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**CERTIFIED PUBLIC ACCOUNTANT**  
**INTERMEDIATE LEVEL EXAMINATIONS**  
**11.3: COMPANY LAW**  
**DATE: WEDNESDAY 26, APRIL 2023**  
**MARKING GUIDE AND MODEL ANSWERS**

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**SECTION A**

**QUESTION ONE**

**Marking Guide**

**(a)**

**(i) As a student of company law, why do you think the registrar General of companies declined to register the company (4 Marks)= 1 Mark each for any 4 reasons as to why the registration was declined**

- A company is a contract and therefore in order for this contract to be effective the necessary elements must be present 1
- In so far as a company is a contract, it supposes a minimum of two parties and thus complies with general requirements of validity of the contracts: 1
- Mutual assent, 1
- Capacity to contract- two of the parties are minors 1
- Object matter of the contract and licit cause- there was no object provided 1

**4**

**(ii) Advise Tuyizire Mbanda, Uwera Kavara and Rehemah Rukundo on what is required in order for their company to be registered (4 Marks)= 1 Mark each 4 requirements**

- A contract and a combination of the following; 1
- The shares from one or several shareholders; 1
- The vocation of all to the profits; 1
- The affectio societatis. 1

**4**

**(iii) Explain the three elements which must be present in order for the agreement between Tuyizire Mbanda, Uwera Kavara and Rehemah Rukundo to be complete? (6 Marks)=2marks each for any three elements well explained**

**Shares**

- In order to contribute to the formation of a share capital of the company, every shareholder must commit to subscribe for a share and is debtor of the share to the company. 0.5
- He/she owes to the company a guarantee similar to that of the seller in case of eviction. 0.5
- The share differs from a sale in that in return to the good of which its property is transferred, a shareholder does not receive a price, but a title representing his/ her share capital in the company. 0.5

- In addition, to the difference of the sale that is a commutative contract, the share has an uncertain character because even though a shareholder knows the value of that he/she brings, he/she ignores the value of the share that he receives in return. 0.5

### **Vocation to Profits Sharing**

- The company is constituted to achieve profits which will be thereafter shared between members. 0.5
- Thus, the decisive criterion is not the search of profits but the sharing of profits between members. 0.5
- It is this criterion that distinguishes a company from an association, a cooperative, etc. With the latter, profits are not shared between the members. 0.5
- The term profit has three possible significances: – to begin with, it has been considered as a way of making money or a positive gain; 0.5
- Then profit their benefit when there is an economy out of an expense; 0.5
- Finally, the profit is any pecuniary or material gain that is added to the fortune of the shareholders 0.5

### **Affectio Societatis**

- Two essential elements at stake are estate sharing and vocation to the profits, it is necessary to add an intentional element which is in Latin “affectio societatis “. 0.5
- The least common denominator is the will of all shareholders to collaborate, on an equal footing to the success of the common enterprise; 0.5
- This common will must not exist at the time of the creation of the company only, but must also continue during the whole social life. 0.5
- The affectio societatis is often strong in small size company but inexistent in the immense majority of companies ranked in stock market. 0.5

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**(b) Assuming that you are such a friend explain to Charity Shema and Susan Mbabazi the legal position on shares and prescription in relation to the formation of a company. (5 Marks)= 1 Mark each for any 5 well elaborated legal position**

- Subscription is the acceptance by the subscriber of the offer to subscribe for shares made by the promoters or their agents (usually a bank). 1
- By subscribing the subscriber promises to take up the number of shares subscribed. 1
- The shares may be paid for in cash or in kind, but never in the form of services, because the capital of a company is conceived as a security (collateral) to creditors of the company who can never proceed against shareholders personally for the debts of the corporation beyond their investment. 1
- The exception is where the company has unlimited liability 1

- For their part, subscribers may not withdraw their subscription; they must honor their promise to take up shares. 1
- The option open to a subscriber who no longer desires to become a shareholder is for him to assign (transfer) his undertaking (promise) to take up shares 1

**(c) Explain to Uwantege Jacky any four advantages of doing business as a company as opposed to a partnership firm and other forms of business. (6 Marks)=1.5 Marks each for any 4 well elaborated advantages**

- A corporation is owned by shareholders, who profit from the company's gains. 5
- A partnership is owned by two or more people who divide the business' profits. 5
- A sole proprietorship is owned by one person who alone is responsible for losses and reaps profits. A company is the most complex form of business and involves the most paperwork and expenses to set up, but it can offer certain rewards that other forms of business do not.

**Advantages of doing business in a company as opposed to other forms of business**

**Access to Funds**

- Companies can more easily raise funds than other forms of businesses. 0.5
- Companies can sell stock to raise money for business expenses or cover debts. 0.5
- Sole proprietors and business partners, on the other hand, must try to come up with funds on their own or turn to loans or credit programs to raise money. 0.5
- It takes less time and effort to sell stocks than it does to apply for loans or seek out investors for a business. 0.5

**Artificial legal person.**

- A company is an artificial person. Negatively speaking, it is not a natural person. 0.5
- It exists in the eyes of the law and cannot act on its own. 0.5
- It has to act through its directors while other businesses like partnership there is no separation of partners from the partnership 0.5

**Separate Legal Entity**

- A company has a legal distinct entity and is independent of its members. 0.5
- The creditors of the company can recover their money only from the company and the property of the company. 0.5
- They cannot sue individual members. 0.5
- Similarly, the company is not in any way liable for the individual debts of its members but a partnership is liable. 0.5

- The property of the company is to be used for the benefit of the company and not for the personal benefit of the shareholders. 0.5
- On the same grounds, a member cannot claim any ownership rights in the assets of the company either individually or jointly during the existence of the company or in its winding up through a board of directors elected by shareholders but the same is not true to a partnership 0.5

