



**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3: COMPANY LAW

DATE: WEDNESDAY 27, NOVEMBER 2024

MARKING GUIDE & MODEL ANSWERS

SECTION A

QUESTION ONE

Marking Guide

| QN | Guideline | Marks |
|-----------|--|--------------|
| a. i | 1 mark for affirmation and 1 mark for justification | 2 |
| ii. | 1 mark for identifying Affectio Societatis as one valid reason and 1 mark each for any 5 explanations of Affectio Societatis | 6 |
| iii. | 2 marks each for the 2 positions and 1 mark for the way forward for the directors | 5 |
| iv. | 1 mark for affirmation and 1 mark for Justification | 2 |
| v. | 2 marks each for any 3 three violations well explained | 6 |
| b. | 1 mark for identification, 1 mark for definition and 1 mark each for any 2 advantages | 4 |
| | TOTAL | 25 |

Model Answers

(a)

i) The candidate is expected to demonstrate knowledge and understanding of a company as a contract

- Yes, the company is justified in removing them from membership based on the circumstances outlined in the case.
- The justification for removal stems from a breach of contract, specifically the lack of willingness to collaborate and act in alignment with the company's common interests.
- This shared commitment to the common interest is not only required at the company's inception but must also persist throughout its entire existence to ensure its proper functioning and harmony.

ii) The candidate is expected to demonstrate knowledge and understanding of "affectio societatis" as an element of a company as a contract

- "Affectio societatis" is the main reason which will justify their removal from the company;
- "Affectio societatis" is a Latin word which means the will to collaborate for the common interest;
- The least common denominator for a company as a contract is the will of all shareholders to collaborate, on an equal footing to the success of the common enterprise;

- This common will must not exist at the time of the creation of the company only, but must also continue during the whole social life of the company;
- This will, referred to as *affectio societatis*, is the intentional element in the definition of a company as a contract, although it had its origin in partnership agreements;
- For the partnership agreement, all partners were expected to have the will to contribute to the common activity in question.

iii) The candidate is expected to demonstrate knowledge and understanding on the powers of the company

Article 26: Company's capacity

- Subject to the provisions of this Law or to any other special law, an incorporated company has, both within and outside Rwanda, full capacity and rights to undertake any business or activity, do any act or enter into any transaction and has full rights, powers and privileges to do so;
- The articles of association of a company may restrict the company's capacity, rights and powers provided by law;
- In the scenario provided the directors shall call the meeting of the members and amend the objects clause to allow them expand the business.

iv) The candidate is expected to demonstrate knowledge and understanding on the manner and process of removing a member from the company

- No, they were not justified;
- If they would have been afforded the opportunity to be heard the decision would not have been taken;
- If it were not the difficult situations, they found themselves in, they would have equally demonstrated the will.

v) The candidate is expected to demonstrate knowledge and understanding on the validity of incorporation documents and of a company's acts.

- Injunctions and compliance orders;
- Personal actions by shareholders;
- Unfair prejudice;
- Derivative action
- Negligence;
- Default;
- Breach of duty;
- Breach of trust.

b. The candidate is expected to demonstrate knowledge and understanding on the schemes of arrangement under alternatives to winding up

- Schemes of arrangements;
- A scheme of arrangement is a court-sanctioned agreement between a company and other parties;
- Schemes are a flexible and long-established procedure by insolvency law in Rwanda;
- A scheme is usually proposed by a company, although administrators may propose a scheme;
- A scheme is a compromise or arrangement between a company and its members or creditors (or any class of them - classes are groups of creditors with similar characteristics).

Advantages of schemes of arrangement

- Less cost;
- Less publicity;
- No need for an Independent Expert's Report to commence the process;
- No advertising of the “Business for Sale”;
- No need to prove to the Commercial High Court that there is a “reasonable prospect” of the company surviving.

