



**CERTIFIED PUBLIC ACCOUNTANT
INTERMEDIATE LEVEL EXAMINATIONS**

I1.3: COMPANY LAW

DATE: WEDNESDAY 28, AUGUST 2024

MARKING GUIDE & MODEL ANSWERS

SECTION A

QUESTION ONE

MARKING GUIDE

QN	DISTRIBUTION OF MARKS	MARKS
1		
a.) i	1 mark for clear demonstration of an understanding of Affectio societatis, 1 mark for clear relation of Profit sharing as part of Affectio societatis	2
ii	1 mark each for any 7 correct explanations demonstrating clear that the student has a grasp of the concept on the procedures	7
b.) i.	1 mark each for any 4 correct explanations demonstrating clear understanding that the student has a grasp of the concept.	4
ii.	1 mark each for any 4 correct explanations demonstrating clear understanding that the student has a grasp of the concept.	4
c).i	2marks for every point well explained for every proposal, 1 st proposal,:1mark for Unlimited liability and 1mark for Limited by guarantee, .2nd proposal :1mark for liability based on shares subscribed for and 1mark on liability of unpaid calls	4
ii	1mark for clear demonstrating of no per value concept and 1mark for identification of non-change of liability,1mark for clear Demonstrating of understanding lifting of corporate veil and 1mark for identification of change of liability	4
	TOTAL	25

MODEL ANSWERS

(a)

i. The candidate is expected to demonstrate knowledge and understanding on the concept of “Affectio Societatis” in relation to profit sharing.

- “Affectio societatis “is a Latin word which means 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.
- In short, the affectio societatis must be understood as the shareholders’ desire to unite in order to collaborate to the common enterprise success without any subordination to one another while accepting common risks.
- 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
- Indeed, their profits should be measured against the involvement in investment and also shareholders’ commitment to contribute to losses.

ii. The candidate is expected to demonstrate knowledge and understanding on the relevant prerequisites before the vocation for profit sharing by the shareholders or directors of a company

- The company as a contract implies putting together shares by each of the contracting parties.
- The share indeed, is the good which is transferred to the company by the shareholder in trade of which he is entitled some shares.
- In other words, it is good that the shareholder commits to put at the disposal of a company for a common exploitation.
- The notion of shares is instrumental to the constitution of a company, especially when it comes to corporations, where without share the whole idea of a company lacks substance.
- A contract involving shares implies two kinds of successive contract:
 - ✓ the commitment to issue a share: the subscription
 - ✓ the actual performance of the obligation which entails the dispossession of share to the profit of company.
- In principle, the proportion of share capital which must be availed at the time of the subscription and that of the date of the calls for the outstanding is determined by articles of association.
- In return for his contribution, the shareholder gets some shares.
- Generally, a share is a unit of ownership in the company's share capital, held by a shareholder or the company itself. Shares in the company are personal, intangible or chose in action, they can be allotted, confer to shareholders the rights provided in the law governing companies and in the company's incorporation documents, including the rights to share in the profits of the company.

(b)

i. The candidate is expected to demonstrate knowledge and understanding on the position of law on altering the name of an existing company

Article 38: Application for change of a name

- An application to change a company name is made following the form prescribed by the Registrar General.
- An application to change the name of a company must:
 - ✓ Prove that the resolution to change the company name was passed by the company shareholders unless the incorporation documents allow for the change to be made by the directors in which case, proof of a resolution of the Board of Directors of the company;
 - ✓ Indicate the new name contemplated for the company.
- Subject to its incorporation documents, an application to change the name of a company is not an amendment of its incorporation documents.

ii. The candidate is expected to demonstrate knowledge and understanding on the position of law on the procedure for the alteration of the name

Article 39: Implementing change of a company name

- Where the Registrar General is satisfied that a company has complied with the requirements under this Law for changing a company name, he or she does the following:

- ✓ Record a new name of the company in the company register;
- ✓ Record the change of name of the company on the certificate of incorporation of the company;
- ✓ Instructs the company to publicize the name

(c)

i. The candidate is expected to demonstrate knowledge and understanding on the liability of shareholders of a private limited by company

