



**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3: COMPANY LAW

DATE: WEDNESDAY 27, AUGUST 2025

MARKING GUIDE AND MODEL ANSWERS

SECTION A

QUESTION ONE

Marking guide

SN	Distribution guide	Total marks
1(a) i	1 mark each for identifying the 2 documents and 0.5 marks each for the 4 contents identified	4
ii	1 mark each for any 2 contents of the memorandum of association of a company limited by shares	2
iii	1 mark each for any 2 relationships created by Articles of Association	2
(b) i	1 mark each for any 3 analyses of the case scenario	3
ii	1 mark each for any 3 explanations of a company as a moral person	3
iii	1 mark each for any 4 explanations of a company as an institution	4
(c) i	1 mark each for any 2 restrictions imposed on a private company	2
ii	1 mark each for any 3 positions of law on transfer of shares and 1 mark each for any 2 positions of law on share certificate.	5
		25

Model Answers

- a) (i) **The candidate is expected to demonstrate knowledge and understanding on incorporation documents (Memorandum and Articles of Association)**

When applying for incorporation of a company, the following shall be submitted to the Registrar General:

- Incorporation documents in the form prescribed by the Registrar General and signed by every person named in the documents as a shareholder of the company or by his/her agent authorized in writing;

Memorandum of Association

- A memorandum of association is a foundational legal document that outlines a company's constitution and its relationship with the outside world.
- It essentially defines the company's purpose, scope of operation, and limits of power, serving as its charter.
- The Memorandum of Association is crucial for company registration and must be filed with the relevant authorities.
- The Memorandum of Association governs the company's interactions with external entities like shareholders, creditors, and the public.

Contents of the Memorandum of Association

The memorandum of association of any company shall state the following:

- The name of the company;

- The head office of the company;
- The proposed business activity;
- Whether the company is a public or a private company;
- Whether the company has limited or unlimited liability;
- The type of company being incorporated;
- Such other information as may be relevant to the type of company being incorporated and that is prescribed under this Law;
- Such other information as may be required in the Registrar General's regulations
- A memorandum of association for a company limited by guarantee must indicate that liability is limited.
- A memorandum of association for a company limited by guarantee must also state that every member undertakes to contribute to assets of the company in the event of its being wound up.

Articles of Association

- The Articles of Association are a key legal document that outlines the internal rules and procedures for a company's operations.
- They define how a company is managed, structured, and governed, including the rights and responsibilities of shareholders and directors.
- Essentially, they act as a company's "constitution," providing a framework for its internal workings.

Contents of the Articles of Association

- In case a company has articles of association, the rights, powers, duties, and obligations of the company, of the Board of Directors, of each director, and of each shareholder or member of the company are those set out in this Law except in case they are restricted or amended by articles of association of the company in accordance with the provisions of this Law.
- **Company Name and Registered Office:** Specifies the company's official name and the location of its registered office.
- **Objectives of the Company:** Defines the company's purpose and the scope of its activities.
- **Share Capital:** Outlines the authorized share capital, the number and classes of shares, and provisions for issuing and transferring shares.
- **Shareholder Matters:** Covers procedures for general meetings, voting rights, dividend payments, and other shareholder-related decisions.
- **Director Matters:** Details the appointment, removal, powers, and duties of directors, including decision-making processes and potential remuneration.
- **Financial Provisions:** May include rules for financial reporting, accounting practices, and other financial matters.
- **Company Administration:** Covers administrative aspects such as record-keeping, use of the company seal, and communication procedures.
- **Liability of Members:** Specifies the extent of shareholders' liability, typically limited to the nominal value of their shares.
- **Dispute Resolution:** May outline procedures for resolving disputes among shareholders or between shareholders and the company.
- **Amendments:** Specifies the process for amending the Articles of Association.

(ii) The candidate is expected to demonstrate knowledge and understanding on the Memorandum of Association of a company limited by shares

In the case of a company with share capital, the memorandum of association must state:

- the full name and address of every shareholder at incorporation;
- the class and number of shares which each shareholder has agreed to take, together with the consideration he or she has provided or is to provide for the issue of the shares.

(iii) The candidate is expected to demonstrate knowledge and understanding on the three-fold relationship created by the Articles of Association.

