



CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS
II.3: COMPANY LAW
DATE: WEDNESDAY 29, NOVEMBER 2023
MARKING GUIDE AND MODEL ANSWERS

SECTION A

QUESTION ONE

Marking guide

Sub question	Criteria	Marks
(a)	2 marks for any capacity discussed, Maximum 4 marks	4
(b)(i)	2 marks of any argument related to law, Maximum 4 marks	4
(b)(ii)	2 marks for any answer related to law, Maximum 4 marks	4
(b)(iii)	2 marks of any well explained and 1 mark in a case a director has filed a notice with the Registrar General, Maximum 13 marks	13
Total for Question 1		25

Model answers

a) The student is expected to know the capacity of the company when it is incorporated as provided for by the law governing companies in Rwanda.

- An incorporated company has, both within and outside Rwanda, full capacity and rights to undertake any business or activity, do any act or enter into any transaction and has full rights, powers and privileges to do so in Rwanda.
- An incorporated company has, both within and outside Rwanda, full capacity and rights to undertake any business or activity, do any act or enter into any transaction and has full rights, powers and privileges to do so outside of Rwanda

b)

i) The student is expected to know if always a contract can be cancelled on the fact that it is contrary to Memorandum of Association or Articles of Association.

- The memorandum and articles of association have the effect of a contract and are binding as between the company and shareholders and members and between the shareholders or members themselves.
- An act of a company and transfer of property to or by the company is not invalid by reason merely that the company does not have the capacity, the right, or the power to do the act or to transfer or take a transfer of the property.

ii) The student is expected to know how a service of a notice is done

- The way used of calling by phone for a notice to Mwiza Ltd is not legal.
- According to law a person is deemed to have received a notice when the communication intended for him or her reaches his or her address.
- A person is not deemed to have received a notice of any matter merely because of its being disclosed in any documents kept by the Registrar General or made available by the company for inspection.

iii)The student is expected to know how the situations of not asserting against a person dealing with a company

- The contract should not be cancelled basing on the fact that it has been signed by the wrong person on behalf of GKN Ltd.
- Article 28 of the Rwandan company law of 2021 provides that a company or a guarantor of an obligation of a company cannot assert against a person dealing with the company or with a person who has acquired property, rights, or interests from the company that:
- The articles of association of the company have not been complied with;

A person named as a director of the company in the most recent notice filed with the Registrar General:

- Is not a director of the company;
- Is not duly appointed;
- Or does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

A person held out by the company as a director, employee, or agent of the company:

- Has not been duly appointed;
- Does not have authority to exercise a power which a director, employee, or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
- A person held out by the company as a director, an employee, or agent of the company with authority to exercise a power which a director, employee, or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power;
- A document issued on behalf of a company by a director, an employee, or an agent of the company with actual or usual authority to issue such documents is not genuine or not valid.

QUESTION TWO

Marking guide

Sub question	Criteria	Marks
(a)(i)	2 marks of each well explained restriction on company name, Maximum 10 marks	10
(a)(ii)	1 mark on a well discussed procedure, Maximum 4 marks	4
(b)(i)	1 mark on well-articulated answer, Maximum 3 marks	3
(b)(ii)	2 marks of each situation that can be a ground of being requested to abandon a name, Maximum 8 marks	8
Total for Question 2		25

Model answers

a)

i) The student is expected to know the restrictions on company name

The Registrar General does not reserve or register a name:

- Which, or the use of which, would contravene any Law;
- Which may be misleading;
- Which goes against good morals;
- Which is identical or almost identical to a name that the Registrar General has already reserved for another company;
- Which is identical with that of an existing company, or statutory corporation, or so nearly resembles that name as to be likely to mislead, except where the existing company or statutory corporation is in the course of being dissolved and signifies its consent in such a manner as the Registrar General requires.

(ii) The student is expected to know the procedures of changing a company name in Rwanda

- An application to change a company name is made following the form prescribed by the Registrar General.

An application to change the name of a company must:

- Prove that the resolution to change the company name was passed by the company shareholders unless the incorporation documents allow for the change to be made by the directors in which case, proof of a resolution of the Board of Directors of the company;
- Indicate the new name contemplated for the company.
- Subject to its incorporation documents, an application to change the name of a company is not an amendment of its incorporation documents.

b)

i) The student is expected to know if it is possible to dispense to add the abbreviation “Ltd” on a company name of a limited company

- Yes, it is possible that the Board of Directors may direct that the entity be registered as a limited company without the addition of the abbreviation “Ltd” to its name when it is proved to the satisfaction of the Registrar General;
- That a limited company to be formed has an objective of promoting commerce, art, science, religion, charity or any other useful objective;
- And intends to apply its profits or other income in promoting its objectives;
- And that it does not intend to distribute its dividends to its shareholders.

(ii) The student is expected to know when a company is required to abandon a name

A company is required to abandon a name when at any time the Registrar General believes that:

- A company’s registered name gives a misleading indication of the nature of its activities that is likely to cause harm to the public;
- A company’s registered name does not comply with the requirements of the company law;
- misleading information has been given for the purpose of a company’s registration with a particular name;
- Undertakings or assurances given for the purpose of a company’s registration with a particular name have not been fulfilled;
- The Registrar General may direct the company in writing to change its name within a period of forty-five (45) days from the date on which the direction is served on the company.

QUESTION THREE

Marking guide

Sub question	Criteria	Marks
(a)	1 mark of well explained position, Maximum 5 marks	5
(b)	2 marks of each listed situation, Maximum 10 marks	10
(c)	1 mark for each order well discussed, Maximum 5 marks	5
Total for Question 3		20

Model answers

a) **The student is expected to explain if a member of the Board of Directors that has a transaction which is beneficial to the company is enough for not disclosing to register of interests**

- The accused Director was wrong;
- Article 167 paragraph 1 of the Law governing companies in Rwanda of 2021 provides that a director or controlling shareholder of a company who is interested in a transaction or proposed transaction with the company, shall immediately after becoming aware of the transaction or proposed transaction cause to be entered in the register of interests, the annual report of the company and;
- If the company has more than one director, disclose to the board the nature and extent of his or her interest and where the interest can be quantified and the monetary value of that interest.

b) **The student is expected to know the situations of transactions can be treated as interested to the member of the Board of Directors**

A director of a company is to be treated as interested in a transaction to which the company is a party if the director:

- Is a party to or will or may derive a material financial benefit from the transaction;
- Has a material financial interest in another party to the transaction;

Is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is:

- The company's holding company being a holding company of which the company is a wholly owned subsidiary;
- A wholly owned subsidiary of the company;
- Wholly owned subsidiary of a holding company of which the company is also a wholly owned subsidiary;
- Is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction;
- Is otherwise directly or indirectly materially interested in the transaction.

c) **The student is expected to know the possible orders can be taken against the member of the Board of Directors who failed to disclose interest and caused a loss to the company**

The court which the action is referred to considers the action, and may order that:

- That director be disqualified from continuing to serve as a director of that company;
- Such director be disqualified from representing or holding a position on the Board of Directors or management of a company for a period of at least one (1) year;
- Such director, as well as other directors who improperly approved the transaction knowing of the interest, are liable to the company or the shareholders for damages caused to them resulting from such misconduct which is unfair or prejudicial to them;
- A director is liable to repay profits earned by such director as a result of the transaction;
- A transaction entered into in the manner provided for under this provision is made void.

QUESTION FOUR

Marking guide

Sub question	Criteria	Marks
(a)	2 marks for any requirement well provided and 1 mark for the position of the case study, Maximum 10 marks	10
(b)	1 mark of the well explanation of the position and 2 marks of any well listed person, Maximum 6 marks	6
(c)	2 marks for any well listed ground, Maximum 4 marks	4
Total for Question 4		20

Model answers

a) **The student is expected to know the requirements for financial assistance to promote shares**

- The proposal is legal as provided for by the article 186 of the Rwandan company law and the requirements based on article 188 of the same law.