### **Perpetual Existence.**

- A company is a stable form of business organization. 0.5
- Its life does not depend upon the death, insolvency or retirement of any or all shareholder (s) or director (s) and this not so with a partnership. 0.5
- Law creates it and law alone can dissolve it. 0.5
- Members may come and go but the company can go on forever but if all partners in a partnership firm dies the firm also die 0.5

### **Common Seal.**

- As was pointed out earlier, a company being an artificial person has no body similar to natural person and as such it cannot sign documents for itself but partners act on behalf of the firm. 0.5
- The company acts through natural person who are called its directors. 0.5
- But having a legal personality it can be bound by only those documents which bear its signature. 0.5
- Therefore, the law has provided for the use of common seal, with the name of the company engraved on it, as a substitute for its signature. 0.5
- Any document bearing the common seal of the company will be legally binding on the company and the same is not true. 0.5

### **Limited Liability**

- A company may be company limited by shares or a company limited by guarantee. 0.5
- In company limited by shares, the liability of members is limited to the unpaid value of the shares. 0.5
- In a company limited by guarantee the liability of members is limited to such amount as the member may undertake to contribute to the assets of the company in the event of its being wound up 0.5

### **Transferable Shares.**

- In a public company, the shares are freely transferable but this not true in other forms of business 0.5
- The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles. 0.5

- However, the articles shall prescribe the manner in which such transfer of shares will be made and it may also contain bona fide and reasonable restrictions on the right of members to transfer their shares. 0.5
- But absolute restrictions on the rights of members to transfer their shares shall be ultra vires. 0.5
- However, in the case of a private company, the articles shall restrict the right of member to transfer their shares in companies with its statutory definition 0.5

### **Separate Property**

- As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name but this not true with other forms of business. 0.5
- Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property but same is true to other forms of business. 0.5
- The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of but the property of the firm is the property of the partners. 0.5

### **Delegated Management**

- A joint stock company is an autonomous, self-governing and self-controlling organization. Since it has a large number of members, all of them cannot take part in the management of the affairs of the company but partners manage the firm. 0.5
- Actual control and management is, therefore, delegated by the shareholders to their elected representatives, known as directors. 0.5
- They look after the day-to-day working of the company. 0.5
- Moreover, since shareholders, by majority of votes, decide the general policy of the company, the management of the company is carried on democratic lines. 0.5
- Majority decision and centralized management compulsorily bring about unity of action. 0.5

### **Total Marks**

**25**

## Model Answers

(a)

**(i) The candidates should demonstrate knowledge and understanding on a company as a contract.**

- A company is a contract and therefore in order for this contract to be effective the necessary elements must be present
- In so far as a company is a contract, it supposes a minimum of two parties and thus complies with general requirements of validity of the contracts
- Mutual assent,
- Capacity to contract- two of the parties are minors
- Object matter of the contract and licit cause- there was no object provided

**(ii) The candidates should demonstrate knowledge and understanding on the requirements for the formation of a company.**

- A contract and a combination of the following;
- The shares from one or several shareholders;
- The vocation of all to the profits;
- The affectio societatis.

**(iii) The candidates should demonstrate knowledge and understanding on the essential elements necessary for the formation of a company.**

## Shares

- In order to contribute to the formation of a share capital of the company, every shareholder must commit to subscribe for a share and is debtor of the share to the company.
- He/she owes to the company a guarantee similar to that of the seller in case of eviction.
- The share differs from a sale in that in return to the good of which its property is transferred, a shareholder does not receive a price, but a title representing his/ her share capital in the company.
- In addition, to the difference of the sale that is a commutative contract, the share has an uncertain character because even though a shareholder knows the value of that he/she brings, he/she ignores the value of the share that he receives in return.

## Vocation to Profits Sharing

- The company is constituted to achieve profits which will be thereafter shared between members.
- Thus, the decisive criterion is not the search of profits but the sharing of profits between members.
- It is this criterion that distinguishes a company from an association, a cooperative, etc. With the latter, profits are not shared between the members.

- 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

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- Two essential elements at stake are estate sharing and vocation to the profits, it is necessary to add an intentional element which is in Latin “affectio societatis “.
- The least common denominator is the will of all shareholders to collaborate, on an equal footing to the success of the common enterprise;
- This common will must not exist at the time of the creation of the company only, but must also continue during the whole social life.
- The affectio societatis is often strong in small size company but inexistent in the immense majority of companies ranked in stock market.

### **(b) The candidates should demonstrate knowledge and understanding on legal position on shares and prescription in relation to the formation of a company.**

- Subscription is the acceptance by the subscriber of the offer to subscribe for shares made by the promoters or their agents (usually a bank).
- By subscribing the subscriber promises to take up the number of shares subscribed.
- The shares may be paid for in cash or in kind, but never in the form of services, because the capital of a company is conceived as a security (collateral) to creditors of the company who can never proceed against shareholders personally for the debts of the corporation beyond their investment.
- The exception is where the company has unlimited liability
- For their part, subscribers may not withdraw their subscription; they must honor their promise to take up shares.
- The option open to a subscriber who no longer desires to become a shareholder is for him to assign (transfer) his undertaking (promise) to take up shares

### **(c) The candidates should demonstrate knowledge and understanding on the advantages of doing business through a company as opposed to other forms of business.**

#### **Advantages of doing business in a company as opposed to other forms of business**

##### **Access to Funds**

- Companies can more easily raise funds than other forms of businesses.
- Companies can sell stock to raise money for business expenses or cover debts.
- Sole proprietors and business partners, on the other hand, must try to come up with funds on their own or turn to loans or credit programs to raise money.



- It takes less time and effort to sell stocks than it does to apply for loans or seek out investors for a business.
- Artificial legal person.
- A company is an artificial person. Negatively speaking, it is not a natural person.
- It exists in the eyes of the law and cannot act on its own.
- It has to act through its directors while other businesses like partnership there is no separation of partners from the partnership

### **Separate Legal Entity**

- A company has a legal distinct entity and is independent of its members.
- The creditors of the company can recover their money only from the company and the property of the company.
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- The property of the company is to be used for the benefit of the company and not for the personal benefit of the shareholders.
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- But having a legal personality it can be bound by only those documents which bear its signature.
- Therefore, the law has provided for the use of common seal, with the name of the company engraved on it, as a substitute for its signature.
- Any document bearing the common seal of the company will be legally binding on the company and the same is not true.