QUESTION TWO

Marking Guide

| QN | Guidelines | Marks |
|-------------|--|-----------|
| a. i | 1 mark each for 3 right definition and 1 mark for the definition which is not right and the reason | 4 |
| ii | 1 mark for affirmation and 1 mark each for any five aspects | 6 |
| iii | 1 mark for explaining why the word persons is used in plural, 1 mark for identifying the natural and artificial persons and 1 mark for explaining with examples the meaning of money's worth | 3 |
| iv | 1 mark for the meaning of legal personality and 1 mark for any 2 examples | 2 |
| b.i. | 1 mark for affirmation and 1 mark for Justification | 2 |
| ii | 1 mark for explaining the legal position on limitation of time and 1 mark for explaining if any action is tenable | 2 |
| iii | 1 mark for explaining the limitation of time in regard to acts of the director and 1 mark on why he should not be held responsible | 2 |
| iv | 1 mark on the position of law on the limitation of time on the acts of a company secretary and 1 mark for explaining the liability aspect | 2 |
| v | 1 mark for identifying the prescription of time and 1 mark for the legal position on prescription | 2 |
| | TOTAL | 25 |

Model Answers

(a)

i) The candidate is expected to demonstrate knowledge and understanding on definition of a company.

- The three definitions are correct except for the one for Mutimura Annette;
- Rurangirwa John explained that a company is an association of persons who contribute money or money's worth for a common purpose and that purpose is profit maximization is correct;
- Mutimura Annette explained that company law is a branch of law which governs companies, this definition does not say what a company is and therefore incorrect;
- Mugabo Ted, a company is a corporate body composed of one or more persons for making profit is also correct
- Mutazindwa Jushua concluded by saying that a company is a legal person recognized by law, is also correct

ii) The candidate is expected to demonstrate knowledge and understanding on company law as a branch of law governing companies

- Yes, she is right

The following are the main aspects found in this branch of law governing companies

- Incorporation of companies;
- Allotment of shares and share capital;
- Memberships in companies;
- Borrowing by companies;
- Management and administration of companies;
- Winding up of companies.

iii. The candidate is expected to demonstrate knowledge and understanding on legal personality

- The word person is used in plural to indicate that the envisaged persons are two different hence persons and not people;
- The word person implies both a natural and artificial person being bearers of rights and duties under law;
- Money can be cash or things worth money like land, car, lorry, furniture etc.

iii) The candidate is expected to demonstrate knowledge and understanding on legal personality

- The definition implies that the term legal person is the ability to bear rights and duties;
- Such rights include right to own property, right to dispose property, right to sue or to be sued etc.

(b)

i) The candidate is expected to demonstrate knowledge and understanding on prescription or limitation of time

- The legal action against Mucyurabuhoro Felix and Byaruhanga Beatrice is not tenable;
- Prescription relates to the extinction of rights by lapse of time i.e. the time within which if an action is not instituted in court, the plaintiff's right of action is lost;
- The law provides that the limitation period is five years for all actions against the promoters of a company starting from the date of publication of the memorandum of association.

ii) The candidate is expected to demonstrate knowledge and understanding on prescription or limitation of law

- The legal position is that any legal action must be undertaken before the lapse of five years from the time the anomaly occurred;
- Since the distribution of the dividends happened say, in 2017 and shareholders left in 2022 long before the discovery in 2023 implying that any action is barred;
- All actions for the restitution of dividends unjustly paid can be recovered within a period of five years from the date of distribution;
- All actions for the payment of dividends or for the reimbursement of part thereof, from the date it became due.

iii) The candidate is expected to demonstrate knowledge and understanding on prescription or limitation of law

- Yes, a managing director in Rwanda can be held responsible for mistakes or wrongful actions that occur during his tenure, even after he has left office.
- The extent of the liability depends on several factors, including the nature of the mistake, the law under which the action is scrutinized, and the specific circumstances of the case.
- No, as an agent, the former Managing Director Mbugtse Ben cannot be held responsible because he was merely acting on behalf of his principal (company);
- All actions against the organs of the company for acts committed in the exercise of their functions starting from the date of such acts or if it was concealed by fraud from the date of discovery;
- The violations happened in 2017 and they were not concealed and given that five years have lapsed all actions are barred.

iv) The candidate is expected to demonstrate knowledge and understanding on prescription or limitation of law