- The Articles of Association create a legally binding contract between a company and its shareholders, and also among the shareholders themselves
- Contractual Relationship:
- The Articles of Association act as a contract between the company and its shareholders, defining their rights, obligations, and responsibilities.
- **Internal Governance:** They establish the framework for how the company operates, including issues like share issuance and transfer, director appointments, and shareholder meetings.
- **Binding on the Company:** The Articles are legally binding on the company, its directors, and its shareholders.
- **Preventing Disputes:** They help to prevent disputes by clarifying expectations and outlining procedures for decision-making.

In case a company has articles of association, the rights, duties, and obligations of the company, of the Board of Directors, of each director, and of each shareholder of the company are those set out in the Law governing companies except in case they are restricted or modified by the articles of association of the company in accordance with the Law governing companies.

b) (i) The candidate is expected to demonstrate knowledge and understanding on the legal status of a company

- The founding members(promoters) by law can determine the outlook of the company with regard to its nature and scope
- The moment the company is registered the company assumes a distinct legal status separate and independent of its members.
- The company becomes a bearer of rights in the same manner as a natural person like ownership of property, right to sue and be sued etc.

(ii) The candidate is expected to demonstrate knowledge and understanding on the company as a moral person

- A company, as a legal entity, is often considered a "moral person" because it can be held responsible for its actions, enter into contracts, and own property, similar to how a natural person can.

- This concept arises from the fact that companies, like individuals, can make decisions, act, and affect others, thus raising questions of ethical responsibility.
- Companies are recognized as legal entities, separate from their owners, with the ability to sue, be sued, and own property.
- This legal status grants them certain rights and responsibilities, blurring the lines between a natural person and an artificial entity.
- If a company can be held legally accountable, it logically follows that it should also be held accountable for the ethical consequences of its actions.
- Some argue that since companies make decisions that affect society, they should be considered moral agents with responsibilities to act ethically.
- This view suggests that corporations should be judged by the same moral standards as individuals, especially when their actions have significant impacts on individuals and society.

(iii) The candidate is expected to demonstrate knowledge and understanding on the company as an institution.

- A company is considered an institution because it is a structured organization with established practices, a degree of longevity, and a significant influence on society.
- It's more than just a business focused on profit; it's an entity with defined roles, responsibilities, and a purpose that often extends beyond its immediate stakeholders.
- Companies, like other institutions, operate with a defined structure, including hierarchies, roles, and established procedures.
- They have established ways of doing things, which can be seen as common practices.
- Companies, particularly large corporations, wield significant influence on the economy, politics, and culture.
- Their decisions and actions can have far-reaching consequences, affecting communities, industries, and even global trends.
- While profit is a key driver for many companies, they also have responsibilities to their employees, customers, and the wider community.
- This broader perspective, emphasizing ethical behavior and social consciousness, is a hallmark of an institution.

c) (i) The candidate is expected to demonstrate knowledge and understanding on the position of law on restrictions imposed on private companies.

A private company shall not:

- Offer to the public or any section of the public whether for cash or otherwise any securities of the company;
- Allot shares or agree to allot shares, whether for cash or otherwise, any securities of the company with a view to all or any of the securities being offered for sale to the public or any section of the public.
- No provision of the Article affects the validity of any allotment of shares or sale of securities, or of any agreement to allot shares or sell securities.

(ii) The candidate is expected to demonstrate knowledge and understanding the position of law on the transfer of shares and share certificate.

- A transferable share 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 registration as holder of the shares imposes on him/her any liability.
- 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 members of the Board of Directors; and
- In case of a person to whom the right to any shares in the company has been transmitted by operation of law, sufficient evidence of transmission.

Share certificates

A company:

- Issues and delivers to the holder of certificates all shares allotted or transferred or remaining after a transfer, unless the conditions of allotment provide otherwise;
- In the case of a transfer, cancels any share certificate sent to the company to enable the registration of the transfer.
- A certificate specifying any shares held by a member is prima facie evidence of his/her title to the shares.

QUESTION TWO

Marking Guide

SN	Distribution guide	Total marks
(a) i	1 mark for analysis as to whether the Board has powers to fire and hire and one mark on who is able to hire and fire	2
ii	1 mark each for any 4 legal positions of law in regard to removal of one or two members of the board of directors	4
(b) i	1 mark for the position of directors in regard to residence, 1 mark for position of law on independent directors, 1 mark for non-executive directors and 1 mark for composition.	4
ii	1 mark for meaning of independent director and 1 mark for the meaning of non-executive director	2
(c) i	1 mark for identifying the appropriate person and 1 mark each for any 4 duties of the person identified.	5

SN	Distribution guide	Total marks
(d) i	1 mark on the position of law on who appoints auditors and 1 mark on the action of the Board of Directors	2
ii	1 mark each for any 6 well elaborated legal position of the removal, replacement or resignation of an auditor	6
		25

Model Answer

(a)

(i) The candidate is expected to demonstrate knowledge and understanding on the position of law on the removal of one or two directors of a company.