### **Limited Liability**

- A company may be company limited by shares or a company limited by guarantee.
- In company limited by shares, the liability of members is limited to the unpaid value of the shares.
- In a company limited by guarantee the liability of members is limited to such amount as the member may undertake to contribute to the assets of the company in the event of its being wound up

### **Transferable Shares.**

- In a public company, the shares are freely transferable but this not true in other forms of business
- The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles.
- However, the articles shall prescribe the manner in which such transfer of shares will be made and it may also contain bona fide and reasonable restrictions on the right of members to transfer their shares.
- But absolute restrictions on the rights of members to transfer their shares shall be ultra vires.
- However, in the case of a private company, the articles shall restrict the right of member to transfer their shares in companies with its statutory definition

### **Separate Property**

- As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name but this not true with other forms of business.
- Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property but same is true to other forms of business.
- The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of but the property of the firm is the property of the partners.

### **Delegated Management**

- A joint stock company is an autonomous, self-governing and self-controlling organization. Since it has a large number of members, all of them cannot take part in the management of the affairs of the company but partners manage the firm.
- Actual control and management is, therefore, delegated by the shareholders to their elected representatives, known as directors.
- They look after the day-to-day working of the company.
- Moreover, since shareholders, by majority of votes, decide the general policy of the company, the management of the company is carried on democratic lines.
- Majority decision and centralized management compulsorily bring about unity of action.

## QUESTION TWO

### Marking Guide

**(a)(i) As a student of company law advice, the company on what to do concerning the objection by other shareholders. (2 Marks)= 1 mark each for any 2 pieces of advice**

- The new business does not need any alteration of the object clause because buying buses will enhance the main objective and the same to the cinema theatre 1
- There is very close affinity between the main business of the company and the two new business. 1
- The buses will ferry people to the cinema theatre and after watching the movie they will make use of the hotel and hence making good profit 1
- Therefore, the two businesses are incidental to the main business of the company and there no need to amend either the memorandum nor the articles of association 1

**(ii) In your opinion did the directors of the company act within their powers in introducing the two new business (Support your answer) (3 Marks)=1 Mark for affirmation and 2 Marks for any 2 supporting answers**

- The directors acted within their powers 1
- The two business are incidental to the main business of the company and did not need any approval from any angle 1
- There is close affinity between the cinema theatre and the hotel because the customers who will come to the theatre will consume food and drinks and other hotel facilities and vice versa. 1
- The buses will ferry both the hotel and cinema theatre customers and thus making extra profit 1

**(iii) The auditor's report must comply with applicable auditing and assurance standards. Explain any six contents contained in the report.(6 Marks)=1 Mark each for any six contents**

### 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; 1
- Whether the auditor has obtained all information and explanations that he or she has required; 1
- Whether proper accounting records have been kept by the company; 1
- The proof that there is no relationship, no interests and debt in the company; 1
- Whether the annual balance sheet complies with the international accounting standards; 1

- The auditor's opinion and problems that are linked with the company's management; 1
- The auditor recommends actions to correct problems identified during the audit; 1
- 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 1

**(iv) Assuming that the shareholders are not satisfied with the audit report because they feel that he is collaborating with the directors and thus misappropriating the company resources. Explain the position of law on removal, resignation or replacement of the auditor (6 Marks) = 1 mark each for any 6 ways in which the auditor can be removed from office**

**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; 1
- 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. 1
- A company shall not propose to appoint a new auditor in place of an auditor who is disqualified for re-appointment, unless: 1
- At least ten (10) working days' written notice of intention to do so has been given to the auditor; 1
- The auditor has been given a reasonable 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. 1
- 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: 1
  - ✓ Distributes to all shareholders at the expense of the company a written statement of the auditor's reasons for unwillingness to be reappointed; 1
  - ✓ 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. 1
- An auditor is entitled to be paid by the company reasonable fees and expenses for making representations to shareholders' under this Article. 1

6

**(b) (i) From the case scenario and as a student of company law which action do you think can be undertaken urgently? (4 Marks)=1 Mark each for any 4 actions.**

**Article 292: Investigation ordered by the Minister**

- The Minister issues instructions requesting the Registrar General to investigate into the business of a local company or of a foreign company having its branch in Rwanda where the Minister is satisfied that: 1
- For the protection of the interests of the public, the shareholders or creditors of a company, it is desirable that the affairs of a company should be investigated; 1
- It is in the public interest that the affairs of a company should be investigated; 1
- In the case of a foreign company, the competent authorities of another country requests that an investigation be made in respect of this Article 1

**4**

**(ii) Explain any four circumstances upon which the Registrar General of Companies can order an investigation of a company (4 Marks) =1 Mark each for any 4 circumstances**

**Article 295: Investigation ordered by the Registrar General**

The Registrar General may direct investigation:

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

**4**

**Total 25 Marks**

## **Model Answers**

**(a)**

**(i) The candidates should demonstrate knowledge and understanding on documents of incorporation.**

- The new business do not need any alteration of the object clause because buying buses will enhance the main objective and the same to the cinema theatre
- There is very close affinity between the main business of the company and the two new business.
- The buses will ferry people to the cinema theatre and after watching the movie they will make use of the hotel and hence making good profit
- Therefore, the two businesses are incidental to the main business of the company and there no need to amend either the memorandum nor the articles of association

**(ii) The candidates should demonstrate knowledge and understanding on the powers of the directors to start new business**

- The directors acted within their powers
- The two business are incidental to the main business of the company and did not need any approval from any angle
- There is close affinity between the cinema theatre and the hotel because the customers who will come to the theatre will consume food and drinks and other hotel facilities and vice versa.
- The buses will ferry both the hotel and cinema theatre customers and thus making extra profit

**(iii) The candidates should demonstrate knowledge and understanding on the contents of the auditor's 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

**(iv) The candidates should demonstrate knowledge and understanding on the removal of an auditor from office**

#### **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 intention to do so has been given to the auditor;
  - The auditor has been given a reasonable 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.