A company may give financial assistance to a person to purchase shares allotted only if the directors have previously resolved that:

- The giving of the assistance is in the best interests of the company;
- The terms and conditions under which the assistance is given are fair and reasonable to the company;
- Giving the assistance in question is of benefit to any shareholders not receiving the assistance;
- The terms and conditions under which the assistance is given are fair and reasonable to any shareholders not receiving the assistance.
- Any such resolution must set out full reasons for the directors' conclusions.

b) The student is expected to know the persons allowed to the competent court to stop the unfair prejudice related to provide financial assistance by a company for the purchase of its own shares

- Yes, he has the right to apply to court for stopping an unfair prejudice as it is provided by article 230 of the Rwandan company law of 2021 and provides the persons eligible to apply to court to stop unfair prejudice.

It is provided that in case the company's affairs were done, are being done or are likely to be done in a manner which is prejudicial to the interests of any of its shareholders or other security holders or a director of the company, any insolvent person or a person likely to be insolvent may apply to the competent court to stop the unfair prejudice, and that person may be:

- A shareholder or other security holder in general;
- A beneficial owner of shares or other security holder;
- A director of the company or any related company.

c) The student is expected to know the grounds you may base on when you apply to the court for an order restraining the proposed financial assistance

A shareholder or the company may apply to the court for an order restraining the proposed financial assistance on the grounds that:

- It is not in the best interests of the company or of benefit to any shareholders not receiving the assistance;
- The terms and conditions under which the assistance is to be given are not fair and reasonable to the company or to any shareholders not receiving the assistance.

SECTION B

QUESTION FIVE

Marking guide

Sub question	Criteria	Marks
(a)	2 marks of well-defined a share, Maximum 2 marks	2
(b)	1 mark of any characteristic discussed, Maximum 5 marks	5
(c)	2 marks on the position and explanation, Maximum 4 marks	4
(d)	1 mark of each answer type of share, Maximum 9 marks	9
(e)	2 marks of each way of allotment of shares well discussed, Maximum 10 marks	10
Total for Question 5		30

Model answers

a) The student is expected to know the definition of a share

A share is one of the equal parts of a company's share capital issued to every shareholder or the company itself

b) The student is expected to know the characteristics of a share

The characteristics of a share in a company are:

- Are personal property;
- Are not in the nature of immovable property;
- Can be allotted;
- Confer to shareholders the rights provided in the law governing companies and in the company's incorporation documents;
- Are transferable subject to any restrictions or limitations set out in the company's incorporation documents.

c) The student is expected to know that a share is a movable property

- No, the argument of saying that a share is immovable property is wrong;
- The law in article 52 of the Rwandan Company law provides that a share is not in the nature of immovable property.

d) The student is expected to know the types of shares

Types of shares may be

- Be ordinary;
- Be redeemable;
- Confer preferential rights to distributions of capital or income;

- Confer special, limited or conditional voting rights;
- Not confer any voting rights.
- I can choose a share that can confer me preferential rights to distribution of capital or income because to invest in a company is because I want to get profit. So, as I will be the first to get it compared to other shareholders, my shares will not get lost;
- I can choose a share that can confer me special voting rights because my votes will help me to ensure that my interests are protected.

e) The student is expected to know how an authorization to allot shares can be provided

Article 58 of the Rwandan company law provides the procedures for authorization of allotment of shares. It provides that subject to any restrictions of provisions in the incorporation documents of a private company or of any options by the shareholders of a private company provided for under article 203 of the Rwandan company law of 2021 related to registration of amalgamation, a company may allot shares from time to time as decided by shareholders by ordinary resolution or, in the case of a public company, by the Board of Directors, in specifying:

- The rights, privileges, limitations and conditions attached to each share to be allotted, and its transferability;
- The maximum number of shares to be;
- The date, if any, when such authority to allot shares expires.
- A resolution for allotment of shares is submitted to the Registrar General within fifteen (15) days of its adoption. Subject to the provisions of incorporation documents, the requirement to allot shares in accordance with shareholders' pre-emption rights does not apply in the case of a public company;
- Subject to the provisions of incorporation documents, the requirement to allot shares in accordance with shareholders' pre-emption rights does not apply in the case of a public company.