- The Board of Directors has no power to fire and hire any of the directors of the company
- The power to hire and fire is reserved to the shareholders through the meeting of the shareholders of the company.

(ii) The candidate is expected to demonstrate knowledge and understanding on the position of law on the removal of one or two directors of a company.

- A company may, by an ordinary resolution passed at a shareholders' meeting remove one or all of the directors before the expiration of their term of office, with or without a stated reason or cause notwithstanding anything in its incorporation documents or in any agreement between the company and the director.
- The notice of shareholders shall state that among items on the agenda of the meeting include the vote on the removal of director and be sent to the director concerned.
- Any director of shareholders' meeting shall state that among items on the agenda of the meeting include the vote on the removal of a director and be sent to the director concerned.
- The notice of shareholders' meeting shall state that among items on the agenda of the meeting include the vote on the removal of a director and be sent to the director concerned.
- Any director removed from office in the manner provided for under Paragraph One of the Article 158 of the Law governing companies is disqualified from performing other duties associated with his/her office as director.
- Nothing in the Article 158 of the Law governing companies is construed as depriving such a director of compensation or damages as a result of termination of office and disqualification from other duties associated therewith.
- The procedure for removing a director set out in this Article shall not be construed to derogate from any other power to remove a director which may exist apart from this Article.

(b) (i) The candidate is expected to demonstrate knowledge and understanding on the position of law on the director's nature and composition.

Article 157: Requesting a company to have a director who resides in the country

- A company must have at least one (1) director who resides in Rwanda.

- In Rwanda, companies are required to have a board of directors, and the composition of that board is regulated by the Companies Act and corporate governance codes.
- The board should include a mix of executive and non-executive directors, with a majority being independent non-executive directors.
- At least one director must be resident in Rwanda as indicated in Article 157 above

Article 158: Independent or non-executive directors in a public company

- In a public company, a majority of directors must be non-executive directors
- The non-executive directors must be at least one-third (1/3) of the directors.
- The independent directors must be at least 2/3 of the total directors.
 - (ii) **The candidate is expected to demonstrate knowledge and understanding on the meaning of independent and non-executive directors.**
- An independent director is a person who does not have a material or pecuniary relationship with the company or related persons, is compensated through sitting fees or allowances, and does not own more than two per cent (2%) of shares in the company.
- A non-executive director is a person who does not form part of the management team of the company and who is not an employee of the company or affiliated with it in any other way, but who can own shares in the company.
- (c) (i) **The candidate is expected to demonstrate knowledge and understanding on the Company Secretary and his duties.**
 - The appropriate person under law to whom the directors are supposed to turn to for guidance and information is the company secretary

Article 173: Duties of a company secretary

A company secretary has the following duties:

- Advise directors on their responsibilities and powers;
- Inform directors about all the necessary regulations or those which may affect the meetings of shareholders and of the Board of Directors, reports thereof and submission of all company documents required by the law to relevant organs as well as consequences due to the failure to comply with such regulations;
- Ensure that minutes of the meetings of shareholders or the Board of Directors are well prepared and that registers provided for by the incorporation documents are accurately kept;
- Ensure that annual balance sheet and other required documents are submitted to the Registrar General as provided for by this Law;
- Ensure that copies of annual balance sheet and activity reports are transmitted to relevant destinations in accordance with this Law and to any person as provided by the Law;
- Perform such other duties as may be assigned by the Board of Directors.
- (d) (i) **The candidate is expected to demonstrate knowledge and understanding on the appointment, removal and resignation of an auditor.**
 - Nzabamwita Alfred and Umurerwa Grace are justified to take legal action against the company

- The reason for the justification is that the Board of directors on their own do not have power to fire and hire except through the meeting of the shareholders of the company.
- (ii) The candidate is expected to demonstrate knowledge and understanding on the appointment, removal and resignation of an auditor.**

Article 140: Removal, replacement or resignation of an auditor

An auditor is not removed from office, unless:

- He or she has been given at least ten (10) working days' written notice of a resolution to that effect;
- Has been given a reasonable opportunity to make representations to the shareholders on the removal, either in writing or by the auditor or his or her representative speaking at a shareholders' general meeting, whichever the auditor may choose.
- A company shall not propose to appoint a new auditor in place of an auditor who is disqualified for re-appointment, unless:
- At least ten (10) working days' written notice of opportunity to make representations to the shareholders on the appointment of another auditor, either in writing or by the auditor or his or her representative speaking at a shareholders' general meeting whichever the auditor may choose.
- Where an auditor has given the directors a written notice of unwillingness to be reappointed, the director, if requested to do so by the auditor:
- Distributes to all shareholders at the expense of the company a written statement of the auditor's reasons for unwillingness to be reappointed;
- Permits the auditor or his or her representatives to explain at a shareholders' general assembly the other reasons for his or her unwillingness to be reappointed.
- An auditor is entitled to be paid by the company reasonable fees and expenses for making representations to shareholders under this Article.

QUESTION THREE

Marking Guide

SN	Distribution guide	Total marks
(a) i	1 mark for compulsory winding up and one mark for what can trigger compulsory winding up of a company	2
ii	1 mark each for any general effects of liquidation or winding of a company	3
(b) i	1mark each for any 3 legal positions regarding the appointment of an insolvency practitioner/liquidator.	3
ii	1 mark each for any 3 well elaborated duties of a liquidator/insolvency practitioner	3

SN	Distribution guide	Total marks
(c) i	1 mark for identifying the arrangement as reorganization and 0.5 marks each for any 4 persons who can apply to court for reorganizing the company.	3
ii	1 mark each for any 3 legal positions upon which the court can allow reorganization	3
iii	1 mark for identifying the administrator and 0.5 for outlining any 4 duties of administrator.	3
		20

Model Answers

(a) (i) The candidate is expected to demonstrate knowledge and understanding on compulsory winding up of the company

- Compulsory winding up of a company, also known as liquidation, is a legal process initiated by a court order, typically when a company is unable to pay its debts.
- This process can be triggered by a creditor's petition, a debtor's application, or the Registrar General's intervention, and it results in the company's assets being realized and distributed to creditors according to a specific hierarchy.

(ii) The candidate is expected to demonstrate knowledge and understanding on the general effects of commencement of insolvency proceedings

General effects of commencement of insolvency proceedings (insolvency law)

Upon the date of commencement of the insolvency proceedings, the following is stayed:

- The commencement or continuation of individual actions or proceedings concerning the debtor's assets, rights, obligations or liabilities;
- The execution of judgments related to the assets of the debtor's property;
- The right of counterparty to terminate any contract with the debtor;
- The right to transfer, mortgage or otherwise dispose of any assets of the debtor.

b) (i) The candidate is expected to demonstrate knowledge and understanding on the Appointment of insolvency practitioner/liquidator

Article 9 – Appointment of insolvency practitioner

- The court is solely competent to appoint an insolvency practitioner.
- However, the Registrar General may appoint an insolvency practitioner on a provisional basis in either of the following circumstances:
- If it is to save a loss that may happen to the debtor's assets;
- If the appointed insolvency practitioner has not been approved by the creditors' meeting;
- If the insolvency practitioner has resigned from his or her duties due to different reasons
- If the appointed insolvency practitioner has failed to execute his or her duties;5°any other circumstance he or she may deem necessary.

- A provisional insolvency practitioner appointed by the Registrar General ceases to act in that capacity only by a further decision of the Registrar General or by court order.
- When the court appoints an insolvency practitioner, a provisional insolvency practitioner appointed by the Registrar General ceases to perform his or her duties and submit a report to his or her successor. A copy of the report is given to the Registrar General.

(ii) The candidate is expected to demonstrate knowledge and understanding on the duties of a liquidator

Duties of a Liquidator

- Article 113 of the Law no 075/2021 of 06/12/2021 relating to insolvency
- To collect, realize and distribute assets or the proceeds of the assets of the company;
- To take custody and control of all the company's assets;
- To keep the company's money, separate from other money which he or she holds or is under his or her control;
- To keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the company and retain the accounts and records of the liquidation of the company for not less than ten (10) years after the liquidation ends;
- To permit the accounts and records of the company to be inspected by any committee of inspection, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation or to be inspected by any creditor or shareholder if the court so orders.

c)i The candidate is expected to demonstrate knowledge and understanding on the duties of a liquidator application for reorganization of a company.

