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**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

11.3: COMPANY LAW

DATE: WEDNESDAY, 27 JULY 2022

INSTRUCTIONS:

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

SECTION A

QUESTION ONE

(a) Based on the information provided in the documents of incorporation, Gicumbi Smart Ltd. was incorporated, and the certificate of incorporation was issued by the Registrar General of Companies. The documents of incorporation were duly signed, except that Batamuliza, Ingabire and Munyana signed it on behalf of five minors.

Required:

Examine the validity of the certificate of incorporation issued by the Registrar General of Companies for the aforesaid company (5 Marks)

(b) A group of persons, called promoters have submitted an application to the Registrar General of Companies for getting Gasabo Public Limited incorporated as a public company. Pending the Registrar's decision of granting certificate of incorporation, the promoters entered into certain contracts for the purchase of some assets for the proposed Gasabo Public Ltd Company.

Required:

Explain the legal position of promoters' liability and the liability of the proposed company after its incorporation. (5 Marks)

(c) Olivier, Rukundo and Uwamahoro are intending to form a company, but they do not intend to have the members of the company to transfer their shares freely, nor do they want to invite the public to subscribe to the shares and finally they only want the membership of the company not to exceed 50. Uwamahoro is not comfortable with the conditions set out.

Required:

Discuss the validity of the aforesaid conditions and distinguish a public company from a private company. (7 Marks)

(d) Rwamagana Public Ltd Company was registered as a public company with 205 members as follows: Number of Directors and their relatives 45, Employees 12, Ex-employees 08 (shares were allotted when they were employees) and others 140. The Total number of members being 205. The Board of directors of the company has taken a decision to convert the company into a private company.

Required:

As a student of company law, the Board of directors seeks your advice about the steps to be taken for conversion of the company into a private company according to the Law N° 007/2021 of 05/02/2021 governing companies in Rwanda. (4 Marks)

(e) Citing the relevant article of the Law N° 007/2021 of 05/02/2021 governing companies in Rwanda **explain the duties and liabilities of the directors of a company.** (4 Marks)

(Total: 25 Marks)

QUESTION TWO

(a) Mutembezi John and Nyirigira Idhephonse are shareholders of Nyamata Ltd Company. Since the company is not doing very well the directors of the company convened an extra ordinary meeting of the members to ask the members to allow the company to borrow money so that it can boost its business. In this meeting the directors convinced the members that in order for the company to raise good money the interest must be attractive. Indeed, the members approved a resolution to the effect of borrowing from the public with good interest. Since Mutembezi John and Nyirigira Idhephonse are rich men of Nyamata they are very much attracted by the interest they will receive by lending to the company. They approached the directors of the company and they offered to each, lend the company FRW 100,000,000 to which the directors accepted without hesitation

Required:

- (i) As a student of company law critically **examine the above scenario and advise both the directors of the company and Mutembezi John and Nyirigira Idhephonse accordingly** (4 Marks)
- (ii) **Explain any three differences between a share and a debenture** (6 Marks)

(b) Ndera Gasabo Public Ltd Company has invited the public to subscribe for the shares. However, the company has subdivided the shares to different classes as follow: Shares whose value is FRW 100,000,000, Shares whose value is FRW 50,000,000, Shares whose value is FRW 20,000,000, Shares whose value is FRW 10,000,000 and finally Shares whose value is FRW5, 000,000. Further the prospectus provides the entitlements to the members of each class. For the first category they shall have special voting rights and they are given the first priority to get dividends notwithstanding that the company has not made good profit. The second category is also given special voting rights but second priority in sharing dividends notwithstanding that the company has not made good profit. The third category is given ordinary voting rights and they can only share the dividends when such dividends have been declared by the company. Finally, the fourth and fifth categories have no voting rights at all and dividends shall be shared if the company has declared such dividends. Gilbert and Peace subscribed for the fourth and Fifth categories respectively having not paid much attention to the conditions. When the company called for the Annual General Meeting (AGM) of the company, Gilbert and Peace were among the very many members who attended the AGM. To their surprise as a number of issues were being decided through voting, Gilbert and Peace and many other members who held the fourth and fifth categories of shares were not allowed to vote completely.

