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**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

11.3: COMPANY LAW

DATE: WEDNESDAY 28, AUGUST 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.**

SECTION A

QUESTION ONE

a) A Company is a legal entity formed by a group of persons, or shareholders, with the primary purpose of engaging in business activities, such as manufacturing, trading, or providing services. The formation of a company involves the issuance of shares or ownership stakes, and it operates under specific legal structures and regulations, one of the major principles is the shared understanding and commitment of the parties involved in a business venture including profit sharing by shareholders.

Required:

- i) In relation to profit sharing, explain the concept of “Affectio societatis.” (2Marks)
- ii) Discuss the relevant pre requisites before the vacation of profit sharing by shareholders or directors of the company. (7Marks)

b) During incorporation one of the prerequisite is having of a proper name. A company may generally use recognised abbreviation of a word or words in the name of a company at any time so long as it is in a not misleading, however even after incorporation the name may be changed by altering the name indicated in the memorandum of association with approval of the registrar of companies

Required:

- i) State the relevant provision of law before altering of an existing company name (4Marks)
- ii) Highlight a brief procedure for the alteration of the name (4Marks)

c) Shadrack Mugabo and Onana Fidel were students at the Adventist University of Rwanda pursuing entrepreneurship and business management courses. After their studies, they registered a company by the name Twin brothers Ltd. As promoters of the company, they had a discussion on the nature of company to establish, they agreed that they should form a private company but in order to raise more capital they shall include some of their old friends who were willing to join them in the venture as shareholders.

They prepared company documents including Memorandum of Association MOA and Article of association AOA however there was disagreements regarding the liability of the company, due to limitation of funds the first proposal was to form company that is either unlimited by or limited by guarantee, this was opposed by majority of the members. The second proposal was to form a company limited by shares and that these shares be in the form of calls based on the per value of the shares. An initial application value to be paid while calls shall be made later as the business grows.

They unanimously accepted this second proposal subsequently the company was registered and Onana Fidel has approached you for more explanation on the liability of the shareholders based on the proposal above.

Required:

- i) As person with knowledge in company law, explain to Onana Fidel on the shareholders liability based on the above proposal. (4 Marks)
 - ii) Briefly explain the liability of shareholder of a company in relation to Shares converted to be with no per value and in relation to when a corporate veil is lifted. (4 Marks)
- (Total: 25 Marks)**

QUESTION TWO

a) Gatsata Plc Ltd company was incorporated in 2015 to deal with motor vehicle spare parts within Kigali and adjacent towns, at the time of incorporation the company had five shareholders with two directors namely Nahimana and John. Due to the improving prospects of the business, there was need of more funding to facilitate the company growth by expansion in other towns.

The directors in a meeting of shareholders made a proposal either to fund the expansion plan by issuing shares to the public or to finance the plan by use of debt majorly by debentures. Upon careful deliberations, the existing shareholders opted for debt rather than shares for fear of diluting the control of the company's decision-making. Subsequently, the debentures were floated to the public and the past customers subscribed them due the company's goodwill.

Due to the Covid pandemic of 2019, the company was unable to pay the interest to debenture holders leading accumulated liabilities and subsequently worsened by increases in price of spare parts. This was accompanied by the push by the government advocating the use of green energy to combat climate change as well poor management and this has made the unpaid liabilities to accrue for more years.

Claudine one of the debenture holders is aggrieved due to the non-payment of interest and is proposing that the company be liquidated due to insolvency

Required:

- i) As a company law student, do you agree with Claudine that the company is insolvent given the above circumstances? (2 Marks)
- ii) In relation to insolvency, explain to Claudine if insolvency can lead to liquidation as per her wish. (4 Marks)
- iii) Discuss the consequence of insolvency declaration by court to Gatsata Plc Ltd shareholders as an action by creditors. (5 Marks)

b) The Directors of a company are allowed to borrow money on behalf of the company as long it is done within their powers and in good faith, where such borrowing is done the creditor may either be given a floating charge or a fixed charge on company assets.

Required:

- i) Differentiate between a fixed charge and a floating charge. (1Mark)

ii) Enumerate the key rights attached to company creditors before winding up and during winding up. (6 Marks)

c) RSL Ltd is private company that was incorporated many years ago in Butare for the purpose of manufacturing sweets and processed drinks ,however due the community focus on more natural foods with low sugars, the company has been making loses over the last two years. As result Alexis, one of the directors of the company is proposing that preference, shares been converted to ordinary shares or non-cumulative preference shares as one of the recovery measures to allow the company return to profitability.