**(b) (i) The candidates should demonstrate knowledge and understanding on mandatory investigation of a company**

#### **Article 292: Investigation ordered by the Minister**

- The Minister issues instructions requesting the Registrar General to investigate into the business of a local company or of a foreign company having its branch in Rwanda where the Minister is satisfied that:
  - For the protection of the interests of the public, the shareholders or creditors of a company, it is desirable that the affairs of a company should be investigated;
  - It is in the public interest that the affairs of a company should be investigated;
  - In the case of a foreign company, the competent authorities of another country requests that an investigation be made in respect of this Article

**(ii) The candidates should demonstrate knowledge and understanding on investigation ordered by the Registrar General**

**Article 295: Investigation ordered by the Registrar General**

**The Registrar General may direct investigation:**

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

**QUESTION THREE**

**Marking Guide**

**(a)(i) If the shareholders desire to liquidate the company based on the aforesaid conflict, advice these shareholders on how the company can be liquidated and eventually dissolved (3Marks) = 1 Mark each for any 3 ways of the court intervention.**

- Given that it is impossible for any resolution by the shareholders to be passed any shareholder can approach the court and file the petition. 1
- The court will call upon the directors to respond to the petition 1
- When the court is satisfied that the circumstances are such that there is no way that this company can transact any business will issue the order for liquidation as a result of a serious misunderstanding between the shareholders, which leads to a malfunctioning of the company. 1
- Liquidation shall be undertaken through the court supervision and eventually the company will be dissolved. 1

**3**



**(ii) Explain any other three factors which may occasion the dissolution of the company. (3 Marks) = 1 Mark each for any 3 factors well elaborated**

The factors that may occasion the dissolution of a company are:

- The expiry of the period for which it was formed; 1
- The realization of the object or where the realization of the object has become impossible; 1
- On the decision of the shareholders under the conditions provided for amending the Articles of Association: 1
  - Upon a decision of the court at the request of a shareholder for a misunderstanding between shareholders hampering the normal functioning of the company: 1
  - Where all the shares are united in the hands of a single shareholder / when all the shares are held by one person; 1
  - Bankruptcy; 1

**3**

**(b) Explain any two grounds for removal of a company from the register of companies (2 Marks) = 1 Mark each for the 2 grounds well elaborated**

The grounds for removal of a company from the register are:

- 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 or the law governing insolvency; 1
- 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. 1

**2**

**(c) Explain the position of law on dissolution of limited life company?**

**• Article 261: Dissolution of limited life company**

Notwithstanding the provisions of the Law on insolvency, a limited life company is dissolved:

- when the period fixed for the duration of the company expires; 1
- Where the shareholders of the company pass a special resolution requiring the company to be wound up and dissolved; 1
- Where the memorandum and articles of association of the company so provides, upon the happening of any one or more of the following events as are stipulated in the memorandum and articles of association: 1
  - ✓ The bankruptcy, death, insanity, retirement, resignation, withdrawal, expulsion, termination, cessation or dissolution of a shareholder; 1
  - ✓ The transfer of any share or other interest in the company in contravention of the memorandum and articles of association of the company; the redemption, repurchase or cancellation of all the shares of a shareholder of the company; 1

✓ The occurrence of any other event on which it is provided in the memorandum and articles of association that the company is to be dissolved. 1

• Where a limited life company dissolves by virtue of Paragraph 1° and no administrator is designated to act in the memorandum and articles of association of the company, the shareholders of the dissolved company shall by resolution appoint an administrator for the purposes of the winding up, and if they fail to pass such a resolution, the Court may appoint an administrator; 1

• Under item 1°, “administrator” includes a director or such other person as may be appointed by the Board of directors; 1

• The administrator referred to in item 1° of this Article needs not be a registered insolvency practitioner under the insolvency Law. 1

6

**d. Advise the five members on the position of law on prescription or limitation of time with regard to the above conflict. (6 marks)= 1 Mark each for any 6 positions of law**

• Prescription relates to the extinction of rights by lapse of time i.e. the time within which if an action is not instituted in court, the plaintiff’s right of action is lost. 1

• All actions against the company shall lapse after 10years from the date the right of action accrued. 1

**However, the following acts shall be barred after 5years:**

• All actions against the promoters of a company starting from the date of publication of the memorandum of association; 1

• All actions against shareholders starting from the date of publication of their retirement or dissolution of the company; 1

• All actions against the organs of the company for acts committed in the exercise of their functions starting from the date of such acts or if it was concealed by fraud from the date of discovery; 1

• All actions against a company in liquidation from the date of publication of the closure of liquidation; 1

• All actions for the restitution of dividends unjustly paid from the date of distribution; 1

• All actions for the payment of dividends or for the reimbursement of part thereof, from the date it became due. 1

6

**Total 20 Marks**

## **Model Answers**

### **(a)(i) The candidates should demonstrate knowledge and understanding on compulsory winding up**

- Given that it is impossible for any resolution by the shareholders to be passed any shareholder can approach the court and file the petition.
- The court will call upon the directors to respond to the petition
- When the court is satisfied that the circumstances are such that there is no way that this company can transact any business will issue the order for liquidation as a result of a serious misunderstanding between the shareholders, which leads to a malfunctioning of the company.
- Liquidation shall be undertaken through the court supervision and eventually the company will be dissolved.