Article 84: Application for reorganization of a company (insolvency law)

The following persons may apply to the court for an order to commence company\ reorganization proceedings:

- A debtor;
- Directors of a company;
- A creditor;
- The Registrar General;
- The regulatory authority

(ii) The candidate is expected to demonstrate knowledge and understanding on the Court order commencing reorganization of a company.

Article 85: Court order commencing reorganization of a company

- After considering an application of reorganization, the court may make an order commencing reorganization proceedings and appoint a provisional administrator if the court is satisfied that:

- There is a reasonable prospect for rescuing the company and it is clear that the company will likely meet its future financial obligations as they become due and payable;
 - It is clear that dissenting creditors will receive as much under the company reorganization plan as they would in the company's liquidation.
- (iii) **The candidate is expected to demonstrate knowledge and understanding on the on duties of the administrator of company reorganization**

Article 93: Duties of the administrator of company reorganization

During company reorganization, the administrator has the following duties:

- To take custody and control of the company's business and property and affairs;
- Investigate the company's business and take possible measures for rescuing the company's business in the interests of creditors and shareholders;
- Carry on the business and manage the property of the company with the objective of rescuing business in the interests of creditors and shareholders;
- Perform any function that the company or its officers could perform if the company was not in reorganization.
- To keep company money, separate from other money which he or she holds or is under his or her control;
- To keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the company and retain the accounts and records for not less than ten (10) years after the administration ends.

QUESTION FOUR

Marking Guide

SN	Distribution guide	Total marks
(a) i	1 mark each for 4 arising issues from the case scenario and 1 mark each for voting by proxy and 1 mark for the right position that proxy is a norm	6
ii	1 mark each for any of the 4 areas outlined	4
(b) i	1 mark for the affirmation and 3 marks for the justification on the position of law on the appointment of the company secretary	4
ii	2 marks each for the appointment, qualification and removal of a company secretary	6
		20

Model Answers

(a) The candidate is expected to demonstrate knowledge and understanding of law on appointment of the company secretary and a proxy

- The directors of the company have been vested with full powers to hire and fire the company secretary without the approval of the board of directors.
- The law allows Mutimura John, Mugisha Faith and Mukisa Hope to appoint proxies to represent them in the meetings of the company in their absence.
- Gasana Christine, Danogendo Dan and Ashimwe Edda are not strangers put the proxies of the members who are absent.
- Right to appoint a proxy: A member of a company has the right to appoint another person as their proxy to attend and vote at a general meeting.
- Notice of meeting: The notice of the meeting must include a statement that a member can appoint a proxy and that the proxy does not need to be a member of the company.
- Proxy form: Companies may provide proxy forms to members, but the form must comply with the Companies Act and the company's articles.

b) The candidate is expected to demonstrate knowledge and understanding on proxies, their appointment and rights

- The ability for a member to appoint a proxy to attend and vote at company meetings is governed by the Companies Act.
- Specifically, the notice of a general meeting must inform members of their right to appoint a proxy, who need not be a member of the company.
- The appointed proxy can exercise all or any of the member's rights at the meeting, including the right to vote, unless restricted by the company's articles of association
- Unless restricted by the company's articles, a proxy can exercise all or any of the member's rights at the meeting, including the right to vote, demand a poll, and speak unless restricted by the company's articles of association.
- Notice of meeting: The notice of the meeting must include a statement that a member can appoint a proxy and that the proxy does not need to be a member of the company.
- Compliance: Ensuring the proxy appointment is valid and complies with statutory and company-specific requirements is crucial.

c) (i) The candidate is expected to demonstrate knowledge and understanding on the position of a company secretary

- No, I don't agree
- Companies must employ a qualified Company Secretary to perform all compliance functions of the company.
- The Company Secretary must advise Management and the Board on their responsibilities and liability with regard to legal and regulatory requirements and compliance with this Code.
- Subject to the company's incorporation documents, the company secretary may be appointed by the directors for such term, at such remuneration and upon such conditions as they think fit; and any company secretary so appointed may be removed by the appointing authority.

- Given the company secretary is an employee of the company he is subject to the director's supervision and therefore they have the power to hire and fire without the approval of the shareholders.