Required:

- (i) **Examine the above case scenario and explain to Gilbert and Peace and the colleagues that they have not been discriminated by being treated as second class citizens contrary to the constitution.** (6 Marks)
- (ii) **From the above scenario discuss any three types of shares of the company** (6 Marks)

(iii) **Outline any three restrictions on allotment of shares that has been imposed by Law N° 007/2021 of 05/02/2021 governing companies in Rwanda against the company.**

(3 Marks)

(Total: 25 Marks)

QUESTION THREE

Rubirizi Public Ltd Company is a well-known company dealing with animal feeds in Rwanda and it is enrolled in the Kigali stock market. Due to the outbreak of the Covid-19 pandemic two years ago the company experienced some financial constraints forcing the directors to borrow from the public. The documents evidencing the debt indicated that it was due to payment within the period of two years. Unfortunately, the company has been unable to pick up due to the continued implications of the pandemic. Mugabo and Ruliza were among the debenture holders who advanced FRW 200,000,000 each to the company. Despite several request demands the company has demonstrated its inability to pay them and all those others that it owes millions of Francs. Mugabo and Ruliza are contemplating to take the company to court because it is clear that the company is bankrupt

Required:

a) **Explain to Mugabo and Ruliza the position of law on the procedure followed to liquidate Rubirizi Public Ltd company** (8 Marks)

b) **Explain the position of Law N° 007/2021 of 05/02/2021 governing companies in Rwanda on the appointment of liquidators and their duties.** (6 Marks)

c) **Describe any three differences between winding up of a company and dissolution of a company** (6 Marks)

(Total: 20 Marks)

QUESTION FOUR

(a) Munyana is a small shareholder of Kibabaga Public Ltd Company which was incorporated in 2020. On 1st August 2021 Munyana was appointed as the small shareholder director of Kibabaga Public Ltd Company. In the month of December 2021 Munyana went to the company to inspect the books of accounts underscoring the fact that financial records are critical to the success of any organization. They are valuable assets or resources that must be well managed, protected or safeguarded because they are the very basis of financial management, support public accountability, expose corruption, promote efficiency and ensure resources are matched to objectives. However, the accounts manager of Kibabaga Public Ltd Company denied Munyana to inspect the books of accounts on the basis that it was prejudicial to the interest of the company if Munyana was to be allowed to inspect.

Required:

Explain as per to the provisions of law governing companies in Rwanda whether Munyana had power to inspect the books of account. (6 Marks)

(b) The financial statement of Gitarama Public Ltd Company specified that the net worth of the company for the Financial Year ended 31 March 2016 was FRW 600,000,000. The Company wants to spend in the financial year 2016-17 in Corporate Social Responsibility Policy. The information available regarding the profits of all preceding three financial years are as follow: - The year 2015-16 FRW 100,000,000, the year 2014-15 FRW 160,000,000 and the year 2013-14 FRW 120,000,000. The Board of Directors had not specified in board of directors' report about the amount and details of expenditure in Corporate Social Responsibility policy.

Required:

Discuss the position of Law N° 007/2021 of 05/02/2021 governing companies in Rwanda in the light of the above scenario. (6 Marks)

(c) Kitovu Public Ltd Company was formed in October 2021 and so far, it has attracted a good number of members. Stratton, Gilbert, and Olivier who are qualified certified Public Accountants of Rwanda CPA(R) are the directors of this company. In its recent meeting, the Board of directors unanimously resolved to appoint two auditors of the company. The majority of the directors felt that there was no need of appointing auditors from outside when these competencies are available among the directors. Therefore, Stratton and Gilbert were appointed as the auditors of Kitovu Public Ltd Company.

