



CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS
11.3: COMPANY LAW

DATE: WEDNESDAY 23, AUGUST 2023
MARKING GUIDE AND MODEL ANSWERS

SECTION A

QUESTION ONE

Marking Guide

Sub questions		Marks
(i)	Award 1 mark for legality and 1 mark for explaining the arrangement (Maximum 2 marks)	2
(ii)	Award 2 marks for identifying the arrangement and 2 marks each for any 4 well explained characteristics (Maximum 10 marks)	10
(iii)	Award 2 marks for identifying the arrangement and 2 marks each for 3 characteristics of a holding company (Maximum 8 marks)	8
(iv)	Award 1 mark for 4 well elaborated explanation (Maximum 4 marks)	4
(v)	Award 1 mark for 4 well elaborated meaning (Maximum 1 mark)	1
Total for this question 1		25

Model Answers

(i) The candidate is expected to demonstrate knowledge and understanding of a subsidiary company

- The arrangement is within the law since article 13 of N° 007/2021 of 05/02/2021 governing companies allows this kind of arrangement where one company is the subsidiary of the other and in this case Munezero is the subsidiary of Mugitondo.
- Board of Directors controlled by another company-The subsidiary company's Board of Directors is regarded as being controlled by another company only if that other company exercises some power exercisable by it with or without the consent or concurrence of any other person.
- The subsidiary company's Board of Directors can appoint or remove all or a majority of the directors or such number of directors as together hold the majority of the voting rights at meetings of the Board of Directors of the company.

(ii) The candidate is expected to demonstrate knowledge and understanding on the characteristics of a subsidiary company

Article 14: Characteristics of a subsidiary company

In determining whether a company is a subsidiary of another company, the following is considered:

- Any shares held or power exercisable by that other company in a fiduciary capacity are treated as not held or exercisable by it;
- Any shares held or power exercisable by any person by virtue of the provisions of any debentures of the company or of a trust deed for securing any issue of such debentures are disregarded;
- Any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary, not being held or exercisable as mentioned under item point 2 above are treated as not held or exercisable by the other company if the ordinary business of that company or its subsidiary, as the case may be, includes the lending of money and the shares are held or

power is exercisable as aforesaid by way of security only for the purpose of a transaction entered into in the ordinary course of that business;

- Subject to the provisions of items 2 and 3 of this Article, any shares held or powers exercisable:

➤ By a person appointed by that other company except where it is concerned only in a fiduciary capacity; or

➤ By a person appointed by a subsidiary of that other company, not being a subsidiary, which is concerned only in a fiduciary capacity, is treated as held or exercisable by that other company.

(iii) The candidate is expected to demonstrate knowledge and understanding on the holding company and its characteristics.

- Nyamagabe is the holding company implying that it has more than 50% of shares in both Munezero and Mugitondo Public Limited Company
- Mugitondo Public Limited Company is a subsidiary of Nyamagabe Public Limited Company but having more shares and 70% voting rights and thus controlling Munezero Public Limited Company
- Munezero Public Limited Company is both a subsidiary of Nyamagabe which is the parent company and Mugitondo by virtue of the shares held.

Article 16: Characteristics of a holding Company

A company is another company's holding company if:

- The other company is its subsidiary;
- The holding company is not itself a subsidiary of any company.
- The holding company in Rwanda is a holding company which is not a subsidiary of a company registered in Rwanda.

(iv) The candidate is expected to demonstrate knowledge and understanding of a Wholly owned subsidiary.

Article 17: Wholly owned subsidiary

A wholly owned subsidiary is a company which has no other shareholders except its parent company and is managed by:

- That parent company;
- A nominee of that parent company;
- A subsidiary of that other company being a subsidiary, the shareholders of which do not include any person apart from that parent company;
- A nominee of such a subsidiary.

(v) The candidate is expected to demonstrate knowledge and understanding of a virtually Wholly owned subsidiary.