Required

i) Explain the positive effect if any, to the above measures proposed by Alexis as part of reconstruction process to the company. (4 Marks)

ii) Other than improving the capital structure and reduction in costs of financing the business is there any other reason as to why the company can undertake reconstruction process. (3 Marks)

(Total 25 Marks)

QUESTION THREE

a) Nyamirambo Ltd is a private company operating in Rwanda since 2019. It is registered by RDB as a company specializing in the supplies of electronic billing machines. It has a capital of eight hundred million francs (FRW 800,000,000) divided into four thousand (4,000) shares worth two hundred thousand francs (FRW200, 000) each. The company has ten (10) shareholders and four directors. In early 2024, the company was converted to a public company through a resolution of shareholders to facilitate its growth prospects. Subsequently the shares were issued to the public for subscription. James Nabwire is one of the person who wish to subscribe to the shares of the company but does not have proper information regarding shares and seeking to acquire more information from you before acquisition of shares.

Required:

i) James Nabwire has approached you for advice regarding the characteristics of shares as per the company law of Rwanda, advise him appropriately. (5marks)

ii) Enumerate any restrictions on allotment of such shares by a company (4marks)

b) African Progression Bank Ltd is a company that was incorporated in Kenya number of years ago to provide loans to small and medium enterprises in order to facilitate growth of farmers. Due to their affordable loans sponsored by non-governmental organizations, the uptake of loans has been tremendous. This has not only made it a leading bank but also one of the most reputable banks in Kenya. In 2022, the company directors proposed to expand the bank to the neighbouring countries, one of them being Rwanda. The company made an application to the Registrar General of companies for incorporation, which was successful and subsequently was incorporated in Rwanda. Due to withdrawal of sponsorship, the company's performance significantly reduced in Kenya and the court order was issued for it to be liquidated in Kenya; however, the performance in Rwanda is still impressive. Olivier Masaka one of the directors

in Rwanda is of the view that the company should not be liquidated here in Rwanda, as the performance is good.

Required:

- i) As company law student, is the view of Olivier Masaka valid? why? (5 Marks)
 - ii) State and explain the circumstances under which a foreign company should be wound up. (6 Marks)
- (Total 20 Marks)**

QUESTION FOUR

a) Kigali Tech Plc Ltd is accompany that was incorporated in Rwanda six years ago to import and supply electronics in Kigali and adjacent towns, Ingabire who is one of the major customer of the company through a friend has heard that the company was put under receivership and it is subsequently subject to compulsory winding by the court. Ingabire is now worried since Kigali Tech Ltd supplies most of the products of her business; she had also deposited twenty million francs (RWF 20,000,000) with company for goods not yet delivered.

Required:

- i) Ingabire who is one of the stakeholders of Kigali Tech Plc Ltd company approached you for advice regarding compulsory winding of the company by court, explain to her persons who can initiate any form of winding up (4 Marks)
 - ii) State the procedure under which the company may be wound by the court (6 Marks)
- b) A liquidator generally is a person who helps to complete the liquidation proceedings as per the law and shall hold office for the duration of liquidation until its completion.

Required:

- i) Explain four duties of the liquidator appointed by the court (4marks)
 - ii) State and briefly explain the effect of appointment of a liquidator by the court (6marks)
- (Total 20Marks)**

SECTION B

QUESTION FIVE

a) Muhoze, Rukundo, Samuel and Rwamagana are long-time friends and neighbours in Muhanga district and all engage themselves in dairy farming business. Due to mutual interest Muhoze made a proposal that they start a common business since all of them are in the dairy farming, however the rest made different opinions. Muhoze was proposing that they establish a company with small deposit to facilitate starting of operations with a guarantee to pay specific amount in case the company is unable to pay its debts. Rukundo was of the view that the best business to start is the one where they only become members but not shareholders with voluntary exit and entry based on mutual benefit with a democratic control. All this proposal were opposed by Samuel and Rwamagana and they were of the view that they contribute capital where profit sharing will be based on capital contributed with no need of forming the company but they should have an agreement among the capital contributors on profit sharing and management of the business or every person to have business individually.

Required:

- i) Identify the various types of business forms as described by the scenario stating their individual business liability (4 Marks)**
- ii) As accompany law expert give three deference between proposal Rukundo and a public limited company (3 Marks)**

b) Gatsibo Plc Ltd company issued shares as means of raising capital to facilitate its expansion plan through the prospectus. The ordinary shares with no voting rights with dividend payable last, after all other shareholders have received dividends and at the option of the company to acquire them back after some years. Shares with rights to receive fixed dividend whether the company makes profit or not. Shares with dividend payable in the current year but not in subsequent years if the company does not make profit while the rate of dividend is fixed.

