
**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3: COMPANY LAW

DATE: WEDNESDAY, 01 DECEMBER 2021

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

MUTIMUKEYE Ltd is a business entity incorporated in accordance with the Company Laws of Rwanda. It has one shareholder, Mrs MUTIMUKEYE Gisele. Recently, her agricultural investment project was considered for a grant from an international financing agency. However, due to the huge work required to conduct a project, she realised the need for more people to jointly do the business together. Her age doesn't allow her to keep everything on her head any longer. She has therefore approached Mr and Mrs Mugabo, Mr and Mrs John, her friend Ms Joanne and her daughter Ms Brenda to acquire shares in MUTIMUKEYE Ltd and bring more capital to the Company from the payments they will make for those shares.

However, the above said prospective shareholders, though excited to undertake the project together with Gisele, they are hesitant to join her in the private company, since they really don't want it to sound as "business" but rather a social entity. They therefore suggest that they transform MUTIMUKEYE Ltd into a cooperative entity instead of a company. This would attract more grants from donors and will not require the 'sophisticated' structures of a company and share dividends process.

Required:

- a) **Advise MUTIMUKEYE Gisele and its prospective members the comparative implications of change from a company form to a cooperative entity.** (8 Marks)
- b) **MUTIMUKEYE Gisele is thinking of rather changing the company category of MUTIMUKEYE Ltd to enable her raise funds publicly instead of going for a cooperative. Explain to her how this change is possible.** (8 Marks)
- c) **MUTIMUKEYE Gisele is also thinking of appointing some physical and moral persons to carry out the daily management of the company affairs as directors, thus giving her some sort of relief. These people, she thinks, will be having a contractual relationship with her. However, she does not understand how this can be explained in an institutional understanding of a company. Advise her on those concepts and the legality of the appointment of physical persons and moral persons as directors of the Company.** (6 Marks)
- d) **What difference does a company category play in relation to how it trades its stock?** (3 Marks)

(Total: 25 Marks)

QUESTION TWO

KIGORI, MATEKE and MBWIJA are siblings who own and run a family company named MAMBWIKI Ltd, which deals in real estate development and management. They inherited the business from their father who bequeathed equally the shares of the company to each of them and appointed all siblings as board members before he died of a natural old age death. They have a cousin named PINARI who has been working with their father, and is still employed as an IT technician, but holds no share, nor is he a board member. However, he does all the work as a director, from engaging with clients and preparing documents to be signed by Mr Kigori, the managing director or approved by the board when necessary. Since, he is full time at the company's office, many of their clients know him better than his cousins. He is the one who keeps the stamp and seal of the company. In May 2020, when Mr Kigori was in isolation due to Covid-19 infection, PINARI had finished a business arrangement of acquiring a new building named 'Love Apartments and Suites' from Ownish Co. Ltd. All paperwork had been finished, just waiting for the signature of MAMBWIKI Ltd.

At the time of signature KIGORI was in isolation undergoing Covid-19 treatment, while MATEKE and MBWIJA were not in the country and could not be reached for any assistance, PINARI took responsibility and signed on behalf of the company the Purchase Agreement, which contained that, as a 'consideration' for acquiring the building, Ownish Co. Ltd would obtain 15% of the shareholding in MAMBWIKI Ltd, where each shareholder would give 5% of his/her shares. As a person who has always negotiated all business deals with them before without any difficulty, Ownish Co. Ltd directors thought PINARI to be an authorised representative of the company. Would PINARI miss the opportunity, the building would be quickly taken by its competitor.

Required:

- a) **Discuss the legality of the transaction entered into by PINARI on behalf of MAMBWIKI Ltd.** (6 Marks)
- b) **What are the requirements for a company like MAMBWIKI Ltd to allot some shares of the company to a third party?** (5 Marks)
- c) **In absence of company's incorporation documents providing otherwise, can a private company be bound by a transaction signed by one director while the board is composed of three members, as it is in the case of MAMBWIKI Ltd?** (3 Marks)

- d) **In what situation would a company be bound by an obligation signed by a third party acting on his implied authority?** (5 Marks)
- e) After Two months after PINARI entered into the transaction, all shareholders convened in an extra-ordinary meeting and all found themselves interested in the transaction with Ownish Co. Ltd. **What can they do to keep on benefiting from the transaction? Can that relieve any interested party from a liability?** (6 Marks)
- (Total: 25 Marks)**

QUESTION THREE

Transtrain is a private limited company incorporated in Rwanda in 2016. It provides services in inland carriage of goods throughout EAC countries, with its head office in Kigali. Transtrain is composed of three shareholders, Magwire who holds 50%, Ntorezo who holds 20% and Fundi with 15%. The remaining 15% is reserved by the company as unissued stocks. In mid-2020, the company faced deep financial distress due to covid-19 pandemic measures, which seriously affected the company business. To regain its strengths to continue its business, the board of directors composed of Magwire and two independent directors, adopted a resolution to raise capital by sending share offers to an investment fund named CASHY Inc. Ltd and MUKIRE Rich, to purchase the 15% reserved shares to obtain the capital needed to run company projects amid difficulties. CASHY Ltd purchased these shares at much higher price than MUKIRE was offering, but some shareholders would obtain the same price from their personal finances, if they had been approached by the board.

