



**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3: COMPANY LAW

**DATE: WEDNESDAY, 01 DECEMBER 2021
MARKING GUIDE AND MODEL ANSWERS**

SECTION A

QUESTION ONE

Marking guide

a) Distinctive features for a limited liability company and a cooperative organization

For a limited liability company:	Marks
- A company is a trading entity per excellence.	1
- An object of company: commercial purposes i.e., making profit/loss.	1
- A company has separate legal personality from its shareholders.	1
- Inequality of shareholders is admissible (rights, obligations powers are determined by the number of shares a shareholder has).	1
- The management works primarily for the best interest of the company.	1

For a cooperative

- Legal personality of a cooperative is separate from that of its members.	1
- Cooperative organization's objective is to improve the social welfare of the members.	1
- Shares of a cooperative member confer only one vote (Principle of equality of cooperative organization's members).	1
- Management works primarily for the best interest of the members.	1

Maximum marks **8**

b) Demonstrate knowledge of the difference between Public and private company and how they trade their stocks

There exist two categories of the companies: public company and private company, whose objective is to engage for commercial purposes (making profit).	1
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Differences between the two categories:

- The number of shareholders in a public company is unlimited while the number of shareholders in a private company is limited.	1
- A public company freely transfers its shares whereas the private company's power to transfer its shares is restricted.	1

Changing Mutimukeye Ltd into Mutimukeye Pls:

- Would enable Mutimukeye to raise funds from securities markets (such as Rwanda Stock Exchange).	1
- Would be able to issue prospectus to the public and invite the public to buy its shares, which is not allowed to a private company	1

To change the category from a private company to private company requires the following:

- To have a company secretary.	1
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- Separate the office of chairperson of the board of directors from that of the managing Director. 1
 - To have independent directors (1/3 of Directors). 1
- Maximum marks** 8

c) Persons qualified to be appointed directors of the company and contract theory of the company

- Mutimukeye cannot appoint moral persons as members of the board of directors. 1
- Only physical persons can be appointed as the members of the board of directors. 1
- Mutimukeye can only appoint physical persons as the members of the board of directors (Law governing companies, Art. 156). 2
- The contractual is theory explains the company existing as a performance of a contract between its members and with its management who exercise the agent's duty on behalf of the shareholders. 1
- state charter merely recognizes the existence of a "nexus of contracts" called a corporation. 1

Maximum marks 6

d) Implication of the category of the company on its capacity to transfer its shares

- The capacity of the company to transfer its shares depends on whether a company is a public company or a private company. 1
- Shares in a public company are freely transferrable 1
- Shares in a private company are not freely transferrable, their transfer is restricted. 1

Maximum marks 3

Total marks 25

Model answers

a) On this question the candidate is expected to show knowledge in the differences between the two forms of business, namely limited liability company and a cooperative entity. They should show differences and similarities between those two forms, with at least 4 elements, namely:

Distinctive features of a company:

- **A company is a trading entity ‘per excellence’.** The company is an entity created to conduct business, to do trade with an aim to make profit.
- **A company’s object is solely established for commercial purposes;** (Law No. 007/2021 of 05/02/2021 governing companies, Art. 4).
- **A company has its legal personality separate from those of its members.** (Law governing companies, Art. 26, company law). This allows the company to separate its liabilities from the liabilities of its shareholders which increases its protection and the protection of its shareholders as far as property is concerned in case either of them is held liable for any wrong.
- **The management works primarily for the best interest of the company.** The management of the company is answerable to such a company and is in no way answerable to individual shareholders of the company.
- **Powers, rights and liabilities of shareholders are determined and limited to the shares they subscribed for (Inequality of shareholders is admissible).** Shares in a company determines the extent of the powers, rights and obligations of the shareholders. The decision-making through, and dividends, etc. are all determined by the number of shares a person holds in a company.

For cooperative:

- **The legal personality of a cooperative is separate from that of its members (Law No. 024/2021 of 27/04/2021 governing cooperatives, Arts. 9, 58-60, 66-70).** This means a cooperative organization has its own existence independent of its members.
- **Cooperative’s objective of improving the social welfare of the members.** The cooperative ultimate raison d’être is the well-being of its members. It is ultimately created to promote the social welfare of its members.

- **The shares of a cooperative members confer only one vote (Principle of equality of all cooperative members).** Members of a cooperative organization have all equal powers in the decision-making process. They also have same share in the course of sharing of the profits.
- **Management works primarily for the best interest of members.** The management of the cooperative organization works to improve the welfare of the cooperative members. As such its role is to further the social cause of the existence of the cooperative organization.

b) The candidate is expected to demonstrate fair knowledge in the difference between a public and a private company and how they may trade their stocks. Particularly, the following should appear:

- **There are two categories of companies, private company and public company;** (Law governing companies, Art. 5) which should not be confused with the types of the company.
- Changing MUTIMUKEYE Ltd into MUTIMUKEYE Plc would enable her to raise funds through a securities market, like Rwanda Stock Exchange. The company will be able to issue prospectus and invite third parties to subscribe for shares or buy debentures, and other securities, which is not allowed for a private company.
- However, it will require some changes, such as the obligation to have a company secretary (Law governing companies, Art. 172) and to separate the office of chairperson from that of the managing director or CEO (Law governing companies, Art. 156). It must also have independent directors (1/3 of Directors) (Law governing companies, Art. 158).

c) The candidate must clearly demonstrate that as far as company law is concerned, only physical persons can be appointed as board members. Thus:

- **The appointment of moral persons is not legal and shall not be valid (Law governing companies, Art. 156).** Therefore, Mutimukeye can only appoint natural person to form the Board of Directors shall be entrusted with the management of business and affairs of her company (Law governing companies, Art. 144 & 156)

d) The company category, namely private company or public company determines the way the company trades its securities. Private companies' rights to transfer its shares or debentures are restricted. They have no access to capital markets. While public companies can freely issue prospectus, list its securities on the capital market and invite the public to become investors in it.

QUESTION TWO

Marking guide

a) Assessment of knowledge on company's mode of contracting Marks

Persons empowered to enter into contract on behalf of the company (Law governing companies, Art. 47):

- | | |
|---|---|
| - One director or the secretary of the company or both | 1 |
| - Any other director or any other person or group of persons, if the incorporation documents so provide, or | 1 |
| - One or more attorneys appointed by the company | 1 |

The contract is invalid because:

- | | |
|---|---|
| - It was not signed by either of the persons under Art. 47 of the Law governing companies | 1 |
| - It has a clause affecting the rights of shareholders (allotment of shares which can only be affected by an ordinary resolution of shareholders (Law governing companies, Art. 58) | 2 |

Maximum marks	6
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b) Transfer of shares in a private limited company

- | | |
|---|---|
| - The transfer of shares in a private company is not open. | 1 |
| - The allotment of shares by a private limited liability company is restricted (Law governing companies, Art. 8). | 2 |
| - Exception: allotment of shares as decided by shareholders by ordinary resolution (Law governing companies, Art. 58) | 2 |

Maximum marks	5
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c) Binding nature of a transaction to company even if signed one director	Marks
Yes. A private company can be bound by a transaction signed by one director (Law governing companies, Art. 47).	2
A private company cannot be bound by a transaction signed by one director if its incorporation documents so prohibit.	1
Maximum marks	3
d) Concept of agency for a company	
The company would be bound by a transaction entered into by an employee or any other person:	
- Acting under the company's express or implied authority if that obligation is not required by the law to be in writing.	2
The company would be bound by a transaction entered into by the persons acting under express or implied authority:	
- One director or the secretary of the company or both	1
- Any other director or any other person or group of persons, if the incorporation documents so provide, or	1
- One or more attorneys appointed by the company	1
Maximum marks	5
e) Ratification of transaction passed by the person who has no authority	
- The transaction passed by the person with no authority cannot bind the company.	2
- If the company wants to appropriate the transaction, entered into by its staff acting without its mandate, it must ratify this transaction to benefit from such a transaction.	2
- Shareholders can pass among other resolutions an ordinary resolution to allot shares in question in the contract to Ownish Co. Ltd (Law governing companies, Art. 58)	2
Maximum marks	6
Total marks	25

Model answers

a)

This question seeks to assess the candidate's knowledge of the company's mode of contracting:

Reference to article 47 of the Law governing companies, the answer must show that "a contract or enforceable obligation is entered into by a private company by one director or the secretary or both of them, any other director or any other person or group of persons, if the company's incorporation documents so provide, or one or more attorneys appointed by the company in accordance with the Law governing companies".

The contract is invalid ipso jure as it is in violation of the provisions of the Article 47 of the Law governing companies. It is also invalid since the contract had a clause affecting the rights of shareholders and allotting some of the shares to a third party. Such transaction requires a decision of shareholders by ordinary resolution (Law governing companies, Art. 58).

b)

For a private limited liability company like MAMBWIKI Ltd to allot some shares to a third party, the transfer of shares is restricted (Law governing companies, Art. 8). Nevertheless, a private company may allot shares from time to time as decided by shareholders by ordinary resolution (Law governing companies, Art. 58).

c)

Yes. A company can be bound by a transaction entered into by one director (Law governing companies, Article 47 Para 1(1°) (b)). However, the company may not be bound by such a transaction in case the incorporation documents so prohibit.

d)

It would be bound by a transaction entered into by an employee or any other person acting under the company's express or implied authority if that obligation is not required by the law to be in writing. The obligations other than those a written form is required by the Law would bind the company if they were signed by the employee or any other person acting under the company's express or implied authority (Law governing companies, Article 47 Para 1 (2°)).

e)

Generally, the transaction which was passed by a person who had no authority to do so cannot bind the company. However, the company can ratify such a transaction. In case the shareholders once convened in a general meeting want to legalise the transaction, they may pass a resolution ratifying the transaction entered into by its staff acting without their mandate. In this case shareholders can pass among other resolutions an ordinary resolution to allot shares in question in the contract to Ownish Co. Ltd (Law governing companies, Art. 58)

