



**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I 1.3: COMPANY LAW

DATE: WEDNESDAY 28, MAY 2025

MARKING GUIDE AND MODEL ANSWERS

SECTION A

QUESTION ONE

Marking guide

SN	Distribution guide	Marks	Total marks
1(a) i	voluntary liquidation Liquidation by shareholder	1 1	2
ii	Each effect well explained(5)	2	10
(b)	Each way well explained(4)	2	8
(c) i	Merger Amalgamation	1 1	2
ii	Pre-requisites Incorporation documents of amalgamated company(1.5*2)	3	3
			25

Model Answers

a) (i) The candidate is expected to demonstrate knowledge and understanding on voluntary or liquidation by shareholders

- Since a company is created through an agreement among the shareholders, the shareholders can at any time make a decision to terminate the life of the company in accordance to the provisions of the articles of association of the company.
- This type of liquidation is known as voluntary liquidation or liquidation by the shareholders

(ii) The candidate is expected to demonstrate knowledge and understanding on the effects of liquidation on a 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 any 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.
- The liquidator may continue only with business transactions as it is only necessary for liquidation purposes

b) The candidate is expected to demonstrate knowledge and understanding on exercise of shareholders rights/powers through resolutions.

- 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;
 - ✓ At a shareholders' extraordinary general meeting;
 - ✓ By shareholders' written resolution in lieu of meeting;
 - ✓ By a unanimous shareholder agreement.

c) (i) The candidate is expected to demonstrate knowledge and understanding on mergers and amalgamations

- The proposed arrangement by Nyabarongo Public Limited Company is a merger
- The proposed arrangement by Rulindo Public Limited Company is an amalgamation

ii. The candidate is expected to demonstrate knowledge and understanding on the prerequisites for authorizing amalgamation and incorporation documents of amalgamated company.

Article 199: Prerequisites for authorizing amalgamation

- A company that proposes to amalgamate authorizes:
 - ✓ An amalgamation proposal;
 - ✓ The proposed incorporation documents of the amalgamated company in conformity with Article 201 of this Law;
 - ✓ In the case of a public company with shares or debentures traded on the capital market, the company must comply with all Laws and regulations relating to the capital market.

Article 201: Incorporation documents of amalgamated company

- The incorporation documents for authorization of an amalgamation are in the prescribed form and in particular state:
 - ✓ The name of the amalgamated company;
 - ✓ The share structure of the amalgamated company, specifying:

- ❖ The number of shares of the amalgamated company and the rights, privileges, limitations and conditions attached to each such share, and its transferability, if different from provisions of Article 193 of this Law;
- ❖ The full names, postal and residential addresses of the directors of the amalgamated company;
- ❖ In the case of a public company, or a private company with a secretary, the full name, postal or residential address of the secretary of the amalgamated company;
 - ✓ The registered office of the amalgamated company;
 - ✓ The place where the amalgamated company's records are to be kept, if not the registered office;
 - ✓ The amalgamated company's accounting reference date.
- The incorporation documents may also contain:
 - ✓ Any restriction on the amalgamated company's capacity and powers;
 - ✓ Any provision permitted by this Law relating to the internal management of the amalgamated company.

QUESTION TWO

Marking Guide

SN	Distribution guide	Marks	Total marks
(a) i	Compulsory investigation ordered by the Minister	1	2
	Compulsory investigation ordered by the Registrar General	1	
ii	Investigation by the Minister and Registrar General	2	6
	Circumstances under which investigation by the minister is undertaken	4	
(b) i	Affirmation	1	2
	Justification	1	
ii	Four grounds for removing a company from the register	4	4
(c) i	Affirmation	1	3
	Any two contents of the financial statement	2	
ii	Affirmation	1	3
	Any 2 contents of the annual report	2	
iii. i	Affirmation	1	3
	Any 2 features	2	
ii	Any 2 circumstances	2	2
			25

Model Answer

(a)

(i) The candidate is expected to demonstrate knowledge and understanding on Mandatory investigation

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.

Article 295: Investigation ordered by the Registrar General

- The Registrar General may direct investigation on his/her own accord or through petition from the shareholders or debenture holders.

(ii) The candidate is expected to demonstrate knowledge and understanding on mandatory investigation /inspection ordered by the Minister and the Registrar General and the circumstances for such investigation.