### **(ii) The candidates should demonstrate knowledge and understanding on factors that can lead to dissolution of companies.**

#### **The factors that may occasion the dissolution of a company are:**

- The expiry of the period for which it was formed;
- The realization of the object or where the realization of the object has become impossible;
- On the decision of the shareholders under the conditions provided for amending the Articles of Association:
- Upon a decision of the court at the request of a shareholder for a misunderstanding between shareholders hampering the normal functioning of the company:
- Where all the shares are united in the hands of a single shareholder / when all the shares are held by one person;
- Bankruptcy;

### **(b) The candidates should demonstrate knowledge and understanding on removal of companies from the register of companies.**

- The Registrar General of Companies acted within law
- When Registrar General receives an application to remove a company from the register and the application satisfies the requirements of this Law, the Registrar General removes the company from the register of companies.
- The balance sheet and annual returns was filed for the year ending 31 March 2012 and thereafter again there was no filing.
- A notice was issued to the appellant on 21st March 2017 and there was no respond and the Registrar proceeded to strike off the name from the register.
- Further the law does not require to make inquiries on matters where the statutory provision are clear on companies should comply and therefore any failure on the part of the company leaves

no room of inquiry from the Registrar General other doing what he is mandated to do and that is to strike off the record such company which is not in compliance with the provisions of law.

- A company is removed from the register of companies when a notice signed by the Registrar General states that the company is removed from the register.

**(c) The candidates should demonstrate knowledge and understanding on disappearance of legal personality of companies.**

**General Causes**

**There are four general causes:**

- A company established for a certain and defined period of time dissolves at the end of that period in the absence of a resolution extending its life.
- A decision taken by the shareholders (partners) to dissolve the company before the time agreed upon.
- Loss of the object or impossibility of performance
- If the object has been attained

**d. The candidates should demonstrate knowledge and understanding on Prescription and limitation of time.**

- Prescription relates to the extinction of rights by lapse of time i.e. the time within which if an action is not instituted in court, the plaintiff's right of action is lost.
- All actions against the company shall lapse after 10 years from the date the right of action accrued.

However, the following acts shall be barred after 5 years:

- All actions against the promoters of a company starting from the date of publication of the memorandum of association;
- All actions against shareholders starting from the date of publication of their retirement or dissolution of the company;
- All actions against the organs of the company for acts committed in the exercise of their functions starting from the date of such acts or if it was concealed by fraud from the date of discovery;
- All actions against a company in liquidation from the date of publication of the closure of liquidation;
- All actions for the restitution of dividends unjustly paid from the date of distribution;
- All actions for the payment of dividends or for the reimbursement of part thereof, from the date it became due.

## QUESTION FOUR

### Marking Guide

**(a) Can Kicukiro Safe Products Ltd Company change the registered office to Kicukiro? (3 Marks)=1 Mark for affirmation**

- Yes, Kicukiro Safe Products Ltd Company can change the registered office 1
- The company needs to pass an ordinary resolution to the effect 1
- The articles of association should be amended to reflect the new registered office 1
- Communication and attached copy of the memorandum and the articles of association should be made to the Registrar General of companies 1

**(b) Making reference to the provisions of the law governing companies in Rwanda, examine the validity of the contract carried out by Nyarugunga Public Ltd Company and Nyabugogo Public Ltd. Company (4 Marks)= 1 mark each for the 4 valid positions**

- The contract between Nyarugunga and Nyabugogo is valid and within the law 1
- The memorandum of association of Nyarugunga expressly authorizes the company to carry on any other trade or business, which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business. 1

### Article 26: Company's capacity

- Subject to the provisions of this Law or to any other special law, an incorporated company has, both within and outside Rwanda, full capacity and rights to undertake any business or activity, do any act or enter into any transaction and has full rights, powers and privileges to do so. 1
- The articles of association of a company may restrict the company's capacity, rights and powers provided under Paragraph One of this Article. 1

**(c) (i) The incorporation documents for authorization of an amalgamation are in the prescribed form and in particular state. Outline this form and state. (7 Marks)=1 Mark each for any 7 form or state**

The incorporation documents for authorization of an amalgamation are in the prescribed and in particular state:

- The name of the amalgamated company; 1
- 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 the Law governing companies; 1

- ✓ The full names, postal and residential addresses of the members of the Board of Directors of the amalgamated company; 1
- ✓ 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; 1
- The registered office of the amalgamated company; 1
- The place where the amalgamated company's records are to be kept, if not the registered office; 1
- The amalgamated company's accounting reference date. 1

The incorporation documents may also contain:

- ✓ Any restriction on the amalgamated company's capacity and powers; 1
- ✓ Any provision permitted by the Law governing companies relating to the internal management of the amalgamated company. 1
- If the proposed amalgamated company is to be the same as one of the amalgamating companies, the incorporation documents for authorization may comprise the incorporation documents of that amalgamating company and proposed notice of change of incorporation documents. 1

7

**(ii) Explain the position of law in Rwanda regarding the manner of authorizing amalgamation (6 Marks)= 1 Mark each on any 6 positions well elaborated**

The members of the Board of Directors each amalgamating company resolves that in its opinion the:

- Amalgamation is in the best interests of the shareholders of the company; 1
- The amalgamated company will satisfy the solvency test immediately after the time at which the amalgamation to become effective. 1
- The members of the Board of Directors voting in favor of a resolution to amalgamate sign a certificate attesting that, in their opinion, the conditions required for amalgamation are satisfied. 1
- The members of the Board of Directors of each amalgamating company send to each shareholder of that company not less than twenty (20) working days before the amalgamation is to take effect: 1
  - A copy of the amalgamation proposals; 1
  - A copy of the proposed incorporation documents; 1
  - Copies of the certificates given to each set of directors in favor of amalgamation; 1
  - A statement of any material interests of the directors, whether in that capacity or otherwise; 1
  - Such other additional information and explanation as may be necessary to enable a shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation. 1

**Model Answers**

**(a) The candidates should demonstrate knowledge and understanding on alteration on incorporation documents.**

- Yes Kicukiro Safe Products Ltd Company can change the registered office
- The company needs to pass an ordinary resolution to the effect
- The articles of association should be amended to reflect the new registered office
- Communication and attached copy of the memorandum and the articles of association should be made to the Registrar General of companies

**(b) The candidates should demonstrate knowledge and understanding on incorporation documents.**

- The contract between Nyarugunga and Nyabugogo is valid and within the law
- The memorandum of association of Nyarugunga expressly authorizes the company to carry on any other trade or business, which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business.