- Yes, a company secretary in Rwanda can be held responsible for wrongful actions or omissions committed while in office if they involve breaches of law, fiduciary or statutory duties.
- The liability of a company secretary depends on their specific roles, responsibilities, and the nature of actions in questions.
- The position of law is that if the company secretary would have been taken to court within the period of five years, he would have been held liable;
- Given that these were matters that were in public domain and even the director was aware the action against the company secretary is barred;
- All actions for the restitution of dividends unjustly paid from the date of distribution;
- All actions for the payment of dividends or for the reimbursement of part thereof, from the date it became due

v) The candidate is expected to demonstrate knowledge and understanding on prescription or limitation of law

- The main legal issue is the prescription or limitation of time;
- Prescription relates to the extinction of rights by lapse of time i.e. the time within which if an action is not instituted in court, the plaintiff's right of action is lost;
- All actions against the company shall lapse after 10 years from the date the right of action accrued;
- However, some specific acts shall be barred after 5 years.

QUESTION THREE

Marking Guide

| QN | Guidelines | Marks |
|--------------|---|--------------|
| a. i. | 1 mark for affirmation and 1 mark for justification | 2 |
| ii | 1 mark each for any 4 powers well explained | 4 |
| iii | 1 mark each for any 4 requirements for a general offer | 4 |
| iv | 1 mark each for any 2 requirements for special offer to acquire shares | 2 |
| v | 1 mark for any 4 powers reserved to the shareholders exercisable by a special resolution for any acquisition by a company of its own shares | 4 |
| vi | 1 mark each for any 2 circumstances upon which the court may issue an order restraining the proposed acquisition | 2 |
| vii | 1 mark each on any 2 legal positions of buyout | 2 |
| | TOTAL | 20 |

Model Answers

(a)

i. The candidate is expected to demonstrate knowledge and understanding on acquisition by a company of its own shares

- No, the directors of Burera Private Limited Company are not within the law;
- 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;
- Make a special offer to one or more shareholders to acquire shares,
- The directors did not do any of the above requirements.

ii. The candidate is expected to demonstrate knowledge and understanding on 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 requirements for general or special offers set out under the Law are followed;
- Make a special offer to one or more shareholders to acquire shares.

iii. The candidate is expected to demonstrate knowledge and understanding on the requirements for general offer to acquire shares

Article 178: Requirements for general offers

- Directors may make a general offer or special 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 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.

iv. The candidate is expected to demonstrate knowledge and understanding on 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 this Law 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 favor 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;
- 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.

v. The candidate is expected to demonstrate knowledge and understanding on the powers reserved to shareholders which may only be exercised by special resolution

Article 191: Powers reserved to shareholders exercisable by special resolution

The powers reserved to shareholders which may only be exercised by special resolution are to:

- Adopt, alter or revoke the company's incorporation documents;
- Adopt a special resolution;
- Authorize a proposal to change the status, category or type of the company;
- Authorize an amalgamation;
- Put the company in liquidation;
- Apply for the company, when solvent, to be removed from the register of companies.

- Any decision made by special resolution may be rescinded only by special resolution.

vi. The candidate is expected to demonstrate knowledge and understanding on the court 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 on the grounds that:
- It is not in the best interests of the company or of benefit to any remaining shareholders;
- The terms of the offer and the consideration offered for the shares are not fair and reasonable to the company or to any remaining shareholders.

vii. The candidate is expected to demonstrate knowledge and understanding on availability for buyout

Article 240: Availability of buyout

- The shareholder is allowed to require the company to purchase his or her shares.
- A shareholder is allowed to vote on the exercise of one of the powers set out in:
- Article 191 of company law and the proposed alteration imposes, alters or removes any restriction on the company's capacity and powers;
- items 2, 3, 4 or 5 of Article 191 of company law which are to authorize:
 - ✓ an action which affects the rights attached to any shares;
 - ✓ a major transaction;
 - ✓ a change in status of the company to a public or private company, or
 - ✓ an amalgamation;
- He or she cast all the votes attached to shares registered in his or her name or with the same beneficial owner against the exercise of the power;
- The shareholders accept that such an action be carried out.

