

INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS
OF RWANDA

CPA



I1.3

COMPANY LAW

Study Manual

2nd edition February 2020,

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INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF RWANDA

Intermediate Level I1.3. Company Law

2nd Edition February 2020

This Manual has been fully revised and updated in accordance with the current syllabus/ curriculum. It has been developed in consultation with experienced tutors and lecturers.

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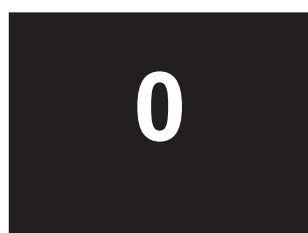
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Study Unit



INTRODUCTION TO THE COURSE

Stage: Intermediate Level

Subject Title: I1.3 – Company Law

Aim

This subject aims to ensure that the candidates understand the key aspects of Company Law and recognise issues that require the advice of a legal professional. In addition, it provides for the candidates insights on legal, regulatory and governance principles and requirements applicable to the company, its organisation and management.

Company Law as an Integral Part of the Syllabus.

The legal principles learnt in this subject will be relevant to students throughout their professional accountancy studies. In particular this subject is an integral component for the study of Financial reporting, Managerial Finance, Auditing, Advanced Financial reporting, Advanced Corporate Finance and Audit Practice & Assurance Services.

Learning Outcomes

On successful completion of this subject students should be able to:-

- Understand how to form a company
- Distinguish between companies and other business organisations
- Understand appointment of Directors, Secretary, Auditor
- Understand Company Accounts
- Understand procedures to be applied to Corporate Insolvency
- Understand a apply alternative procedures to winding up

Syllabus:

1. Company Law

- Nature & Classification of Companies
- Forms of business organisations
- Distinction between companies and other business organisations
- Law relating to other business organisations such as co-operative societies

2. Registration of a Company

- Memorandum and Articles of Association
- Promoters
- Legal consequences of incorporation

3. Share Capital

- Types of Share Capital
- Raising Share Capital
- Variation of shareholders rights
- Prospectuses
- Alteration, maintenance and reduction of capital
- The acquisition and redemption by a company of its own shares
- Financial assistance by a company for purchase of its own shares
- Dividends

4. Debt Capital

- Debentures
- Charges
- Registration of charges
- Remedies for debenture holders
- Borrowing powers of a company

5. Membership of a company

- Ways of becoming a member
- Register of members
- Rights and liabilities of members
- Termination of membership

6. Shares

- Classes of shares
- Issue and Allotment
- Transfer and transmission
- Mortgage of Shares
- Share Warrant

7. Meetings

- Classification of Meetings
- Notice of Meetings
- Agenda
- Proxies
- Quorum
- Proceedings at the meeting
- Resolutions
- Minutes

8. Directors

- Appointment of directors
- Qualification, disqualification and removal of directors
- Powers and duties of directors
- Compensation for loss of office
- Loans to directors
- Register of directors
- Disclosure of directors' interests in contracts
- The Turquand's rule
- Investor Protection
- Insider Dealing

9. The Secretary

- Qualification, Appointment and removal
- Position and duties
- Liability of a secretary
- Removal of a secretary
- Register of directors and secretary

10. Auditors

- Qualification, appointment and removal
- Remuneration of auditors
- Powers and duties
- Vacation of office

11. Company Accounts, Audit and Inspection

- Form and content of accounts
- Books of account
- Group Accounts
- Directors' report

- Auditor's report
- Investigation by the registrar
- Appointment and powers of inspectors
- Inspector's report

12. Corporate Insolvency

- Winding up by court
- Voluntary winding up
- Liquidators: Appointment and duties
- Release of liquidators
- Offences relating to liquidation

13. Alternatives to winding up

- Reconstruction
- Amalgamation
- Mergers and takeover
- Schemes of arrangement
- Rights of shareholders
- Rights of creditors

Study Unit

1

NATURE AND CLASSIFICATION OF COMPANIES

Contents

- A. Definition of Company
- B. The Company as Contract
- C. Shares
- D. Vocation to Profits Sharing
- E. Affectio Societatis
- F. Company as Institution
- G. Forms of Business Organisation
- H. Distinction between companies and other Business Organisations
- I. Legal Status of Companies
- J. Companies Moral Personality

A. CONCEPT OF COMPANY

The expression “company law” may be defined as a branch of law that governs the companies. It deals with all aspects relating to companies, such as incorporation of companies, allotment of shares and share capital, memberships in companies, borrowing by companies, management and administration of companies, winding up of companies. Thus, the company law is that law which exclusively deals with all matters relating to companies.

DEFINITION OF COMPANY

In Rwanda, companies are governed by the Law no 17/2018 of 13/04/2018. (Law governing companies 2018). 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. 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 (Law governing companies, Art. 3).

The contractual conception of the company prevailed for a long time. It has been followed then by another tendency that considered the company like a mixture of both the notions of contract and moral person to some extent depending on the type of companies. The present conception has the tendency to become gradually a combination of two notions but with a predominance of the institutional conception of a company.

B. THE COMPANY AS CONTRACT

Insofar as a company is a contract, it supposes a minimum of two parties and thus complies with general requirements of validity of the contracts: mutual assent, capacity to contract, object matter of the contract and licit cause (Law no 45/2011 of 25/11/2011 governing contracts, Art 4). The reading of the Article 154 of the Law governing companies leaves no doubt on who is qualified to be a Board of Directors member and lay out conditions for eligibility (not being under the age of sixteen (16) years; not being a discharged bankrupt, not being over seventy five (75) years of age; not subject to a disqualification by a court’s order; has not been sentenced in the immediately five (5) years to a penalty under the Law governing companies or the Law regulating Capital Market; complies with any qualification for members of the Board of Directors contained in the company’s incorporation documents; does not have a mental disability as certified by a board of recognized medical doctors). Nevertheless, the Law governing companies does not set special requirements for being a shareholder or party to a contract. But, one can argue with conviction that the majority to enter such a contract is sixteen (16) years as it is the majority set for any person to be eligible a Director of a company.

However, besides the above conditions common to all contract, a company contract has particular conditions. The mere contractual explanation is indeed insufficient insofar as the legislator regulates in an imperative way conditions to create a commercial company.

In the same way a company legally comes into existence after its compliance with an administrative formality of incorporation with the Office of the Registrar General which accords it legal personality (Law governing companies, Art. 23)..

As with regard to company contract, the shareholders agree to put in together the values, goods or know-how in order to share the profits.

The content of this agreement governs the functioning of the company. There is no company contract unless there is a combination of the following elements:

The shares from one or several shareholders;

The vocation of all to the profits;

The affectio societatis.

C. SHARES

In order to contribute to the formation of a share capital of the company, every shareholder must commit to subscribe for a share and is debtor of the share to the company. He/she owes to the company a guarantee similar to that of the seller in case of eviction. The share differs from a sale in that in return to the good of which its property is transferred, a shareholder does not receive a price, but a title representing his/her share capital in the company. In addition, to the difference of the sale that is a commutative contract, the share has an uncertain character because even though a shareholder knows the value of that he/she brings, he/she ignores the value of the share that he receives in return.

The company contract implies therefore putting together shares by each of the contracting parties. The share indeed, is the good which is transferred to the company by the shareholder in trade of which he is entitled some shares. In other words, it is good that the shareholder commits to put at the disposal of a company for a common exploitation. The notion of shares is instrumental to the constitution of a company, especially when it comes to corporations, where without share the whole idea of a company lacks substance. A contract involving shares implies two kinds of successive contract:

- the commitment to issue a share: the subscription
- the actual performance of the obligation which entails the dispossession of share to the profit of company: fulfillment.

In principle, the proportion of share capital which must be availed at the time of the subscription and that of the date of the calls for the outstanding is determined by articles of association. In return for his contribution, the shareholder gets some shares.

Generally, a share is a unit of ownership in the company's share capital, held by a shareholder or the company itself. Shares in the company are personal, intangible or chose in action, they can be allotted, confer to shareholders the rights provided in the law governing companies and in the company's incorporation documents, they are transferrable subject to any restrictions or limitations set out in the company's incorporation documents.

D. VOCATION TO PROFITS SHARING

The company is constituted to achieve profits which will be thereafter shared between members. Thus, the decisive criterion is not the search of profits but the sharing of profits between members. It is this criterion that distinguishes a company from an association, a cooperative, etc. With the latter, profits are not shared between the members.

The term profit has three possible significances:

- to begin with, it has been considered as a way of making money or a positive gain;
- then profit their benefit when there is an economy out of an expense;
- finally the profit is any pecuniary or material gain that is added to the fortune of the shareholders.

The profits and the modes of payment depend on the contractual will of the shareholders. The shareholders can adopt in the articles of association modes of distribution, but when the articles of association are mute, distribution of profits is proportionate to shares held by every shareholder.

Indeed, their profits should be measured against the involvement in investment. Also shareholders commit to contribute to losses.

E. AFFECTIO SOCIETATIS

Two essential elements at stake are estate sharing and vocation to the profits, it is necessary to add an intentional element which is in Latin “affectio societatis”.

This notion is multiform, as it is subject to several doctrinal definitions. The least common denominator is the will of all shareholders to collaborate, on an equal footing to the success of the common enterprise; this common will must not exist at the time of the creation of the company only, but must also continue during the whole social life. The affectio societatis is often strong in small size company but inexistent in the immense majority of companies ranked in stock market.

In short, the affectio societatis must be understood as the shareholders desire to unite in order to collaborate to the common enterprise success without any subordination to one another while accepting common risks. Some authors estimate that affectio societatis is of no value, since the contract of company requires the consent. It is therefore obvious that this contract implies the intention to create a company. The affectio societatis is however more of a feeling than a legal concept.

F. COMPANY AS 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.

G. FORMS OF BUSINESS ORGANISATION

Currently, business organization may take different forms: company, cooperative, association, mutual funds, etc.

Currently, a non-exhaustive list of business organization is provided for by the Office of Registrar General. There are no longer in Rwanda classifications of business activities.

As for business organisations, a number of organizations are eligible to carry out business activities. These organizations may be public or private. As a result of liberal economy Rwanda is currently adopting, any legal entity or person is allowed to carry out business activities. For instance, a business organization can be a company which is traditionally a business organization, a cooperative i.e. some cooperative organisations are business organisations (cooperative banks, production cooperative, etc), non-profit making organisation (churches, mutual funds, etc), States, and its institutions etc.

H. DISTINCTION BETWEEN COMPANIES AND OTHER BUSINESS ORGANISATIONS

The Law governing companies distinguishes two categories of companies (public company and private company) and four types of companies (company limited by shares, a company limited by guarantee, a company limited by both shares and guarantee and unlimited companies). The discussion on the form of business organization will be carried out in Unit 2.

The main distinction between a company and any other business organization is that a “company is a trading entity per excellence” whereas other business organisations conduct trade indirectly. For instance churches do carry out business activities. But most of the times, they create companies or other structures to act on their behalf.

I. LEGAL STATUS OF COMPANIES

Upon its incorporation a company acquires legal personality. From the day of its incorporation, a company becomes a legal entity separate from its owners or shareholders.

When companies have been constituted they are required in law) to register with the Office of the Registrar General before commencing any commercial activity in Rwanda. Upon registration a commercial company acquires legal personality. This is to say that it is treated as an entity separate and distinct from that of its owners. Hence it is capable of enjoying rights and of being subject to duties which are not the same as those enjoyed or borne by its members except to the extent and in the manner provided by law. 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 – Memorandum and Articles of Association

1. 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.

2. 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 distinction between the registered office and the exploitation office is important for it is the registered

office that determines the territorial competence of the court, in the event where someone institutes proceedings against the company, the place where an action in bankruptcy can be instituted, including the nationality of the company.

3. The company has a nationality

A commercial company has a nationality, which is determined by the laws of the country, which regulates its organisation and functioning (definition of powers of management, procedure of shareholders meetings, rules as to liquidation etc.).

4. 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.

5. 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.
- Binding customs are those that do not depend on the law or the free will of the contracting parties because they are mandatory in character. We find these customs in commercial law as opposed to civil law. A binding custom supplements the law. For instance, there is a presumption of joint liability of creditors as opposed to the Civil Code which provides that there is no presumption of joint liability of creditors.

J. COMPANY'S 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 debts. 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. Even when it comes to liabilities, shareholders are shielded and it will be the company to respond.

Study Unit

2

INCORPORATION, CAPACITY AND FUNCTIONING OF THE COMPANY

A. INCORPORATION

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. The incorporation is done by filling out an appropriate form developed by the Registrar General. The formed companies are categorized and put into types.

(1) Categories of companies

Every company is formed on the basis of the following categories:

- private company;
- public company.

(a) Private company

Essential requirements

A private company is incorporated if it fulfills the following essential requirements:

- a name, ending with the words “private limited company” or the letters “Ltd”;
- one or more shares with restricted rights of transfer;
- one or more shareholders with unlimited or limited liability;
- one or more directors of whom at least one must be ordinarily resident in Rwanda; incorporation documents.