Required:

- i) Identify and explain the types of shares described above (3 Marks)**
- ii) Subject to the provisions of incorporation documents, the shareholders of a company may have a pre-emption rights, explain meaning of pre-emption rights in relation to shareholding. (2 Marks)**
- c) According to the company act of Rwanda, a foreign company must have its full name stated clearly in easily legible roman letters in a conspicuous position outside every office or place in which its business is carried on, however there are other obligations imposed by the law on foreign company for they must comply.**

Required:

Explain key obligations of foreign companies in Rwanda as per the companies Act. (8 Marks)

d) Nyamagabe Plc Ltd Company was formed in 2022 and it is one of the best performing companies. Its directors include Mbanda Innocent, Mugabo Paul and Omwimana. The company for the last two years has been giving good dividend to its shareholders and the Managing director Mbanda Innocent was of the view that there is no need of shareholders meeting since there was no complaint by shareholders on affairs of the company. During the directors meeting the Managing director made a proposal to borrow fifty million francs (RWF 50,000,000). Charles however. The company's articles of association only allowed directors to borrow money up to a maximum of twenty four billion (RWF 24,000,000,000). All the directors except Mugabo Paul agreed the proposal but since the majority of directors had consented to the proposal money was borrowed as per the directors wish.

Honorine is one of the shareholders is aggrieved and has approached the directors claiming gross violation in relation to their decision but the directors have refused to listen to her claiming that no shareholders rights have been violated.

Required:

i) As company law expert, do you agree with the decisions of directors? and why? (3Marks)

ii) Other than, the above scenarios explain the rights of shareholders in relation to right to information. (4Marks)

e) As per the laws of Rwanda, a company incorporated under the Law is a body corporate and a legal entity with its own rights and obligations separate from its shareholders or members. The company continues in existence until it is removed from the register of companies, however in certain circumstances the legal personality may be lifted under the same law.

Required:

Highlight any three reasons as to why the legal personality may be lifted. (3 Marks)
(Total 30 Marks)

QUESTION SIX

a) Mr. Shema Nsengiyumva is a shareholder of a company specialized in the sale of real estates within Musanze town. The company named Home Gates Ltd is registered with the institute of surveyors since October 2015. Being the leader in its field for many years, this company has experienced a period of decline since 2017. Following the Covid pandemic, sales have dropped by more than 80% and loan repayment requests were becoming more and more on default. Thereafter, the company has completely fallen in debts and is on the verge of liquidation. From the year 2020, the company has not been receiving substantial income thus affecting its ability to repay existing debt obligations. This has significantly affected its operations and as a result an application was made by creditors to the court for liquidation of the company. The court ruled in favour of creditors and a liquidator was appointed in the year 2023. The liquidation process has been on going until recently when the liquidator made an application of release by the court.

Required:

- i) Explain the criteria of liquidator application for release and consequences of such release. (4 Marks)
- ii) Discuss the effect effects of the release of the liquidator in case of winding up (3Marks)
- iii) Highlight the key contents of liquidators report to be submitted to court before release. (3 Marks)

b) Most the companies including commercial banks in Rwanda have opted to corporate restructuring rather liquidation where there is need for business continuity, some of the common strategies adopted have included takeover, mergers and amalgamation among others.

Required:

- i) Explain the concept of amalgamation by differentiating it from takeover and merge as a corporate restructuring strategy (4 Marks)
- ii) Discuss the pre requisite procedures to be followed by the companies in amalgamation process as per the law (6 Marks)

c) Daniel Murakoze is one among the shareholders of Huye Transporters Ltd a private company with ten (10) shareholders. The company has appointed two directors namely Divine Ishimwe and Umwimuna Marie. The management of the company has not been good for the last two years. The shareholder are of the opinion that they should be able to manage the company by regulation as the law empowers shareholders to do so through company resolution.

Required:

Advice Daniel Murakoze how he can exercise control of the company through resolution by shareholders. (4 Marks)

d) To encourage investment by the public the government has been simplifying the laws relating to business registration and incorporation. However, there is still a gap in understanding the various forms of business. One of the people seeking information about this development is Mr Kwizera who is planning to make an investment in Remera centre has approached you for advice regarding the formation of companies and other un-incorporated business forms that does not require incorporation procedures as he believes that company formation is too expensive.

Required:

Advice Mr Kwizera on the key differences between the two forms of business as described in the above case scenario.

(6 Marks)

(Total 30 Marks)

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