**Article 26: Company's capacity**

- Subject to the provisions of this Law or to any other special law, an incorporated company has, both within and outside Rwanda, full capacity and rights to undertake any business or activity, do any act or enter into any transaction and has full rights, powers and privileges to do so.
- The articles of association of a company may restrict the company's capacity, rights and powers provided under Paragraph One of this Article.

**(c) (i) The candidates should demonstrate knowledge and understanding on authorization of amalgamation**

The incorporation documents for authorization of an amalgamation are in the prescribed 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 the Law governing companies;
  - ✓ The full names, postal and residential addresses of the members of the Board of 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 the Law governing companies relating to the internal management of the amalgamated company.
- If the proposed amalgamated company is to be the same as one of the amalgamating companies, the incorporation documents for authorization may comprise the incorporation documents of that amalgamating company and proposed notice of change of incorporation documents.

**(ii) The candidates should demonstrate knowledge and understanding on the manner of authorization of amalgamation.**

**The members of the Board of Directors each amalgamating company resolves that in its opinion the:**

- Amalgamation is in the best interests of the shareholders of the company;
- The amalgamated company will satisfy the solvency test immediately after the time at which the amalgamation to become effective.
- The members of the Board of Directors voting in favor of a resolution to amalgamate sign a certificate attesting that, in their opinion, the conditions required for amalgamation are satisfied.
- The members of the Board of Directors of each amalgamating company send to each shareholder of that company not less than twenty (20) working days before the amalgamation is to take effect:
  - A copy of the amalgamation proposals;
  - A copy of the proposed incorporation documents;
  - Copies of the certificates given to each set of directors in favor of amalgamation;
  - A statement of any material interests of the directors, whether in that capacity or otherwise;
  - Such other additional information and explanation as may be necessary to enable a shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.



## SECTION B

### QUESTION FIVE

#### Marking Guide

**(a) (i) In your own observation from the above case scenario, do you think that the contract entered by Nkubala John, Mbabazi Rose and Rukundo Pierre was within the law governing companies in Rwanda (4 Marks)= 1 mark each for any 4 positions on pre-incorporation contracts**

- The contract entered by Nkubala John, Mbabazi Rose and Rukundo Pierre is within the law if it reflected the reality 1
- Companies are brought up by the promoters, who decide the company objectives through the incorporation documents and the shape the company will take. 1
- Promoters enter into pre-incorporation contracts which involves the assets upon which this contract shall be based and there is no problem. 1
- The position of law on pre-incorporation contracts is that these contracts are binding upon the company if made bonafide and reflect the reality and there is no exaggerations. 1
- However, when the promoters enter into a contract which is not good for the interest of the company to be formed then such contract shall not bind the company 1
- It is a clear policy of law that you cannot purport to enter into a contract with a non-existent entity and expect such entity to accept responsibility when such contract goes against its interest. 1
- The company therefore can accept to be bound by such contracts which are genuine and representing its interest and ignore those that are otherwise contrary to the expectations 1

4

**(ii) Do you think that the vendors of the land and vehicles can sue the company or the promoters? (Support your answer) (3 Marks) =1 Mark each for any 3 well elaborated positions.**

- The vendors for the land and the vehicles cannot sue the company because the contract was not signed by the company as it was nonexistent. 1
- The vendors can sue the promoters because it was with them, they entered into the contract. 1
- However, if the contract entered by the promoters represented the aspirations of the company and its genuine then the company shall be responsible for the contract. 1
- The vendors shall only be paid by the company if they accepted the market value of their properties 1

3

**(iii) Explain any four contents of the memorandum of association. (6 Marks)=1.5 Marks for any 4 contents well elaborated**

**Contents of the memorandum of association**

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

- The name of the company; 1.5
- The head office of the company; 1.5
- The proposed business activity. 1.5
- A memorandum of association for a company for a company limited by guarantee must indicate that liability is limited. 1.5
- 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. 1.5

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

- The amount of share capital; 1.5
- The class and number of shares making the share capital unless the company is an unlimited company; 1.5
- The full name and the number of shares of every shareholder; 1.5
- That the liability of the shareholders is limited. 1.5

**6**

**(iv) Explain the position of law on the method of contracting (6 Marks)=1 Mark each for any 6 positions of law**

**Article 47: Method of contracting**

A contract or other enforceable obligation is entered into by a company as follows:

- An obligation that the law requires to be made by written contract is entered into on behalf of the company in writing signed under the name of the company by: 1
  - ✓ Two (2) or more directors of the company in the case of a public company; 1
  - ✓ One director or the secretary or both of them; 1
  - ✓ The director, in the case of a private company with only one director; 1
  - ✓ Any other director or any other person or group of persons, if the company's incorporation documents so provide; 1
  - ✓ One or more attorneys appointed by the company in accordance with this Law 1
- Any other obligation may be entered into on behalf of the company by any person acting under its express or implied authority. 1

Paragraph One of this Article applies to a contract or to an obligation if:

- The contract or obligation was entered into in Rwanda or elsewhere; 1
- The Law governing the contract or obligation is the law of Rwanda or not 1

6

**(b) (i) From the case scenario above, do you think the Registrar General acted within law in striking off the company from the register of companies? (support your answer) (5 Marks)= 1 Mark each for any 5 explanations**