Characteristics of a private company

A private company has the following characteristics:

- restricting the right to transfer its shares or debentures;
- limiting the number of shareholders to one hundred (100) but excluding persons employed or formerly employed by the company;
- prohibiting any invitation to the public to subscribe for any shares or debentures of the company.

Where two (2) or more persons jointly hold one or more shares, such persons shall be treated as a single shareholder.

(b) Public company

Essential requirements for a public company

A public company is incorporated if it fulfills the following essential requirements:

- a name, ending with the words “public limited company” or letters “plc”;
- one or more shares all of which must be fully transferable;
- shareholders whose liability is limited to the amount, is any, unpaid on the shares respectively held by each;
- one or more directors;
- a company’s secretary;
- incorporation documents.

Characteristics of a public company

A company is considered to be a public company if:

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

(2) Types of companies

According to the categories of companies set forth in the Law governing companies, companies are grouped into the following types:

- a company limited by shares;
- a company limited by guarantee;
- a company limited by shares and by guarantee;
- an unlimited company.

A company limited by shares and by guarantee may be public or private.

However, a company limited by guarantee or an unlimited company cannot be a public company.

(3) Company's objective

Every company shall be considered to be established for commercial purposes.

(4) Application for incorporation of a company

When applying for incorporation of a company, the following shall be submitted to the Registrar General:

- incorporation documents in the form prescribed by the Registrar General and signed by every person named in the documents as a shareholder of the company or by his/her agent authorized in writing;
- consent in the prescribed form signed by each of the persons named as the company's directors and secretary in the incorporation documents.

A company must have a memorandum of association. If the instruments authorizing the agent were signed by an authorized representative, they must be accompanied by that representative's authority to sign.

(4) Contents of the memorandum of association

The memorandum of association of any company shall state the following:

- the name of the company;
- the head office of the company;
- the proposed business activity.

A memorandum of association for a company for a company limited by guarantee must indicate that liability is limited.

A memorandum of association for a company limited by guarantee must also state that every member undertakes to contribute to assets of the company in the event of its being wound up.

In the case of a company with share capital, the memorandum of association shall state:

- the amount of share capital;
- the class and number of shares making the share capital unless the company is an unlimited company;
- the full name and the number of shares of every shareholder;
- that the liability of the shareholders is limited.

(5) Articles of association

A company may or may not have articles of association. In case a company does not have articles of association, the rights, powers, duties, and obligations of the company, of the Board of Directors, of each director, and of each shareholder of the company shall be those set out in the Law governing companies.

The articles of association are binding as between the company and each shareholder and between the shareholders themselves. In case a company has articles of association, the rights, duties, and obligations of the company, of the Board of Directors, of each director, and of each shareholder of the company are those set out in the Law governing companies except in case they are restricted or modified by the articles of association of the company in accordance with the Law governing companies.

(6) Duties of the Registrar General where the application for registration of a company meets the requirements

Registration of a company in the Office of the Registrar General is compulsory. Where the Registrar General receives an application for registration that complies with the Law governing companies, he/she does the following:

- register the application;
- register details relating to the company in the register of companies and business;
- issue a certificate of incorporation.

A certificate of incorporation is a conclusive evidence that all the requirements of this law in respect of incorporation have been complied with; and that the company has been duly incorporated under this law on the date of incorporation stated in the certificate.

(7) Company as a distinct legal entity

Upon registration of its incorporation documents, a company is duly incorporated as a company having own legal personality, separate from that of its shareholders.

(8) Certificate of incorporation

The Registrar General sends to the company or the person from whom the incorporation document was received a certificate of incorporation in the prescribed form stating:

- the company's registered name;
- the company's registered code;
- the company's date of information.

B. COMPANY'S POWERS

(1) Company's capacity

The capacity, powers, rights, duties and obligations of a company, its directors, its secretary and its shareholders are as set out in the Law governing companies, except if restricted or modified by the company's incorporation documents. An incorporated company has full capacity and rights to undertake any business activities, do any act relating to its mission.

(2) Validity of incorporation documents and of a company's acts

No provision of a company's incorporation documents may contravene or be inconsistent with the Law governing companies. In case a company's incorporation documents have provision which prejudices or contradicts the Law governing companies, such provision is invalid. An act of a company and transfer of property to or by the company are not invalid by reason merely that the company does not have capacity, the right, or the power to do the act or to transfer or take a transfer of the property. However, this does not limit any right to bring proceedings against a director or other employee of the company or against a third party in connection with:

- injunctions and compliance orders;
- personal actions by shareholders;
- unfair prejudice;
- derivative action;
- negligence;
- default;
- breach of duty;
- breach of trust.

C. FORMALITIES OF CARRYING ON BUSINESS

Registered office and registered address

A company must at all times have a registered office in Rwanda. All communications, notices and service of legal proceedings on the company shall be addressed to a company's registered office. Subject to any restrictions in the company's incorporation documents, the Board of Directors may change its registered office and registered office address from time to time in accordance with the provisions of the Law governing companies. The change of the registered office takes effect on a date stated in notice but it shall not be earlier than five (5) working days after the notice is registered by the Registrar General.

Service of documents on a company

Any communication or notice is served on a company by:

- personally serving it to a director or to the company's secretary;
- sending it by registered post to the registered postal address of the company or sending it electronically;
- leaving it at the registered office of the company.

Disclosure of a company name

Every company shall have its full name clearly stated in easily legible letters in a conspicuous position outside its registered office or place in which its business is carried on.

A company shall have the company's full name and the company's code clearly stated in easily legible letters on:

- all written communications sent by or on behalf of the company, except for internal company communications;
- all trade catalogues and trade circulars issued by or on behalf of the company;
- all documents issued or signed by or on behalf of the company as evidence of or that create a legal obligation of the company.

A company may use any generally recognized abbreviation of a word or words in the name of a company at any time, so long as it is in a non-misleading manner. In this respect and under law, the abbreviation of limited company is "Ltd". Talking about this abbreviation, not all companies are required to accompany their names with this abbreviation as some dispensation is accorded by the Registrar General in case 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 dividends to its shareholders.

Application for company name reservation

An application for a name reservation is made by a person who wishes to form a company or who wishes to change the name of a company. The application is lodged in the form prescribed by the Registrar General. Where the Registrar General approves such an application, the name is reserved in the company register for a period of three (3) months renewable only once upon application. Where the Registrar General rejects an application for a name reservation, the Registrar General notifies the applicant in writing within two (2) working days from the date on which such an application was received stating the reasons for rejection. Company name reservation is subject to restrictions such as

- 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.

Method of contracting

A contract or other enforceable obligation is entered into by a company as follows:

- 1° an obligation that the law requires to be made by written contract is entered into on behalf of the company in writing signed under the name of the company by:
 - a) two (2) or more directors of the company in the case of a public company;
 - b) one director, in the case of a private company with only one director; or
 - c) any other director or any other person or group of persons, if the company's incorporation documents so provide;
 - d) one or more attorney appointed by the company in accordance with the Law governing companies;
- 2° any other obligation may be entered into on behalf of the company by any person acting under

its express or implied authority.

The aforementioned applies to a contract or to an obligation if:

- the contract or obligation was entered into in Rwanda or elsewhere;
- the law governing the contract or obligation is the law of Rwanda or not.

Power of company's attorney to sign documents

A company may, in writing, empower any person, either generally or in respect of any specified matters, as its nominee, to sign documents on its behalf.

A document signed by the nominee on behalf of the company binds the company.

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.

D. THE DISAPPEARANCE OF LEGAL PERSONALITY

When a company acquires a legal personality the personality does not persist for life i.e., it is not permanent, some day it will end. The disappearance of legal personality is the consequence of dissolution of the company, which entails the dissolution and distribution of its patrimony among shareholders (partners).

1. Causes of Disappearance

The causes of disappearance are of two types, the one is applicable to all commercial companies; the other relates to individual partners and is restricted to those companies in which the personality of the participant is fundamental.

a) General Causes

There are four general causes:

- A company established for a certain and defined period of time dissolves at the end of that period in the absence of a resolution extending its life.

- A decision taken by the shareholders (partners) to dissolve the company before the time agreed upon.
- Loss of the object or impossibility of performance
- If the object has been attained

b) Peculiar causes

The causes peculiar to an individual do not apply to all commercial companies. They relate exclusively to partnerships. Accordingly the death, incapacity or insolvency of a partner will result in dissolution.

However in practice, partnership agreements usually contain a provision (clause) making it possible for the partnership to continue doing business notwithstanding any of the above causes that may lead to its dissolution.

A partnership cannot be dissolved by the unilateral will of one partner except if he acts in good faith. The last cause for dissolution, which is applicable to all types of commercial companies, is the dissolution for just cause. Here dissolution may be requested by an individual shareholder or partner. The just cause is left to the appreciation of the court. Some of the factors, which may be considered as just cause, include failure by a partner to respect his obligations, permanent disability of a partner, antagonism that makes it impossible for the partners to work together etc.

Note that the regular transformation of a commercial company from one form into another shall not entail the creation of a new legal entity. The same shall apply to an extension of the existence of a company or any other amendment of its Articles of Association (partnership Agreement) with formalities of publication both at the time of constitution (formation) to any amendment of its Articles of Association (partnership Agreement)

Study Unit

3

SHARES AND DEBENTURES

Share Capital

Contents

- A. Subscription of Share Capital
- B. Payment of Shares
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- G. Prospectuses
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- I. The Acquisition and Redemption by a Company of its own Shares
- J. Financial Assistance by a Company for the Purchase of its own Shares
- K. Dividends
- L. Other considerations related to Shares

A. FOR SHARES AND DEBENTURES

Shares are rights in a company are represented by negotiable instruments called shares. A share may be as “the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of nature covenants entered into by all shareholders inter se”. A share is not a sum of money...but is an interest measured by a sum of money and made up of various rights contained in the contract, including the rights to a sum of money of a more or less amount.

(1) Subscription for shares and debentures

Subscription is the acceptance by the subscriber of the offer to subscribe for shares made by the promoters or their agents (usually a bank). By subscribing the subscriber promises to take up the number of shares subscribed. The shares may be paid for in cash or in kind, but never in the form of services, because the capital of a company is conceived as a security (collateral) to creditors of the company who can never proceed against shareholders personally for the debts of the corporation beyond their investment. The exception is where the company has unlimited liability – see 3.23 below

Note that by virtue of subscription promoters are bound to either constitute the company or reimburse the amount of subscription if the company is not constituted within six months from the date the proposed company account was opened at a bank.

For their part, subscribers may not withdraw their subscription; they must honour their promise to take up shares. The option open to a subscriber who no longer desires to become a shareholder is for him to assign (transfer) his undertaking (promise) to take up shares

(2) Public invitation to subscribe for shares and debentures A public invitation to subscribe for shares or debentures is construed as a document or any means whether intended to a particular section of the public or to the public in general even though such invitation is accepted by the targeted public. An offer may be made pursuant to provisions of the invitation and subscription is done only by a person to whom the invitation for subscription is issued. However, the invitation to subscribe for shares or debentures issued *bona fide* is not construed to be intended for the public where it is:

- an offer to enter into an underwriting agreement for selling shares and debentures;
- made to a person whose ordinary business is to buy and sell shares or debentures whether as principal or agent;
- made to existing shareholders or debenture holders of a company relates to shares or debentures of that company.

The Registrar General issues instructions on procedures related to the subscription for debentures.

(3) Documents deemed debentures

Any invitation to the public to deposit money with or to lend money to a company is deemed to be an invitation to subscribe for or purchase debentures of the company. Any document that is issued or intended or required to be issued by a company acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the company in respect of any money that is or may be deposited with or lent to the company in response to a public invitation is deemed a debenture.

B. NATURE AND ALLOTMENT OF SHARES

(1) Characteristics of shares

Shares in a company:

- are personal property;

- are not in the nature of immovable property;
- can be allotted;
- confer to shareholders the rights provided in this law and in the company's incorporation documents; and
- are transferable subject to any restrictions or limitations set out in the company's incorporation documents.

(2) Types of shares and account for each class

Subject to the provisions of company's incorporation documents, different classes of shares may be issued in a company. The shares in a company may:

- 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.

A company shall maintain in the book of accounts a stated capital account for each class of shares it issues stating the names and addresses of all shareholders and the number, type and class of shares held by each.

A company cannot reduce its stated capital except as provided under the Law governing companies.

The share capital of a company shall be expressed in Rwandan francs.

Where shares having par value are issued at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called "the share premium account" and the provisions of the Law governing companies relating to the stated capital of the company and relating to the reduction of the share capital of the company apply.

Where shares having a par value are issued for a consideration other than cash and the value of that consideration is more than the par value of such shares, the difference between the par value of the shares and the value of the shares so acquired is transferred to the share premium account. In the case of shares having par value, the share premium account may, be opened in order for the shares of the company to be issued as fully paid shares.

(3) Payments by use of stated capital account and the share premium account

The stated capital account, including in case of shares having a par value, the share premium account may, provided that the directors are satisfied that the company will immediately after the application satisfy the solvency test, be applied by the company in order to pay:

- the preliminary expenses of the company;
- the expenses of, and the commission paid on the determination or issue of any such shares.