❖ 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 interest of 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 Registrar General may direct investigation on his/her own accord or through petition from the shareholders or debenture holders

The Registrar General may direct:

- ✓ In the case of a company having a share capital, on the application of: a) 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 holders or is necessary in the public interest.

An inspector shall 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.

(b)

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

- From the scenario above the Registrar General did not act within the law by removing the two companies from the register of companies
- There was no amalgamation proposal which had been submitted to his office regarding the said amalgamation
- There was no resolution from the shareholders of the respective companies, which had been submitted, to his office regarding the said amalgamation.

(ii) The candidate is expected to demonstrate knowledge and understanding on the grounds for removal of a 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 this Law;
 - ❖ the company has not filed its annual return as required under this Law;
 - ✓ 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 requires 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 under this Law and that the company has not filed its annual return as required under this 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.

(c) **(i) The candidate is expected to demonstrate knowledge and understanding on the position of law on financial statement**

- The financial statement was not prepared in accordance to the provisions of law

- The Board of Directors of every company shall ensure that, within three (3) months following the end of a financial statement the audit is made and signed by at least one representative of the company. Such an audit shall be submitted to the Registrar General.
- The financial statements of a company shall comply with international standards. Members of the Board of directors shall provide such information and explanations as are necessary for auditing process to be conducted.
- Concerning registration of the financial statement, all companies, with the exception of the small private companies, must insure that in the thirty (30) days that follow the date required for the signature of the financial states of the company, and the financial states of the whole group, the copies of these financial states accompanied by a copy of the audit report on these financial states are deposited to the office of the Registrar General for registration.
- The law states that the consolidated financial statements shall, in the case of companies which are required to comply with the International Accounting Standards, contain:
 - ✓ A consolidated balance sheet for the group as at that balance sheet date;
 - ✓ A consolidated income statement;
 - ✓ Cash flow statements
 - ✓ Statement changes in equity
 - ✓ Disclosure notes

(ii) The candidate is expected to demonstrate knowledge and understanding on the position of law on the annual report submitted to the Registrar General

- The annual report prepared as seen in the case scenario those not comply with the provisions of law
- The Board of Directors of every company shall, within six (6) months after the company's financial statement date, prepare an annual report on the affairs of the company during the accounting period ending on that date.
- The Board of Directors of a company shall cause a copy of the annual report to be sent to every shareholder of the company not less than fifteen (15) days before the date fixed for holding the annual meeting of the shareholders.

Concerning the format, every annual report for a company shall be in writing and be dated and shall:

- 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 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 understood well.

(d) (i) The candidate is expected to demonstrate knowledge and understanding on the position of law on solvency test

- The demand to have Nyambene Public Limited Company to carry out a solvency test is justified because it was unable to pay the creditors when they demanded payment, even after the court through a judgement ordered the company to pay it was unable and the liabilities are suspected to be more than assets.

According to the wording of law, a company shall satisfy the solvency test where:

- The company is able to pay its debts as they become due in the normal course of business;
- The value of the company's assets greater than the sum of the value of its liabilities and the company's share capital.

(ii) The candidate is expected to demonstrate knowledge and understanding on the position of law for a company considered to be unable to pay its debts

A company shall be considered unable to pay its debts where:

- A creditor to whom the company is indebted in a sum exceeding twenty thousand Rwanda francs (20,000 Rwf), has served at the registered office a demand under his/her hand or under the hand of his/her Lawfully authorized agent requiring the company to pay the sum due, and the company has for three weeks thereafter neglected to pay the sum or to secure it to the reasonable satisfaction of the creditor;

- Execution or other process issued on a judgment or order of any Court in favor of a creditor of the company is returned unsatisfied;
- It is proved, to the satisfaction of the Court that the company is unable to pay its debts, having regard to its existing, contingent and prospective liabilities.