QUESTION THREE

Marking guide

a) Powers of the Board of Directors	Marks
- The Board of Directors does not have the powers to transfer shares in a private company as it does with the public company.	2
- The power to allot shares in a private company is entrusted with the shareholders.	1
- A decision to allot shares in a private company will require an approval by the general meeting of shareholders through an ordinary resolution (Law governing companies, Art. 58).	2
Maximum marks	5

b) Rights of shareholders	
- Non respect of the rights (pre-emption rights) of Ntorezo and Fundi, shareholders:	2
- Non-restriction of the pre-emption right of shareholders	1

Acquisition of newly issued shares on a pro rata to the shares already held by such existing shareholders:

- At a price no less favourable than that offered to other persons	1
- On terms which maintain or increase the relative voting and distribution rights of those existing shareholders.	1
- Shares subject to pre-emption rights that are not acquired by existing shareholders may be issued to any person.	2
Maximum marks	5

c) Powers of the Board of Directors to allot shares	Marks
- Allotment of shares in a private company is decided by the shareholders by a special resolution	1
- The Board of Directors does not have powers to transfer shares in a private company (Law governing companies, Art. 58)	2
- The Board of Directors has the power to transfer shares in a public limited company (Transtain Plc) (Law governing companies, Art. 58)	2
Maximum marks	5

d) Powers of the Board of Directors	Marks
- The Board of Directors of Transtrain Ltd does not have the power to transfer 50% of its shares to CASHY Ltd, it is the power of the shareholders (Law governing companies, Art. 58).	2
- The Board of Directors have no powers to appoint an auditor of the company in replacement of the existing one, this power is entrusted to the shareholders by an ordinary resolution (Law governing companies, Art. 132)	2
- The Board of Directors has no power to remove the external auditor of the company from his or her position, this power is devolved to the shareholders by an ordinary resolution passed at a shareholders' general meeting (Law governing companies, Art. 137).	1
Maximum marks	5

Total marks	20
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Model answers

a) This question assesses the candidate's knowledge in the powers of the board and the shareholders rights. The Board of Directors does not have power to transfer shares in a private company. Under the Article 58 of the Law governing companies, a decision to allot shares in a private company will require an approval by the general meeting of shareholders through an ordinary resolution.

b) The rights of NTOREZO and FUNDI who are shareholders in the company, especially the pre-emptive rights were not respected. According to article 59 of the Law governing companies, shareholders of a company have a pre-emption right to acquire newly issued shares of a company as provided in this Article. The right is to acquire the newly issued shares on pro rata 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 this Article 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.

Shares 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 rights.

c) The Article 58 of the Law governing companies provides 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. Under the provisions of this Article, the Board of Directors does not have the power to allot shares in a private company. It has such power in a public company.

If it were Transtrain Plc, the company would be a public limited company and therefore gives the Board of Directors the power to transfer shares. This means, and under the Article 58 of the Law governing companies, the board of directors can resolve to allot shares, without necessarily requiring the approval of the shareholders resolution in a public limited company. Consequently, the decision by MAGWIRE and other board members would be valid.

d) Since Transtrain Ltd is a private company, **the Board of Directors does not have the power to take any decision that affects the rights attached to any shares, this is the power of shareholders** (Law governing companies, Art. 58). Consequently, the transfer of 50% of shares of Transtrain Ltd to CASHY Ltd is null and without effect.

The Board of Directors does not have the power to appoint the auditors, especially in replacing the existing one. This is the sole power of the shareholders by an ordinary resolution (Law governing companies, Art 132).

The Board of Directors has no power to remove the external auditor of the company from his or her position. An auditor may be removed from office at any time by an ordinary resolution passed at a shareholders' general meeting (Law governing companies, Art. 137).

QUESTION FOUR

Marking guide

a) **Duration for establishment of foreign business in Rwanda before incorporation** Marks

- ✓ A foreign company can establish a place of business dealing with share transfer or share registration office within Rwanda. 1
- ✓ For a foreign company to establish legally such business, it must apply for registration within ten (10) working days from the day of establishing its place of business (Law governing companies, Ar. 247) 2
- ✓ Threshee LLC as a foreign company cannot legally establish its business in Rwanda for a trial period of sixty (60) days since it violated the duration provided for a foreign company to establish its business in Rwanda pre-incorporation which is ten (10 days). 2
- ✓ The trial period of sixty (60) days Threshee LLC is claiming does not exist under the Laws of Rwanda. 1

Maximum marks 6

b) **Advantages of incorporating a foreign company as a foreign company or a subsidiary**

Advantages of incorporating a foreign company as a foreign has several advantages including but not limited to:

- Lower operational costs 1
- A large pool of talent 1
- Business-friendly laws and regulations 1
- Government incentives 1
- Untapped opportunities 1
- Simple business registration 1
- Vast opportunities. 1

The advantages associated with incorporating a company as a subsidiary include the following:

- ✓ Subsidiaries are independent of their parent organizations since they have separate legal personality and thus this makes it easier for them to conduct business, to form partnerships, and to explore new markets. 1
- ✓ A subsidiary enjoys a greater degree of flexibility because it can issue or transfer shares to third parties like investors, partners, employees, or venture capitalists. 1
- ✓ A subsidiary can explore more economic opportunities in a foreign country compared to a branch which basically conducts business similar to its parent organization. 1

- ✓ Since a subsidiary has a separate legal personality, it offers greater legal protection for shareholders of the parent organization who will have no liability if the subsidiary falls into debt or suffers legal problems. 1

Maximum marks 8

c) Number of Directors and the obligation to reside in Rwanda

- ✓ A private company must have at least one (1) director whereas a public company must have at least two (2) directors (Law governing companies, Art. 153). 2
- ✓ Threshee (Rwanda) Plc must have at least two (2) directors, and therefore the decision of Threshee LLP to appoint three directors is legal. 2
- ✓ There is a requirement for any company incorporated in Rwanda to have at least one (1) Director who resides in Rwanda (Law governing companies, Art. 156), and as such the decision of Threshee LLC to let all the three directors reside in Congo Brazzaville is illegal. 2

Maximum marks 6

Total marks 20

Model answers

a)

Threshee LLC established its business in Rwanda for sixty (60) days without incorporation. As a foreign company its registration as a business is mandatory for the right of establishment.

Legally speaking, a foreign company such as Threshee LLP can establish a place of business dealing with share transfer or share registration office within Rwanda (Law governing companies, Art. 247). However, for a foreign company to establish legally such business, **it must apply for registration within ten (10) working days of establishing a place of business** (Law governing companies, Ar. 247). Therefore, a foreign company cannot just come and start doing business without necessary clearances and fulfilling registration requirements. It application for registration of business, the establishment to be legal must be carried out within ten (10) working days from the day of establishment.

As earlier explained Threshee LLP has established its business in Rwanda for sixty (60) days. This is illegal under the Laws governing companies in Rwanda as a foreign company which wishes to establish business in Rwanda must apply for registration within ten (10) working days. It is implied that if the foreign company does not respect this period for application for registration of its

business, **it cannot legally establish its business**. Also, under the Laws of Rwanda governing companies, a trial period whether of sixty (60) days or not, is not provided.

b)

The advantages for a foreign company to incorporate its business as a foreign company or a subsidiary. Generally, incorporating a foreign company as a foreign has several advantages including but not limited to lower operational costs, a large pool of talent, business-friendly laws and regulations, government incentives, untapped opportunities, simple business registration, vast opportunities. Currently, in Rwanda because of lax laws for foreign investors, and free economic zones policies, there are no more advantages for domestically registered companies than there are for foreign companies.

The advantages associated with incorporating a company as a subsidiary include the following:

- ✓ Subsidiaries are independent of their parent organizations since they have separate legal personality and thus this makes it easier for them to conduct business, to form partnerships, and to explore new markets.
- ✓ A subsidiary enjoys a greater degree of flexibility because it can issue or transfer shares to third parties like investors, partners, employees, or venture capitalists.
- ✓ A subsidiary can explore more economic opportunities in a foreign country compared to a branch which basically conducts business similar to its parent organization.
- ✓ Since a subsidiary has a separate legal personality, it offers greater legal protection for shareholders of the parent organization who will have no liability if the subsidiary falls into debt or suffers legal problems.

Generally, a subsidiary is a domestic company and enjoys domestic company treatment as far as taxes, management of the employees, rescue plans, etc.

c)

The law governing companies in Rwanda establishes that a private company must have at least one director and a public company shall have at least two (2) directors (Law governing companies, Art. 153). Since the subsidiary which was created by Threshee LLC has been registered as Threshee (Rwanda) Plc, this subsidiary is **Public limited company**. Therefore, and as per the Law, Threshee (Rwanda) Plc shall have at least two (2) Directors.

The resolution of Threshee LLC to appoint three (3) members of the Board of Directors of Threshee (Rwanda) Plc is legal as the required number of Directors for Public Limited Company

such as Threshee (Rwanda) Plc is two (2). Nevertheless, the three (3) Directors shall not in any case all reside outside Rwanda. The law requires for any company incorporated in the Republic of Rwanda to have at least one (1) Director who resides in Rwanda (Law governing companies, Art. 157). Therefore, the decision of Threshee LLC to have all Directors of Threshee (Rwanda) Plc is illegal as it contravenes the provisions of the Article 156 of the Law governing companies.

SECTION B

QUESTION FIVE

Marking guide

a) Appointment of external auditor	Marks
✓ The auditor of the company is appointed by the shareholders by an ordinary resolution (Law governing companies, Art. 132 Paragraph One)	1
✓ The Board of Directors can appoint the first auditor of the company, and an auditor so appointed unless removed, hold office until the conclusion of the company's first general meeting or until twenty-eight (28) days after the date that the company's annual accounts are sent to shareholders, whichever is the sooner (Law governing companies, Art. 132, Para. 2)	1
✓ The appointment of Bridgefils Co is legal as it was carried out by the Board of Directors	1
✓ The removal of Bridgefils Co as auditor of Mureke Ltd is illegal as:	1
- Bridgefils Co has not been given at least ten (10) days' written notice of resolution to remove it	1
- Bridgefils Co. has not been given a reasonable opportunity to make representations to the shareholders on the removal, either in writing or by the auditor or his or her representative speaking at a shareholders' general meeting, whichever the auditor may choose [...] (Law governing companies, Art. 140)	1
Maximum marks	6

b) Replacement of the auditor

- ✓ The shareholders of the company are entrusted with the power to replace an auditor of their company 1
- ✓ It is illegal to appoint an auditor who has conflict of interest with the company, TYC Partners has 20% of shares in FIC Plc, a company in which Mureke Ltd has also 30% of shares, which renders TYC Partners unqualified to be auditor of Mureke

- | | |
|---|---|
| Ltd (Law governing companies, Art. 133) | 2 |
| ✓ The replacement of Bridgefils Co with TYC Partners is also illegal as: | 1 |
| - Bridgefils Co has not been given at least ten (10) days' written notice of resolution to remove it | 1 |
| - Bridgefils Co. has not been given a reasonable opportunity to make representations to the shareholders on the removal, either in writing or by the auditor or his or her representative speaking at a shareholders' general meeting, whichever the auditor may choose [...] (Law governing companies, Art. 140) | 1 |

Maximum marks **6**

c) Power of the Registrar General to intervene in the appointment of the auditor of the company

- | | |
|--|---|
| ✓ Normally, the Registrar General does not appoint an auditor of the company. | 1 |
| ✓ The Shareholders of the company appoints the auditor of the company whereas the Board of Directors appoint the first auditor of the company. | 1 |
| ✓ The Registrar General is involved in the appointment of the auditor of the company in case the shareholders and/or Board of Directors do not appoint the auditor (Law governing companies, Art. 132) | 2 |
| ✓ The Registrar General has the powers to direct the company to appoint its auditor within thirty (30) days (Law governing companies, Art. 132). | 2 |

Maximum marks **6**

d) Legality of the recommendation by Bridgefils Co

- | | |
|---|---|
| ✓ The Board of Directors ensures the annual accounts of the company are within time limits prepared, audited, and approved; disclosed to shareholders; and delivered to the Registrar General | 1 |
| ✓ The Board of Directors have power to sign on books of account as a team although they can delegate this power: | |
| - To committees consisting of such a director or directors if deemed appropriate, | 1 |
| - To one or more Managing or Executive Director appointed by them (Law governing companies, Article 146). | 1 |
| ✓ The signing of special accounts which include a balance sheet, a profit and loss account, cash flow statements, equity and changes therein, are audited by independent auditor and approved by directors. | 1 |
| ✓ The special accounts shall be signed on behalf of the Board of Directors by two directors (Law governing companies, Art. 125) | 1 |
| ✓ The recommendation of Bridgefils Co is illegal for the signing of special accounts. | 1 |

Maximum marks **6**

e) **Duty of the Board of Directors to file the annual accounts: time and required documents to submit**

The Board of Directors ensure the company delivers to the Registrar General not later than:

- Seven (7) months after its accounting reference date in the case of a private company; 1
- Four (4) months after its accounting reference date in the case of a public company. 1

The documents the company is required to submit are:

- A copy of signed and approved annual accounts 1
- A copy of the auditor's report on those accounts 1
- The reports of directors relating to the same accounting period as those annual accounts (Law governing companies, Article 142). 1

The Board of Directors shall submit its annual accounts to the Registrar General not later than seven (7) months from the day of the company's accounting reference date, that is 31

July of each year 1

Maximum marks 6

Total marks 30

Model answers

a)

Generally, the appointment of external auditor of the company is authorised by the shareholders by an ordinary resolution. This means the sole authority to appoint the auditor of the company is the shareholders acting by an ordinary resolution held either in an Annual Meeting of Shareholders or an Extraordinary Meeting of Shareholders.

However, there is one exception to this rule: the appointment of the first auditor of the company **can be done by the Board of Directors**. The first auditor of the company may be appointed by the Board of Directors without the approval required under the Law governing companies (Law governing companies, Art. 132 Paragraph One), and auditors so appointed, unless removed, hold office until the conclusion of the company's first general meeting or until twenty-eight (28) days

after the date that the company's annual accounts are sent to shareholders, whichever is the sooner (Law governing companies, Art. 132, Para. 2).