- The Registrar General of Companies acted within law 1
- When Registrar General receives an application to remove a company from the register and the application satisfies the requirements of this Law, the Registrar General removes the company from the register of companies. 1
- The balance sheet and annual returns was filed for the year ending 31 March 2012 and thereafter again there was no filing. 1
- A notice was issued to the appellant on 21st March 2017 and there was no respond and the Registrar proceeded to strike off the name from the register. 1
- Further the law does not require to make inquiries on matters where the statutory provision are clear on companies should comply and therefore any failure on the part of the company leaves no room of inquiry from the Registrar General other doing what he is mandated to do and that is to strike off the record such company which is not in compliance with the provisions of law. 1
- A company is removed from the register of companies when a notice signed by the Registrar General states that the company is removed from the register. 1

5

**(ii) Explain any three general causes that can lead to disappearance of the legal personality of a company. (6 Marks)= 2 Marks each for any 3 well explained cause.**

### **General Causes**

There are four general causes:

- A company established for a certain and defined period of time dissolves at the end of that period in the absence of a resolution extending its life. 2
- A decision taken by the shareholders (partners) to dissolve the company before the time agreed upon. 2
- Loss of the object or impossibility of performance 2
- If the object has been attained 2

6

**Total 30 Marks**

**Model Answers**

**(a)**

**(i) The candidates should demonstrate knowledge and understanding on pre-incorporation contracts**

- The contract entered by Nkubala John, Mbabazi Rose and Rukundo Pierre is within the law if it reflected the reality
- Companies are brought up by the promoters, who decide the company objectives through the incorporation documents and the shape the company will take.
- Promoters enter into pre-incorporation contracts which involves the assets upon which this contract shall be based and there is no problem.
- The position of law on pre-incorporation contracts is that these contracts are binding upon the company if made bonafide and reflect the reality and there is no exaggerations.
- However when the promoters enter into a contract which not good for the interest of the company to formed then such contract shall not bind the contract
- It is a clear policy of law that you cannot purport to enter into a contract with a non-existent entity and expect such entity to accept responsibility when such contract goes against its interest.
- The company therefore can accept to be bound such contracts which are genuine and representing its interest and ignore those that are otherwise contrary to the expectations

**(ii) The candidates should demonstrate knowledge and understanding on the legal position of pre-incorporation contracts**

- The vendors for the land and the vehicles cannot sue the company because the contract was not signed by the company as it was nonexistent.
- The vendors can sue the promoters because it was with them they entered into the contract
- However, if the contract entered by the promoters represented the aspirations of the company and its genuine then the company shall be responsible for the contract
- The vendors shall only be paid by the company if they accepted the market value of their properties

**(iii) The candidates should demonstrate knowledge and understanding on 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.
- A memorandum of association for a company 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.

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

- The amount of share capital;
- The class and number of shares making the share capital unless the company is an unlimited company;
- The full name and the number of shares of every shareholder;
- That the liability of the shareholders is limited.

**(iv) The candidates should demonstrate knowledge and understanding on the methods of contracting by companies.**

**Article 47: Method of contracting**

**A contract or other enforceable obligation is entered into by a company as follows:**

- An obligation that the law requires to be made by written contract is entered into on behalf of the company in writing signed under the name of the company by:
  - ✓ Two (2) or more directors of the company in the case of a public company;
  - ✓ One director or the secretary or both of them;
  - ✓ The director, in the case of a private company with only one director;
  - ✓ Any other director or any other person or group of persons, if the company's incorporation documents so provide;
  - ✓ One or more attorneys appointed by the company in accordance with this Law;
- Any other obligation may be entered into on behalf of the company by any person acting under its express or implied authority.

Paragraph One of this Article applies to a contract or to an obligation if:

- The contract or obligation was entered into in Rwanda or elsewhere;
- The Law governing the contract or obligation is the law of Rwanda or not

**(b) (i) The candidates should demonstrate knowledge and understanding on the removal of companies register by the Registrar General of companies.**

- The Registrar General of Companies acted within law
- When Registrar General receives an application to remove a company from the register and the application satisfies the requirements of this Law, the Registrar General removes the company from the register of companies.
- The balance sheet and annual returns was filed for the year ending 31 March 2012 and thereafter again there was no filing.
- A notice was issued to the appellant on 21st March 2017 and there was no respond and the Registrar proceeded to strike off the name from the register.

- Further the law does not require to make inquiries on matters where the statutory provision are clear on companies should comply and therefore any failure on the part of the company leaves no room of inquiry from the Registrar General other doing what he is mandated to do and that is to strike off the record such company which is not in compliance with the provisions of law.
- A company is removed from the register of companies when a notice signed by the Registrar General states that the company is removed from the register.

**(ii) The candidates should demonstrate knowledge and understanding on the general causes of disappearance of legal personality of companies**

**General Causes**

There are four general causes:

- A company established for a certain and defined period of time dissolves at the end of that period in the absence of a resolution extending its life.
- A decision taken by the shareholders (partners) to dissolve the company before the time agreed upon.
- Loss of the object or impossibility of performance
- If the object has been attained

**QUESTION SIX**

**Marking Guide**

**(a) (i) Explain to Muvara and Kavara whether their constitutional right has been violated by restricting their right to vote in the company meetings (3 Marks)=1 mark each for any 3 explanations**

- Muvara and Kavara’s constitutional right has not been violated because it is a choice, they made from the many options available 1
- They would have taken their time to learn the rights attached to every type of shares available. 1
- If they would have opted to take up those shares with the right to vote they would have not even realized that voting was restricted 1
- Finally, the law governing companies allows companies to create various types of shares to afford the opportunity to all people to invest in companies 1

**3**

**(ii) Explain to Muvara and Kavara the types of shares provided by the company as highlighted above (4 Marks) =1 Mark each for the 4 types of shares well explained**

Subject to the provisions of company's incorporation documents, different classes of shares may be issued in a company. The shares in a company may:

- Be ordinary; 1
- Confer preferential rights to distributions of capital or income; 1
- Confer special, limited or conditional voting rights; 1
- Not confer any voting rights. 1

