
**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3: COMPANY LAW

DATE: WEDNESDAY, 28 APRIL 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) and 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.

SECTION A

QUESTION ONE

- (a) In June 2020, a heated discussion erupted between Kagabo, the Managing Director of Nyamirambo Tours Limited, a private limited company specialising in transport and Mafubo, the chief priest at Rwezamenyo parish, a Catholic Diocese parish. Kagabo argued that Nyamirambo Tours Limited is a trading company and that it is solely allowed to carry out business activities whereas the Rwezamenyo parish is not allowed to carry out any business activity. Mafubo retorted that his parish is allowed to carry out business activities and it is doing so by running an Economat General, a business activity run by the parish to subsidise its activities and therefore can be qualified as a business organisation. In another development, two companies, A&B Plc and Y&Z Plc, two public limited companies located in Kigali, created a non-equity joint venture, A&Y Joint Venture to implement a recent tender they have been negotiating with the Government of Rwanda and won to create the Nyabarongo irrigation project. A&Y Joint Venture signed a contract with the Government to implement this Nyabarongo irrigation project.

Required:

- i. Explain the main distinction between a company (Nyamirambo Tours Ltd) and an association (Rwezamenyo parish) under law focusing on the way the two organisations do business. (6 Marks)**
 - ii. While explaining your position, do you think A&Y Joint Venture is a business organisation? (6 Marks)**
- (b) In early January 2020, Karabo and Kamana created KA&KA Plc. Upon its incorporation with the Rwanda Development Board, the promoters issued prospectuses to potential shareholders and later on, KA&KA Plc, through its promoters issued its shares to the public through an invitation to the public to subscribe for shares. In regards with the aforementioned facts and basing on the Law No. 17/2018 of 13/04/2018 governing companies:

Required:

- i. Write a brief note on the differences between “Subscription for shares” and “Public invitation to subscribe for shares. (7 Marks)**
- ii. Briefly discuss the “transferability” of shares in KA&KA Plc taking also into account the means that can be used by KA&KA Plc as far as the transferability of its shares is concerned under the law. (6 Marks)**

(Total:25 Marks)

QUESTION TWO

Bwiru and Bwima created Bwibwi Ltd, a private company which is based in the City of Kigali and whose main activities are fishing and public cleaning in 2017. The company had the Articles of Association and the Memorandum of Understanding together with other relevant incorporation documents. By the time of its creation, Bwiru and Bwima had fifty per cent (50%) of shares respectively. In June 2020, Bwima wanted money to finance his new business, Bwima enterprise Ltd that specialises in fish oils but as he had no other sources of income, he wanted to transfer his shares to Bwiru. Bwiru accepted his co-shareholder offer and in July 2020, a shareholders' resolution on the allotment of shares from Bwiru to Bwima was unanimously passed by the shareholders. In this resolution, it was resolved that forty per cent (40%) of the shares which were owned by Bwima be allotted to Bwiru and a payment of Frw 100 million be made by Bwiru to Bwima for the transaction. Bwiru transferred the payment immediately after the resolution was passed. After the transfer was effective and all the formalities carried out to deregister the shares from Bwima to Bwiru, Bwiru started to behave like the sole owner of Bwibwi Ltd. Among the actions he took was to alter the Articles of Association to give him a casting vote in the major decisions of the company.

Required:

- (a) **State the essential requirements for the incorporation of a private company under the Law governing companies of 2018.** (5 Marks)
- (b) **Knowing that the shareholders of the company make decisions in the company by passing resolutions, state and explain the types of shareholders' resolutions provided for by the Law governing companies of 2018.** (9 Marks)
- (c) **Do you think Bwibwi Ltd had an obligation to file with the Registrar General, the resolution on the allotment of shares that belonged to Bwima to Bwiru in light of the Law governing companies of 2018? Explain your answer.** (4 Marks)
- (d) **Do you think the action taken by Bwiru to alter the Articles of Association of Bwibwi Ltd is legal? Explain.** (7 Marks)

(Total:25 Marks)

QUESTION THREE

Mahwera Limited is a private company limited by shares which has the head office at Nyamirambo. It was incorporated in June 2018 with the Rwanda Development Board. However, since its creation, no meeting of the shareholders was called. Recently, Nkubaganyi, one of the shareholders of the company called on the concerned organ to call on the meeting of the company shareholders. However, the relevant organ declined his call alleging that the meetings of shareholders were not necessary as long as the company had a functioning Board of Directors and Management and that the Law on companies does not specify the duration on which the company is requested to call the meetings of shareholders. Moreover, unlike the previous repealed version of the Law governing companies of 2009, which provided the matters to be transacted in the meetings of shareholders, the reigning Law governing companies does not provide any such matters.