QUESTION THREE

Marking Guide

SN	Distribution guide	Marks	Total marks
(a)	Partnership	1	
i	Co-operative Society	1	
	Sole Trader	1	3
ii	2 advantages of partnership	1	2
	2 disadvantages of sole trader	1	
(b)	Affirmation	1	2
i	Justification	1	
ii	3 implications of legal status	3	3
(c)	Affirmation	1	
i	Justification on legal status	1	2
ii	3 differences between shareholder and debenture holder	3	3
(d) i	Affirmation	1	
	Justification	1	2
ii	3 powers of the directors to acquire shares	3	3
			20

Model Answers

(a) (i) **The candidate is expected to demonstrate knowledge and understanding on forms of business organizations**

- Nkusi Nobert suggestion is the formation of a partnership firm
- Kangabe Alice suggestion is the formation of a cooperative society
- Mutagoma Nils suggestion is the formation of a sole trade

(ii) **The candidate is expected to demonstrate knowledge and understanding on the advantages of partnership and disadvantages of sole trade**

Advantages of partnership

- **Shared responsibility.** Work-load, decision-making and risks are shared among the partners
- **Increased capital.** More partners contribute funds, reducing financial strain
- **Diverse skills and expertise.** Each partner brings unique knowledge and skills, leading to better decision making

- **Flexibility.** Partnerships are easier to form, manage and dissolve compared to corporations
- **Better problem solving.** More minds working together can lead to more solutions
- **Networking and business growth.** Partners can leverage their contacts to expand business opportunities
- **Limited regulation.** Compared to corporations, partnerships typically have fewer legal and compliance requirements

Disadvantages of Sole trader

- **Unlimited liability.** The owner is personally responsible for all debts and losses, meaning personal assets can be seized to cover the business debts.
- **Limited capital.** Raising funds can be challenging since sole traders rely on personal savings or loans rather than investors
- **Workload and responsibility.** The owner must manage all aspects of the business leading to stress and heavy workload
- **Limited growth potential.** Expansion is harder due to financial and managerial limitations
- **Lack of continuity.** If the owner falls ill or passes away, the business may cease to exist
- **Limited expertise.** A sole trader may lack diverse skills needed for business operations, unlike partnerships or corporations that benefit from multiple perspectives

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

Article 24: Company as a distinct legal entity

- A company incorporated under this Law has its own legal personality separate from that of its shareholders.
- A company incorporated under this Law is a body corporate and a legal entity in its own rights and obligations separate from its shareholders or members.
- A company continues in existence until it is removed from the register of companies.
- The company is independent and separate entity from the members notwithstanding the amount of shares that one has.
- The legal status of a company is that it is a legal person able to own property, can be sue or sue in its own name
- Based on the above explanation given that the property belonged to the company the loss occasioned was the loss of the company and not of Nyabisare Jane.

(ii) The candidate is expected to demonstrate knowledge and understanding on a company as a legal entity

- **Legal status.** Refers to the legal identity by which a person, entity, association or company is recognised, with sufficient capacity for taking on obligations and carrying out activities that incur full legal responsibility regarding themselves and third parties.
- **Separate Legal Personality:** A company with a distinct legal status is considered a separate entity from its owners (shareholders or members), meaning it can own property, enter into a contract and be sued or sue in its own name,

- **Ownership of property:** The property of the company is not the property of the shareholders. From the scenario given demonstrates that the property kept in Nyabisare Jane's home is the company's property and anything happening to it has a bearing on the company as the owner and has got nothing to do with Nyabisare Jane though being the largest shareholder

(c)

(i) **The candidate is expected to demonstrate knowledge and understanding on share and debt capital**

- Yes, Nsigaye James and Bertha Mukisa are all investors of BRALIWA PLC
- Nsigaye is a shareholder while Bertha Mukisa is a debenture holder

(ii) **The candidate is expected to demonstrate knowledge and understanding on the difference between a shareholder and a debenture holder**

The difference between a shareholder and a debenture holder

Feature	shareholders	Debenture holders
Definition	Owners of the company holding equity shares	Creditors of the company holding debt securities
Ownership	Have ownership in the company	They do not have ownership
Return on Investment	Earn dividends which depend on company profit	Earn fixed interest regardless of profit
Voting rights	Have voting rights in company decisions	Have no voting rights on management decisions
Repayment Priority	Paid last in case of liquidation	Paid first in case of liquidation
Risk	Higher risk as returns depend on the company performance	Lower risk as they receive fixed interest payments
Security	Usually unsecured except in the case of preference shares	Often secured against company assets

(d) (i) **The candidate is expected to demonstrate knowledge and understanding on the position of law on alteration and notification of alteration of incorporation documents due to allotment of shares**

- The alteration of the memorandum and the articles is not justified because the law was not followed

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.
- The directors did not act within the law because they did not follow the law

(ii) **The candidate is expected to demonstrate knowledge and understanding on the powers of the 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;
- Make a special offer to one or more shareholders 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;
 - ✓ Because 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.