Article 18: Virtually wholly owned subsidiary

- A company is considered to be a virtually wholly owned subsidiary of another company where the latter owns ninety (90) per cent or more of the voting power in that company

QUESTION TWO

Marking Guide

Sub questions	Marks
(i) Award 1 mark for the legality of the action of the directors and 1 mark for the right approach that which would have been followed by the directors of Nyabarongo Public Limited Company (Maximum 2 marks)	2
(ii) Award 2 marks each for any well explained fundamental right (Maximum 6 marks)	6
(iii) Award 2 marks for explanation on whether the right to vote can be restricted and 1 mark each for any 4 enumerated rights to vote (Maximum 6 marks)	6
(iv) Award 1 mark on the powers of the directors to introduce classes and 1 mark each for the 2 procedures to be followed in introducing classes (Maximum 3 marks)	3
(v) Award 2 marks each for any 4 well elaborated way taking into account the ordinary resolution (Maximum 8 marks)	8
Total for this question 2	25

Model Answers

(i) The candidate is expected to demonstrate knowledge and understanding on variation of rights more especially on classes of shares of a company.

- The action of the directors is not within the law because once they made a decision whose effect is to vary the rights of the shareholders, the law provides thus:

Article 87: Variation of rights

- Where the share capital of a company is divided into different classes of shares, a company does not take any action which varies the rights attached to a class of shares unless that variation is approved by a special resolution of shareholders having such a class of shares.
- Where the variation of rights attached to a class of shares is approved and the company becomes entitled to take the action concerned, the holder of a share of that class, who did not consent to or cast any vote in favor of the resolution for the variation, may apply to a competent Court for an order against acts that are prejudicial to a shareholder, or he or she may require the company to purchase those shares.

(ii) The candidate is expected to demonstrate knowledge and understanding on fundamental rights of shareholders.

Article 85: Fundamental rights attached to shares

Shares confer the following on their holders:

- The right to share in the distribution of the dividends of the company;
- The right to share in the distribution of the surplus assets of the company upon its liquidation;

• In accordance with other rights and privileges and subject to such limitations or conditions on such rights as may be provided for in the law governing companies or the company's incorporation documents, the right to vote on shareholders' resolutions includes:

- ✓ Appointing or removing an auditor or director;
- ✓ Approving a major transaction;
- ✓ adopting or altering articles of association;
- ✓ Dissolving the company;
- ✓ Approving an amalgamation in accordance with the provisions of the law governing companies.

However, where a company has more than one class of shares, the classes confer all the rights set out in Point One, but one class need not confer any of such rights on its holder. Unless otherwise specified in the incorporation documents, each share has attached to it the following rights:

- With respect to the right to share in the distribution of the dividends of the company, the right to an equal share;
- With respect to the right to share in the distribution of the surplus assets of the company upon its winding up, the right to an equal share;
- With respect to the right to vote on shareholders' resolutions, the right to one vote.
- Subject to the provisions of the law governing companies, if the company is a public company, a share is fully transferable.

(iii) The candidate is expected to demonstrate knowledge and understanding on restriction on the fundamental rights of shareholders.

- From the case scenario above all members were given ordinary shares entitling each shareholder to one vote
- After perusing through the registration documents there is no clause providing for the classes and thus shareholders rights cannot be restricted without a legal backup

Rights exercised through voting

- Approving a major transaction;
- Adopting or altering articles of association;
- Dissolving the company;
- Approving an amalgamation in accordance with the provisions of Law.

(iv) The candidate is expected to demonstrate knowledge and understanding on procedure of introducing the classes and thus varying shareholders rights.

- Since the incorporation documents do not provide for the classes therefore the directors have no powers to introduce the classes without using the laid down procedure

The Procedure

- Where the share capital of a company is divided into different classes of shares, a company does not take any action which varies the rights attached to a class of shares unless that variation is approved by a special resolution of shareholders having such a class of shares.
- Where the variation of rights attached to a class of shares is approved and the company becomes entitled to take the action concerned, the holder of a share of that class, who did not consent to or cast any vote in favor of the resolution for the variation, may apply to a

competent Court for an order against acts that are prejudicial to a shareholder, or he or she may require the company to purchase those shares.