Therefore, the appointment of Bridgefils Co. as external auditor of Mureke Ltd **is legal since it was done by the Board of Director, and it is within the ambit of the Board of Directors to appoint the first auditor of the company.** The term of the office of the auditor so appointed, and in this case the term of office of Bridgefils Co. is **when Bridgefils Co, will be removed by the Shareholders of Murekatete Ltd in their first general meeting or until twenty-eight (28) days after the date that the company's annual accounts are sent to shareholders, whichever is the sooner.**

1° Although the First Annual Meeting of Shareholders of Murekatete Ltd has the power to remove Bridgefils Co. by an ordinary resolution as an auditor of the company, **there is a strict procedure which must be followed as under the Article 140 of the Law governing companies.** Under this Article, **“an auditor is not removed from the office, unless: he or she has been given at least ten (10) working days’ written notice of resolution to that effect.**

2° **has been given a reasonable opportunity to make representations to the shareholders on the removal, either in writing or by the auditor or his or her representative speaking at a shareholders’ general meeting, whichever the auditor may choose [...]**”

The First Annual General Meeting of Murekatete Ltd removed Bridgefils Co. Ltd without observing the provisions of the Article 140 of the Law governing companies in Rwanda, as **no ten (10) days’ notice nor floor given to Bridgefils Co. to make representations to shareholders were given before removing this auditor.** Therefore, the **ordinary resolution of the First Annual General Meeting of Murekatete Ltd to remove Bridgefils Co. as an auditor of the company is illegal and without effect.**

b)

The shareholders of Murekatete Ltd are empowered to appoint an auditor of their company. The shareholders of Murekatete Ltd legally, can appoint an auditor without any justification. Under the provisions of the Article 132 Paragraph 2 of the Law governing companies, the First Annual General Meeting of Shareholders of Murekatete Ltd can appoint TYC Partners as the company's auditor.

The appointment of TYC Partners was largely based on its worldwide fame and financial capacity since it held stocks in FIC Plc, a company Murekatete is holding also 30% of the shares. As such, TYC Partners and Murekatete Ltd are business partners. The Law governing companies (Art. 133) disqualifies an auditor in case a **person is a partner of [...] of the company**. As already explained above, TYC Partners and Murekatete Ltd are business partners in FIC Plc where TYC Partners holds 20% of shareholders and Murekatete holds 30% of the shares of FIC Plc. Therefore, under the provisions of the Article 133 of the Law governing companies which deals with the issues concerning conflict of interest and prohibits companies to appoint **auditors they have conflict of interest with, the appointment of TYC Partners by an ordinary resolution of the First Annual General Meeting of Murekatete Ltd is illegal.**

Also, the appointment of TYC Partners as a new auditor of Murekatete Ltd does not meet procedural requirement for the replacement of an auditor as established by the Article 140 of the Law governing companies in Rwanda. Under this Article, **“a company shall not propose to appoint a new auditor in place of an auditor who is disqualified for re-appointment, unless:**

1° **he or she has been given at least ten (10) working days’ written notice of resolution to that effect.**

2° **has been given a reasonable opportunity to make representations to the shareholders on the removal, either in writing or by the auditor or his or her representative speaking at a shareholders’ general meeting, whichever the auditor may choose [...]**”

a) The First Annual General Meeting of Murekatete Ltd replaced Bridgefils Co. Ltd with TYC Partners without observing the provisions of the Article 140 of the Law governing companies in Rwanda, as **no ten (10) days’ notice nor floor given to Bridgefils Co. to make representations to shareholders were given before removing this auditor.** Therefore, the **ordinary resolution of the First Annual General Meeting to replace Bridgefils Co. with TYC Partners is illegal and without effect.**

c)

Normally, the Registrar General does not appoint an auditor to audit the accounts of the company. The auditor of the company is appointed by the Shareholders by an ordinary resolution. However, the Board of Directors is empowered to appoint the first auditor of the company whose term runs until he/she is removed from Office by the Shareholders first Annual General Meeting or until twenty-eight (28) days from the day of submission of the accounts of the company to the shareholders whichever comes first (Law governing companies, Art. 132).

The Law governing companies empowers the Registrar General to intervene in the appointment of the auditor of the company. This power is only exercised when the Board of Directors and/or the Shareholders of the company do not appoint the auditor of the company as per the Law (Law governing companies, Art. 132 Paragraphs 2 & 3). Under the Article 132 Paragraph 3 of the Law governing companies, **“in case no auditor is appointed [...], the Registrar General has the powers to direct the company to appoint its auditor within thirty (30) days.”** The law does not clearly empower the Registrar General to appoint an auditor of a company. It rather gives him/her symbolic powers to direct the company to appoint an auditor but does not show the fate of his/her direction in case the company refuses to appoint an auditor.

d)

The Board of Directors of a company must ensure that annual accounts are within the time limits specified in the Law governing companies:

- 1° prepared, audited, and approved.
- 2° disclosed to shareholders.
- 3° delivered to the Registrar General.

The Board of Directors as a Team of five Directors is empowered to sign on the books of accounts. 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 company expressly reserve those powers to the shareholders or any other person (Law governing companies, Art. 144). This means, since there is no one else indicated by the Law or incorporation documents of Mureke Ltd to sign

on the books of accounts, the Board of Directors (five (5) members of the Board of Directors) are legally empowered to sign on the books of accounts.

However, the Law also **allows the Board of Directors to delegate any of its powers:**

- 1° **to committees consisting of such a director or directors if deemed appropriate,**
- 2° **to one or more Managing or Executive Director appointed by them** (Law governing companies, Article 146).

From this perspective, the recommendation of Bridgefils Co. to the Board of Directors to delegate one member of the Board of Directors to sign the books of account on and for their behalf is legal and accurate. However, the procedure followed in approving special accounts of the company is a bit different from the proposal above. Special accounts are a set of accounts showing the activities of a company during the accounting period, which include a balance sheet, a profit and loss account, cash flow statements, equity and changes therein. The Board of Directors of a company ensures that, special annual account in respect of the company as at the accounting reference date are audited by an independent auditor and approved by directors and **signed on their behalf by two directors**, or if there is only one member, by himself or herself (Law governing companies, Art. 125 Paragraph 2). It follows that the **recommendation of Bridgefils Co. is illegal for the signing of special accounts** which constitute the most important part of what the auditor of the company is hired to audit and advise thereon.

e)

The Board of Directors ensure that the company delivers to the Registrar General **not later than seven (7) months after its accounting reference date in the case of a private company**, and four (4) months after its accounting reference date in the case of a public company:

- 1° a copy of signed and approved annual accounts.
- 2° a copy of the auditor's report on those accounts.
- 3° the reports of directors relating to the same accounting period as those annual accounts (Law governing companies, Article 142).

Therefore, since Mureke Ltd is a private company, whose accounting reference date is 31st January of each year, it must under the provisions of the Article 142 of the Law governing companies,

submit its annual accounts to the Registrar General not later than seven (7) months from the day of the company's accounting reference date, that is 31 July of each year. The documents the company is required to submit are:

- 1° A copy of signed and approved annual accounts.
- 2° A copy of the auditor's report on those accounts.
- 3° The reports of directors relating to the same accounting period as those annual accounts (Law governing companies, Article 142).

Note also that a certain category of private companies of which Mureke Ltd is not part of are allowed to **opt out of the requirements to have their annual accounts audited and have an auditor's report**. The type of such private companies is prescribed by an Order of the Minister.

QUESTION SIX

Marking guide

a) Regulation of circular holdings	Marks
✓ The Law governing companies (Art.175) regulates circular holdings:	1
- A subsidiary must not hold shares in its holding company.	1
- 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	1
✓ The restricts the power of shareholders of the holding company to transfer shares.	1
✓ Mpore Group (Nkore) cannot transfer ten percent (10%) of its shares to either Mpore Suka Ltd or Mpore Shenge Ltd as its prohibited under the regulations on circular holding (Law governing companies, Art. 175)	2
Maximum marks	6
b) Rights of a subsidiary which held shares in a holding company before becoming its subsidiary	
✓ Mpore Shenge will be allowed to hold its shares in Mpore Group.	1
✓ The Law does not prevent [...] a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company [...] 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 its shares in the holding company (Law governing companies, Art 175, Para 3 (1o))	2

- ✓ In case subsidiary holds shares in a holding company, the subsidiary has no right to vote at meetings of the holding company or any class of members thereof (Law governing companies, Art. 175 Para 3(1°)). 2
- ✓ Mpore Shenge Ltd is allowed to hold shares in Mpore Group but it has no right to vote at meetings of the Mpore Group or any class of members thereof. 1

Maximum marks 6

c) Administration of a company in difficulties

- ✓ When a company cannot pay its debts when they are due, but the shareholders and the company wish to continue operating, the company can be put into provisional administration (Law N° 23/2018 of 29/04/2018 relating to insolvency and bankruptcy, Art. 39). 1
- ✓ From the application of a provisional administration to the end of the provisional administration:
 - no application for liquidation of the company by the court may be commenced 1
 - no order for the liquidation of the company may be made if the court is satisfied that it is in the interests of the company's creditors for the company to continue under provisional administration 1
 - the functions of and powers of any liquidator are suspended 1
 - no resolution for the liquidation of the company may be made 1
 - no other steps may be taken to enforce any charge over any of the company's property and no other proceedings. 1

Maximum marks 6

d) Convening extraordinary meetings of shareholders

- ✓ Board of Directors or any other person so authorised in the company's incorporation documents, may convene a shareholders' extraordinary meeting (Law governing companies, Art. 103) 2
- ✓ The Board of Directors convene a shareholders' general extraordinary meeting upon request made by a 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. 1
- ✓ The Bingwa as the sole Director of the company in action and shareholder whose shareholding is sixty percent (60%) of the company can convene the extraordinary meeting of shareholders to appoint the needed directors to pass the resolutions. 2
- ✓ Notice of this extraordinary general meeting shall be sent to Mr Gihuri, the only other shareholder not less than fifteen (15) days before the date of the meeting, and notice states the agenda for the meeting. 1

Maximum marks 6

e) **Liability for calls**

- ✓ The liability for calls is attached to the holder of the share, not to the person that transferred the shares on call. 2
- ✓ The 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. 2
- ✓ Mr Gihuri is liable for calls on the shares he bought from Mr Munigi and is required to pay to the company three million Rwandan francs (FRW 3,000,000) to cover the debts the company owes to others 2

Maximum marks 6

Total marks 30

Model answers

a)

Mpore Shenge Ltd and Mpore Suka Ltd are wholly owned subsidiaries of Mpore Group. Mpore Group is owned by Nkore who holds eighty percent (80%) of shares but since he does not need to partner with any other shareholders, wishes to issue twenty percent (20%) of the stocks to Mpore Shenge Ltd and Mpore Suka Ltd, the subsidiaries of Mpore Group.