QUESTION FOUR

Marking Guide

SN	Distribution guide	Marks	Total marks
(a)	Affirmation	1	
i	Justification	1	2
ii	3 rights of shareholders	3	3
(b)			
i	Understanding on a dormant company	1	
	Justification	1	2
ii	Correct Definition of a dormant company	1	
	When company is considered to be dormant	2	3
(c)	Affirmation	0.5	
i	Identification of Pre-incorporation contract	0.5	1
ii	2 position of law on pre-incorporation contracts 2 marks each	4	4
(d) i	Private company	1	
	Public company	1	2

SN	Distribution guide	Marks	Total marks
ii	3 differences between a private and public company	3	3
			20

Model Answers

(a)

(i) **The candidate is expected to demonstrate knowledge and understanding on the alteration of articles of association**

- From the analysis of the case scenario the directors did not act within their powers in removing and replacing the auditors since that violates the rights of the shareholders who alone can remove and appoint the auditors and the directors.
- The alteration of the articles of the association without the participation of the shareholders is also the violation of the rights of the shareholders who alone can alter the documents of incorporation.
- The directors do not have power to enter into a major transaction without the approval of the shareholders through a general meeting because this one of the rights of the shareholders.

(ii) **The candidate is expected to demonstrate knowledge and understanding on the rights conferred to shareholders by shares**

Shares confer 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:

- To appoint or remove an auditor or director;
- To approve a major transaction;
- To alter or adopt articles of association;
- Dissolve the company;
- Approve an amalgamation in accordance with the provisions of the Law governing companies.

(b)

(i) **The candidate is expected to demonstrate knowledge and understanding on a dormant company**

- The status of Nyamirambo Public Limited Company is a dormant company
- From the case scenario, the company has not commenced the business because of the conflict and hence it becomes dormant company

(ii) The candidate is expected to demonstrate knowledge and understanding on a dormant company

Article 263: Definition of a dormant company

- A company is a dormant company for any period during which no significant accounting transaction occurs.

Article 264: A company considered dormant

A company is deemed dormant where it:

- Has been dormant from the time of its formation;
- Has been dormant since the end of its previous accounting period, by a special resolution of shareholders and is not required to prepare accounts for that period.

Article 266: Notice by a dormant company

- The company must, within fifteen (15) days of the passing of the special resolution declaring it to be a dormant company, give notice to the Registrar General of that resolution.

(c) The candidate is expected to demonstrate knowledge and understanding on pre-incorporation contract

i)

- The case scenario is about pre-incorporation contract.
- Pre-incorporation contract is a contract entered on behalf of the company before the company is incorporated.

ii)

- Kagame Celestin cannot succeed to recover his money from the company by reason that when the contract was entered in October 2018 the company was not in existence and therefore there was no way it would have entered into the contract.
- Kagame can sue the promoters in their individual capacities for breach of contract but not the company.

Article 49: Pre-incorporation contracts

- The company may ratify a pre-incorporation contract, after its incorporation and there upon the company is bound by it and entitled to the benefit of it as if the company was in existence at the date of the pre incorporation contract and as if the company had entered into the contract.
- A pre-incorporation contract may be ratified within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.
- Before ratification by the company, the person who purported to act in the name or on behalf of the company is, in the absence of express agreement to the contrary, personally bound by the pre-incorporation contract and entitled to the benefit of it.

- A company ratifies a pre-incorporation contract in the same manner as a contract or other enforceable obligation may be entered into by a company under this Law.
- A party to a pre-incorporation contract that is not approved in all or a part of its provisions by the company after its registration may file a claim to the competent court.

(d)

(i) The candidate is expected to demonstrate knowledge and understanding on private and public company

- The company formed by Mbangutse Bill and Mutimura Joshua is a private company reason only minimum of two persons are required (except on one man companies), certificate of trading can be issued before incorporation
- The company formed by Byaruhanga Charles, Gasana Christian, Mucyurabuhoro Edwin, Rusanga Esperance, Ngamije Eunice, Mugabo Felix and Gasirikare Michael is a public company. Minimum of seven persons with no maximum. certificate of trading cannot be issued before incorporation

(ii) The candidate is expected to demonstrate knowledge and understanding on the difference between private and public company

Difference between a public company and a private company

- The incorporation documents of a public company allow its members the right to transfer their shares in the company while the one of a private company restricts the right to transfer shares.
- The incorporation documents of a public company do not prohibit invitations to the public to subscribe for shares or debentures of the company whereas the one of a private company prohibit invitations to the public to subscribe for shares or debentures of the company
- The certificate of incorporation of a public company state that it is a public company and the one of a private company state that it is private.
- The minimum number of members of a public company is seven while the minimum number of members of a private company is two
- Shares of a public company are found in a stock market while shares of a private company are not traded in the stock market.