Required:

- (a) After stating the meetings of shareholders of the company, state the organ(s), if any, responsible to call the meetings of shareholders, and the duration for calling the meetings of shareholders. (10 Marks)**
- (b) Do you agree with the organ responsible for calling the meetings of the shareholders of Mahwera Limited that the reigning Law governing companies does not provide for the matters to be transacted in the meetings of the shareholders? Explain. (5 Marks)**
- (c) Explain the circumstances under which the Registrar General is allowed to convene the meeting of shareholders. (5 Marks)**

(Total:20 Marks)

QUESTION FOUR

Kimihurura Plc is a company that owns a large chain of hotels worldwide. Kimihurura Plc has a strong Board of Directors composed mostly of family members. Its Board of Directors has seven (7) Members of the Board of Directors of whom two are executive directors, Kimihurura Mucyo who is the Chairperson of the Board of Directors and the Chief Executive Officer of the company and his younger sister Kimihurura Sine who is the Chief Financial Officer, five (5) Directors are non-executive directors and among them is three (3) independent directors. The youngest member of the Board of Directors is Kimihurura Jr, aged seventeen (17) years who is also the youngest grandson of the oldest Member of the Board of Directors; Kimihurura Sr who is the founding shareholder of the company, aged ninety-two (92) years old. In a resolution of the Board of Directors that passed by a unanimous vote, the Board of Directors resolved to expand the business of the company into event management and allotted shares to the new shareholders of the company to collect funds for the new business of the company. The number of its shareholders is now four thousand (4,000) although there is strong doubt about the exact number as recently; Kimihurura Mucyo confirmed that their company has no register of shareholders.

Required:

- (a) Appointing members of the Board of Directors requires attention from the shareholders as it is a process that follows strict requirements set in the Law of companies 2018 and the company's incorporation documents. Having in mind the requirements for the appointment of the directors of a company, write a brief comment on the legality of the appointment of:
- i. Kimihurura Mucyo as the Chairperson of the Board of Directors and the Chief Executive Officer of the company.** (5 Marks)
 - ii. Kimihurura Sr as the Director of the company.** (5 Marks)
- (b) **Comment on the validity and legality of the resolution of the Board of Directors to expand the business of the company into event management and allotment of shares to new shareholders.** (5 Marks)
- (c) The Chairperson of the Board of Directors and Chief Executive Officer of Kimihurura Plc admitted that the company has no register of shareholders. This is a violation of the Law governing companies as it states that each company keeps a register of shareholders. **In light of this admission and basing on the relevant legal provisions, explain the responsible person within the company to ensure the register of shareholders is kept by the company.** (5 Marks)

(Total:20 Marks)

SECTION B

QUESTION FIVE

- (a) **In relation with the company's annual account, state the duties of the members of Board of Directors.** (6 Marks)
- (b) Migina Ltd is a very small private company located at Remera in the City of Kigali. Its share capital is one million Rwandan francs (FRW 1,000,000) and it has two shareholders who have each of them fifty percent (50%) of stakes. Recently a heated debate erupted between the two shareholders on whether they should appoint an external auditor to audit the annual accounts of their company as a mandatory requirement for the administration of the company. As they could not reach to any conclusion, they sought for advice from you as an expert in Company Law. **Advise them appropriately.** (6 Marks)
- (c) A&B Limited is a private company owned by ninety (90) shareholders. Recently the company was hit by multiple financial problems in such a way that the management of the company felt the need of the appointment of a particular auditor. In a unanimous resolution, the Board of Directors of A&B Limited appointed Mugenzuzi as a particular auditor of the company. Some of the majority shareholders were not content of the appointment of this particular auditor and sought advice on how to remove him from his function.

Advise them on the following:

- i. **Legality of the appointment of Mugenzuzi by the Board of Directors as a particular auditor of A&B Limited.** (6 Marks)
- ii. **Removal of an auditor.** (6 Marks)
- (d) **State the organs of the State mandated to initiate the investigations into the company and the type of investigation they initiate under the Law governing companies in Rwanda.** (6 Marks)

(Total:30 Marks)

QUESTION SIX

(a) State and explain the causes of disappearance of the legal personality of the company.

(20 Marks)

(b) Discuss the concept “Reconstruction” in the context of alternative means to winding up.

(10 Marks)

(Total:30 Marks)

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