(4) Restrictions on the allotment of shares

A company is not allowed to allot:

- a nominal or par value share;
- a share which is subject to calls;

- a redeemable share at time when there are not allotted shares of the company which are not redeemable.

If a company allots par value shares:

- a share purportedly allotted with a nominal or par value is deemed to be a share of no nominal or par value, allotted at its actual allotment price, including any purported premium;
- a share purportedly allotted subject to calls is deemed to be fully paid;
- a share purportedly allotted as redeemable, is deemed to be not redeemable.

(5) Authorization to allot shares

Subject to any restrictions of provisions in its incorporation documents or of any options by the shareholders of a private company provided under Article 210 of the Law governing companies, a company may allot shares from time to time as decided by the shareholders through an ordinary resolution, or in the case of a public company by the Board of Directors specifying:

- the rights, privileges, limitations and conditions attached to each share to be allotted, and its transferability,
- the maximum number of shares to be allotted;
- the date, if any, when such authority to allot shares expires.

The resolution on the allotment of shares is filed with the Registrar General within fifteen (15) working days from the day of its adoption.

(6) Pre-emption rights

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.

Shareholders of a company have a pre-emption right to acquire newly-issued shares of a company as provided in the Article 61 of the Law governing companies. The right is to acquire the newly-issued shares pro rata in proportion to the shares already held by such existing shareholders at a price no less favourable than that offered to other persons, and on terms which maintain or increase the relative voting and distribution rights of those existing shareholders.

The pre-emption rights provided for in the Article 61 of the Law governing companies cannot be restricted or eliminated by a company's incorporation documents.

The company gives each existing shareholder advance notice of any proposed issuance stating, at a minimum, the number of shares to be issued, the proposed price or method of determining the price of issuance, and the time period and procedure for exercising the pre-emptive rights. The time period shall remain open within a period of three (3) months. All rules and conditions for exercise shall be uniform for all shareholders who have this right.

Such subject to pre-emption rights that are not acquired by existing shareholders pursuant to such rights may be issued to any person within a period of three (3) months after having been offered to existing shareholders at the same price as the price set for the exercise of pre-emption.

Allotment of shares at a lower price during or after such three (3) month period is subject to existing shareholders' rights.

(7) Consideration for allotment of shares

Subject to restriction on consideration on allotment of shares for public companies in accordance with

the Law governing companies, payment given on shares is cash, promissory notes, contracts for future services, moveable or immovable property or any other securities of the company.

Notwithstanding anything in its incorporation documents, subject to any option out of the Article 62 of the Law governing companies by the shareholders of a private company, before a company allots shares other than share split, the Board of Directors shall;

- decide on the consideration for and the terms on which shares will be allotted;
- resolve that in its opinion the consideration for and terms of the allotment are fair and reasonable to the company and to all existing shareholders.

The directors who vote in favour of the resolution sign a certificate stating:

- the consideration for and the proposed terms of allotment;
- that in their opinion, the consideration for and terms of the allotment are fair and reasonable to the company and to all existing shareholders;
- the restrictions set out in Article 69 of the Law governing companies if the company is a public company.

The Board of Directors, within fifteen (15) working days, submit a certificate to the Registrar General as specified the Law governing companies.

The Board of Directors may at any time resolve to allot shares as a share split, and such allotment of shares does not necessarily respect the provisions of the Article 62.

Conversion of class of shares into shares of no par value

A company may at any time, convert any class of shares of the company into shares of no par value provided that seventy five per cent (75%) of shareholders vote for the resolution. In case of conversion of shares, a notice of the terms of the conversion is given to the Registrar General for registration within fourteen (14) days of approval of the conversion.

The shares having a par value which are converted into shares of no par value do not affect the rights and liabilities attached to such shares. In particular, such conversion does not affect:

- any unpaid liability on such shares;
- the rights of the holders of the shares in respect of dividends, voting, or repayment during winding up of a company or in case of reduction of share capital.

A company shall not allot a share to any person if the allotment of that share increases liability of that person to the company or imposes new liability on that person unless that person consents in writing to acquire shares. Any allotment of shares without such consent is void.

When a company issues shares, the Board of Directors submits to the Registrar General a notice of alteration of the company's incorporation documents within fifteen (15) working days from such an allotment.

C. SPECIAL PROVISIONS RELATING TO ALLOTMENT OF SHARES FOR PRIVATE COMPANIES

(1) Restriction on public offers by private companies

A private company shall not:

- offer to the public or any section of the public whether for cash or otherwise any securities of the company;
- allot shares or agree to allot shares, whether for cash or otherwise, any securities of the company

with a view to all or any of the securities being offered for sale to the public or any section of the public.

No provision of the Article affects the validity of any allotment of shares or sale of securities, or of any agreement to allot shares or sell securities.

If a public company accepts as payment for which a share is allotted an undertaking given by a person that he/she or another person should do work or perform services for the company or any other person, the allottee is liable to pay the company in respect of those shares an amount equal to their value and interest on that amount.

(2) Transfer of shares

A transferable share may be transferred by entry of the name of the transferee in the company's register of shareholders.

Where shares are to be transferred there shall be delivered to the company:

- a share transfer form signed by:
 - a) the shareholder or a person to whom the right to any shares in the company has been transmitted by operation of law;
 - b) the transferee if registration as holder of the shares imposes on him/her any liability.
- if a share certificate has been issued in respect of the shares to be transferred, the share certificate or evidence of its loss or destruction and, if required, an indemnity to the satisfaction of the members of the Board of Directors; and
- in case of a person to whom the right to any shares in the company has been transmitted by operation of law, sufficient evidence of transmission.

A share transfer form is not required where the transferee is a person to whom the right to any shares in the company has been transmitted by operation of law. Upon receipt of the documents required by Paragraph 2 of the Article 77 of the Law governing companies, the company enters in its register of shareholders the name of the transferee as holder of the shares unless:

- 1° the Board of Directors resolve within thirty (30) working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
- 2° notice of the resolution, including the reasons, is sent to the transferor and to the transferee within five (5) working days of its adoption by the Board of Directors; and
- 3° the Law governing companies or the company's incorporation documents expressly permits the Board of Directors to refuse or delay registration for the reasons stated.

(3) Share certificates

A company:

- issues and delivers to the holder of certificates all shares allotted or transferred or remaining after a transfer, unless the conditions of allotment provide otherwise;
- in the case of a transfer, cancels any share certificate sent to the company to enable the registration of the transfer.

A certificate specifying any shares held by a member is prima facie evidence of his/her title to the shares.

Study Unit

4

SHAREHOLDERS' RIGHTS, LIABILITIES POWERS AND MEETINGS

A. SHAREHOLDERS' GENERAL RIGHTS

(1) Fundamental rights attached to shares

Shares confer 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 Law governing companies or the company's incorporation documents, the right to vote on shareholders' resolutions includes:
 - to appoint or remove an auditor or director;
 - to approve a major transaction;
 - to alter or adopt articles of association;
 - dissolve the company;
 - approve an amalgamation in accordance with the provisions of the Law governing companies.

However, where a company has a more than one class of shares, the classes confer all the rights set out in Paragraph One of the Article 88 of the Law governing companies, 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 Law governing companies, if the company is a public company, a share is fully transferrable.

If the company is a private company, unless some other restriction on transfer is specified in its incorporation documents, a share is transferrable 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 law.

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.

(2) Shareholders rights to information

Documents to be disclosed annually to shareholders

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 four (4) 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.

Report of the members of the Board of Directors

In respect of the accounting period to which the annual accounts relate, a report of the members of the Board of Directors for a company shall be in writing. Such report:

- states the amount, if any, which the Board of Directors recommends should be paid as dividend and the amount, if any, which they propose to carry to reserves;
- states any donations exceeding the prescribed amount, including charitable or political donations made by the company since the date of the previous report;
- states particulars of any entries in the register of interests made since the date of the previous annual report;
- is signed on behalf of the Board of Directors by two (2) directors of the company, or, if there is the only one director, by that director;

In the case of a public company, the report also:

- states the principal activities of the company and its subsidiaries during the period and any significant changes in those activities during the period; and
- contains a fair review of the development of the business of the company and its subsidiaries during the accounting period and of their positions at the end of it.

The requirement for a report of the directors does not apply in the case of a private company where shareholders have opted out of this requirement.

Other disclosures to shareholders

Shareholders shall be provided information related to:

- proceedings at shareholders' meetings and the incorporation documents;
- provisions of Article 116 of the Law governing companies;
- provisions of the Article 178 of the Law governing companies on requirements for special offers except if a private company shareholders have opted out of the requirements.

A disclosure referred to under Paragraph One of the Article 93 of the Law governing companies shall be made to seek shareholders authorization with respect to :

- the power to alter company's incorporation documents;
- class authorization;
- major transactions;
- change of status;
- manner of authorizing amalgamations.

B. LIABILITY OF SHAREHOLDERS

(1) Liability of shareholders

With the exception of an unlimited liability company, a shareholder is not liable for the obligations of a

company only because of being a shareholder. The liability of a shareholder to the company, or for the company's obligations is limited to:

- any amount unpaid on a share held by the shareholder;
- any liability expressly provided for in the company's incorporation documents which may provide that the shareholder's liability is unlimited;
- any distribution received by the shareholder but which has to be recovered in accordance with the Article 75 of the Law of the Law governing companies.

When the incorporation documents of a company provides that a share imposes a liability on its holder, that liability is attached to the holder of the share for the time being, and not to a prior holder of the share, even if the liability became enforceable before the share was registered in the name of the current shareholder.

Subject to Paragraph 2 of the Article 95 of the Law governing companies, when:

- all or part of the payment for the allotment of a share remains unsatisfied;
- the person to whom the share was allotted no longer holds that share, liability in respect of that unsatisfied payment does not become that of subsequent holders of the share was allotted, or of any other person who assumed that liability at the time of allotment.

No provision of the Article 95 of the Law governing companies affects a shareholder's liability to the company on any contract, including a contract for the allotment of shares or for any tort or breach of fiduciary duty or other ground to take legal action for wrong committed by him/her.

A court may pierce the corporate veil to hold a shareholder liable for obligations of the company if the court finds that the shareholder has abused the company form for fraudulent or illegal purposes or abused the company's assets as if they were personal assets.

(2) Liability for calls

Where a share makes its holder liable to calls, or imposes any other liability on its holder, that liability is attached to the holder of the share, and not to a prior holder of the share, even if the liability became enforceable before the share was registered in the name of the current holder.

(3) Liability of personal representative

Where a personal representative of the estate of a deceased person is registered as the holder of a share comprised in that estate, the liability of that personal representative, in respect of that share, does not exceed the value of any assets which, at the time when any demand is made for the satisfaction of such liability are held by that personal representative upon the same trusts as are applicable to that share.

(4) Liability of trustee in bankruptcy

Where a trustee in bankruptcy is registered as the holder of a share, the liability of that trustee in bankruptcy, in respect of that share, cannot exceed the value of any property of the bankrupt which, at the time when any demand is made for the satisfaction of such liability, is vested in the trustee.

(5) Liability of shareholders in respect of exercise of powers

A shareholder voting solely in his/her capacity as a shareholder in the exercise of any of the powers set out in Paragraph 2 of the Article 99 of the Law governing companies does not owe any duty to the company or to any other person and does not incur any liability in respect of the exercise of or failure to exercise votes to which that shareholder is entitled.

The powers mentioned in Paragraph One of the Article 99 of the Law governing company are those to:

- authorize an allotment of shares;
- authorize an alteration of shareholders' rights;
- authorize the appointment of or removal of a member of the Board of Directors;
- authorize the appointment of or removal of an auditor;
- authorize any alteration in the company's incorporation documents;
- authorize a major transaction pursuant to Article 196 of the Law governing companies;
- apply for a solvent company to be removed from the register;
- reverse an opt out under Article 209 of the Law governing company.

Where a company's incorporation documents:

- confer any power which would otherwise be exercised by the member of the Board of Directors;
- require the directors to exercise or refrain from exercising a power in accordance with a decision or direction of the shareholders.

the shareholders who vote on or control the exercise of that power, or the decision or direction that the power should not be exercised by the Board of Directors are deemed to be members of the Board of Directors for the purposes of the duties of members of the Board of Directors set out in the Law governing companies.

No provision of the Article 99 of the Law governing companies affects any liability arising out of a contract or other obligation expressly entered into by a shareholder.

C. EXERCISE OF SHAREHOLDER POWERS BY REGULATIONS

(1) Exercise of shareholder powers by resolutions

Powers reserved for shareholders by the Law governing companies 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 meeting;
- by a unanimous shareholder agreement.

(2) Shareholder resolution relating to the management of the company

Subject to the company's incorporation documents, the shareholders may pass a resolution relating to the management of the company, but such a resolution is not binding on the Board of Directors. However, the Board of Directors may refrain from complying with such a resolution if satisfied that the resolution is contrary to the company's interests.

D. SHAREHOLDERS' MEETINGS AND RESOLUTIONS IN LIEU OF GENERAL MEETING

(1) Shareholders' annual general meeting

The Board of Directors calls an annual general meeting 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 shareholders' meeting on the agreed date. Notice of each meeting is sent to all shareholders not less than thirty (30) days before the date of the meeting. The notice states, at a minimum, the agenda for the meeting and information regarding directors to be elected at the meeting including biographies, a statement of their business experience, and any directorships held by them in other companies.