SECTION B

QUESTION FIVE

Marking Guide

SN	Distribution guide	Marks	Total marks
(a)	Affirmation	1	
i	Justification	1	2
ii	Any 3 contents of the annual return	3	3
(b)	Merger	1	
i	Amalgamation	1	
	Takeover	1	3
ii	Process of amalgamation	1	1
iii	Creditors rights on amalgamation (2)	2	2
iv	4 ways of actualizing a merger	4	4
(c) i	Affirmation	1	1
ii	Any 4 documents	4	4
(d) i	Affirmation	1	
	Justification	1	2
ii	3 meaning of profit under vocation to profit sharing	3	3
(e) i	Affirmation	0.5	
	Justification	0.5	1
ii	2 contents of the annual balance sheet	2	2
iii	2 positions on cessation of business	2	2
			30

Model Answers

(a) (i) **The candidate is expected to demonstrate knowledge and understanding on foreign company**

- Yes the Registrar General was justified to decline the balance sheet of Kisumu Public Limited Company
- The information required to be provided in the balance sheet is missing out

(ii) **The candidate is expected to demonstrate knowledge and understanding on the content of the balance sheet of a foreign company**

- Assets
- Liabilities
- Explanatory/ disclosure notes

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.

(b)

(i) The candidate is expected to demonstrate knowledge and understanding on amalgamation, merger and takeovers

From the analysis of the case scenario, the following are the arrangements proposed by the directors.

- The directors of Gicumbi Public Limited Company proposal is about amalgamation
- The directors of Nyaruguru Public Limited Company proposal is about a merger
- The directors of Kirehe Public Limited Company proposal is about a takeover

(ii) The candidate is expected to demonstrate knowledge and understanding on amalgamation and the pre-requisites for authorizing amalgamation

Article 198: Amalgamation

- Subject to any restrictions in their respective incorporation documents, two (2) or more companies may amalgamate, and continue as one company, which may be one of the amalgamating companies, or may be a new company.
- The parties to an amalgamation cannot implement such amalgamation until it has been approved, with or without conditions, by the authority in charge of competition and consumer protection.

Article 199: Prerequisites for authorizing amalgamation

A company that proposes to amalgamate authorizes:

- An amalgamation proposal;
- The proposed incorporation documents of the amalgamated company in conformity with Article 201 of this Law;
- In the case of a public company with shares or debentures traded on the capital market, the company must comply with all Laws and regulations relating to the capital market.

(iii) The candidate is expected to demonstrate knowledge and understanding on the creditor's rights on amalgamation.

Article 205: Creditors' rights on amalgamation

- Where immediately after the time when an amalgamation becomes effective, an amalgamated company does not satisfy the solvency test, any creditor of any of the

amalgamating companies may recover any loss he or she has suffered by reason of the amalgamation:

- If, no certificate approving the amalgamation was given by directors of that amalgamated company, from the directors of the amalgamating company at the time the amalgamation was approved;
- Even if the directors who signed it gave the certificate, there were no reasonable grounds for the opinion that the amalgamated company would not satisfy the solvency test.

(iv) The candidate is expected to demonstrate knowledge and understanding on actualizing a merger

- A merger as is proposed by the directors of Nyaruguru Public Limited Company is a process where two or more companies combine to form a single entity
- The three companies will undertake comprehensive negotiations to iron out and differences in their opinions.
- The directors will undertake serious financial evaluations of each company and see to it how the operations of the three companies can be integrated.
- When all is settled then they will follow the legal provisions rights from convening the general meeting of shareholders and seeking approval to drafting the incorporation documents and presenting all required documents to the Registrar General
- A take-over, which is proposed by the directors of Kirehe Public Limited Company, is a process whereby one company acquires control of another company or companies, usually by purchasing a majority stake in shares.
- Kirehe Public Limited Company will undertake the valuation of the two companies and undertake due diligence in understanding their financial status, legal obligations and operational efficiency.
- When all is settled then they will follow the legal provisions rights from convening the general meeting of shareholders and seeking approval to drafting the incorporation documents and presenting all required documents to the Registrar General

