
**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3: COMPANY LAW

DATE: WEDNESDAY, 30 MARCH 2022

INSTRUCTIONS:

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

SECTION A

QUESTION ONE

Recently, a heated discussion on the difference between a bank and a cooperative as business organizations erupted between Bugabo, a significant shareholder in M-Bank Rwanda Plc, a firm whose sole business is banking activities with share capital of 20 Billion Rwandan Francs and 5 shareholders with different number of shares and voting rights and which has the head office in the City of Kigali and Berwa, the President of the Council and Chairperson of the Board of Directors of CO-AB Kigali SACCO, a Cooperative recently licensed as a bank under the Law governing operations of banking. Bugabo alleged that CO-AB Kigali SACCO is not a business since its objective is pure social and it is even impossible for a cooperative to claim it is a business organization. Berwa, a former senior bank executive vigorously disputed what she called a misconception of a cooperative by Bugabo, his former bank executive and friend. Also, Bugabo alleged that the cooperative lacks some of the fundamental documents for the establishment of a business organization such as the memorandum of association and articles of association and therefore cannot be referred to as a business. Berwa presented the cooperative as an entity created to alleviate its members from poverty and effectively rendering them rich which makes it a perfect business organization.

Required:

(a) The law governing companies in Rwanda establishes two categories of companies, a private company and public company, and five types of companies, a company limited by shares, a company limited by guarantee, a company limited by shares and guarantee, an unlimited company and a protected cell company. Also, for a company to establish, a number of incorporation documents including but not limited to memorandum of association and articles of association are required.

i) Focusing on the categorization and typology of the companies under Rwandan law, **define M-Bank Plc.** (6 Marks)

ii) **State the minimum contents of M-Bank Plc Memorandum of Association.** (5 Marks)

iii) **Explain the rights, powers, duties, and obligations of the company, of the Board of Directors, of each director, and of each shareholder of the company in case a company does not have the Articles of Association.** (3 Marks)

iv) Do you think a company must have Articles of Association under the Law governing companies in Rwanda? **Explain.** (3 Marks)

(b) Part of the argument between Bugabo and Berwa is on the difference between a company and a cooperative as business organizations. In regards with their differences on the meaning of what a business organization should, **explain to them the distinction between M-Bank Rwanda Plc and CO-AB Kigali SACCO with an emphasis on:**

i) The acquisition of their legal personality (4 Marks)

ii) The objective of M-Bank Plc and CO-AB Kigali SACCO. (4 Marks)

(Total: 25 Marks)

QUESTION TWO

A group of Kigali-based investors created in June 2021, Kiruhura Investment Co. Plc, a public company limited by shares with preference share capital and equity share capital and having its head office in the City of Kigali. The shareholders of this huge investment company wanted only to transfer, as the law provides any of the stocks in the company but still needed some clarifications on the notions of the classes or types of share capital before they started to sell their stocks in Kiruhura Investment Co. Plc. Also, even before the operations to transfer shares in Kiruhura Investment Co. Plc. The company by an ordinary resolution of shareholders, converted all the redeemable shares totaling ninety per cent (90%) of the company shareholding into shares of no-par value basing on the fact that the majority shareholders, Kavuyo and Kivange who retain 40 and 30 per cent respectively back such a move. In the meantime, Mahirwe and Mugisha who hold 10 percent each respectively complained to the company about their rights and obligations over the converted shares.

Required:

- (a) Explain the types/classes of share capital as highlighted in this case. (10 Marks)
 - (b) Explain the legality of Kiruhura Investment Co. Plc on the conversion of 90 percent of its shares which are par value shares into a no-par value share. (8 Marks)
 - (c) Do you think the resolution of the company to convert shares into no par value shares will affect the rights and liabilities of Mahirwe and Mugisha? Explain. (7 Marks)
- (Total: 25 Marks)**

QUESTION THREE

K & K Limited is a private company located in Nyarugenge, City of Kigali. It has 10 shareholders who invested each one billion Rwandan francs. Recently, due to Covid-19 related business difficulties, the company ran out of liquidities and make recourse to the Rwanda Stock Exchange where it listed its debentures officially posting its document calling the public to subscribe for its debentures. Members of the public subscribed for the K & K Limited's debentures and a piece of paper on which the company acknowledges their debenture holder status was given to them by the company. This decision to call the public to subscribe for K & K Limited's debentures was passed by a universal resolution of its shareholders. In the meantime, the company when confronted with the Capital Market Authority for possible violation of the laws on companies and capital markets, the company purported that it did not issue any document deemed debenture and therefore cannot be held liable of violation of the law under the laws on capital markets nor the laws governing companies in Rwanda.

Required:

- (a) **Define the concept debenture under the Law governing companies in Rwanda** (5 Marks)
- (b) **Comment on the legality of the unanimous resolution of K & K Limited's shareholders allowing the company to invite the public to subscribe for its debentures.** (5 Marks)
- (c) **Knowing that K & K Ltd issued the invitation to the public to subscribe for its debentures, are you the same view as the company that it did not issue any document deemed debenture and therefore cannot be held liable for violation of the law under the Law governing companies or capital markets? Elaborate on your answer.** (10 Marks)
- (Total: 20 Marks)**

QUESTION FOUR

Komezha and Garuka has recently started a project to process maize from their large maize farm in Nyagatare. Since the project is successful, the two men are in the process to create a private company limited by shares and call it K & G Ltd. Though they want to attract investors into their company, they would like to keep control of their firm even if they do not have majority of shares. Komezha and Garuka, the initial promoters of the company, do not want to issue shares that are conferring any powers or preference to the new shareholders of the company. Ten new shareholders, Mwiza, Makara, Makoro, Meza, Mahela, Mafaranga, Mashilingi, Kwetu, Kwaheli, and Mpore filed their documents requesting the promoters to subscribe for shares in K & G Ltd.