(ii) The candidate is expected to demonstrate knowledge and understanding on the appointment, qualification and removal of a company secretary

Article 172: Appointment of a company secretary

- A public company must have a company secretary, and a private company may have a company secretary.
- Subject to the company's incorporation documents, the company secretary may be appointed by the directors for such term, at such remuneration and upon such conditions as they think fit; and any company secretary so appointed may be removed by the appointing authority.

Qualification of a company secretary

- In Rwanda, a company secretary typically needs a bachelor's degree in law/Advocate,
- Certified secretaries' finalist;
- Any qualification as may be required by articles of association of the company.

Removal of a company secretary

- A company secretary can be removed from office through a board resolution passed by a majority of the directors at a board meeting.
- The company must also notify the Registrar General of the change.
- The specific procedures and requirements may vary depending on the company's articles of association and the Rwandan Companies Act.

SECTION B

QUESTION FIVE

Marking Guide

SN	Distribution guide	Total marks
(a) i	1 mark on the affirmation and 1 mark of the justification	2
ii	1 mark for affirmation and 1 mark each for any 2 justifications	3
iii	1 mark each for identifying the 2 positions and 1 mark each for any three differences	5
(b) i	1 mark on the position of law on transfer of shares and 1 mark of the argument on the denial of transfer	2
ii	1 mark for the register of members and 1 mark for what is its purpose	2
iii	1 mark each for any 2 importance of the register of members well elaborated	2
iv	1 mark each for any 4 contents of the register of members outlined	4
(c) i	2 marks for explaining what is transmission of shares	2
ii	2 marks each for any 2 other circumstances through which transmission of shares occur	4
iii	1 mark for affirmation and 1 mark for justification	2
ii	1 mark for any 2 differences between transfer and transmission of shares of a company	2
		30

Model Answers

(a) (i) **The candidate is expected to demonstrate knowledge and understanding on the borrowing powers of the company**

- Yes, the directors of the company have power subject to the incorporation documents of the company.
- Provided that the company has issued all the shares and all of them have been paid in fully and there is need for more capital, then the company is allowed to borrow through debentures.

(ii) **The candidate is expected to demonstrate knowledge and understanding of a fixed and floating charges.**

- No, the company did not act within the law with regard to the fixed (secured) and floating (unsecured) charge,

- A charge is a legal claim or interest created by a company over its assets to secure a debt or obligation, like a loan or debenture or a charge is a security interest created over a company's assets to secure a loan or other debt on the fixed and floating charge.
 - Fixed charge is therefore given the first priority and followed by the floating charge.

iii) **The candidate is expected to demonstrate knowledge and understanding on the difference between fixed and floating charge.**

- Kambanda Fred has a fixed charge over the company assets while Kabera Eric, Kabaliza Franc and Umutoniwaze Grace, have floating charges over the assets of the company.

Difference between Fixed and floating charge

- A fixed charge is a security interest over specific, identifiable assets, while a floating charge is a security interest over a changing pool of assets.
- Fixed charges restrict the borrower's ability to deal with the asset without lender consent, whereas floating charges allow the borrower to use and dispose of the assets in the ordinary course of business until the charge "crystallizes".

SN	FEATURE	FIXED CHARGE (SECURED)	FLOATING CHARGE (UNSECURED)
1	Asset Specificity	Attached to specific, identifiable assets	Attached to a class of assets that can change
2	Borrower's Control	Limited control over the asset	Greater control over the assets until crystallization
3	Crystallization	No crystallization; charge is permanent	Crystallizes upon specific events, becoming a fixed charge
4	Priority	Generally higher priority in insolvency	Lower priority in insolvency than fixed charges
5	Examples	Mortgage, specific equipment charge	Charge over inventory, book debts

b)i the candidate is expected to demonstrate knowledge and understanding the position of law on transfer of shares

- No, Mugabe Jone, Murerwa Peace and Mugabo Peter are not justified to question the transfer of shares undertaken by them willingly.
- Companies are required to keep a register of members, which records details of all shareholders, including their names, latest known addresses, and the number and class of shares held and if transfers were affected this is a proof of transfer of their shares

ii The candidate is expected to demonstrate knowledge and understanding on the register of members

- Register of members

Article 114: Register of shareholders and debenture holders

- A company keeps a register of its shares and debentures that records the shares and debentures issued by the company and it is the duty of each director and a secretary to ensure that the register is properly kept and the following particulars promptly entered in it

iii The candidate is expected to demonstrate knowledge and understanding on the importance of the register of members.