(v) The candidate is expected to demonstrate knowledge and understanding on exercise of shareholder powers by resolution

Article 97: Exercise of shareholder powers by resolution

Powers reserved for shareholders by the law governing companies or by a company's incorporation documents are exercised by shareholders' resolution:

- ✓ At a shareholders' annual general meeting; This where the shareholders vote to appoint directors and auditors, approve distribution of dividends and other annual reports presented in the meeting
- ✓ At a shareholders' extraordinary general meeting; Members exercise their powers to vote when they are called upon to deliberate on matters arising and that which requires immediate action and cannot hold until the General Annual meeting. For example, if the auditors of the company or all the directors resign then an extraordinary meeting shall be called to appoint such auditors or directors as the case may be.
- ✓ By shareholders' written resolution in lieu of general meeting; There are matters which have direct effect to every member and thus requires each member to vote either for or against but taking into account the personal interest. For example, if the company is being altered from a company limited to unlimited company, then each member will be asked to express is vote in writing. In case a member is not interested to invest in unlimited company then he is given his or her investment and those willing will continue to members of unlimited company
- ✓ By a unanimous shareholder agreement; These are those decisions which are made requiring a high threshold to safeguard the member's interest. This requires at least $\frac{3}{4}$ of the membership and holding more than $\frac{3}{4}$ of the share capital. For example, approving a major transaction

QUESTION THREE

Marking Guide

Sub questions	Marks
(a) Award 1 mark each for outlining any 2 legal positions and any 2 powers of the directors to acquire the shares and 1 mark for notification (Maximum 5 marks)	5
(b) Award 1 mark each for any five legal positions on general offer of acquisition of shares (Maximum 5 marks)	5
(c) Award 1 mark each for any five legal positions on special offer of acquisition of shares (Maximum 5 marks)	5
(d) Award 1 mark each for any five legal positions on the grounds upon which the order can be issued by the court (Maximum 5 marks)	5
Total for this question 3	20

Model Answers

(a) The candidate is expected to demonstrate knowledge and understanding on the powers of directors to acquire shares

Article 177: Powers of directors to acquire shares

At any time when a company is entitled to acquire its own shares, the directors may:

- Make a general offer to all shareholders of the company to acquire a proportion of their shares, if:
 - Such an offer will, if accepted in full, leave unaffected relative voting and distribution rights;
 - All shareholders are afforded a reasonable opportunity to accept the offer;
 - The acquisition in question is in the best interests of the company;
 - That the terms of the offer and the consideration offered for the shares are fair and reasonable to the company;
 - That they are not aware of any information not available to shareholders which is material to an assessment of the value of the shares and as a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer; any such resolution sets out full reasons for the board of directors' resolution.
- That the acquisition in question is of benefit to the remaining shareholders;
- That the terms of the offer and consideration offered for the shares are fair and reasonable to the remaining shareholders.

Article 65: Notification of alteration of incorporation documents due to allotment of shares

- When a company issues shares, the Board of Directors submits to the Registrar General a notice of alteration of the company's incorporation documents within fifteen (15) working days from such an allotment.

(b) The candidate is expected to demonstrate knowledge and understanding on the requirements for general offers

Article 178: Requirements for general offers

- Directors may make a general offer to acquire shares only if they have previously resolved:
- That the acquisition in question is in the best interests of the company;
- That the terms of the offer and the consideration offered for the shares are fair and reasonable to the company
- That they are not aware of any information not available to shareholders which is material to an assessment of the value of the shares;
- As a result of lack of information, the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer; any such resolution sets out full reasons for the board of directors' resolution.
- Directors who vote in favour of a resolution required by Paragraph one of this Article sign a certificate as to the matters set out in that Paragraph which may be combined with the certificate required by article 68 of the law governing companies and any certificate required under article 179 of the law governing companies.

(c) The candidate is expected to demonstrate knowledge and understanding on the requirements for special offers

Article 179: Requirements for special offers

- The members of the Board of Directors may make a special offer to acquire shares only if in addition to complying with requirements of article 178 of the law governing companies the directors have previously resolved:
- That the acquisition in question is of benefit to the remaining shareholders;
- That the terms of the offer and consideration offered for the shares are fair and reasonable to the remaining shareholders.
- Any such resolution sets out full reasons for the directors' conclusions.
- Directors who vote in favour of a resolution required by Paragraph One sign a certificate as to the matters set out in Paragraph One.
- Before an offer is made pursuant to a resolution under Paragraph One, the company sends each shareholder a disclosure document setting out the nature and terms of the offer, and if made to specified shareholders, to whom it will be made;
- The text of the resolution required by Paragraph One, together with such further information and explanation as may be necessary to enable a shareholder to understand the nature and implications for the company and its shareholders.
- The offer may be made not less than ten (10) and not more than thirty (30) working days after the disclosure document has been sent to each shareholder.

(d) The candidate is expected to demonstrate knowledge and understanding on the grounds for the court to issue an order restraining proposed acquisition

Article 180: Order restraining proposed acquisition

- A shareholder or the company may apply to the court for an order restraining a proposed acquisition pursuant to a general or special offer under articles 178 and 179 of - the law governing companies on the grounds that:
- Directors may make a general offer or special offer to acquire shares only if they have previously resolved:
- That the acquisition in question is not in the best interests of the company;
- That the terms of the offer and the consideration offered for the shares are unfair and unreasonable to the company;
- That they are not aware of any information not available to shareholders which is material to an assessment of the value of the shares as a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer; any such resolution sets out full reasons for the board of directors' resolution.
- That the acquisition in question is of benefit to the remaining shareholders;
- That the terms of the offer and consideration offered for the shares are fair and reasonable to the remaining shareholders.
- Any such resolution sets out full reasons for the directors' conclusions.
- Directors who vote in favour of a resolution required by Paragraph One sign a certificate as to the matters set out in Paragraph One.
- Before an offer is made pursuant to a resolution under Paragraph One, the company sends each shareholder a disclosure document.
- The document disclosure sent to all shareholders sets out the nature and terms of the offer, and if made to specified shareholders, to whom it will be made and the text of the resolution required by Paragraph One, together with such further information and explanation as may be necessary to enable a shareholder to understand the nature and implications for the company and its shareholders.
- The offer may be made not less than ten (10) and not more than thirty (30) working days after the disclosure document has been sent to each shareholder.

QUESTION FOUR

Marking Guide

Sub questions	Marks
(a) Award 1 mark each for each opinion provided on the basis of Munyangero, s accusation (Maximum 3 marks)	3
(b) Award 3 marks for the position of law and 2 marks for justification (Maximum 5 marks)	5
(c) Award 4 marks for the position of law on appointment and 2 marks for qualification and role of the inspector (Maximum 6 marks)	6
(d) Award 2 marks each on explaining who can request the Registrar General to order for investigation (Maximum 6 marks)	6
Total for this question 4	20

Model Answers

(a) The candidate is expected to demonstrate knowledge and understanding on mandatory investigation of companies

- The Minister did not act within the law because Munyangero is not a shareholder of the company and shares of the company are not dished out but wherever and when available the public is invited through the circulation of a prospectus upon which the public can subscribe.
- Munyangero did not furnish the Minister with any evidence of the accusation upon which the Minister would have relied upon to order for the mandatory investigation for the public interest
- The action of the Minister ordering for the mandatory investigation is purely an abuse of power in contravention of the law and thus Munyana, Mahoro and Umubyeyi have every right to seek redress from the court of law

(b) The candidate is expected to demonstrate knowledge and understanding on investigation ordered by the Minister

Article 292: Investigation ordered by the Minister

- The Minister issues instructions requesting the Registrar General to investigate into the business of a local company or of a foreign company having its branch in Rwanda where the Minister is satisfied that:
- For the protection of the interests of the public, the shareholders or creditors of a company, it is desirable that the affairs of a company should be investigated;
- It is in the public interest that the affairs of a company should be investigated;
- In the case of a foreign company, the competent authorities of another country requests that an investigation be made in respect of this Article
- Munyangero, s accusation cannot be withheld because she did not in any manner demonstrate the availability of share and a subscription which was turned down.
- Munyangero alone cannot be taken to represent public interest because there is no evidence to the effect that apart for her, there are other people who have raised similar concerns

(c) The candidate is expected to demonstrate knowledge and understanding on appointment of inspector of the business of the company

Article 293: Appointment of inspector of the business of the company

- An inspector of the business of a company appointed by the Registrar General has the power to investigate the business of a company pursuant to article 292 of the law governing companies which provides;
- For the protection of the interests of the public, the shareholders or creditors of a company, it is desirable that the affairs of a company should be investigated;
- It is in the public interest that the affairs of a company should be investigated;
- In the case of a foreign company, the competent authorities of another country requests that an investigation be made in respect of this Article
- The appointed person must be a qualified, skilled and experienced professional manager.
- The appointed inspector prepares a report according to the format and procedure required by the Registrar General.

(d) The candidate is expected to demonstrate knowledge and understanding on Investigation ordered by the Registrar General.

Article 295: Investigation ordered by the Registrar General

The Registrar General may direct investigation:

- In the case of a company having a share capital, on the application of:
- One shareholder or a group of shareholders holding at least one-tenth (1/10) of the issued shares in the company;
- Debenture holders holding not less than one-fifth (1/5) in nominal value of the issued debentures;
- In the case of a company limited by guarantee, on the application of not less than one-fifth (1/5) in number of the persons on the share register;
- Where he or she considers that the appointment of an inspector is necessary to safeguard the interests of shareholders or debenture shareholders or is necessary in the public interest, require an inspector to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and in the case of a debenture agency deed, the conduct of the debenture holders' representative and to make a report in such form and manner as the Registrar General may direct.

The candidate is expected also to demonstrate knowledge and understanding on Some reasons which might drive the Registrar General to lodge a case before the court against a company

- Where from a report of an inspector of the activities of a company it appears to the Registrar General that in the management and administration of a company, there is a shareholder who, by virtue of his or her company, shares and voting rights deriving from the classes of such shares and other benefits, alters the decisions that were taken through the vote, causes mismanagement for him or her to maintain control and where the latter helps him or her to unfairly discriminate

other shareholders, the Registrar General may lodge a case before the court in accordance with the law governing companies

SECTION B

QUESTION FIVE

Marking guide

Sub questions	Marks
(a)(i)	Award 2 marks each for any 4 positions well discussed (Maximum 8 marks)
(a)(ii)	Award 1 mark each for the 4 well explained positions (Maximum 4 marks)
(a)(iii)	Award 1 mark each for any 4 well discussed positions (Maximum 4 marks)
(b)(i)	Award 1 mark for each of the opinions well-reasoned (Maximum 4 marks)
(b)(ii)	Award 1 mark each for any 8 procedures (Maximum 8 marks)
(b)(iii)	Award 1 mark each for the 2 positions (Maximum 2 marks)
Total for this question 5	
	30

Model Answers

(a) (i) The candidate is expected to demonstrate knowledge and understanding on Authorization of distribution by the Board of Directors

Article 69: Authorization of distribution by the Board of Directors

- The Board of Directors of a company may, subject to any restrictions contained in the company's incorporation documents and the law governing companies, authorise a distribution of shares by the company at such time and of such amount and to such shareholders as they consider fit provided that the Board of Directors is satisfied that the company will, after the distribution of shares, satisfy the solvency test Directors who vote in favour of the distribution sign a certificate that in their opinion the company will, after the distribution, stays solvent to pay its debts.
- Where, after the resolution to distribute shares is made and before such distribution is effected, the Board of Directors in its opinion establishes that the company will, after the distribution of shares, not satisfy the solvency test to pay its debts, any distribution done is considered as unauthorized one.

In applying the solvency test the following is taken into account:

- Debts treated as including fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made;
- Liabilities treated as including the amount that would be required, if the company is to be removed from the register of companies immediately after the time of distribution, to satisfy the fixed entitlements of all security holders, unless the incorporation documents provide the directors with the power to otherwise determine it.

• The certificate issued by the Board of Directors provided under this Article does not apply in the case of a private company where shareholders have opted out of the requirement of the certificate.

ii) The candidate is expected to demonstrate knowledge and understanding on Distribution of dividends

Distribution of dividends

The Board of Directors cannot authorise dividends:

- In respect of some shares in a class, and not of others of that class; or
- Of a greater value per share in respect of some shares of a class than in respect of others of that class except where the amount of the dividend is low by comparison with the amount paid to the company in respect of the shares.
- A shareholder may waive his or her entitlement to receive a dividend by notice in writing to the company signed by that shareholder or on his or her behalf by his or her authorized person.
- Dividends are paid to the shareholders not later than thirty (30) days after it has been authorized by the Board of Directors and after satisfaction of the solvency test.

(iii) The candidate is expected to demonstrate knowledge and understanding on Allotment of shares in lieu of dividends

Allotment of shares in lieu of dividends

- Subject to the provisions in a company's incorporation documents, the Board of Directors may allot shares to shareholder who has accepted the allotment, wholly or partly, in lieu of the proposed dividend or proposed future dividend if:
- The right to receive shares in lieu of the proposed dividends or proposed future dividends has been offered to all shareholders of the same class on the same terms;
- The shareholders elected to receive the shares in lieu of dividends, preserve their relative voting and distribution rights;
- The shareholders to whom the right is offered are afforded a reasonable opportunity for accepting it;
- The shares allotted to each shareholder are allotted on the same terms and subject to the same rights as the shares allotted to all shareholders in that class who agree to receive shares; and
- The stated capital account, including in case of shares having a par value, the share premium account may, provided that the directors are satisfied that the company will immediately after the application satisfy the solvency test, be applied by the company in order to pay

(b) (i) The candidate is expected to demonstrate knowledge and understanding on transmission of shares

- Mugabe and Mukisa will not succeed in court
- By the fact that Mugabe is the only surviving member of the family he did not produce the father's death certificate or any such document
- Mukisa must provide a proof of the transfer of shares from Kaliwabo otherwise the company cannot act on hearsay
- The law provides that in the case of a person to whom the right to any shares in the company has been transmitted by operation of law, it is sufficient evidence of such transmission.

ii) The candidate is expected to demonstrate knowledge and understanding on Procedure for transfer of shares

Procedure for transfer of shares (Art 75)

- Subject to the incorporation documents of a company, shares in the company may be transferred by entry of the name of the transferee in the company's register of shareholders.
- Where shares are to be transferred, there shall be delivered to the company:
 - A share transfer form signed by:
 - The shareholder or a person to whom the right to any shares in the company has been transmitted by operation of law;
 - The transferee;
 - If a share certificate has been issued in respect of the shares to be transferred, the share certificate or evidence of its loss or destruction and, if required, an indemnity to the satisfaction of the directors; and
 - In the case of a person to whom the right to any shares in the company has been transmitted by operation of law, sufficient evidence of such transmission.
 - A share transfer form is not required where the transferee is a person to whom the right to any shares in the company has been transmitted by operation of law.
 - Upon receipt of the documents required by law, the company enters in its register of shareholders the name of the transferee as holder of the shares unless:
 - The Board of Directors resolve within thirty (30) working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
 - Notice of the resolution, including the reasons, is sent to the transferor and to the transferee within five (5) working days of its adoption by the Board of Directors; and
 - The law governing companies or the company's incorporation documents expressly permits the Board of Directors to refuse or delay registration for the reasons stated.
 - Subject to the incorporation documents of a company, the board may refuse or delay the registration of a transfer of shares if the holder of the shares has failed to pay to the company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with the incorporation documents.

iii) The candidate is expected to demonstrate knowledge and understanding on Remittance of shares following the issuance of a certificate of amalgamation

Remittance of shares following the issuance of a certificate of amalgamation (Article 76)

- Where two (2) or more companies are amalgamated, they must forthwith demonstrate the value of a share of each company following the issue of a certificate of amalgamation.
- The amalgamated company remits to any person entitled to a share or shares under the amalgamation proposal, the share or shares to which that person is entitled

QUESTION SIX

Marking Guide

Sub questions		Marks
(a)	Award 2 marks each for any 4 positions well discussed (Maximum 3 marks)	3
(b)	Award 1 mark each for the 2 opinions well elaborated (Maximum 2 marks)	2
(c)	Award 2 marks each for any 4 grounds well explained (Maximum 8 marks)	8
(d)	Award 1 mark each for the 2 grounds (Maximum 2 marks)	2
(e)	Award 2 marks each for any 4 well explained grounds (Maximum 8 marks)	8
(f)	Award 4 marks for the 4 positions and 3 marks for the 3 parties that can apply (Maximum 7 marks)	7
Total for this question 6		30

Model Answers

(a) The candidate is expected to demonstrate knowledge and understanding on Remittance of shares following the issuance of a certificate of amalgamation

- The shareholders of Muyenzi Public Limited Company can succeed if they were to proceed to court.
- The fact that until the amalgamation took place there was no such communication from the office of the Registrar General is evidence enough that the company was operational
- There is no proof from the Registrar General to the effect that the company has ceased to carry on business and there is a proper reason for the company to continue in existence
- By the time the Registrar General received the amalgamation documents he had already removed Muyenzi from the register, however it would have been in order if Muyenzi which is the amalgamating company would be removed on reception of the amalgamation document subject to the issuance of a certificate of incorporation to Nyabigege Public Limited Company
- Notwithstanding that the company was dormant for a whole year and the Registrar General can remove it from the register the emerging pandemic was unforeseen force which affected many organizations and therefore the action of the Registrar General to remove the company from the register cannot stand the test of fairness

(b) The candidate is expected to demonstrate knowledge and understanding on removal of the company from the register of companies

- The amalgamation of the two companies given the prevailing circumstances is legal as the two amalgamating companies had passed the shareholders resolutions to the effect and the delay in the transmission of the documents to the office of the Registrar General cannot invalidate the amalgamation.
- Given that the Registrar General had not notified Muyenzi nor Nyarutarama of his intention to remove it from the register of companies therefore the two companies acted within the law and the amalgamation is legally binding

(c) The candidate is expected to demonstrate knowledge and understanding on removal of the company from the register of companies

Article 281: Grounds for removal of a company from the register

The Registrar General removes a company from the register if:

- The company is an amalgamating company other than an amalgamated company and, on the same day, the Registrar General issues a certificate of amalgamation;
- The Registrar General is satisfied that:
 - ✓ The company has ceased to carry on business and there is no proper reason for the company to continue in existence;
 - ✓ The company has failed to pay fees due to the Registrar General under the law governing companies;
 - ✓ The company has not filed its annual return as required under the law governing companies;
- The Registrar General receives a request, in a form approved by him or her, from:
 - ✓ A shareholder authorized to make the request by a special resolution of shareholders entitled to vote and voting on the question;
 - ✓ The Board or any other person, where the incorporation documents of the company so require or permits, that the company be removed from the register on the grounds that the company has ceased to carry on business and there is no proper reason for the company to continue in existence; the company has failed to pay fees due to the Registrar General and finally the company has not filed its annual return as required under law
- There is delivered to the Registrar General an application for removal of an insolvent company from register and no liquidator is acting in relation to that company or the liquidator appointed fails to deliver to the Registrar General the documents required to be filed under the law relating to insolvency;
- A liquidator delivers to the Registrar General the final report and final accounts of the liquidation and the statement required by the law governing insolvency.

(d) The candidate is expected to demonstrate knowledge and understanding on grounds for objecting to removal of a company from the register of companies

Article 283: Grounds for objecting to removal of a company from the register of companies

- Where the Registrar General gives notice of an intention to remove a company from the register of companies, any person may deliver to the Registrar General, not later than the date specified in the notice, an objection to the removal from the register on the grounds that:
 - The company is still carrying on business
 - That for any other reason it would not be just and equitable to remove the company from the register

(e) The candidate is expected to demonstrate knowledge and understanding on removal of the company from the register of companies

- The company is still carrying on business
- The company is a party to legal proceedings;
- The company is in receivership, liquidation or both;
- That the person is a creditor, a shareholder or any other person who has an undischarged claim against the company;
- That the person believes that he or she has a right of action to pursue under provisions of Law;
- That for any other reason it would not be just and equitable to remove the company from the register

(e) The candidate is expected to demonstrate knowledge and understanding on removal of the company from the register of companies

Article 287: Restoration by the Registrar General of a company to the register

The Registrar General may on his or her own initiative or on application restore a company to the register where he or she is satisfied that after its removal from the register:

- The company was still carrying on business or other reason existed for the company to continue in existence;
- The company was a party to legal proceedings;
- The company was subject to an insolvency process; or
- For any other good cause shown.

Application to restore a company to the register may be made by any of the following after payment of prescribed fee:

- Shareholder or director of the company;
- A creditor of the company; or
- A liquidator of the company

END OF MARKING GUIDE AND MODEL ANSWERS