(c)

(i) The candidate is expected to demonstrate knowledge and understanding on records kept in the company's registered office

- No, the records which are supposed to be available for inspection are not complete

(ii) The candidate is expected to demonstrate knowledge and understanding on records kept in the registered office for inspection

- Minutes of all meetings and resolutions of directors and board committees for at least the last ten (10) years;
- Certificates given by directors under this Law for at least the last ten (10) years;
- Copies of all annual accounts, auditors and directors' reports in relation to the last ten (10) completed accounting periods of the company;
- The register of beneficial ownership for at least the previous ten (10) years;

- Copies of all written communications to all shareholders or all holders of the same class of shares during the last seven (7) years, including annual reports.

(d)

(i) **The candidate is expected to demonstrate knowledge and understanding on vocation to profit sharing.**

- It is not true, every company that is formed is not profit oriented
- Cooperative societies, Sacco's and NGOs are non-profit-making companies that are formed to serve the welfare of the members.

(ii) **The candidate is expected to demonstrate knowledge and understanding on the meaning of profit under vocation to profit sharing.**

The term profit has three possible significances:

- To begin with, it has been considered as a way of making money or a positive gain;
- Then profit their benefit when there is an economy out of an expense;
- Finally, the profit is any pecuniary or material gain that is added to the fortune of the shareholders.

(e)

(i) **The candidate is expected to demonstrate knowledge and understanding on the removal of a foreign company from the register of companies**

- No, the Registrar General was not justified to remove Nairobi Public Limited Company from the register but rather the company would be fined for non-compliance.

(iii) **The candidate is expected to demonstrate knowledge and understanding on the contents of annual return**

- 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**

Article 256: Ceasing to carry on business in Rwanda

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

- Liquidation of foreign company at its head quarter in the country of incorporation
- Non submission of annual returns for consecutive period
- 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.

QUESTION SIX

Marking Guide

SN	Distribution guide	Marks	Total marks
(a)	3 aspects of a company as a contract	3	3
(b) i	5 issues regarding the special provisions in relation to private company	5	5
ii	5 issues negating the special provision relating to private company	5	5
iii	5 issues highlighted on special provisions regarding public companies	5	5
(c) i	Status is liquidation	1	1
ii	Liquidator 3 ways in which a liquidator is released	1 3	4
(d) i	Affirmation 2 grounds upon which a company is removed from the register	1 2	3
ii	2 well explained positions on notice to remove the company from the register	4	4
			30

Model Answers

(a) The candidate is expected to demonstrate knowledge and understanding on a company as a contract

- From the analysis of the case study, a company formed by Sandra Esta, Fiston Gashumba and Gloria Kayumba by subscribing their names in the articles and memorandum is a private because only three members subscribed their name with a consensus
- The company is not a contract
- In order for the company to be a contract there must be mutual consent which is lacking because the brothers to Sandra and the sisters for Gashumba and Kayumba did not have a mutual agreement
- The purpose or object of the company that is to smuggle gold and silver from Congo is unlawful and does not constitute a contract.

(b) (i) The candidate is expected to demonstrate knowledge and understanding on special provisions regarding private companies

- From the analysis of the case scenario above the company formed by Umuhoza Joyce and Kigabo Patrick by subscribing their names to the incorporation documents is a private company.
- The articles and memorandum of association are void for contemplating free transfer of shares

- The enlistment of the company in the stock market is also void because private companies are not enlisted in stock market
- The circulation or offer of a prospectus for public invitation is also void because private companies do not invite the public to subscribe for shares
- Given therefore that private companies do not invite the public to subscribe for shares the purported subscription is therefore invalid.

(ii) The candidate is expected to demonstrate knowledge and understanding on issue negating the private company under the special provisions

Article 66: Restriction on public offers by private company

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.
- Umuhoza Joyce and Kigabo Patrick were not guided by the special provisions governing private companies by having articles purporting to all free transfer of shares
- The issuance of a prospectus violates the special provisions regarding the sale of securities to the public or a section of the public.
 - Proposing to enlist the private company in the stock market is the violation of the special provisions relating to a private company that is not allowed for offer its securities to the public.
 - Finally, the subscription of the shares by the public is a violation of the special provision relating to private companies and therefore invalid.