Required:

- a) **Discuss the legality of the board's decision to provide offers to third parties to buy shares from Transtrain Ltd?** (5 Marks)
- b) **Discuss the rights of NTOREZO and FUNDI who were not approached by the board in the capital raising process?** (5 Marks)
- c) **Discuss the board's power in a private company to allot shares. Would it make any difference if Transtrain were a public limited company?** (5 Marks)
- d) After CASHY Ltd becoming the fourth shareholder in Transtrain Ltd, it has now presented its offer to the board to buy up to 50% of its shareholders to pay all its liabilities and expand its activities by opening more offices in other provinces of the country. The board was convened by Mr Magwire, its chairman to approve the transaction in which

Magwire's half shares and 15% of Ntorezo and 10% of Fundi are to be transferred to CASHY Ltd. As it appears on the agenda of the meeting, the same board will also replace the existing company auditors to appoint the auditing firm that has been working for CASHY Ltd. The Board of Directors which was chaired by Magwire held its ordinary meeting on 1 August 2021, resolved 50 percent of shares be transferred to CASHY Ltd, dismissed the external auditor of Transtrain Ltd and appointed the auditing firm that has been working with CASHY Ltd. **Discuss the legality of the resolutions of the Board of Directors.** (5 Marks)

(Total: 20 Marks)

QUESTION FOUR

Threshee LLC is multinational company with headquarters in Brazzaville, Congo. In 2020, the company started a journey of opening its first office in Kigali, Rwanda, thanks to its reputed corporate governance and almost corruption free condition. Initially the company has had chosen to register its office as a foreign company to easily liaise with local stakeholders and keep the centrality of its management. Threshee has already appointed a management team and found its physical office in Village Plaza in Kigali. It has committed to try the business for a period of 60 days ("trial period"), after which it shall choose to register the business at the Office of the Registrar General or close doors in case the business is not embraced by the citizens of Kigali. After the trial period, the management report shows that the business could not really take off with a 'foreign company' status, since it was outcompeted by companies enjoying 'domestic treatment', thus suggesting to rather run a subsidiary company of Threshee LLC.

Required:

- a) Threshee LLC established its business in Rwanda for sixty (60) days without incorporation of its business. **Can a foreign company legally establish its business in Rwanda without its incorporation? Explain your answer using the example of the establishment of business which was carried out by Threshee LLC for sixty (60) days.?** (6 Marks)
- b) **Explain the advantages for a foreign company to incorporating its business as a foreign company or incorporating its business in Rwanda as a subsidiary.?** (8 Marks)
- c) As a foreign company, Threshee LLC which already has over 12 directors in Brazzaville, has created a subsidiary in Rwanda and called it Threshee (Rwanda) Plc. Subsequently,

the company appointed three (3) of its directors who all reside in Brazzaville to manage Threshee (Rwanda) Plc. To them, that number is enough for a subsidiary company. **Explain whether the resolution of Threshee LLC to appoint three directors to run its subsidiary while all of them residing in Brazzaville is legal.**

(6 Marks)

(Total: 20 Marks)

SECTION B

QUESTION FIVE

MUREKE Ltd is an export company specialised in trade of animal products in Rwanda and across the region. It also holds 30% shares in FIC Plc which owns and runs the renown FIC Mall. The company was registered on the 30th of May 2020. Soon after its incorporation at the Office of the Registrar General, the Board of Directors of MUREKE Ltd appointed Bridgefils Co. Ltd as its external auditor to audit its annual accounts. The shareholders received the first annual accounts on 31 December 2020. Some members of MUREKE Ltd were not satisfied with the quality of the work done by Bridgefils Co. Ltd and requested the First Annual Meeting of Shareholders to remove the auditing firm in the next annual general meeting. The First Annual General Meeting of Shareholders of MUREKE Ltd which was convened in May 2021 removed by an ordinary resolution Bridgefils Co. Ltd and appoint TYC Partners Ltd as an upgrade replacement. TYC Partners is one of the reputed firms worldwide in which all Rwandan affiliated members are members of institutions of chartered accountants recognized in Rwanda and have confidence to make corrections over the poor work done by Bridgefils Co. Ltd. TYC Partners Ltd is also more financially reliable as it owns other investments, including 20% shares in FIC Plc.