(2) Shareholders' review of the company management

The chairperson of any shareholders' general meeting gives the shareholders a reasonable opportunity to discuss and comment on the management of the company. A shareholders' general meeting may pass a resolution under the Article 104 of the Law governing companies which makes recommendations to the Board of Directors on matters affecting the management of the company.

(3) Registrar General's power to convene shareholders' annual general meeting

If default is made in holding a shareholders' annual general meeting, in accordance with the Law governing companies, the Registrar General may by written notice convene such a meeting and give such ancillary or consequential directions as he/she considers necessary, including a direction modifying or supplementing the company's incorporation documents or provisions of the Law governing companies in relation to the calling, holding and conducting of the meeting.

Where a general meeting called by the Registrar General is not held in the year in which the default in holding the shareholders' annual meeting occurred, the meeting is not to be considered as the annual general meeting for the year in which it is held unless the Registrar General so directs.

(4) Shareholders' extraordinary general meeting

A shareholders' general meeting other than the annual meeting is a shareholders' extraordinary meeting. 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 a 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 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 meeting, the members of the Board of Directors have not convened the meeting, the signatories to the notice or any of them may convene the meeting, but such meeting shall not be held more than three (3) months after the date of service of the notice.

A general meeting convened under the preceding paragraph is convened in the same manner in accordance with the Article 106 of the Law governing companies. The company repays to the signatories to the notice any reasonable expenses incurred by them due to the failure of members of the Board of Directors to comply with the provisions of the Article 106 of the Law governing companies, and any sum so remuneration of the members of the Board of Directors who were in default.

(5) Proceedings at shareholders' general meeting

Subject to the company's incorporation documents, instructions issued by the Registrar General govern proceedings at shareholders' general meeting.

(6) Shareholders' written resolution in lieu of general meeting

A resolution in writing signed by all shareholders entitled to vote on that resolution at a shareholders' general meeting is as valid as if it had been passed at a meeting of those shareholders. A resolution in writing dealing with all matters to be dealt with at a general meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of the Law governing companies relating to a meeting of shareholders.

The signatures need not be on a single document but rather each one is on a document which accurately states the terms of the resolution. However, a resolution to remove a member of the Board of Directors or an auditor is of no effect unless passed at a general meeting of shareholders.

Study Unit

5

MANAGEMENT AND ADMINISTRATION

A. COMPANY RECORD KEEPING

(1) Company records to be kept

The company must keep at its registered office, or at any other place in Rwanda, each of the following records:

- its incorporation documents;
- the share register;
- the index of shareholders;
- the accounting record;
- a register of interests of members of the Board of Directors for information purposes;
- minutes of all general assemblies and resolutions of shareholders within ten (10) years;
- minutes of all meetings and resolutions of members of the Board of Directors and Board of committees within ten (10) years;
- certificates given by directors under the Law governing companies within the last ten (10) years;
- copies of all annual accounts, auditors and members of the Board of Directors reports in relation to the last ten (10) completed accounting periods of the company.

Where the company changes the place at which its records are kept, it must, within fifteen (15) days of the change, notify the Registrar General.

(2) Form of records

The records of a company must be kept:

- in written form;
- in a manner that allows the documents and information that comprise the records to be easily accessible and convertible into written form.

Members of the Board of Directors and the secretary of a company ensure at all times that adequate precautions are taken against forgery of the company's records and for facilitating the discovery of any such forgery.

(3) Register of shareholders

A company keeps a register of its shares that records the shares issued by the company and it is the duty of each member of the Board of Directors and a Secretary to ensure that the register is properly kept and the following particulars promptly entered in it:

- names and latest known addresses of each person who is or has within the last ten (10) years been a shareholder;
- the shares index held by each shareholder, a share segregated by another share by its number and, where the company has more than one class of issued shares, by its class;
- the date of any allotment of shares to, or repurchase or redemption of shares from, or transfer of shares by the last ten (10) years, and in relation to any such transfer, the name of the person to or from whom the shares were transferred;
- whether the incorporation documents or the terms of issue of the shares place any restrictions or limitations on the transfer of shares, a notice of any trust, expressed, implied or constructive, must be entered on the register.

A company may appoint an agent to maintain its share register.

(2) Accounting records

Duty to keep accounting records

The Board of Directors of a company causes to be kept accounting records at all times that give a true and fair view of the company's financial position and that explain its transactions and comply with accepted accounting standards.

Accounting records contain proper books of account and are kept in a written form or in a manner in which they are easily accessible and convertible into a written form with particular respect to:

- daily receipts and expenses with their accounting documents;
- a register of assets and liabilities of the company;
- where the company's business involves the sale of a register of goods:
 - a) all sales and purchases of goods by the company, those who brought them and related invoices;
 - b) a register of stock held and its variation;
- where the company's business involves providing services, a register of services provided and relevant.

(4) Audit

Direction to conduct audit

Every company appoints an external auditor to audit its annual accounts

Appointment of an auditor

The appointment of a particular auditor shall be authorized by the shareholders by ordinary resolution.

The first auditor of the company may be appointed by the Board of Directors without the approval required under Article 130 of the Law governing companies, and auditors so appointed, unless removed, hold office until the conclusion of the company's first General Assembly or until the twenty-eight (28) days after the date that the company's annual accounts are sent to shareholders, which is the sooner. In case no auditor is appointed in accordance with Paragraph 2 of the Law governing companies, the Registrar General has the powers to direct the company to appoint its auditor within thirty (30) days.

The salary and other expenses of the auditor are determined by the General Assembly of shareholders or the Board of Directors.

Qualification of an auditor

A person or a firm is not qualified for appointment as auditor of a company unless, in the case of an firm, every partner in the firm is a full or associate member of an institution or association of chartered accountants recognized in Rwanda. None of the following can be qualified as auditor of a company:

- a member of the Board of Directors or an employee;
- a person who is a partner of or in the employed of by a director or employee of the company;
- a person who, either in item 1^o or 2^o is disqualified for appointment as auditor of a related company.

Auditor's report

The auditor's report must comply with applicable auditing and assurance standards and state:

- the scope and limitations of the audit;
- whether the auditor has obtained all information and explanations that h/she has required;
- whether a proper accounting records have been kept by the company;
- the proof that there is no relationship, no interests and debt in the company;
- whether the annual balance sheet complies with the international accounting standards;
- the auditor's opinion and problems that are linked with the company's management;
- the auditor recommends actions to correct problems identified during the audit;
- whether, in the auditor's opinion, according to the best of his information and the explanations given to him as shown by the accounting and other documents of the company, the annual accounts comply with the Article 123 and 125 of the Law governing companies as the case may be, and where they do not, the areas in which they fail to comply.

The auditor of a company must submit the report under Paragraph One of the Article 132 of the Law governing companies to the shareholders of the company. In the case of a public company listed on the stock exchange the audit report is published in at least one of the most circulated newspapers in Rwanda.

Right of access to information

The Board of Directors of a company ensure that its auditor has a right of access at all times to the accounting records and other documents of the company, and that the auditor is entitled to require from any member of the Board of Directors or employee of the company such as information and explanation as the auditor thinks necessary for the performance of his duties as auditor.

Removal, replacement or resignation of an auditor

Subject to the company's incorporation documents and to Article 142 of the Law governing companies, an auditor may be removed from office at any time by an ordinary resolution passed at a shareholders' general assembly.

An auditor shall not be removed from office, unless:

- at least ten working days' written notice of a resolution to do so;
- has been a reasonable opportunity to make representations to shareholders on the removal, either in writing or by the auditor or his/her representative speaking at a shareholders' general assembly, whichever the auditor may choose.

A company shall not propose to appoint a new auditor in place of an auditor who is disqualified for re-appointment, unless:

- at least ten working days' written notice of intention to do so has been given to the auditor;
- the auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another auditor, either in writing or by the auditor or his/her representative speaking at a shareholders' general assembly whichever the auditor may choose.

Where an auditor has given the member of the Board of Directors a written notice of unwillingness to be reappointed, the member of the Board of Directors, if requested to do so by the auditor:

- distribute to all shareholders at the expense of the company a written statement of the auditor's reasons for unwillingness to be reappointed;
- permit the auditor or his/her representatives to explain at a shareholders' general assembly the other reasons for his/her unwillingness to be reappointed.

An auditor is entitled to be paid by the company reasonable fees and expenses for making representations to shareholders' under the Article 138 of the Law governing companies.

(5) Documents to be delivered to the Registrar General

The following documents must be delivered to the Registrar General:

- company's incorporation documents;
- notice of adoption, alteration or revocation of incorporation documents;
- change of status to public or private company;
- subject to Article 210 of the Law governing companies, annual accounts;
- annual returns on company's information;
- documents relating to amalgamation;
- application for a solvent company to be removed from the register;
- in the case of a foreign company:
 - a) application for registration;
 - b) notice of alteration;
 - c) annual accounts and annual returns;
 - d) notice that the company intends to cease to have a registered office in Rwanda;
 - e) objection for removal from the register.

(6) Members of the Board of Directors and Secretaries

(a) Powers of members of the Board of Directors

Management of a company

The business and affairs of a company are managed by or under the direction of the Board of Directors of the company which has all powers necessary for the management except where the company's incorporation documents or the Law governing companies expressly reserve those powers to the shareholders or any other person.

Where a private company has one Director, he/she exercises the powers and carries out the duties of a Board of Directors provided for in the Law governing companies.

Delegation of powers

Subject to any restrictions in the incorporation documents of a company, the Board of Directors may delegate any of the powers:

- to committees consisting of such a director or members of the Board of Directors if deemed appropriate;
- to one or more managing or Executive Directors appointed by them.

However, the Members of the Board of Directors shall not delegate any of their fiduciary duties.

If the Board of Directors have delegated any power, then every member of the Board of Directors whether a party to the decision to delegate or not, is responsible for every exercise of the power by the delegate as if the power was exercised by the member of the Board of Directors or any one or more of them, unless he/she:

- believes on reasonable grounds at all times before the exercise the power in conformity with the duties imposed on members of the Board of Directors of the company by the Law governing companies and the company's incorporation documents;
- has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

(b) Responsibility of members of the Board of Directors

Fundamental duty

The fundamental duty of a member of the Board of Directors of a company, when exercising powers or performing duties as a member of the Board of Directors, is to act in good faith in a manner that he/she believes on reasonable grounds is in the best interests of the company, and use reasonable grounds is in the best interests of the company, and use reasonable diligence in the discharge of the duties of his/her office.

Duty to existing shareholders

A member of the Board of Directors of a company shall not, when exercising powers or performing duties as a member of the Board of Directors, act or agree to the company acting in a manner that unfairly prejudices or unfairly discriminates against any existing shareholder of the company, unless the director believes on reasonable grounds that his/her duty as a director requires him/her to do so.

Compliance with incorporation documents and the Law governing companies

A member of the Board of Directors of a company shall not act or agree to the company acting in a manner that contravenes its incorporation documents or the Law governing companies.

Solvency

A member of the Board of Directors of a company shall not agree to the company entering into a contract or arrangement or acting in any other manner unless he/she believes at that time on reasonable grounds that the act concerned does not involve an unreasonable grounds that the act concerned does not involve an unreasonable risk of causing the company to fail the solvency test.

A member of the Board of Directors of a company shall not agree to the company incurring an obligation unless he/she believes at that time on reasonable grounds that the company will be able to perform the obligation when required to do so.

Standard of care and exercise of power for a proper purpose

A member of the Board of Directors, shall exercise the care, diligence and skills reasonably to be expected of a director acting in like circumstances.

A member of the Board of Directors also exercises the power for a proper purpose.

Use of information and device

A member of the Board of Directors of a company, when exercising his/her powers or performing duties as a member of Board of Directors, may accept as correct, reports, statements, financial data and other information prepared, and professional or expert advice given, by any of the following persons:

- an employee of the company whom a member of the Board of Directors believes on reasonable

- grounds to be reliable and competent in relation to the matters concerned;
- any professional or expert person in relation to matters which a member of Board of Directors believes on reasonable grounds to be within the person’s professional or expert competence.
 - any other member of the Board of Directors, or a committee of members of the Board of Directors upon which he/she did serve, in relation to matters within his/her or committee’s designated authority.

The acceptance of a member of the Board of Directors is to the extent only that the member acts in good faith, after reasonable inquiry when the need for inquiry is indicated by the circumstances and without knowledge that would cause such acceptance to be unwarranted.

(c) Appointment and removal of members of the Board of Directors

Number of members of the Board of Directors

Notwithstanding anything in its incorporation documents, a private company shall have at least two (2) members of the Board of Directors.

Members of the Board of Directors must act in a collegial administration and must be of a sufficient number provided for in incorporation documents of the company for a meeting to be attained.

Appointment of first and subsequent members of the Board of Directors

A person who is not disqualified from appointment as a member of the Board of Directors and who has indicated his/her consent in writing may be appointed as a member of the Board of Directors of a company. A person named as a member of the Board of Directors of a company. A person named as a member of the Board of Directors in the company’s incorporation documents is a Director until that person ceases to hold office as such in accordance with the Law governing companies.