(iii) The candidate is expected to demonstrate knowledge and understanding on special provisions regarding public companies

We assume that Umuhoza Joyce and Kigabo Patrick intended to form a public company but then the documents of incorporation should bear the signatures of at least seven members.

Regarding the special provisions relating to public companies the law provides thus:

Article 67: Distribution of payment for public companies with regard to compensation

- A public company must not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.
- However, if a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up, in whole or in part, by the undertaking is liable:

- ✓ To pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking;
- ✓ To pay interests at the appropriate rate on the amount payable
- ✓ The shareholder of a public company has an unconditional right:
- ✓ To be included in the company's register of members in respect of those shares;
- ✓ To have an instrument of transfer of them executed in his favor.

(c)

(i) **The candidate is expected to demonstrate knowledge and understanding on liquidation of companies**

- Ruhango Public Limited company is under liquidation

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

- Someone who takes 'who takes custody and the control of the company's property is the liquidator appointed by the court.

Release of liquidator

- At the close of liquidation, it is mandatory for the liquidator to establish a written report on the liquidation exercise, which shall be submitted to the general meeting, failing this, to the auditors.
- The shareholders shall take a decision on the final accounts, the discharge of the liquidator and auditors in respect of the performance of their duties.
- The discharge will be valid if and only if the report and profit and loss account do not contain errors or omissions.
- The foregoing notwithstanding the court may at the request of any interested party pronounce the termination of liquidation once the liquidation exercise has been concluded.
- Notwithstanding the end of liquidation the court may order the reopening of liquidation at the request of any interested party:
 - ✓ If the decision pronouncing the end of liquidation was actuated by a fraud on his rights;
 - ✓ If the liquidators have not shared all that accrued to, the company in liquidation to make known his status, shareholder, or creditor. Should liquidation be reopened the former liquidators will be reinstated, if need be, or they may be replaced.
 - ✓ This, it will do after hearing the liquidator.

(d)

(i) **The candidate is expected to demonstrate knowledge and understanding on removal of a company from the register of companies.**

- No, the Registrar General was not justified to remove the companies from the register of company through hearsay.

- **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 this Law
 - ✓ The company has not filed its annual return as required under this Law;
- 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 requires or permits, that the company be removed from the register on the grounds set out in paragraph 2 of this Article;
- 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.
- A request that a company be removed from the register under item 30 of paragraph one, may be made on the grounds:
 - ✓ That the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors and has distributed its surplus assets in accordance with its incorporation documents and this Law; or
 - ✓ That the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the company into liquidation;
 - ✓ A written notice accompanies a request that a company be removed from the register from the Rwanda Revenue Authority stating that there is no objection to the company being removed from the register.
- The Registrar General removes a company from the register under paragraph one of this Article only when:
 - ✓ He or she has given notice of intention to remove the company from the register;
 - ✓ He or she is satisfied that:
 - ❖ No person has objected to the removal;
 - ❖ He or she has complied with the provisions of Article 283 of this Law in case of objection to the removal of the company from the register of companies.

(ii) The candidate is expected to demonstrate knowledge and understanding on the notice of intention to remove the company from the register of companies,

Article 282: Notice of intention to remove a company from register

Where the Registrar General:

- Has reason to believe that a company has ceased to carry on business and ought to be removed from the register under Article 346 of this Law;
- Received an application for removal of a company in commercial recovery;
- Received a liquidator.

Where the Registrar General intends to remove a company from the register on the ground referred to in Paragraph One of this Article, the Registrar General gives notice to:

- The company;
- Any secured party who has a registered interest in relation to any property of the company;
- The Rwanda Revenue Authority.
- The Registrar General, within a period not exceeding thirty (30) days, gives public notice to those specified in Paragraph 2 of this Article.

The notice to remove a company from the register must specify:

- ✓ The name and registered code of the company and its registered office;
- ✓ The article stating the grounds on which the Registrar General proposes to remove the company from the register of companies;
- ✓ The date of an objection to the removal from the register is sent or delivered to the Registrar General, and which is not less than twenty (20) working days after the date of the notice.

The end of the Model answers and Marking Guide