- A register of members, also known as a shareholder register, is crucial for maintaining transparency and accountability within companies and organizations.
- It serves as a record of all current and past members, including their contact details and the number and class of shares they hold.
- This register is essential for various reasons, including legal compliance, ownership verification, and facilitating corporate governance.

iv The candidate is expected to demonstrate knowledge and understanding on the contents of the register of members.

Article 114: Register of shareholders and debenture holders

A company keeps a register of its shares and debentures that records the shares and debentures issued by the company and it is the duty of each director and a secretary to ensure that the register is properly kept and the following particulars promptly entered in it:

- Names and latest known addresses of each person who is or has within the last ten (10) years been a shareholder or debenture holder;
- The shares index held by each shareholder, a share segregated by another share by its number, so as long as the share has a number and, where the company has more than one class of issued shares, by its class; the date of any allotment of shares to, or repurchase or redemption of shares from, or transfer of shares or debentures by or to each such shareholder within the last ten (10) years, and in relation to any such transfer, the name of the person to or from whom the shares or debentures were transferred;
- Whether the incorporation documents or the terms of issue of the shares or debentures place any restrictions or limitations on the transfer of shares or debentures, a notice of any trust, expressed, implied or constructive, must be entered on the register.

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

- Transmission of shares is the process through the transfer of ownership of shares are transferred by operation of law e.g. when a shareholder dies, incapacitated or becomes bankrupt.
- The four sons in the case scenario should become members of the company through transmission as a result of the death of their father.

ii) The candidate is expected to demonstrate knowledge and understanding on the circumstances when shares are transmitted.

- In company law, transmission of shares refers to the transfer of ownership of shares due to an event specified by law
- Such as the death or
- Bankruptcy of a shareholder, rather than a voluntary sale or transfer.
- This transfer is automatic, occurring by operation of law, and requires specific documentation to be registered with the company.

iii) The candidate is expected to demonstrate knowledge and understanding on transfer of shares.

- Yes, the company was right to refuse to refund Eva Rukundo the investment.
- Shares of a company are freely transferable and therefore Eva Rukundo should look for the willing buyer and sell to him the shares.

iv) The candidate is expected to demonstrate knowledge and understanding on the difference between transfer and transmission of shares.

- In Rwanda, the transfer and transmission of shares are governed by the Companies Act and the specific Articles of Association of the company.
- Shares are considered movable property and are transferable in accordance with the procedures outlined in the company's Articles.
- Public companies generally have more freedom in share transfer compared to private companies, which may impose restrictions.
- The primary difference between share transfer and share transmission lies in the voluntariness of the action.
- Share transfer is a voluntary act where a shareholder willingly sells or gifts their shares to another person.
- Share transmission, on the other hand, occurs automatically by operation of law, typically due to the death, insolvency, or lunacy of a shareholder.
- Voluntary: A shareholder decides to transfer their shares to another party.
- Requires an instrument of transfer: Usually involves a formal document (transfer deed) signed by both the transferor and transferee.
- Requires registration with the company: The company must be notified and register the transfer.
- Involuntary: Occurs due to legal events like death, insolvency, or lunacy.
- No transfer deed required: The transfer happens automatically by operation of law, without a formal transfer deed.
- Requires legal documentation: Proof of the event (e.g., death certificate, succession certificate) is needed for the company to update its records.

QUESTION SIX

Marking Guide

SN	Distribution guide	Total marks
(a)	2 marks for any 4 well elaborated contents of the auditor's report	8
(b) i	2 marks each for any 5 key components of the directors report well elaborated	10
ii	1 mark each for any six legal positions with regard to delegation of powers/authority by the directors of the company	6
c)i	1mark each for every legal position properly stated	4
ii	2 marks for clearly elaborating the position of law on a statement made through investigation as the basis of evidence	2
		30

Model Answers

(a) i **The candidate is expected to demonstrate knowledge and understanding on the Auditors Report.**

Article 135: Auditor's report

The auditor's report must comply with applicable auditing and assurance standards and state:

- The scope and limitations of the audit;
- Whether the auditor has obtained all information and explanations that he or she has required;
- Whether proper accounting records have been kept by the company;
- The proof that there is no relationship no interests and debt in the company;
- Whether the annual balance sheet complies with the international accounting standards;
- The auditor's opinion and problems that are linked with the company's management;
- The auditor recommends actions to correct problems identified during the audit;
- Whether, in the auditor's opinion, according to the best of his information and the explanations given to him as shown by the accounting and other documents of the company, the annual accounts comply with Article 125 and Article 127 of this Law as the case may be, and where they do not, the areas in which they fail to comply.
- The auditor of a company must submit the report under Paragraph One of this Article to the shareholders of the company.
- In the case of a public company listed on the stock exchange the audit report is published in at least one (1) of the most widely circulated newspapers in Rwanda.