Subject to the company’s incorporation documents, the appointment of the first and subsequent member of the Board of Directors of the company is authorized by shareholders’ ordinary resolution.

Appointment of members of the Board of Directors to be voted on individually

Subject to the incorporation documents of the company, the shareholders of a company may vote on a resolution to appoint a director of the company only if:

- the resolution is for the appointment of one (1) Director;
- single resolution for the appointment of two (2) or more persons as members of the Board of Directors of the company be so voted after it has first been passed without a vote being cast against it.

In relation to a public company, a motion for the appointment of one (1) director or more persons as members of the Board of Directors of the company by a single resolution may not be made at a shareholders’ meeting, unless a resolution that it shall be made has first been agreed to by the meeting without any vote being given against it.

A resolution moved in contravention of the Article 153 of the Law governing is void, whether or not it’s being moved was objected to at the time of decision making, but:

- this Paragraph shall not be taken as excluding the operation of Article 159 of the Law governing companies;
- where a resolution so moved is passed, no provision for the automatic reappointment of retiring members of the Board of Directors has been provided in default of new appointment has been provided.

For the purposes of the Article 153 of the Law governing companies, a motion for approving a person’s

appointment, or for nominating a person for appointment is to be treated as a motion for his/her appointment. Nothing in the Article 153 of the Law governing companies is taken as preventing the election of one (1) or more members of the Board of Directors by poll.

Appointment of the members of the Board of Directors

A company appoints a natural person as a member the Board of Directors. No person shall be appointed to hold the office as a Director of a company if he/she:

- is under the age of sixteen (16) years;
- is an undischarged bankrupt;
- in the case of a public limited company, is over seventy five (75) years;
- is subject to a disqualification by a court's order;
- has been sentenced in the immediately preceding five (5) years to a penalty under the Law governing companies, or the Law regulating Capital Market;
- does not comply with any disqualification for members of the Board of Directors contained in the company's incorporation documents;
- has a mental disability as certified by a board of recognised medical doctors.

A person who is disqualified from being appointed as a director but who acts as a director is deemed to be a director for the purposes of provisions of this Law that imposes duties and obligations on a director of a company.

In a public company the functions of the Chairperson of the Board of Directors and the Chief Executive Officer shall not be exercised by the same individual.

In a public company the Board of directors establishes an audit committee consisting of at least three (3) independent Non-Executive Directors. The audit committee's functions include review of the company's accounting and financial practices, the integrity of its financial controls and financial statements, and its compliance with legal requirements. Those functions also include recommending the appointment and compensation of the company's independent auditor, and monitoring and oversight of that auditor.

Requesting a company to have a director who resides in the country

A company must have at least one (1) director who resides in Rwanda.

Independent and non-executive members of the Board of Directors in a public company

In a public company a majority of members of the Board of Directors shall be non-executive directors and at least one-third (1/3) of the directors shall be independent directors.

A non-executive director shall be a person who does not form part of the management team of the company and who is not an employee of the company or affiliated with it in any other way, but who can own shares in the company.

An independent director shall be a person who does not have a material or pecuniary relationship with the company or related persons, is compensated through sitting fees or allowances, and does not own any shares in the company.

Removal of one or more members of the Board of Directors

A company may, by an ordinary resolution passed at a shareholders' meeting remove one or all of the directors before the expiration of their term of office, with or without a stated reason or cause notwithstanding anything in its incorporation documents or in any agreement between the company and the director.

The notice of shareholders' shall state that among items on the agenda of the meeting include the vote on the removal of director and be sent to the director concerned.

Any director of shareholders' meeting shall state that among items on the agenda of the meeting include the vote on the removal of a director and be sent to the director concerned.

The notice of shareholders' meeting shall state that among items on the agenda of the meeting include the vote on the removal of a director and be sent to the director concerned.

Any director removed from office in the manner provided for under Paragraph One of the Article 158 of the Law governing companies is disqualified from performing other duties associated with his/her office as director.

Nothing in the Article 158 of the Law governing companies is construed as depriving such a director of compensation or damages as a result of termination of office and disqualification from other duties associated therewith. The procedure for removing a director set out in this Article shall not be construed to derogate from any other power to remove a director which may exist apart from this Article.

(7) Company Secretary

(a) Appointment of a Secretary

A public company must have a secretary, and a private company may have a secretary, and a private company may have a secretary.

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

(b) Duties of a Company Secretary

A Company Secretary has the following duties:

- advise members of the Board of Directors on their responsibilities and powers;
- inform members of the Board of Directors about all the necessary regulations or those which may affect the meetings of shareholders and of the Board of Directors, reports thereof and submissions 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 types of required documents are submitted to the Registrar General as provided for by the Law governing companies;
- ensure that copies of annual balance sheet and activity reports are transmitted to relevant destinations in accordance with the Law governing companies and to any person as provided by the law.

Study unit

6

CAPITAL STRUCTURE

A. SHAREHOLDINGS IN THE COMPANY

(1) General Regulations against company holding its own shares

Except as provided in Articles 225 and 227 of the Law governing companies, a company may not hold shares in itself.

(2) Circular holdings

A subsidiary must not hold shares in its holding company.

An issue of shares by a holding company to its subsidiary is void. A transfer of shares in a holding company to its subsidiary is void.

However, this Article shall not prevent:

- a subsidiary from continuing to be a member of its holding company if, it already holds shares in that holding company, but the subsidiary has no right to vote at meetings of the holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company or any class of members thereof; and the subsidiary, within the period of twelve (12) months or such longer period as the Registrar General may allow after becoming the subsidiary of its holding company, disposes of all of its shares in the holding company. This paragraph ceases to apply if the subsidiary ceases to be a subsidiary of the holding company.
- A subsidiary continues to be a member of its holding company until the commencement of the Law governing companies. However, the subsidiary has no right to vote at meetings of the holding company.

With respect to any share referred to in the Article 174 of the Law governing companies:

- where the holding company has shares of only one class, the aggregate number of shares held by all the subsidiaries of the holding company or by the holding company as treasury shares, must not at any time exceed ten percent (10%) of the total number of shares of the holding company at that time;
- where the share capital of the holding company is divided into shares of different classes, the aggregate number of the shares of any class held by all the subsidiaries of the holding company or by the holding company as treasury shares, must not at any time exceed ten percent (10%) of the total number of the shares;
- where item 1° or item 2° of the Article 174 of the Law governing companies is contravened, the holding company disposes of or cancels the excess shares, or procures the disposal of the excess shares by its subsidiary before the end of the period of six (6) months beginning with the day on which that the breach of item 1° and item 2° occurs, or such further period as the Registrar General may allow;
- where the subsidiary is a wholly-owned subsidiary of the holding company, no dividend may be paid, and no other distribution, whether in cash or otherwise, of the holding company's assets, including any distribution of assets to members on a winding up, may be made, to the subsidiary in respect of the shares referred in the Article 174 of the Law governing companies.

B. ACQUISITION BY A COMPANY OF ITS OWN SHARES

(1) Acquisition of company's own shares

A company may purchase or otherwise acquire shares allotted to it:

- subject to any restriction in its incorporation documents and in accordance with Articles 67, 176 and 177 of the Law governing companies;

- in the case of a private company, if the shareholders have opted out of the requirements of Article 225 of the Law governing companies;
- in accordance with an order of the court made under the Law governing companies on the terms and conditions set out in the Law governing companies;
- in accordance with the Article 226 of the Law governing companies.

(2) Powers of members of the Board of Directors to acquire shares

At any time when a company is entitled to acquire its own shares, the directors may:

- make a general offer to all shareholders of the company to acquire a proportion of their shares, if:
 - a) such an offer will, if accepted in full, leave unaffected relative voting and distribution rights;
 - b) all shareholders are afforded a reasonable opportunity to accept the offer;
 - c) the requirements for general or special offers set out in Article 177 of the Law governing companies are followed;
- make a special offer to one or more shareholders to acquire shares, other than in accordance with item 1°, if the requirements set out in Article 178 of the Law governing companies are followed.

C. REDEEMABLE SHARES

(1) Redeemable shares

Redemption at option of the company

Where a share is redeemable at the option of the company, any such redemption is deemed to be an acquisition of the share for the purposes of the Articles 176 and 178 of the Law governing companies.

Redemption at the option of the shareholder

Where a share is redeemable at the option of the holder of the share, and the holder gives proper notice to the company requiring the company to redeem the share;

- the company redeems the share on the date specified in the notice, or if no date is specified, on the date of receipt of the notice;
- from the date of redemption the former shareholder ranks as an unsecured creditor of the company in respect of the sum specified in the incorporation documents as being payable upon such redemption.

A redemption under the Article 181 is not a distribution for the purposes of the Articles 71 and 72 of the Law governing companies but is deemed to be a distribution for the purposes of Article 75 Paragraph One and 3 of the Law governing companies.

Redemption upon a fixed date

Where a share is redeemable upon a date specified in the incorporation documents:

- the company must redeem the share upon that date;
- from that date, the former shareholder ranks as an unsecured creditor of the company in respect of the sum specified in the incorporation documents as being payable upon such redemption.

A redemption under the Article 182 of the Law governing companies is not a distribution, but is deemed to be a distribution for the purposes of recovering a distribution from shareholder.

Study Unit

7

ADOPTION, ALTERATION AND REVOCATION OF INCORPORATION DOCUMENTS AND FUNDAMENTAL CHANGES

(1) Powers reserved to shareholders exercisable by special resolution

The powers reserved to shareholders and which may only be exercised by special resolution are to:

- adopt, alter or revoke the company's incorporation;
- authorize a transaction which affects the rights attached to any shares;
- adopt a special resolution;
- authorize a proposal to change the status of the company to a public or a private company;
- authorize an amalgamation;
- 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.

A. ALTERATION OF INCORPORATION

(1) Power to alter incorporation documents

When a company alters its incorporation documents, the directors must within ten (10) working days of the alteration deliver to the Registrar General:

- a completed notice of alteration of incorporation documents in the prescribed form; and
- completed consent in the prescribed form signed by any person named in the notice as new director or secretary.

In the case of an allotment of shares, the notice must specify:

- the number of shares allotted;
- the rights, privileges, limitations and conditions attached to each allotted share or class, and its transferability, if different to Article 88 of the Law governing companies.

In the case of a cancellation of shares, the notice must specify for shares of each class the number cancelled and the date of cancellation.

In the case of an alteration of the company's name, the Registrar General must issue an amended certificate of incorporation.

The provisions of the Paragraph One do not apply to any part of a company's incorporation documents relating to the internal management of the company.

Where the shareholders of a company are unable to alter articles of association in the manner provided by the articles or the Law governing companies, a competent court may, upon the application of the shareholders or directors make an order altering the articles of association on terms and conditions as it deems fit.

The applicant for such an order shall ensure that copies of the order together with the altered articles are delivered to the Registrar General in fifteen (15) working days.

(2) Notice of alteration of incorporation documents

Subject to provisions of Paragraph 4 of the Article 94 of the Law governing companies, when a company alters its incorporation documents, the directors shall within 10 workings days of the alteration deliver to the Registrar General:

- a completed notice of alteration of incorporation documents in the prescribed form;

- completed consent in the prescribed form signed by any person named in the notice as a new director or secretary.

In the case of an allotment of shares, the notice shall specify:

- the number of shares allotted;
- the rights, privileges, limitations and conditions attached to each allotted share or class, and its transferability, if different to Article 88 of the Law governing companies.

In the case of a cancellation of shares, the notice shall specify for shares of each class the number cancelled and the date of cancellation.

In the case of an alteration of the company's name, the Registrar General shall issue an amended certificate of incorporation.

B. AMALGAMATION

(1) Amalgamation

Subject to any restrictions in their respective incorporation documents, two or more companies may amalgamate, and continue as one company, which may be one of the amalgamating companies, or may be a new company.

The parties to an amalgamation shall not implement such amalgamation until it been approved, with or without conditions, by the authority in charge of competition and consumer protection.

(2) Prerequisites for authorizing amalgamation

A company that proposes to amalgamate authorizes:

- an amalgamation proposal which complies with the 201 of the Law governing companies;
- the proposed incorporation documents of the amalgamated company which comply with the Article 202 of the Law governing companies.

Amalgamation proposal

An amalgamation proposal sets out the terms of the amalgamation, and in particular:

- the manner in which shares of each amalgamating company are to be converted into shares of the amalgamated company;
- if any shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company;
- any payment to be made to any shareholder or director of an amalgamated company, other than a payment of the kind described in item 2° of Article 201 of the Law governing companies;
- details of any arrangements necessary to perfect the amalgamation and to provide for subsequent management and operation of the amalgamated company.

An amalgamation proposal specifies the date on which the amalgamation is intended to become effective.

If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal provides for the cancellation of those shares when the amalgamation becomes effective without any payment in respect of those shares, and no provision may be made in the proposal for the conversion of such shares into shares of the amalgamated company.