QUESTION FOUR

Marking Guide

| QN | Guidelines | Marks |
|-------------|---|--------------|
| a.i. | 2 marks for the format of the annual report and 2 marks each for any 4 contents of the annual report well explained | 10 |
| ii | 1 mark for any 3 items of individual annual report | 3 |
| iii | 1 mark for any 4 items of group annual report | 4 |
| iv | 1 mark each for any 3 duties of directors with regard to annual accounts | 3 |
| | TOTAL | 20 |

Model Answers

(a)

i. The candidate is expected to demonstrate knowledge and understanding on the format and contents of annual report

- Concerning the format, every annual report for a company shall be in writing and be dated;
- In addition to the annual report being in writing and dated it should describe, so far as the Board believes is material for the shareholders to have an appreciation of the state of the company's affairs and is not harmful to the business of the company or of any of its subsidiaries, especially any change during the accounting period in:
 - ✓ The nature of the business of the company or any of its subsidiaries;
 - ✓ The classes of business in which the company has an interest, whether as a shareholder of another company or otherwise;
- Include financial statements for the accounting period and any group financial statements for the accounting period completed and signed in accordance with this company law;
- Where an auditor's report is required in relation to the financial statements or group financial statements, included in the report, include that auditor's report;
- State particulars of entries in the interests register made during the accounting period;
- State the amount which represents the total of the remuneration and benefits received by or due and receivable from the company and any related corporation by:
 - ✓ Executive directors of a company engaged in the full-time employment of the company and its related corporations, including all bonuses and commissions received by them as employees;
 - ✓ Separate statement, the non-executive directors of the company;
- State the total amount of donations made by the company and other subsidiaries during the accounting period;
- State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period;
- State the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm;
- Be signed on behalf of the Board of Directors by two (2) directors of the company or, where the company has only one director, by that director;

- Disclose related party transactions and full information about the nature and extent of the conflict of interest;
- Any other details that are necessary for the report to be well understood.
- A Company whose subsidiary companies is located outside Rwanda shall also comply with the provisions of this article within eight (8) weeks after the dates contained therein.

ii. The candidate is expected to demonstrate knowledge and understanding on the individual account annual return

- Annual accounts are carried out during the accounting period by a company or a group of companies.

Individual accounts

Individual accounts annual report should show the activities of a company during the accounting period, which include a:

- Balance sheet;
- A profit and loss account;
- Cash flow statements;
- Equity and statement of changes therein.

iii. The candidate is expected to demonstrate knowledge and understanding on the group account annual report

Group accounts

- Group accounts annual report should show the activities of a group of companies during the accounting period, which include:
- A consolidated balance sheet for the group;
- A consolidated profit and loss account for the group;
- Cash flow statements;
- Equity and statement of changes therein and;
- Any other document which may be attached to the group accounts to provide additional information.

iv. The candidate is expected to demonstrate knowledge and understanding on the duties of directors regarding annual report

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

- Prepared, audited and approved;
- Disclosed to shareholders;

- Delivered to the Registrar General.

SECTION B

QUESTION FIVE

Marking Guide

| QN | Guidelines | Marks |
|--------------|---|--------------|
| a. i. | 1 mark for affirmation and 1 mark for justification | 2 |
| ii. | 2 marks each for any 3 legal position of pre-emption rights | 6 |
| iii. | 1 mark for explaining the debenture holders and 1 Mark each for any 3 legal positions for documents deemed as debenture | 4 |
| iv. | 1 mark for any 4 legal bases for authorization to allot shares | 4 |
| b. i. | 1 mark each for the 4 issues raised and 0.5 mark each for any 4 characteristics of shares | 6 |
| ii | 2 marks for any of 2 positions of law on allotment of shares in lieu of dividends. | 4 |
| iii | 1 mark each for the affirmation of the 3 violations and 1 mark for justification | 4 |
| | TOTAL | 30 |

Model Answers

(a)

i. The candidate is expected to demonstrate knowledge and understanding on allotment of shares