QUESTION SIX

Marking guide

Sub question	Criteria	Marks
(a)	1 mark for each fundamental right listed attached to share, Maximum 7 marks	7
(b)	1 mark for any method discussed, Maximum 3 marks	3
(c)	2 marks of each time date for determination of shareholders entitled to receive notice of or vote at a meeting of shareholders, Maximum 8 marks	8
(d)	2 marks of each document listed and 2 marks of any time limits well specified, Maximum 12 marks	12
Total for Question 6		30

Model answers

a) The student is expected to know the fundamental rights attached to shares

Shares confer the following on their holders:

- The right to share in the distribution of the dividends of the company;
- The 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 the Rwandan company law of 2021 or the company's incorporation documents, the right to vote on shareholders' resolutions includes:

- Appointing or removing an auditor or director;
- Approving a major transaction;
- Adopting or altering articles of association;
- Dissolving the company;
- Approving an amalgamation in accordance with the provisions of the Rwandan company law of 2021.
- Where a company has more than one class of shares, the classes confer all the rights set out, but one class need not confer any of such rights on its holder.

Unless otherwise specified in the incorporation documents, each share has attached to it the following rights:

- 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;
- With respect to the right to vote on shareholders' resolutions, the right to one vote.
- Subject to the provisions of the Rwandan company law of 2021, if the company is a public company, a share is fully transferable.

- If the company is a private company, unless some other restriction on transfer is specified in its incorporation documents, a share is transferable subject to the right of the shareholders to decline to register a transfer to a person of whom they do not approve. The right to decline registration also applies to a person to whom the right to any share in the company has been transferred by operation of the Rwandan company law of 2021.
- b) **The student is expected to know the method of sending documents to shareholders**
- Any document to be sent to shareholders may be delivered physically or by electronic means to the shareholder, posted or delivered to the address for that shareholder shown on the register of shareholders.
 - The document posted to a shareholder is deemed to be received by the shareholder five (5) working days after it is delivered to the address for that shareholder shown on the register of shareholders.
 - If a document sent to a shareholder at the address shown on the register of shareholders is returned unclaimed three (3) consecutive times, the company does not have to send any further documents to the shareholder until the shareholder notifies the company of his or her new address.
- c) **The student is expected to know the date for determination of shareholders' rights**

The date for determination of shareholders entitled to receive notice of or vote at a meeting of shareholders is:

- The close of business on the day immediately preceding the day on which the notice is given
- If no notice is given, the day on which the meeting is held.
- Basing on article 86 of the Rwandan Company law of 2021 paragraph 2, it is possible to be represented but a shareholder should take into consideration the date for the determination of shareholders rights for any purpose except determining the right to receive notice of or to vote at a meeting is at the close of business on the day on which the directors pass the resolution relating thereto.
- The Board of Directors fixes in advance a date on which the shareholders of the company are to be determined for the purpose of determining shareholders entitled to receive notice of or vote at a meeting of shareholders, provided that the date fixed may not precede by more than thirty (30) days or by less than ten (10) days the date on which the meeting is to be held.

d) The student is expected to know the documents to be sent annually to every shareholder of the company and time limits for disclosure of such information

The Board of Directors of a company sends to every shareholder of the company within the specified time limits the following documents:

- A copy of the company's annual accounts approved and signed;
- A copy of the auditor's report on those accounts;
- A copy of the Board of Directors' report relating to the same accounting period as those accounts.

The time limits for disclosure of such information are:

- Within seven (7) months of the company's accounting reference date, in the case of a private company;
- Within four (4) months of the company's accounting reference date, in the case of a public company.
- A private company may, through its incorporation documents or by special shareholder resolution, provide for more extensive or different information rights for shareholders than those set out in the article 88 of the Rwandan company law of 2021.

END OF MARKING GUIDE AND MODEL ANSWERS