

CERTIFIED PUBLIC ACCOUNTANT INTERMEDIATE LEVEL EXAMINATIONS

11.3: COMPANY LAW

WEDNESDAY: 3 DECEMBER 2014

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.**

SECTION A

Attempt three questions in this section. Question 1 and 2 and either 3 or 4(not both)

QUESTION ONE

Cheng Ltd is an international construction company operating in Rwanda. In 2013, some of its shareholders wanted to break up and form a new construction company whose Head Office was to be registered in Nairobi. Shares allotted to the Shareholders who wanted to break-up were registered as “redeemable” and the remaining shareholding was composed of ordinary shares. Knowing that their knowledge in the business of selling and buying shares was limited since Cheng Ltd was a private company the shareholders seek further advice.

Required:

Cheng Ltd shareholders approach you for advice on the matter putting particular emphasis on the following:

- (a) Transfer of shares in a private company; **(10 Marks)**
 - (b) Redemption of the shares in Cheng Ltd; **(10 Marks)**
 - (c) Whether Cheng Ltd must be liquidated upon the break-up; **(5 Marks)**
- (Total 25 Marks)**

QUESTION TWO

- a) The principle of corporate legal personality is an important and fundamental aspect of Company law. Discuss this statement in line with the provisions of the Rwanda company law. **(10 marks)**

- b) Rwandanet Company Ltd., a private limited company, has been under inquiry on alleged fraudulent financial transactions. The officers of the company under suspicion have denied any association with the company.

At the inquiry it was suggested that the corporate veil be lifted and the realities of the company in question be looked into.

Explain the instances when the veil of incorporation may be lifted. **(15 marks)**

(Total 25 Marks)

QUESTION THREE

What is the minimum content of the memorandum of association in Rwandan Law? **(10 Marks)** What are the differences between such a memorandum of association and the articles of association under Rwandan Law? **(6 Marks)**

- a) In which case must the articles of association of commercial companies be necessarily notarized under Rwandan Law? **(4 Marks)**
- (Total 20 Marks)**

QUESTION FOUR

- a) Explain the reasons why an entity may be liquidated. **(2 Marks)**
- b) Explain the duties of a liquidator **(6 Marks)**
- c) Explain how a liquidator is released from his duties. **(4 Marks)**
- d) In performing their duties explain the decisions that a liquidator can only make after approval by the shareholders or court. **(8 Marks)**

(Total 20 Marks)

SECTION B

Attempt one question in this section. Choose either Question 5 or 6 (not both)

QUESTION FIVE

Fred is a member of Glad Ltd, a small publishing company, holding 100 of its 500 shares; the other 400 shares are held by four other members. It has recently become apparent that Fred has set up a rival business to Glad Ltd and the other members have decided that he should be expelled from the company. To that end they propose to alter the articles of association to include a new power to 'require any member to transfer their shares for fair value to the other members upon the passing of a resolution so to do'.

Required:

- a) Advise the parties concerned whether or not the proposed change to the articles is legally enforceable and whether or not it can be used to force Fred to sell his shares. (16 Marks)
- b) Chu, a suitably qualified person, was appointed as the company secretary of Do Co. Since his appointment, Chu has entered into the following contracts in the name of Do Co:
 - i) An extremely expensive, long-term contract with Ex Co for the maintenance of Do Co's photocopiers;
 - ii) an agreement to hire a car from Far Co which Chu used for his own non-business related purposes;
 - iii) An agreement with Gro Co to landscape the garden of Chu's, personal house.

NB: The directors of Do Co have only recently become aware of the following above contracts:

Required:

In the context of company law, with specific regard to the authority of company secretaries, advise the directors of Do Co whether the above agreements are binding on the company. (14 Marks)
(Total 30 Marks)

QUESTION SIX

At the start of 2010, Hot Company entered into the following transactions in an endeavour to sustain its operation:

1. It borrowed Frw 50,000,000 from Ina, secured by a floating charge. The floating charge was created on 1 April and it was registered on 15 April;
2. It borrowed a further Frw 50,000,000 from Jo. This loan was secured by a floating charge created on 3 April and registered on 12 April;
3. It borrowed Frw 100,000,000 from Ko-Bank. This loan was secured by a fixed charge. It was created on 5 April and was registered on 16 April.

Unfortunately, the money borrowed was not sufficient to sustain Hot Company and, in August 2013, compulsory liquidation proceedings were begun. It is extremely unlikely that there will be sufficient assets to pay the debts owed to all of the secured creditors.

Required:

- a) Advise Hot Company as to the order of security and payment of the above debts and explain why they are placed in that order. (20 Marks)

b) In the context of the formation of companies explain:

i) The statement of capital and initial shareholdings; (4 Marks)

ii) The articles of association, paying particular regard to how these can be altered. (6 Marks)

(Total 30 Marks)

End of question paper