- No, they will not succeed in court because it is a private company;
- The shares were distributed among the existing shareholders and hence there was no offer.

ii. The candidate is expected to demonstrate knowledge and understanding on pre-emption rights

Article 59: Pre-emption rights

- Subject to the provisions of incorporation documents, the shareholders of a private company have a pre-emption right to acquire newly-issued shares of a company as provided in this Article;
- The right of each shareholder is to acquire the newly-issued shares pro rata to the shares already held by such existing shareholders, at a price no less favorable than

that offered to other persons, and on terms which maintain the relative voting and distribution rights of those existing shareholders;

- 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;
- Subject to the provisions of incorporation documents, the time period remains open within a period of three (3) months;
- All rules and conditions for exercise must 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;
- The allotment of shares at a lower price during or after such three (3)-month period is subject to existing shareholders' rights. The incorporation documents of a company may negate, limit or modify these rights.

iii. The candidate is expected to demonstrate knowledge and understanding on debenture holders

- The ten men are debenture holders of the company;
- In Lieu of the loan provided they receive interest as agreed upon with the company from time to time;
- The hand written note is a debenture acknowledging their debt hence making them debenture holders;
- Any document that is issued or intended or required to be issued by a company acknowledging or evidencing or constituting an acknowledgement of the indebtedness of the company in respect of any money that is or may be deposited with or lent to the company in response to a public invitation is deemed a debenture.

iv. The candidate is expected to demonstrate knowledge and understanding on documents deemed as debentures

Article 51: Document deemed debentures

- Any invitation to the public to deposit money with or to lend money to a company is deemed to be an invitation to subscribe for or purchase debentures of the company;
- Any document that is issued or intended or required to be issued by a company acknowledging or evidencing or constituting an acknowledgement of the indebtedness of the company in respect of any money that is or may be deposited with or lent to the company in response to a public invitation is deemed a debenture.

(b)

i. The candidate is expected to demonstrate knowledge and understanding on authorization to allot shares and characteristics of shares

Article 58: Authorization to allot shares

- Subject to any restrictions of provisions in the incorporation documents of a private company or of any options by the shareholders of a private company may allot shares from time to time as decided by shareholders by ordinary resolution or, in the case of a public company, by the Board of Directors, in specifying:
- The rights, privileges, limitations and conditions attached to each share to be allotted, and its transferability;
- The maximum number of shares to be allotted;
- The date, if any, when such authority to allot shares expires;
- A resolution for allotment of shares is submitted to the Registrar General within fifteen (15) days of its adoption;
- Subject to the provisions of incorporation documents, the requirement to allot shares in accordance with shareholders' pre-emption rights does not apply in the case of a public company.

Article 52: Characteristics of shares

Shares in a company:

- Are personal property;
- Are not in the nature of immovable property;
- Can be allotted;
- Confer to shareholders the rights provided in this Law and in the company's incorporation documents;
- Are transferable subject to any restrictions or limitations set out in the company's incorporation documents.

ii. The candidate is expected to demonstrate knowledge and understanding on Allotment of shares in lieu of dividends

Article 71: 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.

iii. The candidate is expected to demonstrate knowledge and understanding on

- No, the articles cannot contravene the law;
- The law provides fundamental rights attached to shares.

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 this Law 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 this of company law.
- However, where a company has more than one class of shares, the classes confer all the rights set out in Paragraph 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;

QUESTION SIX

MARKING GUIDE

| QN | Guidelines | Marks |
|-------------|--|--------------|
| a.i. | 1 mark for affirmation and 1 mark for justification | 2 |
| ii | 1.5 marks each for any 4 fundamental rights well elaborated | 6 |
| iii | 1 mark each for any 2 rights attached to a share | 2 |
| b.i. | 1 mark for affirmation and 1 mark for justification | 2 |
| ii | 2 marks for any 2 circumstances in which a court can appoint a liquidator | 4 |
| iii | 2 marks of any 3 legal effects of liquidation of a company | 6 |
| c.i. | 1 mark for affirmation and 1 mark for justification | 2 |
| ii | 2 marks each for any 2 legal positions on annual return of a foreign company | 4 |
| iii | 1 mark each of any 2 legal positions on circumstances when a foreign company ceases to carry business in Rwanda. | 2 |
| | Total | 30 |