Liability of shareholders

- With the exception of an unlimited liability company, a shareholder is not liable for the obligations of a company only because of being a shareholder.
- The liability of a shareholder to the company, or for the company's obligations is limited to:
 - any amount unpaid on a share held by the shareholder;
 - ✓ Any liability expressly provided for in the company's incorporation documents which may provide that the shareholder's liability is unlimited;
 - ✓ Any distribution received by the shareholder but which has to be recovered in accordance with the Article 75 of the Law of the Law governing companies.
- **Liability for calls** Where a share makes its holder liable to calls, or imposes any other liability on its holder, that liability is attached to the holder of the share, and not to a prior holder of the share, even if the liability became enforceable before the share was registered in the name of the current holder.
- **Liability of personal representative** Where a personal representative of the estate of a deceased person is registered as the holder of a share comprised in that estate, the liability of that personal representative, in respect of that share, does not exceed the value of any assets which, at the time when any demand is made for the satisfaction of such liability are held by that personal representative upon the same trusts as are applicable to that share.
- **Liability of shareholders in respect of exercise of powers** A shareholder voting solely in his/her capacity as a shareholder in the exercise of any of the powers set out in Paragraph 2 of the Article 99 of the Law governing companies does not owe any duty to the company or to any other person and does not incur any liability in respect of the exercise of or failure to exercise votes to which that shareholder is entitled.

ii. The candidate is expected to demonstrate knowledge and understanding on the conversion of shares to shares of no par-value and lifting of corporate veil

Article 62: Conversion of class of shares into shares of no-par value

- ✓ A company may at any time, convert any class of shares of the company into no-par value shares provided that seventy-five per cent (75%) of shareholders vote for the resolution.
- ✓ In case of conversion of shares as provided for in Paragraph One of this Article, a notice of the terms of the conversion is given to the Registrar General for registration within fourteen (14) days of approval of the conversion.

Article 63: Rights and liabilities not affected by converted shares

- The shares having a par value which are converted into of no-par value do not affect the rights and liabilities attached to such shares.

- In particular, such conversion does not affect:
 - ✓ any unpaid liability on such shares;
 - ✓ the rights of the holders of the shares in respect of dividends, voting, or repayment during the winding up of a company or in case of reduction of share capital.

QUESTION TWO

Marking guide

QN 2	DISTRIBUTION OF MARKS	MARKS
a) i	1mark Agreement/validity and 1mark Correct justification	2
ii	1mark for every correct point Demonstrating understanding of liquidation by court	4
iii	1 mark each for any 5 correct explanation demonstrating understanding of liquidation/receivership/administration as an action by creditors	5
b) i&ii	1mark for correct difference between floating charge and fixed. charge, 1mark for any 3 correct right before winding up 1mark for any 3 correct right during winding up	7
c) i	2marks for every correct explanation of the 2 proposal positive effect which demonstrate student understanding of the concept	4
ii	1 mark for any 3 correctly stated objective	3
	Total	25

MODEL ANSWERS

(a)

i. The candidate is expected to demonstrate knowledge and understanding on insolvency

- No, Claudine is not right that the company is insolvent, however the inability to pay debts is one of the grounds for insolvency
- The inability of the company not to pay its creditors does not make the company insolvent but if proved by the court then this inability can lead to insolvency
- A company is considered insolvent if its liabilities are more than its assets plus its stated capital and this is a legal fact which must be proved by the solvency test.

ii. The candidate is expected to demonstrate knowledge and understanding on the grounds upon which the company can be declared insolvent

- Yes, insolvency can lead to liquidation of the company
- Law No 075/2021 OF 06/12/2021 Relating to insolvency provides thus:

Article 7: Grounds for the commencement of insolvency proceedings

- Insolvency proceedings commence when:

- ✓ The debtor is unable to pay its debts when they fall due in the normal course of business;
- ✓ The assets of the debtor are less than its liabilities plus its stated capital.

iii The candidate is expected to demonstrate knowledge and understanding on the consequences of insolvency declaration by the court to the shareholders