After ten years into existence, Komezha, Garuka and other ten shareholders take a unanimous resolution to modify the category of their company. They turned K & G Ltd into a public company limited by shares and incorporated it as K & G Plc later in 2020. As the grow of K & G Plc became tremendous, they seek money to expand their business and cover the African continental. In a special resolution passed in May 2021, the shareholders of K & G Plc decided to invite the public to purchase shares in K & G Plc through the issuance of the prospectus. They however ended up listing only 30 percent of the shareholding of the company.

Required:

- (a) **State the classes of shares available for K & G Ltd.** (5 Marks)
- (b) **Explain to Komezha and Garuka how they can keep control of their company even if they are minority shareholders.** (5 Marks)
- (c) **What is a "prospectus"?** (5 Marks)
- (d) **Discuss the concept "transfer of shares in K & G Plc".** (5 Marks)
- (Total: 20Marks)**

SECTION B

QUESTION FIVE

Sehene is a member of the Board of Directors of Sehene, Gashonga & Sons Plc, a public limited company with a 9 strong Board of Directors Members. The company specializes in cement production and distribution. Sehene and Gashonga have also another venture in cement business, SG Ltd. In their functions as powerful board members of Sehene, Gashonga & Sons Plc, the two Directors noted the prosperous Sehene, Gashonga & Sons Plc needed raw materials to produce cement supply of the Bugesera Airport, a large Government of Rwanda infrastructure project. The company entered into contract with several suppliers, the most important of them being SG Ltd which secured a contract valued at FRW 100 billion to supply raw materials. Initially, some members of the Board of Directors were reluctant in supporting the transaction yet using their business relations Sehene and Gashonga managed to pass a resolution with simple majority vote of the members of the Board of Directors with only Five (5) members (Sehene and Gashonga among them) approving the transaction. The Board of Directors did not disclose this transaction to the Shareholders until one of them noted that SG Ltd was supplying raw materials for cement production at the price which was twice the market price and shared his grievance with other shareholders. The shareholders were not happy of the transactions and requested the Board to call the meeting of shareholders to transact on the matter, a meeting which was called one week later.

During the meeting on the issue of the contract between Sehene, Gashonga & Sons Plc and SG Ltd, the shareholders also noted in the reports that Sehene and Gashonga have acquired together 20 per cent of the shareholding of Sehene, Gashonga & Sons Plc after noting in their meetings with the management and substantial reports that the value of its shares was going to sky rocket in the next three years leaving the company one of the most valuable assets in the cement industry.

Required:

- (a) **Do you think Sehene and Gashonga have interest in the transaction between Sehene, Gashonga & Sons Plc and SG Ltd? Explain.** (5 Marks)
- (b) **Substantiate on the validity of the Board of Directors Resolution to allow Sehene, Gashonga & Sons Plc and SG Ltd to enter a FRW 100 billion for the latter to supply raw materials to the former.** (5 Marks)
- (c) **Do you think the failure by Sehene and Gashonga to disclose their interest in the contract between Sehene, Gashonga & Sons Plc and SG Ltd can invalidate this transaction? Explain.** (5 Marks)
- (d) **Explain whether Shareholders of Sehene, Gashonga & Sons Plc can invalidate the FRW 100 billion contract for supply of raw materials.** (5 Marks)
- (e) **By buying shares from Sehene, Gashonga & Sons Plc as a result of the information which is not accessible to the public they got from their position as members of the Board of Directors, do you think this transaction is legal? Explain.** (10 Marks)

(Total: 30Marks)

QUESTION SIX

Makosa is the Chairman of a 9 members Board of Directors of Birayi Ltd, an Irish potato growing, and distribution company located in Musanze. The company, whose value is FRW 5,000 billion, is a well-managed company which holds regularly annual meetings of shareholders. In its 2019-2020 Annual meeting of shareholders, the Chairman of the Board of Directors presented a report to the Meeting of Shareholders he alone signed and stamped. In that accounting period, the Annual Report of Directors concealed the political donations the company had made to the two major political parties as the shareholders were always against any political donations from the company. However, during this annual meeting of shareholders, the Auditor of the company reported on these donations and highlighted improper accounting records that have been kept by the company which were conducted under the watch of the Board of Directors. To conclude, the auditor reported that the Board of Directors refused him all the information and documents he had requested. When the problems uncovered by the external auditor in Birayi Ltd were reported to the competent government authorities, the investigation and inspection into the company were launched. In the same token, the Minister ordered the investigation into Birayi Ltd.

Required:

- (a) **Comment on the legality of the annual report of directors.** (10 Marks)
- (b) **Explain the legal foundations of the auditor's report in this case and whether the Board of Directors did not meet the requirements by the law to cooperate with the auditor and maintain proper accounting records of the company.** (10 Marks)
- (c) **Elaborate on the investigation ordered by the Minister into a company under the Law governing companies in Rwanda.** (10 Marks)

(Total: 30Marks)

End of question paper