Incorporation documents of amalgamated company

The incorporation documents for authorization of an amalgamation are in the prescribed and in particular state:

- the name of the amalgamated company;
- the share structure of the amalgamated company, specifying:
 - a) the number of shares of the amalgamated company and the rights, privileges, limitations and conditions attached to each such share, and its transferability, if different from provisions of Article 193 of the Law governing companies;
 - b) the full names, postal and residential addresses of the members of the Board of Directors of the amalgamated company;
 - c) in the case of a public company, or a private company with a secretary, the full name, postal or residential address of the secretary of the amalgamated company;
- the registered office of the amalgamated company;
- the place where the amalgamated company's records are to be kept, if not the registered office;
- the amalgamated company's accounting reference date.

The incorporation documents may also contain:

- any restriction on the amalgamated company's capacity and powers;
- any provision permitted by the Law governing companies relating to the internal management of the amalgamated company.

If the proposed amalgamated company is to be the same as one of the amalgamating companies, the incorporation documents for authorization may comprise the incorporation documents of that amalgamating company and proposed notice of change of incorporation documents.

Manner of authorizing amalgamation

The members of the Board of Directors each amalgamating company resolves that in its opinion the:

- amalgamation is in the best interests of the shareholders of the company;
- the amalgamated company will satisfy the solvency test immediately after the time at which the amalgamation to become effective.

The members of the Board of Directors voting in favour of a resolution to amalgamate sign a certificate attesting that, in their opinion, the conditions required for amalgamation are satisfied.

The members of the Board of Directors of each amalgamating company send to each shareholder of that company not less than twenty (20) working days before the amalgamation is to take effect:

- a copy of the amalgamation proposals;
- a copy of the proposed incorporation documents;
- copies of the certificates given to each set of directors in favour of amalgamation;
- a statement of any material interests of the directors, whether in that capacity or otherwise;
- such other additional information and explanation as may be necessary to enable a shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.

The amalgamation is authorized:

- by the shareholders of each amalgamating company by special resolution;

- by any class of amalgamating companies, where no provision in the amalgamation proposal would, if contained in an alteration to that company's incorporation documents, require the authorization of that class.

Registration of amalgamation

After an amalgamation has been authorized, the following documents shall, within ten (10) working days of passing of the resolution to amalgamate, be delivered to the Registrar General in relation to the amalgamated company:

- its implementation documents, of if the amalgamated company is the same as one of the amalgamating companies, notice of change of incorporation documents;
- consents in the prescribed form signed by each of the persons named as director or secretary in the incorporation documents or in the notice of change of incorporation documents, as the case may be;
- a certificate approving the amalgamation.

Certificates on amalgamation

The Registrar General sends to the company, or person who delivered the documents required for registration of an amalgamation:

- if the amalgamated company is the same as one of the amalgamating companies, a certificate of amalgamation in the prescribed form, together with, if necessary, an amended certificate of incorporation of the company;
- if the amalgamated company is a new company, a certificate of amalgamation in the prescribed form together with certificate of incorporation in the prescribed form.

Study Unit

8

CORPORATE INSOLVENCY

Contents

- A. The Disappearance of Legal Personality
- B. Winding up by the Courts
- C. Voluntary Winding Up
- D. Liquidators: Appointment and Duties
- E. Release of Liquidators
- F. Offences relation to Liquidation

A. THE DISAPPEARANCE OF LEGAL PERSONALITY

When a commercial company acquires legal personality the personality does not persist for life i.e., it is not permanent, it will some day end. The disappearance of legal personality is the consequence of dissolution of the company, which entails the dissolution and distribution of its patrimony among shareholders (partners).

Causes of Disappearance

The causes of disappearance are of two types, the one is applicable to all commercial companies; the other relates to individual partners and is restricted to those companies in which the personality of the participant is fundamental.

a) General Causes

There are four general causes:

1. A commercial company established for a certain period of time dissolves at the end of that period in the absence of a resolution extending its life.
2. A decision taken by the shareholders (partners) to dissolve the company before the time agreed upon.
3. Loss of the object or impossibility of performance
4. If the object has been attained

b) Peculiar causes

The causes peculiar to individuals do not apply to all commercial companies, they relate exclusively to partnerships. Accordingly the death, incapacity or insolvency of a partner will lead to the dissolution.

However in practice, partnership agreements usually contain a provision (clause) making it possible for the partnership to continue doing business notwithstanding any of the above causes that may lead to its dissolution.

A partnership cannot be dissolved by the unilateral will of a partner except if he acts in good faith. The last cause for dissolution, which is applicable to all types of commercial companies, is the dissolution for just cause. Here dissolution may be requested by an individual shareholder or partner. The just cause is left to the appreciation of the court. Some of the factors, which may be considered as just cause, include failure by a partner to respect his obligations, permanent disability of a partner, antagonism that makes it impossible for the partners to work together etc.

Note that the regular transformation of a limited company from one form into another shall not entail the creation of a new legal entity. The same shall apply to an extension of the existence of a company or any other amendment of its Articles of Association (partnership Agreement) with formalities of publication both at the time of constitution (formation) to any amendment of its Articles of Association (partnership Agreement)

Dissolution of a Company

The dissolution of a company is the termination of its legal existence. Among the causes of dissolution of companies we may allude to the factors which are general and which apply to all types of commercial companies and those which that are unique to certain forms of commercial companies.

a) Causes Common to dissolution of all types of Companies

The factors that may occasion the dissolution of a company are:

- The expiry of the period for which it was formed;
- The realisation of the object or where the realisation of the object has become impossible;
- On the decision of the shareholders under the conditions provided for amending the Articles of Association:
- Upon a decision of the court at the request of a shareholder for a misunderstanding between shareholders hampering the normal functioning of the company:
- Where all the shares are united in the hands of a single shareholder / when all the shares are held by one person;
- Bankruptcy;

Expiry of the term (Exfluxion of time): If the articles of association provided for definite life (term) the company automatically terminates at the end of the designated time. However, the life of a company constituted for a fixed period may be extended by a decision of the shareholders in conformity with the condition provided for amending the Articles of Association. In the event where it is deemed necessary to prolong the life of the company, the managers (directors) are required to submit the question of prolongation to the shareholders at least six months before the expiry date.

Where a company is established for an indefinite period, then, a shareholder may if acting in good faith signifies his intention to withdraw from the company by giving the company six months' notice. Should that come to pass the other shareholders are required to reimburse the dissenting shareholder the equivalent of his assets having regard to the situation of the company as at the time of withdrawal provided that he does not elect to dissolve the company

Note that where a company is established for an indefinite period the company is a company at will. Such a company may be dissolved at any time by any shareholder. All that is necessary is for a shareholder to notify the other shareholders.

Realisation of the object or where realization of the object becomes impossible.

A company that is formed for a certain objective such as to acquire a certain plot of ground and

then to develop and sell residential lots dissolves when that objective is reached. Similarly where a company is formed for a certain objective and the realization of the object becomes impossible the company may be dissolved. Impossibility of achieving the objects may be the result of exhaustion of minerals, withdrawal of administrative concession nationalization etc.

On the decision of the shareholders.

Since a company is created as a result of the decision of the shareholders the shareholders can at any time decide to terminate the life of the company in accordance with the conditions provided for amending the Articles of Association

Upon a decision of the court.

A company may also be dissolved upon a decision of the court at the request of a shareholder for a serious misunderstanding between the shareholders, which leads to a malfunctioning of the company.

Where all the shares are united in the hands of a single shareholder.

When all the shares are held by one person this person can alone decide to dissolve the company. The person could be not only an individual but another company.

The bankruptcy of accompany is another factor that conduces to the dissolution of accompany. A company is said to be bankruptcy if it is unable to pay its debts as they are, or become due. Both bankruptcy and judicial administration are procedures controlled by the court.

Liquidation of companies

Liquidation of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. Upon liquidation of a company, a liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

There are two types of liquidation: compulsory liquidation under an order of court and voluntary liquidation under a resolution of the company.

A company shall be under liquidation as soon as it is dissolved for any reason except by merger. The words “in liquidation” shall be added to the name of the company including letters, invoices and various publication of the said company.

The legal personality of the company shall continue to exist for liquidation purposes until the liquidation procedure is completed.

When a decision ordering the liquidation of the company has been taken the powers of the board of directors, managing directors or the managers shall end (be suspended) and the liquidator will assume their functions. The managing directors or managers are required as at the date of dissolution to establish a balance sheet, profits and loss account and a report, which shall be submitted to the auditors (if any) for verification and to the shareholders for approval.

The liquidator(s) are, in default of their designation by the articles of association appointed by the annual 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 .

As seen before, every company shall be considered to be a commercial company.

It is therefore of paramount importance to discuss some matters relating to commercial activities, persons who carry out such activities (traders), and any other relevant matter that might fall within commercial sphere.

B. WINDING UP BY THE COURTS

Upon a decision of the court

A company may also be dissolved upon a decision of the court at the request of a shareholder for a serious misunderstanding between the shareholders, which leads to a malfunctioning of the company.

C. VOLUNTARY WINDING UP

On the decision of the shareholders

Since a company is created as a result of the decision of the shareholders the shareholders can at any time decide to terminate the life of the company in accordance with the conditions provided for amending the Articles of Association (i.e. in principle the unanimous decision of the partners (partnership) and the special majority for companies (SARL and SA).

D. LIQUIDATORS: APPOINTMENT AND DUTIES

Note that a liquidator may be chosen from among the shareholders or third parties. In addition, the liquidator may be a corporate body.

However, where the shareholders are unable to appoint a liquidator within three month of the dissolution of the company he may be designated by a court decision at the request of any interested party. In default, the managers or directors of the company at the time or moment of dissolution shall, in relation to the third parties, assume any obligation and liabilities of the liquidators.

Note that in case of nullity e.g. where the Articles of Association does not take the form of a notarial act it is only the court that is competent to appoint liquidators.

The liquidators are clothed with the widest powers possible to realize the act of liquidation as well as to represent the company i.e., legal proceedings (liquidation proceedings). However, the liquidator cannot without the consent of the shareholders (under condition for amending the articles of association) or authorization of the court, as the case may be, sell real estate, borrow give secured debts, transfer the assets of the company by private contract), assign or transfer the assets of the company to another company or stay the execution of a judgment.

Note that the effect of liquidation is to create concurrent rights between creditors of the company. As such, no cancellation of sale of movable property can be allowed against the interest of creditors.

The liquidator is empowered to pay creditors. Where the sums allotted to creditors have not been paid out, they shall be deposited in an account opened at the National Bank of Rwanda.

After paying off the creditors the balance available will then be shared among shareholders and any property that cannot be shared conveniently shall be handed over to the shareholders jointly.

In the course of performing his duties the liquidator is required to use the care and skill required of a paid agent. The liquidator is liable to the company as well as third parties for the actionable wrong resulting from any errors made by him in the exercise of his duties.

Each year the liquidator is required to submit to the general meeting a financial statement, profit and losses account as well as a written report in which he shall give an account of the liquidation exercise during the year together with reasons hampering the closure of liquidation. Nonetheless, the general meeting of shareholders or the court may at any time request the liquidator to submit a written report containing the state of the liquidation exercise and the reason hindering the closure of liquidation.

E. RELEASE OF LIQUIDATORS

At the close of liquidation it is mandatory for the liquidator to establish a written report on the liquidation exercise, which shall be submitted to the general meeting, failing this, to the auditors.

The shareholders shall take a decision on the final accounts, the discharge of the liquidator and auditors in respect of the performance of their duties. The discharge will be valid if and only if the report and profit and loss account do not contain errors or omissions.

The foregoing notwithstanding the court may at the request of any interested party pronounce the termination of liquidation once the liquidation exercise has been concluded. This, it will do after hearing the liquidator.

Notwithstanding the end of liquidation the court may order the reopening of liquidation at the request of any interested party:

- If the decision pronouncing the end of liquidation was actuated by a fraud on his rights;
- if the liquidators have not shared all that accrued to the company in liquidation

To make known his status of shareholder or creditor.

Should liquidation be reopened the former liquidators will be reinstated, if need be, they may be replaced.

PRESCRIPTION OR LIMITATION OF TIME

Prescription relates to the extinction of rights by lapse of time i.e. the time within which if an action is not instituted in court, the plaintiff's right of action is lost.

All actions against the company shall lapse after 10years from the date the right of action accrued. However, the following acts shall be barred after 5years:

- all actions against the promoters of a company starting from the date of publication of the memorandum of association;
- all actions against shareholders starting from the date of publication of their retirement or dissolution of the company;
- All actions against the organs of the company for acts committed in the exercise of their functions starting from the date of such acts or if it was concealed by fraud from the date of discovery;
- All actions against a company in liquidation from the date of publication of the closure of liquidation;
- all actions for the restitution of dividends unjustly paid from the date of distribution;
- all actions for the payment of dividends or for the reimbursement of part thereof, from the date it became due.

Study Unit

9

ALTERNATIVES TO WINDING UP

Contents

- A. Reconstruction
- B. Amalgamation, Mergers and Take-overs
- C. Schemes of Arrangement
- D. Rights of Shareholders
- E. Rights of Creditors

A. RECONSTRUCTION

Transformation, Merger and Cessation

The transformation of a company is the operation whereby a company changes its legal form by decision of its partners. The transformation of the company does not result in the creation of a new corporate body. The act of transformation amounts to an amendment of the Articles of Association (PA) which is subject to the publication formalities seen above. Nevertheless, if the transformation of a company has the effect of increasing the commitment of a shareholder in which the shareholders liability is limited to their contributions into one in which their liability is unlimited the consent of the shareholder in question is required.