- Commencement of either winding up or receivership or winding up
- Appointment of the administrator /receiver/ liquidator.
- There shall be commencement of either administration or liquidation, which may finally lead to winding through the appointment by the court.
- All company assets are vested with administrator /receiver/ liquidator
- All the powers to run the affairs of the company shall be vested to the appointed authority (. administrator /receiver/ liquidator)
- Supervision of administrator /receiver/ liquidator shall be by the appointing authority creditors, court or company registrar.
- The new appointed authority shall only be subject to control by the appointing authorities rather shareholders or directors
- Cessation to hold office by directors including other employees: all company employees stand dismissed including directors
- Disposal of company assets: company assets are sold to facilitate settlement of company debts
- Settlement of company debts: creditors are paid from proceeds of company disposal based on documented priority
- Release of administrator /receiver/ liquidator: upon completion the creditor stands released

(b) i. The candidate is expected to demonstrate knowledge and understanding on the difference between a fixed and floating charge

- In company law, a charge is a security interest created over a company's assets to secure a loan or other debt.
- There are two types of charges: fixed charges and floating charges.
- A fixed charge is a charge that is attached to a specific asset or a specific group of assets.
- It gives the lender a security interest in those specific assets, and the company cannot deal with those assets without the lender's consent.
- The assets subject to a fixed charge are typically identified in the charge document.

ii. The candidate is expected to demonstrate knowledge and understanding on the rights of creditors before and after winding up

Creditors rights before winding up

- right to receive interest based on terms of credit
- right to appoint receiver in case of fixed charge/liquidator
- right to petition court for winding up
- right to accept or decline the changes on terms of credit
- right to information

Subsection 3: Rights of creditors and shareholders during liquidation

Article 128: Meeting of creditors or shareholders during liquidation

- A liquidator convenes a creditors or shareholders' meeting if so, requested in writing by two (2) or more creditors or shareholders, for any matter including voting on a proposal that a committee of inspection be appointed to act with the liquidator.
- The liquidator must give notice of the meeting in not less than five (5) working days, which must be conducted in accordance with proceedings of shareholders' or creditors' meeting. Members of a committee of inspection chosen by creditors or shareholders' meeting take office immediately.
- However, if there is a difference between the decisions of meetings of creditors or shareholders on the question of appointing a committee of inspection or the membership of a committee of inspection, the liquidator refers the matter to the court which decides thereon.
- The sole shareholder of a company may present to the liquidator a view on any matter which could have been decided at a meeting of shareholders under this Article and that view is treated as if it were a decision taken at a meeting of shareholders.

(c)

i. The candidate is expected to demonstrate knowledge and understanding on the ordinary and non-cumulative sharers as opposed to preference and cumulative shares

- Ordinary shareholders are only given dividends once the company has made profit and declared such dividends and therefore in the prevailing circumstances the company cannot declare dividends and it can recoup
- On the contrary the preference shares give priority to the holders the moment the company has made profit and as such the profit made must be shared as a priority to the preference shareholders and thus a complication.
- Equally if the preference shares are converted to non- cumulative shares it will imply that as much as the company has made some profit which may not be significant in the prevailing circumstances as much as it is not shared there is not profit accumulating on the part of the shareholders and thus giving the company an opportunity to focus ahead
- Indeed, this approach of converting the shares from preference to ordinary or non-cumulative will provide a reprieve for the company to redirect its energy on finding alternative avenues of generating profit for the company

ii. The candidate is expected to demonstrate knowledge and understanding on reconstruction of a company

- Yes, apart from improving the capital structure and reduction of costs there are other reasons of reconstruction
- Without reconstruction more specifically through merger the respective companies will have no alternatives other than to be liquidated
- Reconstruction does not only reduce costs but bring in efficiency which will improve the performance of the company either merged or reconstructed.
- To overcome the problems of over capitalization, massive cumulative losses ,
- To simplify the structure of a company when it becomes too complicated.
- To change the face value of the company's shares when necessary.
- To generate a surplus by writing off cumulative losses and writing down overvalued assets.