Required:

- a) **Discuss the legality of appointment of Bridgefils co. as an external auditor of MUREKE Ltd by the board and expiry of its appointment term.**
(6 Marks)
- b) **Discuss the legality of the appointment of TYC Partners to replace Bridgefils co. as the new auditor of the company.**
(6 Marks)

- c) **Discuss the power of the Registrar General to intervene in the appointment of company auditor.** (6 Marks)
- d) One of the observations of the board on the performance of Bridgefils, is its recommendation that the books of account be signed by a member of the board on behalf of the rest, while they think it must be approved by all members of the board, seeing that MUREKE Ltd's board is composed of 5 people. In light of the Law governing companies in Rwanda, **discuss the observation of the Board of Directors of MUREKE Ltd and the position of Bridgefils Co. Ltd.** (6 Marks)
- e) In its 1st Board meeting in June 2020, since the first financial year is already expiring, **advise them on 30th of June 2020**, the board adopted its accounting reference date as 31st of January of each year (not clear at all). **Advise them on their duty to file its annual accounts, especially on time and types of documents to be submitted accordingly.** (6 Marks)

(Total: 30 Marks)

QUESTION SIX

MPORE Group Ltd is a holding company incorporated in accordance with the laws of Rwanda. This company came up as a result of unexpected growth of MPORE SHENGE Ltd, which dealt in textile manufacturing. It has entered in modern agriculture which has boosted it in a few months and necessitated to have its own management, thus registering MPORE SUKA Ltd. Recently, Mr NKORE, who is the sole shareholder of both companies decided to incorporate MPORE Group Ltd, which owns all shares in MPORE SUKA Ltd and MPORE SHENGE Ltd. MPORE SUKA Ltd and MPORE SHENGE Ltd became wholly owned subsidiaries of MPORE Group Ltd. NKORE holds eighty percent (80%) of shares of MPORE Group Ltd. The twenty percent (20%) remaining are still unissued shares. He is thinking of giving ten percent (10%) of shares of MPORE Group Ltd to MPORE SUKA Ltd and MPORE SHENGE Ltd each. This is because he does not want to appear as sole shareholder in the holding company and does not trust anybody to partner with in owning Parent company.

In a different scenario, MUNDEKE Ltd is a company incorporated in 2016 by two (2) shareholders, Bingwa with 60% of the shares and Munigi with 40% of the shares representing a value of six million Rwandan francs (FRW 6,000,000) and four million Rwandan francs (FRW 4,000,000) respectively. In 2018, Munigi dissatisfied with the company's performance, sold all his shares to Gihuri for a fair consideration of ten million Rwandan francs (10,000,000) as an agreed price which he immediately paid through a bank cheque. However,

by the time of transfer, 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. Despite the efforts made by Mr Gihuri in bringing new investment and finding market, the company failed to relieve from financial distress of months of losses. Now it has not been operational for the last 3 months. On Monday, when revenue authority and local administrative agents were in their usual monitoring work, Mr Gihuri was surprised to learn that MUNDEKE Ltd must continue to bear its tax and other current liabilities as they fall due, though it's not operating. In addition, Gihuri is waiting for a promising capital of which he expects to use in paying all existing liabilities which is two times higher than the current assets of the company, two thirds (2/3) of which are overdue.

Required:

- a) **Advise Mr Nkore on his proposal to issue 10% of the unissued shares to MPORE Shenge and MPORE Suka each.** (6 Marks)
 - b) Suppose that MPORE Shenge held shares already before becoming a subsidiary to MPORE Group. **Explain the rights it should be prevented from exercising.** (6 Marks)
 - c) **Advise Mr Gihuri and MUNDEKE Ltd on what the company may do while it has temporarily ceased off doing business until the capital is obtained, so as to protect the company from incurring liabilities onward.** (6 Marks)
 - d) Until now, the board of directors is composed of only Bingwa alone, who is the chairman and managing director. He has been waiting for the board to convene an extra-ordinary meeting to adopt needed resolutions, but all in vain. Taking into consideration the existing general meetings of shareholders, **explain to him the way he can use to convene the appropriate meeting of shareholders to appoint the Board of Directors to adopt the needed resolutions.** (6 Marks)
 - e) In case the anticipated General Meeting approves, Mr Gihuri wants also to suggest a resolution to liquidate the company. **Explain to him the fate of the liability on calls which had not been paid by Munigi on the shares purchased by Gihuri.** (6 Marks)
- (Total: 30 Marks)**

End of Question Paper