The Law governing companies in Rwanda regulates **circular holdings**, which means shares of group of companies and those companies that make it may be interlinked or interconnected. The Article 175 of the Law governing companies provides that:

“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.”

Under the provisions of Article 175 Paragraph One and 2, Mpore Group (Nkore) cannot transfer ten percent (10%) of its shares to either Mpore Suka Ltd or Mpore Shenge Ltd **as it is strictly prohibited for a subsidiary to hold shares in its holding company or a holding company to issue its shares to its subsidiary.**

b)

If we depart with the premise that Mpore Shenge Ltd held shares already before becoming a subsidiary of Mpore Group, **Mpore Shenge Ltd will be allowed to hold its shares in Mpore Group.**

The provisions of the Article 175 Paragraph One & 2 of the Law governing companies which prohibit a subsidiary from holding shares in its holding company or a holding company to issue shares to its subsidiary do not apply where a subsidiary held shares in a holding company before it became its subsidiary. The Article 175 Paragraph One & 2 **does not prevent [...] a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company [...] 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 its shares in the holding company (Law governing companies, Art 175, Para 3 (1^o)).**

But the subsidiary company loses its right to vote in the holding company as a result of it being the subsidiary of such holding company it holds shares. The law clearly indicates that the subsidiary cannot vote in the meetings of its holding companies. The Article 175 Para 3(1^o) provides that [...] **the subsidiary has no right to vote at meetings of the holding company or any class of members thereof [...].**

Therefore, Mpore Shenge Ltd is allowed to hold its shares in Mpore Group but it has no right to vote at meetings of the Mpore Group or any class of members thereof.

c)

Generally, when a company cannot pay its debts when they are due, but the shareholders and the company wish to continue operating, the company can be put into provisional administration (Law N° 23/2018 of 29/04/2018 relating to insolvency and bankruptcy, Art. 39). Therefore, the advice to Mr Gihuri and Mundeke Ltd is to apply for commencement of the insolvency proceedings. In this case, the Director of Mundeke Ltd can propose and apply for the provisional administration.

From the application of a provisional administration to the end of the provisional administration:

- 1° **no application for liquidation of the company by the court may be commenced.**
- 2° no order for the liquidation of the company may be made if the court is satisfied that it is in the interests of the company's creditors for the company to continue under provisional administration.
- 3° the functions of and powers of any liquidator are suspended.
- 4° no resolution for the liquidation of the company may be made.
- 5° **no other steps may be taken to enforce any charge over any of the company's property and no other proceedings.**

d)

The Board of Directors of Mundeke Ltd is currently composed of Bingwa alone having seen his business partner sold his shares and left the company. As the Board of Directors is not complete, needed resolutions cannot be passed.

Bingwa as the sole Director of the company in action and shareholder whose shareholding is sixty percent (60%) of the company **can convene the extraordinary meeting of shareholders to appoint the needed directors to pass the resolutions.** Under the Article 103 of the Law governing companies, the **"Board of Directors or any other person so authorised in the company's incorporation documents, may convene a shareholders' extraordinary meeting.**

The Board of Directors **convene a shareholders' general extraordinary meeting upon request made by a 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.**" Consequently, Bingwa who holds sixty percent (60%) of votes is allowed to make **written notice and serve it to the company to convene an Extraordinary general meeting of the shareholders.**

Notice of this extraordinary general meeting shall be sent to Mr Gihuri, the only other shareholder **not less than fifteen (15) days before the date of the meeting, and notice states the agenda for the meeting.**

e)

Mr Gihuri bought forty percent (40%) of shares of Mundeke Ltd for ten million Rwandan Francs (FRW 10,000,000). However, by the time of selling his shares, Mr Munigi had not yet finished to pay for his subscribed shares and owed to the company an amount of 3 million. This was not clearly explained to Gihuri before the transfer, and he did not make any effort to inquire about it either, he got to know about this call during the routine visit by the revenue authority.

As under the Law governing companies in Rwanda, **liability for calls is attached to the holder of the share**. Under the Article 93 of the Law governing companies, “Where a share makes its holder liable to calls, or imposes any other liability on its holders, **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.**”

Therefore, Mr Gihuri is liable for calls on the shares he bought from Mr Munigi and is required to pay to the company three million Rwandan francs (FRW 3,000,000) to cover the debts the company owes to others.

END OF MARKING GUIDE AND MODEL ANSWERS