Transformation does not destroy the rights of creditors of the company. Accordingly creditors shall maintain their rights over the company prior to such transformation. In addition the creditors may within three months from the date of publication of the act of amendment petition the court to nullify the transformation if they fail to obtain sufficient guarantee from the company.

For its part a merger is the operation whereby two or more companies merge to form a single company either by creating a new company or by one company acquiring the other (s). All the companies involved in the merger operation are each required to take and publish the decision in accordance with the rules regulating amendment of important aspects affecting the company in default in accordance with the requirements for constituting a new company.

A merger entails the dissolution without liquidation of the disappearing company and the universal transfer to the beneficiary company of their assets and liabilities in the state in which they are on the date of wrapping up of the operation.

Note that third parties (creditors) shall maintain their rights over the company prior to the merger. Furthermore, they may request the court within three months from the date of publication of the act of merger to declare the merger void if they fail to receive adequate guarantee from the company.

In addition a company may either alone or together with other companies create a new company by the partial transfer of its assets to the new company. Note that the decision transferring part of the assets of the company is taken and published in accordance with the rules to be observed when amending important aspects of the company. In default the rules regulating the reduction of the capital of the company must be strictly followed.

B. AMALGAMATION, MERGERS AND TAKE-OVERS

The transformation of a company is the operation whereby a company changes its legal form by decision of its partners. The transformation of the company does not result in the creation of a new corporate body. The act of transformation amounts to an amendment of the Articles of Association (PA) which is subject to the publication formalities seen above. Nevertheless, if the transformation of a company has the effect of increasing the commitment of a shareholder in which the shareholders liability is limited to their contributions into one in which their liability is unlimited the consent of the shareholder in question is required.

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Note that third parties (creditors) shall maintain their rights over the company prior to the merger. Furthermore, they may request the court of the act of merger to declare the merger void if the fail to receive adequate guarantee from the company.

C. SCHEMES OF ARRANGEMENT

The transformation of a company is the operation whereby a company changes its legal form by decision of its partners. The transformation of the company does not result in the creation of a new corporate body. The act of transformation amounts to an amendment of the Articles of Association (PA) which is subject to the publication formalities seen above. Nevertheless, if the transformation of a company has the effect of increasing the commitment of a shareholder in which the shareholders liability is limited to their contributions into one in which their liability is unlimited the consent of the shareholder in question is required.

In addition a company may either alone or together with other companies create a new company by the partial transfer of its assets to the new company. Note that the decision transferring part of the assets of the company is taken and published in accordance with the rules to be observed when amending important aspects of the company. In default the rules regulating the reduction of the capital of the company must be strictly followed.

D. RIGHTS OF SHAREHOLDERS

The rights of shareholders are safeguarded through Article 142 which states that a major transaction of amalgamation can only be approved by a special resolution at a meeting of the shareholders.

A special resolution can only be approved by a majority of 75% of the votes of those shareholders entitled to vote and who have voted on the issue under consideration.

E. RIGHTS OF CREDITORS

Transformation does not destroy the rights of creditors of the company Accordingly creditors shall maintain their rights over the company prior to such transformation.

In addition the creditors may petition the court to nullify the transformation if they fail to obtain sufficient guarantee from the company.

Study Unit

10

FOREIGN COMPANIES

Contents

- A. Definition
- B. Registration of Foreign Companies
- C. Obligations applicable to foreign companies
- D. Cessation of foreign company activities

This chapter deals with general notions on foreign company, obligations incurred by them as well as some provisions regarding the end of activities of a foreign company.

A. DEFINITION

A foreign company is a company incorporated outside of Rwanda and that has some of its activities in Rwanda by:

- establishing a share transfer office or a share registration office in Rwanda;
- administering, managing or dealing with property in Rwanda as an agent, personal representative or trustee, whether through its employees or an agent or in any other manner.

A foreign company has to be registered by the Registrar General. Where it is established that its name is confusing as far as companies inside the country are concerned, he/she shall require the name to be changed.

B. REGISTRATION OF FOREIGN COMPANIES

Every foreign company shall, before starting business file the following with the Registrar General :

- a duly authenticated copy of its articles of association and the certificate of its registration delivered by the registration officer;
- a duly authenticated copy of its certificate of incorporation, articles of association,
- memorandum of association depending on where it was established and any other instrument constituting or defining its being established;
- a list of its directors residing in Rwanda;
- a memorandum of or power of attorney to represent the company in Rwanda;
- notice of its registered office in Rwanda;
- a declaration made by the authorized agents of the company.

Where a foreign company has complied with the provisions of the law, the Registrar General shall register the company and shall issue a certificate thereof in the prescribed form.

C. OBLIGATIONS APPLICABLE TO FOREIGN COMPANIES

The law sets out obligations related to foreign companies, notably:

- Obligation to file with the Registrar General a court order (art. 328);
- Obligation by the Registrar General to approve changes (article 329);
- Obligation of a foreign company to deposit to the Registrar General has copy of a Balance Sheet (art. 330);
- Obligation to comply with requirements to local companies Rwanda of (art. 331);
- Obligation to comply with international accounting standards (art. 332);
- Obligation to give Notice by a foreign company of particulars of its business in Rwanda (art. 333);
- Obligation to keep at the head office, branch registers (art. 334);
- Filing with the Registrar General a notice as to a place where the register is kept (art. 335 and 336); etc.

D. CESSATION OF FOREIGN COMPANY ACTIVITIES

In the terms of the article 340, where a foreign company ceases to have a place of business or to carry on business in Rwanda, it shall, within seven (7) days of the date of the cessation, file with the Registrar

General a notice to that effect, and as from the day on which the notice is filed, its obligation to file any document other than a document that ought to have been filed shall cease to operate, and the Registrar General shall within three (3) months after the filing of the notice remove the name of the company from the register.

Article 341 adds by saying that Where a foreign company goes into liquidation or is dissolved in its place of incorporation or origin:

- an authorized agent in Rwanda shall, upon commencement of the liquidation, file with the Registrar General a notice to that effect;
- the liquidator of a dissolved company shall have the powers of a liquidator for Rwanda.

The article 342 gives the procedure to follow by the liquidator in these terms, A liquidator of a foreign company appointed by the Court or a person exercising the powers and functions of such a liquidator shall:

- before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business and where no liquidator has been appointed , invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;
- not, without leave of the Court, pay out any creditor to the exclusion of any other creditor.

Where a foreign company has been wound up so far as its assets in Rwanda are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered (article 343).

Finally to the terms of the article 344 of the law says, On receipt of a notice from an authorized agent in charge of liquidation or dissolution of the company, the Registrar General shall remove the name of the company from the register.

Where the Registrar General has reasonable cause to believe that a foreign company has ceased to carry on business in Rwanda, shall remove it from the register of companies in accordance with the Law.

Study Unit

11

DORMANT COMPANY

Contents

- A. Dormant Company

A. DORMANT COMPANY

Article 346 and 347 give this definition, a company shall be a dormant company for any period during which no significant accounting transaction occurs in relation to the company. Where a company has:

- been dormant from the time of its formation;
- has been dormant since the end of its previous accounting period; and is not required to prepare accounts for that period, by a special resolution passed at a meeting of shareholders, such company declare itself a dormant company.

A company shall not declare itself to be a dormant company where it is a company formed for the business of banking or insurance.

The company shall, within fifteen (15) days of the passing of the special resolution declaring itself to be a dormant company gives notice to the Registrar General of that resolution (art. 349).

Where a company which has declared itself to be a dormant company ceases to be dormant, a notice thereto shall be given to the Registrar General by that company (art.350).

It is worth mentioning exemption for dormant companies as envisaged by article 351 saying that any company, which is registered as being a dormant company, shall be exempted from the requirement of having its accounts audited and from the payment of any prescribed fee as is relevant to its situation.

Study Unit

12

REMOVAL FROM REGISTER OF COMPANIES AND PENALTIES

Contents

- A. Removal from Register of Companies
- B. Solvency and company's inability to pay
- C. Pertinent provisions in relation to the removal from the register of companies
- D. Penal Provisions

The present chapter approaches the removal of a company from register of companies as well as the penalties.

A. REMOVAL FROM REGISTRAR COMPANIES

Before speaking of actual removal from register, the law distinguishes a companies based on whether or not they have passed the solvency test. It is however difficult to establish.

B. SOLVENCY AND COMPANY'S INABILITY TO PAY

According to the wording of article 352, a company shall satisfy the solvency test where:

- the company is able to pay its debts as they become due in the normal course of business;
- the value of the company's income is greater than the sum of the value of its liabilities and the company's share capital.

A company shall be considered to be unable to pay its debts where:

- a creditor to whom the company is indebted in a sum exceeding twenty thousand Rwanda francs (20,000 Rwf), has served at the registered office a demand under his/her hand or under the hand of his/her Lawfully authorized agent requiring the company to pay the sum due, and the company has for three weeks thereafter neglected to pay the sum or to secure it to the reasonable satisfaction of the creditor;
- execution or other process issued on a judgment or order of any Court in favor of a creditor of the company is returned unsatisfied;
- it is proved to the satisfaction of the Court that the company is unable to pay its debts, having regard to its existing, contingent and prospective liabilities.

C. PERTINENT PROVISIONS IN RELATION TO THE REMOVAL FROM THE REGISTER OF COMPANIES

A company shall be removed from the register of companies when a notice, signed by the Registrar General states that the company is removed from the register (art. 354). Concerning reasons for removal from the register of companies article 355 specifies that The Registrar General shall remove a company from the register of companies where :

- the company is an amalgamating company, other than an amalgamated company, on the day on which the Registrar General issues a certificate of amalgamation;
- the Registrar General is satisfied that the company has ceased to carry on business.

However article 357 provides for possible objections in the following manner:

Where a notice is given of an intention to remove a company from the register, any person may deliver to the Registrar General, not later than the date specified in the notice, an objection to the removal on grounds that :

- the company is still carrying on business or there is other reason for it to continue in existence;
- the company is a party to legal proceedings;
- the company is in receivership or liquidation, or both;
- a person is a creditor or a shareholder, or a person who has an undischarged claim against the company;
- the person believes that there exists, and intends to pursue, a right of action against the company;
- for any other reason, it would not be just and equitable to remove the company from the register.

The proceeding of removal of a company from the register by the Registrar General are subject to prior assessment of objections as put by article 358, the Registrar General shall not proceed with the removal

unless he/ she is satisfied that :

- the objection has been withdrawn;
- any facts on which the objection is based are not, or are no longer, correct;
- the objection is frivolous or vexatious. The Registrar General shall give notice to the person objecting that his/her objection is receivable or not and provide grounds therefor.

The property of a company which is removed from the register includes leasehold rights and all other rights vested in or held on behalf of or on trust for the company prior to its removal but does not include property held by the former company on trust for any other person (art. 359).

Finally article 360 states that the removal of a company from the register of companies shall not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register and that liability continues and may be enforced as if the company had not been removed from the register.

D. PENAL PROVISIONS

Articles 361 to 376 give a whole range of the penal provisions mainly consisting in fine up to 10 millions Rwandan Francs, notwithstanding the existing penal Code provisions. Those penalties are applied notably in the following cases:

- Where a company fails to comply with the Law as to getting registered in the relevant Register of companies is concerned (art. 361);
- Where a company fails to keep the books required (art. 362);
- Where a company fails or delays to provide the Registrar General with the documents that are required (art. 363);
- Recidivism (art. 364);
- False or misleading notice (art. 365);
- Deliberate submission of false document (art. 366);
- Fraudulent use and destruction of company's property (art. 367);
- Falsification of the records (art. 368);
- Use of a fraudulent document (art.369);
- Fraudulent exercise of the commercial activities (art. 370);
- Fraudulent acts (art. 371);
- Etc.

Study Unit

13

ACCOUNTING RECORDS AND AUDIT

Contents

- A. Definition
- B. Financial Statement and Annual Report
- C. Mandatory Investigation
- D. Amalgamation of Companies
- E. Alteration of the nature of companies

A. DEFINITION

By audit, one should understand a mission of investigating entrusted to a professional (named auditor sometimes) by a person in quest of information on a concerned operation or on a situation of an enterprise that consists depending on the agreement in verifying the conformity of the operation or the situation under study to the rules of the law in general or those of a determined sector, it can also aim at assessing the risks of the initiative or the activity considered or even its degree of efficiency and eventually draw a report to the assignor.

Some provisions related to the auditors

These provisions hinge on the appointment, fees and expenses, resignation of an auditor, etc.

Concerning an auditor's nomination article 238 specifies that a company shall, at each annual meeting, appoints an auditor. Where at that annual meeting, the company fails to appoint an auditor during that annual meeting or the post continues to fall vacant for a one month period, the Registrar General shall have the powers to have the company appoint its auditor within thirty (30) days.