Model Answers

(a)

i. The candidate is expected to demonstrate knowledge and understanding on the articles of association and provisions of law

- Ngamiye and Ruzindana are right;
- The restrictions are in order because it is about choices;

ii. The candidate is expected to demonstrate knowledge and understanding on the fundamental rights attached to a share

- 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 company law or the company's incorporation documents, the right to vote on shareholders' resolutions;

- 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;
- 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 surplus assets of the company upon its winding up, the right to an equal share.

iii. The candidate is expected to demonstrate knowledge and understanding on the rights attached to a share

- 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.

(b)

i. The candidate is expected to demonstrate knowledge and understanding on the appointment of a liquidator

Article 103: Appointment of a liquidator

No, Marie Grace can not file case for liquidation because she is a shareholder while the law provides to shareholders a special resolution.

A liquidator is appointed by the following:

- Shareholders by a special resolution;
- The directors or any other person, if the company's incorporation document so requires or permits;
- The court. The appointment of a liquidator is of no effect unless that person has consented in writing to the appointment.
- Creditors may request the Court to change the appointed liquidator within a period of fifteen (15) working days if there is a reasonable ground and notify the appointing authority.

ii. The candidate is expected to demonstrate knowledge and understanding on the circumstances when the court can appoint a liquidator

Article 104: Circumstances in which the court may appoint a liquidator

On the application made by the company, a director of the company, a shareholder of the company, a creditor of the company or by the Registrar General, the court may appoint a liquidator.

The court appoints a liquidator for any of the following grounds:

- When the company is unable to pay its debts;
- When the company or its directors have persistently or seriously failed to comply with the Law governing companies;
- When the company does not comply with the essential features of a private company or public company;
- When it is just and equitable that the company be put into liquidation.

iii. The candidate is expected to demonstrate knowledge and understanding on the effects of liquidation to the company

Article 107: Effects of liquidation

The liquidation has the following effects:

- The liquidator takes custody and control of the company's property;
- The company's officers remain in office but cease to have any powers, functions or duties other than those required or permitted to be exercised by this Law;
- No enforcement of court order, other legal process may be commenced or continued against the company or its property except with the liquidator's written consent or with the order of the court.
- However, the provisions of the preceding Paragraph do not affect the right of a secured creditor to take possession of and realize any property in the bankrupt's estate over which that creditor has a charge;
- No share of the company may be transferred or other alteration made in the rights or liabilities of any shareholder;
- No shareholder may be allowed to exercise any power under the company's incorporation document or the Law governing companies
- The incorporation document of the company may not be altered, except that the liquidator may change the company's registered office or full address.

(c)

i. The candidate is expected to demonstrate knowledge and understanding on the annual return for foreign company

- Yes, the Registrar General was justified;
- The return did not have the full information required.

ii. The candidate is expected to demonstrate knowledge and understanding on the legal position for annual return of foreign company

Article 255: Annual return

- The directors of a foreign company ensure that the company delivers to the Registrar General each year, during the month allocated to the company under this

Law, an annual balance sheet in the prescribed form signed by the directors of the company or if there is only one director, by that director and confirming:

- That the information is on the register at the date of the return in relation to:
 - ✓ The name of the foreign company;
 - ✓ The directors of the foreign company;
 - ✓ The principal place of business and address of the foreign company;
 - ✓ the constitution of the foreign company;
 - ✓ The persons authorized to receive the documents in Rwanda on behalf of the foreign company.

iii. The candidate is expected to demonstrate knowledge and understanding on cessation of business by a foreign company

Article 256: Ceasing to carry on business in Rwanda

The Registrar General removes a foreign company from the register when:

- He or she gave a letter to the foreign company enquiring whether it is carrying on business in Rwanda and does not within three (3) months receive any reply;
- There is delivered to him or her a notice stating that a foreign company has ceased to carry on business in Rwanda.

End of Marking Guide and Model Answers