**(iii) Explain any four characteristics of a share (6 Marks) =1.5 Marks for any 4 characteristics of a company well explained**

**Characteristics of shares**

**Shares in a company:**

- Are personal property 1.5
- Are not in the nature of immovable property; 1.5
- Can be allotted; 1.5
- Confer to shareholders the rights provided in this law and in the company's incorporation documents; and 1.5
- Are transferable subject to any restrictions or limitations set out in the company's incorporation documents. 1.5

**(iv) Distinguish a share from a debenture (4 Marks)=2 Marks for any 2 well elaborated differences**

- A share entitle the holder to earn profit known as dividends while the holder of a debenture is entitled to have interest 1
- The holder of a share is the owner of the company but the holder of the debenture is a creditor 1
- The holder of the debenture can be a shareholder but a shareholder cannot become a debenture holder 1
- Debenture holder can buy the debenture on discount but a share cannot be bought at a discount 1

**b. (i) Explain the position of law on the exercise of shareholders powers by resolutions (6 Marks)=1.5 Marks each for any well explained 4 powers**

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; 1.5
- At a shareholders' extraordinary general meeting; 1.5
- By shareholders' written resolution in lieu of meeting; 1.5
- By a unanimous shareholder agreement. 1.5

**6**

**(ii) Do you think that it will be right for Nyarutarama Private Company to issue/offer these shares to the public? Explain any restrictions placed on private companies on public offers (4 Marks) =1 Mark for affirmation and 3 Marks for the 3 explanations**

- Nyarutarama as private company cannot offer shares to the public 1

**Restriction on public offers by 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; 1
- 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. 1
- 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. 1

**4**

**(iii) Write brief notes on pre-emption rights (3 Marks)=1 Mark each for any 3 brief notes**

- Subject to the provisions of incorporation documents, the requirement to allot shares in accordance with shareholders' pre-emption rights does not apply in the case of a public company. 1
- Shareholders of a company have a pre-emption right to acquire newly-issued shares of a company as provided in the Article 61 of the Law governing companies. 1
- The right is to acquire the newly-issued shares pro rata in proportion to the shares already held by such existing shareholders at a price no less favorable than that offered to other persons, and on terms which maintain or increase the relative voting and distribution rights of those existing shareholders. 1



- The pre-emption rights provided for in the Article 61 of the Law governing companies cannot be restricted or eliminated by a company's incorporation documents. 1
- The company gives each existing shareholder advance notice of any proposed issuance stating, at a minimum, the number of shares to be issued, the proposed price or method of determining the price of issuance, and the time period and procedure for exercising the pre-emptive rights. 1
- The time period shall remain open within a period of three (3) months. All rules and conditions for exercise shall be uniform for all shareholders who have this right. 1
- Such subject to pre-emption rights that are not acquired by existing shareholders pursuant to such rights may be issued to any person within a period of three (3) months after having been offered to existing shareholders at the same price as the price set for the exercise of pre-emption. 1
- Allotment of shares at a lower price during or after such three (3) month period is subject to existing shareholders' rights. 1

3

**Total 30 Marks**

### **Model Answers**

**(a)**

**(i) The candidates should demonstrate knowledge and understanding on types of shares.**

- Muvara and Kavara's constitutional right has not been violated because it is a choice they made from the many options available
- They would have taken their time to learn the rights attached to every type of shares available.
- If they would have opted to take up those shares with the right to vote they would have not even realized that voting was restricted
- Finally the law governing companies allows companies to create various types of shares to afford the opportunity to all people to invest in companies

**(b) The candidates should demonstrate knowledge and understanding on types of shares.**

Subject to the provisions of company's incorporation documents, different classes of shares may be issued in a company. The shares in a company may:

- Be ordinary;
- Confer preferential rights to distributions of capital or income;
- Confer special, limited or conditional voting rights;
- Not confer any voting rights.

**(c) The candidates should demonstrate knowledge and understanding on characteristics of shares.**

**Characteristics of shares**

Shares in a company:

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

**(i) The candidates should demonstrate knowledge and understanding on the difference between debentures and shares.**

- A share entitle the holder to earn profit known as dividends while the holder of a debenture is entitled to have interest
- The holder of a share is the owner of the company but the holder of the debenture is a creditor
- The holder of the debenture can be a shareholder but a shareholder cannot become a debenture holder
- Debenture holder can buy the debenture on discount but a share cannot be bought at a discount

**(ii) The candidates should demonstrate knowledge and understanding on the exercise of the shareholders powers through resolution**

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

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

**(iii) The candidates should demonstrate knowledge and understanding on pre-emption rights.**

- Subject to the provisions of incorporation documents, the requirement to allot shares in accordance with shareholders' pre-emption rights does not apply in the case of a public company.
- Shareholders of a company have a pre-emption right to acquire newly-issued shares of a company as provided in the Article 61 of the Law governing companies.
- The right is to acquire the newly-issued shares pro rata in proportion to the shares already held by such existing shareholders at a price no less favorable than that offered to other persons, and on terms which maintain or increase the relative voting and distribution rights of those existing shareholders.

- The pre-emption rights provided for in the Article 61 of the Law governing companies cannot be restricted or eliminated by a company’s incorporation documents.
- The company gives each existing shareholder advance notice of any proposed issuance stating, at a minimum, the number of shares to be issued, the proposed price or method of determining the price of issuance, and the time period and procedure for exercising the pre-emptive rights.
- The time period shall remain open within a period of three (3) months. All rules and conditions for exercise shall be uniform for all shareholders who have this right.
- Such subject to pre-emption rights that are not acquired by existing shareholders pursuant to such rights may be issued to any person within a period of three (3) months after having been offered to existing shareholders at the same price as the price set for the exercise of pre-emption.
- Allotment of shares at a lower price during or after such three (3) month period is subject to existing shareholders’ rights.

**END OF MARKING GUIDE AND MODEL ANSWERS**