When during a yearly assembly of the company, no auditor is named or takes back to his/her/its station and that the station remains vacant since one month, the Registrar General is authorized to order to the company to name a auditor within (30) days at most.

An auditor of a company shall be automatically reappointed at an annual meeting of the company unless:

- the company passes a resolution at the annual meeting appointing another person to replace the auditor;
- a small private company passes a resolution that no auditor shall be appointed;
- the auditor has given notice to the company that he/she does not wish to be reappointed.

Where an auditor gives the Board of Directors of a company written notice that he/she does not wish to be reappointed, the Board shall, if requested to do so by that auditor :

- distribute to all shareholders and to the Registrar General, at the expense of the company, a written statement of the auditor's reasons for his/her wish not to be reappointed;
- permit the auditor or his/her representative to explain at a shareholders' meeting the reasons for his/her wish not to be reappointed.

Regarding an auditor's qualification, article 242 says that no person shall be appointed or act as auditor of a company, other than a small private company, unless he/she possesses qualifications of, or equivalent to those of any institution or association of chartered accountants.

It is worth highlighting that Small private companies need not to appoint an auditor according to article 251 of the law. Where a small private company decides to appoint an auditor, the provisions of this Law shall apply.

Where at, or before the time required for the holding of the annual meeting of a small private company, notice is given to the Board of Directors of the company, signed by a shareholder who holds at least five per cent (5%) of the shares of the company, the company shall appoint an auditor. Such resolution shall cease to have effect at the next annual meeting, and the auditor shall thereupon be re-appointed unless the shareholders by unanimous resolution agree not to appoint the auditor.

With regard to fees and auditor's expenses, they are determined by the meeting of the shareholders or by the Board of directors when it is specified by the articles of association of the company.

Where from a report of an inspector it appears that any qualified auditor:

- has been guilty of misconduct;
- has conducted an audit in a manner that is not appropriate;

the Registrar General shall refer that matter to competent authorities for necessary action. Concerning an auditor's resignation, an auditor may resign prior to the annual meeting of the company. This shall, after receiving the notification thereof, call on the Board of Directors to a special meeting to receive the auditor's notice of resignation. The auditor shall provide a written report which gives to him/her representative the opportunity to give an explanation why he/she does not wish to be re appointed as auditor. Also during that meeting, the Board of Directors or the meeting of shareholders shall appoint of a new auditor (article 245).

Where from a report of an inspector it appears to the Registrar General that in the management and administration of a company, there is a shareholder who, by virtue of his/her company, shares and voting rights deriving from the classes of such shares and other benefits, alters the decisions that were taken through the vote, causes mismanagement for him/her to maintain control and where the latter helps him/her to unfairly discriminate other shareholders, the Registrar General may lodge a case before the Court following this Law.

Auditing report

According to the article 241 of the law, an auditing report required to be signed on behalf of a firm appointed as auditor of a company, by a member of the firm who is a qualified auditor.

Article 247 says that the auditor of a company shall prepare an auditing report and submit it to the company's shareholders. The auditor's report shall state the following:

- The work done by the auditor;
- The scope and limitations of the audit;
- The proof that there is no relationship, no interests and debt which the auditor has in the company;
- Whether the auditor has obtained all information and explanations he/she needed;
- Whether, proper accounting records have been well kept by the company;
- Whether, in the auditor's opinion, the financial statements give a true and fair view of the matters to which they relate, and where they do not, shortcomings are identified;
- Whether, the financial statements comply with the international accounting standards;
- The auditor's opinion and problems that are linked with the company's management;
- The auditor makes recommendations with regard to the identified problems.

Article 250 lays down modalities for submitting auditor's report in these words, where the auditor of a company completes his/her report, he/she submits it to the company in a period not exceeding seven (7) days and reserve a copy of the same for the debenture holders or their representatives.

B. FINANCIAL STATEMENT AND ANNUAL REPORT

Financial Statement

The Board of Directors of every company shall ensure that, within three (3) months following the end of a financial statement the audit is made and signed by at least one representative of the company. Such an audit shall be submitted to the Registrar General (article 253).

The financial statements of a company shall comply with international standards. Members of the Board of directors shall provide such information and explanations as are necessary for auditing process to be conducted (art. 254).

Concerning registration of the financial statement, all company, with the exception of the small private companies, must insure that in the thirty (30) days that follow the date required for the signature of

the financial states of the company and the financial states of the whole group, the copies of these financial states accompanied by a copy of the audit report on these financial states are deposited to the office of the Registrar General for registration.

With regard to the content of the financial statement, article 266 states that the consolidated financial statements shall, in the case of companies which are required to comply with the International Accounting Standards, contain:

- a consolidated balance sheet for the group as at that balance sheet date;
- a consolidated income statement;

Annual report

The Board of Directors of every company shall, within six (6) months after the company's financial statement date, prepare an annual report on the affairs of the company during the accounting period (article 267 of the law) ending on that date.

The Board of Directors of a company shall cause a copy of the annual report to be sent to every shareholder of the company not less than fifteen (15) days before the date fixed for holding the annual meeting of the shareholders.

Concerning the format, every annual report for a company shall be in writing and be dated and shall:

- describe, so far as the Board believes is material for the shareholders to have an appreciation of the state of the company's affairs and is not harmful to the business of the company or of any of its subsidiaries, especially any change during the accounting period in:
 - a) the nature of the business of the company or any of its subsidiaries;
 - b) the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise;
- include financial statements for the accounting period and any group financial statements for the accounting period completed and signed in accordance with this Law;
- where an auditor's report is required in relation to the financial statements or group financial statements, included in the report, include that auditor's report;
- state particulars of entries in the interests register made during the accounting period;
- state the amount which represents the total of the remuneration and benefits received by or due and receivable from the company and any related corporation by:
 - a) executive directors of a company engaged in the full time employment of the company and its related corporations, including all bonuses and commissions received by them as employees;
 - b) separate statement, the non-executive directors of the company;
- state the total amount of donations made by the company and other subsidiaries during the accounting period;
- state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period;
- state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm;
- be signed on behalf of the Board of Directors by two (2) directors of the company or, where the company has only one director, by that director;
- disclose related party transactions and full information about the nature and extent of the

conflict of interest;

- any other details that are necessary for the report to be well understood.

A Company whose subsidiary companies is located outside Rwanda shall also comply with the provisions of this article within eight (8) weeks after the dates contained therein.

C. MANDATORY INVESTIGATION

Besides the inspection of the documents of a company made by the Shareholder(s), the law set out a series of provisions related to the inspection of the activities of a company and that is made by the inspector.

Mandatory investigation and appointment of an inspector

Where the Minister in charge of companies is satisfied that:

- for the protection of the public, the shareholders or creditors of a company, it is desirable that the affairs of a company should be investigated;
- it is in the public interest that the affairs of a company should be investigated;
- in the case of a foreign company, the appropriate authority of another country had requested that an investigation be made under this article in respect of the company; he/she shall issue the instructions to the Registrar General as to investigating into the business of a local company or of a foreign company having its branch in Rwanda (article 274).

An inspector of the business of a company shall be appointed by the Registrar General and have the power to investigate the business of a company.

The appointed inspector should be a qualified, skilled and experienced professional manager. This expert shall prepare a report according to the format required by the Registrar General (art. 175).

However, the article 283 allows a company, with the exception of a declared company can, to appoint an inspector by ordinary resolution, to investigate its business.

In the same vein, article 294 provides that a foreign company with subsidiary companies in Rwanda may appoint inspectors for such subsidiary companies and the Registrar General shall be notified thereof.

Expenses and operating cost of the inspection of a declared company are paid by the office of the Registrar General. An inspection cannot be ordered by the Minister, in this case the article 277 The Registrar General may :

- in the case of a company having a share capital, on the application of:
 - a) one shareholder or a group of shareholders holding at least one-tenth (1/10) of the issued shares;
 - b) debenture holders holding not less than one-fifth (1/5) in nominal value of the issued debentures;
- in the case of a company limited by guarantee, on the application of not less than one-fifth (1/5) in number of the persons on the share register;
- where he/she considers that the appointment of an inspector is necessary to safeguard the interests of shareholders or debenture shareholders or is necessary in the public interest, require an inspector to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and in the case of a debenture agency deed, the conduct of the debenture holders' representative, and to make a report on his/her investigation in such form and manner as the Registrar General may direct.

Publication or submission of copies of the reports

The Registrar General may, where he/she is of the opinion that it is necessary in the public interest to do so, ask the organ that requested for the investigation to cause the report to be published (art. 280).

A copy of the inspector's report shall be forwarded to the Registrar General, at the registered office of the company and to those who requested for it. (art. 279).

On the conclusion of the investigation, the inspector shall report his/her opinion in such manner and to such persons as the company's general assembly indicated (art. 284).

Procedure and powers of the inspector

Every person concerned shall, if required to do so by the inspector, produce to the latter every book in his/her custody, control or possession and give to the inspector all assistance in connection with the investigation which he/she is reasonably able to give for the investigation to be smoothly carried out (art. 287).

An inspector may by written notice require any person concerned to appear for examination on oath in relation to the business of a subsidiary and the notice may require the production of every book in the custody, control or possession of the person concerned (art.288).

Where an inspector requires the production of a book in the custody, control or possession of a person concerned, he/she:

- may take possession of those books;
- may retain those books for such time as he/she considers necessary for the purpose of the accomplishment of his/her mission;
- shall, where those books are in his/her possession, permit the company to have access, at all reasonable times to the book.

Appendix

I. FORMS TO BE COMPLETED WHEN A COMPANY IS REGISTERED WITH THE OFFICE OF THE REGISTRARGENERAL

-A-

Form of memorandum of association of a company limited by shares (art. 14)

- 1) The name of the company is limited (insert name of company)."
- 2) The category of the company is Private / Public.
- 3) The company has the articles of association/ doesn't have articles of association.
- 4) The registered office of the company will be
- 5) The shareholders resolved that Mr./Mrs./Miss: will be the first Managing Director of the Company.
- 6) The objects for which the company is established are.....
.....
- 7) The liability of the members is limited.
- 8) The share capital of the company is (Insert the amount of share capital) divided into shares of
Rwandan francs

WE, the several persons whose names and addresses are subscribed, desire to be formed into a company, under this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

N°	Names, postal addresses and occupations of subscribers	Number of shares subscribed	Signature of subscribers
2.			
3.			
4.			
5.			
6			
7			
8			
	Total shares taken		

(if more than 5, please attach a list of shareholders on separate paper)

Date:.....

Witness:

Signature:

-B-

Form of memorandum of association of a company limited by guarantee (art. 14)

- 1) The proposed name of the company is limited (insert name of company).”
- 2) The category of the company is Private.
- 3) The company has the articles of association/ doesn't have articles of association.
- 4) The registered office of the company will be situated
- 5) The shareholders resolved that Mr./Mrs./Miss: will be the first Managing Director of the Company.
- 6) The objects for which the company is established are
.....
.....
- 7) The liability of the members is limited.
- 8) Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up.

WE, the several persons whose names and addresses are subscribed, are desire to be formed into a company, under this memorandum of association.

Nº	Names, postal addresses and occupations of subscribers	Amount of guarantee	Signature of subscribers
2.			
3.			
4.			
5.			
6			
7			
8			
	Total shares taken		

(if more than 5, please attach a list of shareholders on separate paper)

Date:

Witness

Signature:.....

- C-

Memorandum of association of a company limited both by shares and by guarantee (art. 14)

- 1) The proposed name of the company is limited (insert name of company)."
- 2) The category of the company is Private / Public.
- 3) The company has the articles of association/ doesn't have articles of association.
- 4) The registered office of the company will be situated
- 5) The shareholders resolved that Mr./Mrs./Miss:will be the first Managing Director of the Company.
- 6) The objects for which the company is established are
.....
.....
- 7) The liability of the members is limited.
- 8) The share capital of the company is (Insert the amount of share capital) divided into shares of Rwandan francs

N°	Names, postal addresses and occupations of subscribers	Number of shares subscribed	Amount of guarantee	Signature of subscribers
2.				
3.				
4.				
5.				
6				
7				
8				
	Total shares taken			

- 9) Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up.

WE, the several persons whose names and addresses are subscribed, are desire to be formed into a company, under this memorandum of association.

(if more than 5, please attach a list of shareholders on separate paper)

Date:

Witness

Signature:

-D-

Memorandum of association of an unlimited company (art. 14)

- 1) The proposed name of the company is limited (insert name of company).”
- 2) The category of the company is Private.
- 3) The company has the articles of association/ doesn't have articles of association.
- 4) The registered office of the company will be situated
- 5) The shareholders resolved that Mr./Mrs./Miss: will be the first Managing Director of the Company.
- 6) The objects for which the company is established are
.....
.....
- 7) The liability of the members is unlimited.
- 8) The share capital of the company is (Insert the amount of share capital) divided into shares of Rwandan francs

WE, the several persons whose names are subscribed, desire to be formed into a company, under this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

N°	Names, postal addresses and occupations of subscribers	Number of shares subscribed	Signature of subscribers
2.			
3.			
4.			
5.			
6			
7			
8			
	Total shares taken		

(if more than 5, please attach a list of shareholders on separate paper)

Date:

Witness:

Signature:

