
**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3 COMPANY LAW

DATE: WEDNESDAY, 25 AUGUST 2021

INSTRUCTIONS:

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

SECTION A

QUESTION ONE

Mahela, Boss and Bwana who are among the richest persons in Kigali decided to form a company to run their charitable and educational activities and for non-profit purposes which they gave the name MBB for a period of one hundred (100) years. They also formed a protected cell with their company which was to deal exclusively with research in the MBB. After pooling together their resources, and before the filing of the incorporation documents with the Registrar General for its incorporation they approached you as an expert in company law to advise them on the following:

- (a) **The type of the company suitable for MBB.** (5 Marks)
- (b) **The requirement to have the Articles of Association.** (5 Marks)
- (c) **The content unique to the memorandum of association for a company limited by guarantee.** (5 Marks)
- (d) **The consequence of the incorporation of the MBB under the laws of Rwanda.** (5 Marks)
- (e) **The modes of disappearance of legal personality of MBB.** (5 Marks)

(Total: 25 Marks)

QUESTION TWO

- (a) Muka, Mukiza and Mutegetsu created MMM Ltd in 2005. The three shareholders are also members of the company's Board of Directors. Mukiza was appointed Chairman of the Board of Directors of the Company on the first Annual Meeting of Shareholders and has been the Chairman of the Board of Directors since then. Muka has 100 ordinary shares, Mukiza has 200 ordinary shares and Mutegetsu has 50 shares which confer special voting rights in matters relating to the appointment of the Managing Director of MMM Ltd. Under the Articles of Association of MMM Ltd, Mutegetsu, had the powers to veto the appointment and dismissal of the managing director of the company, and to authorise any allotment of shares within the company. The company grew enormously that it has already created subsidiaries across the world. On 15 of February 2021, Mukiza convened the Annual General Meeting of Shareholders in accordance with the Law governing companies and the Articles of incorporation of the MMM Ltd. This Annual General Meeting of Shareholders was held on 28 February 2021. Muka and Mukiza attended the meeting but Mutegetsu failed to attend as he was seriously ill at the King Faisal Hospital in Kigali. Among the matters transacted during this Annual General Meeting was the appointment of Mr Barushywanubusa as the Managing Director of the MMM Ltd and allotment of more 100 ordinary shares to Muka. During this Annual General Meeting;
- (i) A resolution to appoint Mr Barushywanubusa as the managing director of the company was passed by both shareholders with 85% of the voting shares, and

- (ii) A resolution to allot 100 more shares to Muka was passed by both shareholders with 85% of the voting shares.

Explain the legality of the resolutions passed by the shareholders of MMM Ltd during the Annual General Meeting of Shareholders which was held on 28/02/2021.

(10 Marks)

- (b) Keza, Kelia and Kabwana created Keza & Co Ltd in 1980s. Keza subscribed and paid for 20 shares, Kabwana subscribed for 35 shares but paid for 25 shares and Kelia subscribed and paid for 45 shares. The value of each share was one million Rwandan francs (Frw 1,000,000). The company was headquartered in the City of Kigali. The three shareholders were also Members of the Board of Directors. In 2020, Kabwana was appointed as Chairman of the Board of Directors whereas Keza was appointed as the Managing Director of the company. Kelia who held 45% of shareholding of Keza & Co Ltd was a very powerful director who was involved in the management of all the important matters of Keza & Co Ltd. Kelia managed to enrich herself on the back of the Keza & Co Ltd. In 2019, she tapped from the company's funds before the distribution of dividends and took five billion Rwandan francs (Frw 5.000.000.000) to buy her personal luxury apartment in upper scale Nyarutarama. In the same year, she bought a five hundred million Rwandan francs (Frw 500.000.000) Ferrari with the company's funds. Due to poor decision making and shareholders' flashy spending, the Keza & Co Ltd started experiencing payment difficulties in January 2021. The company owed its creditors around ten billion Rwandan francs (Frw 10.000.000.000) by this time. As it was clear to creditors of the company, the creditors of Keza & Co Ltd seized the court for appointment of the liquidator. The creditors proposed Mr Mahane, who was subsequently appointed by the court. Upon taking custody and control of the company's property, Mahane noted that the company's assets could not cover all the debts due. But the auditors of the company found that there were personal expenses by shareholders on the account of the company and advised Mahane to recover the company's money from these shareholders. However, when he requested the shareholders to contribute to the payment of the debts of the company, the shareholders declined his request alleging that their company has its legal personality separate from their personality and as such they cannot be liable of the obligations of Keza & Co Ltd. Mahane approaches you as an expert in company law for advice. Basing on relevant laws governing companies in Rwanda, **advise him on the following:**

- (i) **Liability of shareholders in regards to the acquisition of shares in Keza & Co Ltd.**

(5 Marks)

- (ii) **Enforcement of Keza & Co Ltd's Auditors in relation to personal expenses by shareholders using company's funds.**

(10 Marks)

(Total: 25 Marks)

QUESTION THREE

- (a) **After defining the concept “affection societatis”, explain the concept of a company as an institution.** (10 Marks)
- (b) Blue Star Ltd is an E-Commerce company located in the City of Kigali. One of their leading shareholders, Manyanga who holds 30 per cent of the shareholding of the company wanted to alter the incorporation documents to change 50 percent of his shares into shares conferring special voting rights. He lobbied other two leading shareholders who had a combined 40 percent of shareholding of Blue Star Ltd. The three shareholders convinced the Board of Directors to convene an extraordinary meeting of shareholders to alter the incorporation documents of Blue Star Ltd. The extraordinary meeting of shareholders was held in January 2021 and in a 70 percent majority resolution, the shareholders of Blue Star Ltd altered its incorporation documents to accommodate Manyanga’s request to change 50 percent of his shares into shares conferring special voting rights. **With relevant legal provisions, explain the legality of the Extraordinary Meeting of Shareholders to alter Blue Star Ltd.** (10 Marks)
- (Total: 20 Marks)**

QUESTION FOUR

KCB Rwanda Plc is a Kenyan bank which was registered in Rwanda by the Office of the Registrar General of the Companies. Recently a heated debate erupted between a Rwandan and Kenyan on the nationality of this bank and the argument was broadly on whether it is a domestic bank or a foreign bank.

- (i) **Under the Law governing companies, what are the requirements for successful application of a foreign company?** (10 Marks)
- (ii) **In relation to the Law governing companies in Rwanda, explain the nationality of KCB Rwanda Plc.** (10 Marks)
- (Total: 20 Marks)**

SECTION B

QUESTION FIVE

- (a) **Define the shareholders' general meetings.** (8 Marks)
- (b) Excel Promotion Ltd is a Rwandan company located in Musanze. In 2020, the Board of Directors of the Excel Promotion Ltd did not convene the annual meeting of shareholders as the directors had the knowledge that they would all be dismissed. One of the majority shareholders mobilised his fellow shareholders and the group of shareholders referred the matter to the Registrar General to assist in calling the Meeting of Shareholders. Following this request, the Registrar General appointed his trusted company law lawyer, Mategeko as a Director as of the seven (7) directors required by the Law, only six (6) directors were appointed and convened the meeting of shareholders. During this meeting of shareholders, all the members of the Board of Directors of Excel Promotion Ltd were dismissed by a special resolution of shareholders. However, the Chairman of the Board of Directors and other Directors of the Company challenged the decision of the shareholders to dismiss the members of the Board alleging that the Meeting of Shareholders which took decision to dismiss the Directors was illegally convened.
- (i) **Do you think the Registrar General had the power to convene the meeting of shareholders of Excel Promotion Ltd? Explain your answer.** (8 Marks)
- (ii) **Do you think the Registrar General duly exercised his powers to appoint Mategeko as a Director of the Excel Promotion Ltd? Explain.** (6 Marks)
- (iii) **Discuss the legality of the special resolution of shareholders to dismiss all the members of the Board of Directors of the Excel Promotion Ltd.** (8 Marks)
- (Total: 30 Marks)**

QUESTION SIX

- (a) Mahindi Ltd, a maize growing company largely known in Rwanda, was created in December 2019. After its incorporation, the Shareholders and the Board of Directors of the company decided not to appoint an external auditor to audit its annual accounts alleging that the company had no obligation to appoint one since Mahindi Ltd was a private limited company. However, in its Annual General Meeting of Shareholders which was held in January 2021, the shareholders of Mahindi Ltd noted some inconsistencies in the financial statements and appointed by a special resolution, Mr Mugenzuzi as a particular auditor to inspect the financial records of the company. Mugenzuzi started auditing the annual accounts of the company. However, as the Board of Directors was afraid of Mr Mugenzuzi's discoveries, it denied him access to information in relation with the accounting records.
- (i) **Explain the legality of the decision of Shareholders and the Board of Directors not to appoint an auditor of the company.** (5 Marks)

(ii) Discuss the legality of the appointment of Mr Mugenzuzi as a particular auditor of Mahindi Ltd. (5 Marks)

(iii) What is your view on the conduct of Board of Directors of Mahindi Ltd to deny Mr Mugenzuzi access to information in relation with the accounting records of the company? (5 Marks)

(b) Bihemu Ltd is a foreign company which has its head office in the City of Kigali. It has been operating in Rwanda for over twenty (20) years in food and restaurant industry. The facilities of this company have recently been marred with dirt and closures due to night noises. For this, the Minister decided the company be investigated.

(i) Under what conditions can the Minister order the investigation into a business? (8 Marks)

(ii) Who appoints the inspector to enforce the provisions of the Article 292 of the Law governing companies, and what are the qualifications of the inspector? (4 Marks)

(iii) What is the organ to bear monitoring and investigation expenses? (3 Marks)

(Total: 30 Marks)

End of question paper

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