the Annual General Meeting. Note that one or more liquidators shall be appointed: 1

- Unanimously by the partners in case of a general partnership; 1

- Unanimously by the active partners and by the majority in capital in case of a limited partnership and limited partnership by shares; 1
- By the majority capital of shareholders in case of private limited company 1
- Under the quorum and majority conditions provided for a special meeting in case of a public limited company. 1

Maximum marks 4

e) When does the office of the liquidator becomes vacant? (5 Marks) =1 mark

The office of liquidator becomes vacant if the person holding office:

- Is removed from office by appointing authority 1
 - Resigns 1
- A liquidator may resign from the office by providing a notice of fifteen (15) working days to the Registrar General and waits for the appointment of his or her successor 1
- Is disqualified as insolvency practitioner 1
 - Is the subject to a prohibition order 1
 - Dies. 1

Maximum marks 5

f) Mention a misbehavior of a liquidator considered as an offence and mention its penalty.

(3 Marks) =1 mark for the offence and 1 mark each for 2 penalties

- A breach of trust or misappropriation of debtor's property 1
- Imprisonment for a term of not less than three (3) years but not more than five (5) years 1
- A fine of not less than three million Rwandan francs (FRW 3,000,000) but not more than five million Rwandan francs (FRW 5,000,000) 1

Maximum marks 3

Total marks 30

Model answers

a) Application for insolvency proceeding

The candidate is expected to know how a liquidator can be appointed

According to article 99 of the law of insolvency and bankruptcy, a liquidator is appointed by the following:

- Shareholders by a special resolution
- The directors or any other person, if the company's incorporation document so requires or permits
- The court

• A person's appointment as liquidator is of no effect unless that person has consented in writing to the appointment.

The candidate is expected to know the persons allowed to apply for insolvency proceedings

The application for commencement of insolvency proceedings may be carried out by the following persons:

- Creditors
- Debtor
- Members of the Board of Directors or one of them
- Registrar General
- A creditor's application is admissible if he or she has an interest and if he or she shows his or her claim as well as the reason why insolvency proceedings should be commenced.
- A Commercial court of Nyarugenge is the competent court to hear the case.

b) The candidate is expected to know the reasons (grounds) on which one can apply for insolvency proceedings

Business insolvency proceedings commence when the debtor:

- Is unable to pay the debts when they are due
- Is over-indebted and is not in the position to pay the debts by the due date
- From what is provided for by the law as the grounds for the commencement of insolvency proceedings, it is shown that the required person who will apply for insolvency proceedings against Bwiza private Limited is to base on the fact that the Bwiza private Limited becomes unable to pay the debts that are due.

c) The candidate is expected to know the duties of a liquidator in insolvency proceedings

Duties of a liquidator a liquidator has the following duties:

- To collect, realize and distribute assets or the proceeds of the assets of the company
- To take custody and control of all the company's assets
- To keep the company's money, separate from other money which he or she holds or is under his or her control
- To keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the liquidation and retain the accounts and records of the liquidation of the company for not less than six (6) years after the liquidation ends
- to permit the accounts and records of the company to be inspected by any committee of inspection, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation or to be inspected by any creditor or shareholder if the court so orders.

d) Candidate is expected to know how a liquidator can be appointed.

The liquidator(s) are, in default of their designation by the articles of association appointed by the Annual General Meeting. Note that one or more liquidators shall be appointed:

- Unanimously by the partners in case of a general partnership;
- Unanimously by the active partners and by the majority in capital in case of a limited partnership and limited partnership by shares;
- By the majority capital of shareholders in case of private limited company

Under the quorum and majority conditions provided for a special meeting in case of a public limited company.

e) The candidate is expected to know when the office of liquidator becomes vacant

The office of liquidator becomes vacant if the person holding office:

- Is removed from office by appointing authority
- Resigns. A liquidator may resign from the office by providing a notice of fifteen (15) working days to the Registrar General and waits for the appointment of his or her successor
- Is disqualified as insolvency practitioner
- Is the subject to a prohibition order
- Dies

f) The candidate is expected to know offences that can be committed by a liquidator and penalties to offender

- A breach of trust or misappropriation of debtor's property
- Imprisonment for a term of not less than three (3) years but not more than five (5) years
- A fine of not less than three million Rwandan francs (FRW 3,000,000) but not more than five million Rwandan francs (FRW 5,000,000)

END OF MARKING GUIDE AND MODEL ANSWERS