b) i **The candidate is expected to demonstrate knowledge and understanding on the key components of the director's report**

Contents of the directors' report

- The Director's Report, mandated by Section 134 of the Companies Act, 2013, provides a comprehensive overview of a company's performance and activities during the financial year.
- It includes details about the company's financial position, operational overview, risk management, and compliance with various legal and regulatory requirements.
- This report is crucial for informing stakeholders, shareholders, and regulators about the company's performance, governance, and commitment to corporate social responsibility.

Financial Performance and Position:

- **Directors' Responsibility Statement:** This statement outlines the directors' responsibilities regarding the preparation of financial statements and the audit report.
- **Financial Highlights:** The report includes key financial figures and trends to give a snapshot of the company's financial performance.
- **Material Changes:** Details of any material changes and commitments affecting the company's financial position are disclosed.
- **Amounts Proposed to be Carried to Reserves:** The report specifies any amounts proposed to be transferred to reserves.
- **Dividend Recommendation:** The report includes the amount of dividend, if any, recommended by the board.
- **Explanation to Auditor's Remarks:** Any qualifications, reservations, or adverse remarks made by the auditor in their report are addressed and explained.
- **Internal Financial Control:** A statement on the effectiveness of the company's internal financial control systems is included.

Operational Overview and Activities:

- **State of Affairs:** A general overview of the company's state of affairs during the year is provided.
- **Material Changes Affecting Financial Position:** Details of any material changes that have impacted the company's financial standing are disclosed.
- **Extract of Annual Return:** The report includes an extract of the annual return, as per Section 91(3) of the Act.
- **Number of Board Meetings:** Information on the number of board meetings held during the year, along with details of attendance by each director, is provided.
- **Significant and Material Orders:** Details of any significant and material orders passed by regulators, courts, or tribunals are included.
- **Compliance with Secretarial Standards:** The report confirms compliance with the relevant secretarial standards.

Risk Management and Corporate Social Responsibility:

- **Risk Management Policy:** The company's risk management policy and its implementation are detailed.

- **Corporate Social Responsibility (CSR) Policy:** For companies covered under CSR provisions, the report includes details of the CSR policy, including reasons for any unspent amount.

(ii) The candidate is expected to demonstrate knowledge and understanding on the directors' powers to delegate their authority.

Article 146: Delegation of powers

Subject to the provisions of the incorporation documents of a company, the Board of Directors may delegate any of its powers:

- To committees consisting of such a director or directors if deemed appropriate;
- to one or more Managing or Executive Directors appointed by them.
- However, the members of Board of Directors cannot delegate any of their fiduciary duties.
- If the Board of Directors have delegated any power under Paragraph One then every director whether a party to the decision to delegate or not, is responsible for every exercise of the power by the delegate as if the power was exercised by the director or any one or more of them, unless he or she:
- Believes on reasonable grounds at all times before the exercise of the power that the delegate will exercise the power in conformity with the duties imposed on directors of the company by this Law and the company's incorporation documents;
- Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

c)i The candidate is expected to demonstrate knowledge and understanding on management of books used during investigation and obligation to answer questions asked by the inspector

Article 307: Management of the books used during the investigation

- Where an inspector requires the production of books in the custody, control or possession of a person concerned, the inspector:
- May take possession of those books;
- May retain those books for such time as he or she considers necessary for the purpose of the accomplishment of his or her mission;
- Must, where those books are in his or her possession, permit the company to have access, at all reasonable times to the books.

Article 308: Obligation to answer questions asked by the inspector

- No relevant person has the right to refuse to answer a question which concerns the company during the investigation into the business of a company.

ii The candidate is expected to demonstrate knowledge and understanding on the statements made during the investigation and considered as evidence in legal proceedings

Article 309: Statements made during the investigation and considered as evidence in legal proceedings

- An inspector may cause statements he or she came across during the investigation process to be recorded in written form and to be read to or by and signed by the person who makes such statements and the latter may be used as evidence in any legal proceedings against that person.
- The said proceeding may through the court of law or Quasi authority or any tribunal

End of the Model answers and Marking Guide