Required:

(i) **Do you support the reasoning of the Board of Directors of Kitovu Public Ltd Company on the appointment of Stratton and Gilbert as the auditors (support you answer)** (4 Marks)

(ii) **Citing Law N° 007/2021 of 05/02/2021 governing companies in Rwanda explain the qualifications and disqualification of an auditor of a company** (4 Marks)

(Total: 20 Marks)

SECTION B

QUESTION FIVE

(a) Nyagatovu Public Ltd Company and Muhima Public Ltd Company are both companies registered in Rwanda and dealing with infrastructural activities like construction of roads, houses, and other such like projects. Due to the outbreak of Covid-19 the two companies were adversely affected to the extent of being unable to discharge their mandate. In order for the two companies to remain afloat the directors convened a meeting where it was resolved that the two companies amalgamate and form Remera Public Ltd Company as an amalgamated company. Given that the composition of the shares of the two companies is not the same and some shares need to be converted the amalgamation proposal did not provide a formula for such conversion. Furthermore, there is no direction on compensation of directors of the respective amalgamated companies

Required:

- (i) **Critically examine the above case scenario in the light of amalgamation proposal** (4 Marks)
- (ii) **Citing Law N° 007/2021 of 05/02/2021 governing companies in Rwanda explain the terms of amalgamation as set out in the amalgamation proposal** (8 Marks)
- (iii) **Explain the rights of the creditors of Nyagatovu and Muhima Public Ltd Company when Remera Public Ltd company does not satisfy the solvency test** (4 Marks)

(b) Gitarama Public Ltd Company was formed in 2015 as a company dealing with high end quality furniture for export. The company has been performing very well over years and the returns to the members have been very impressive. In its Annual General Assembly of members, the directors informed the members of the need to position the company strategically so that it can even make more profit. The members were very excited, and they unanimously voted to approve the changes proposed by the directors in order to make the company more competitive and more profitable. The directors were mandated to amend both the articles of association but subject to publication formalities. The directors while making these amendments they increased the liability of the members without their consent, and they equally varied the creditors' rights

Required:

- (i) **State the operation contemplated in the above case scenario and explain whether the said case scenario is in compliance with Law N° 007/2021 of 05/02/2021 governing companies in Rwanda.** (4 Marks)
- (ii) **Explain the position of the creditors of the company when a company merger or amalgamates** (6 Marks)
- (iii) **Citing Law N° 007/2021 of 05/02/2021 governing companies in Rwanda briefly explain the grounds for removal of a solvent company from the register of companies.** (4 Marks)

(Total: 30 Marks)

QUESTION SIX

Mogunero Public Ltd Company as a subsidiary of Butare Public Ltd Company is holding 40% of the shares of Butare Public Ltd Company. In a meeting of the Board of Directors of Butare Public Ltd Company a resolution was passed authorizing the company to transfer 10% of its shares to Mogunero Public Ltd Company. In addition, the Board of Directors further resolved to provide financial assistance to two prospective members who were allotted shares but they are financial down for the time being for them to purchase the shares allocated to them by Butare Public Ltd Company

Required:

- a) **Examine the legal implications of the resolutions passed by the board of directors of Butare Public Ltd Company** (4 Marks)
- b) **Examine the first resolution of the Board of Directors of Butare Public Ltd Company in the light of Law N° 007/2021 of 05/02/2021 governing companies in Rwanda regarding Circular Holding** (8 Marks)
- c) **Examine the second resolution of the Board of Directors of Butare Public Ltd Company in the light of Law N° 007/2021 of 05/02/2021 governing companies in Rwanda regarding requirement for financial assistance to promote shares** (8 Marks)
- d) **Explain the position of Law N° 007/2021 of 05/02/2021 governing companies in Rwanda regarding the dissolution of a limited life company** (10 Marks)

(Total: 30 Marks)

End of question paper

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