- To obtain more money via the issuance of new shares.
- To produce funds for working capital requirements, asset replacement, the addition of balancing equipment, the modernization and other purposes

QUESTION THREE

Marking guide and model answers

QN	DISTRIBUTION OF MARKS	MARKS
a)i	1mark for any 5 correctly stated characteristic, which demonstrate student understanding. Of concept	5
ii	1mark for any 5 correctly stated restriction on allotment of shares, which demonstrate student understanding of concept.	5
b)i	2 marks for correct validity on continuation of business by company in Rwanda and 2 marks for justification of correct validity.	4
ii	1mark for any 6 correctly stated reason which demonstrate student understanding of winding by foreign companies	6
	Total	20

MODEL ANSWERS

(a)

i. The candidate is expected to demonstrate knowledge and understanding on the characteristics of a share

Characteristics of shares

- Shares in a company are personal property
- Shares are not in the nature of immovable property;
- Shares can be allotted;
- Shares confer to shareholders the rights provided in this law and in the company's incorporation documents; and
- Shares are transferable subject to any restrictions or limitations set out in the company's incorporation documents

ii. The candidate is expected to demonstrate knowledge and understanding on the restrictions on allotment of shares.

Restrictions on the allotment of shares

A company is not allowed to allot:

- A nominal or par value share;
- A share which is subject to calls;
- a redeemable share at time when there are not allotted shares of the company which are not redeemable.

If a company allots par value shares:

- A share purportedly allotted with a nominal or par value is deemed to be a share of no nominal or par value, allotted at its actual allotment price, including any purported premium;
- A share purportedly allotted subject to calls is deemed to be fully paid;
- A share purportedly allotted as redeemable, is deemed to be not redeemable

(b)

i. The candidate is expected to demonstrate knowledge and understanding on the implication of liquidation of a foreign company

- The views of Olivier are not valid
- Article 341 adds by saying that “Where a foreign company goes into liquidation or is dissolved in its place of incorporation or origin”:
 - ✓ An authorized agent in Rwanda shall, upon commencement of the liquidation, file with the Registrar General a notice to that effect;
 - ✓ The liquidator of a dissolved company shall have the powers of a liquidator for Rwanda.
- The article 342 gives the procedure to follow by the liquidator in these terms, A liquidator of a foreign company appointed by the Court or a person exercising the powers and functions of such a liquidator shall:
 - ✓ Before any distribution of the foreign company’s assets is made, by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business and where no liquidator has been appointed, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;
 - ✓ Not, without leave of the Court, pay out any creditor to the exclusion of any other creditor.
 - ✓ Where a foreign company has been wound up so far as its assets in Rwanda are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered (article 343).
 - ✓ Finally, to the terms of the article 344 of the law says, on receipt of a notice from an authorized agent in charge of liquidation or dissolution of the company, the Registrar General shall remove the name of the company from the register.
 - ✓ Where the Registrar General has reasonable cause to believe that a foreign company has ceased to carry on business in Rwanda, shall remove it from the register of companies in accordance with the Law

ii. The candidate is expected to demonstrate knowledge and understanding on the circumstances which can lead to winding up of a foreign company

Article 118: Notice with regard to liquidation or dissolution at a foreign company’s place of incorporation

- Where a foreign company goes into liquidation or is dissolved in its place of incorporation or origin:
 - ✓ An authorized agent in Rwanda, upon commencement of the liquidation, files with the Registrar General a notice to that effect;
 - ✓ The liquidator of a dissolved company has the powers of a liquidator for Rwanda.

QUESTION FOUR

Marking guide and model answers

Marking guide

QN 4	DISTRIBUTION OF MARKS	MARKS
a)i	1mark for Correct meaning of compulsory winding up and 3marks for correctly stated persons who can initiate winding up process	4
ii	1mark for any 6correctly stated procedure which demonstrate student understanding of winding by the court	6
b)i	1mark for any 4 correctly stated duty which demonstrate student understanding of winding up through the court	4
ii	1mark for any 3 correctly identified effect and 1mark for any 3correctly explained effect identified	6
	Total	20

MODEL ANSWERS

(a)

i. The candidate is expected to demonstrate knowledge and understanding on the persons who can initiate compulsory winding up

- Creditors
- Directors or one of them
- Debtor
- Shareholders or partners
- Registrar General of companies
- Regulatory authority

ii. The candidate is expected to demonstrate knowledge and understanding on the procedure for compulsory winding up

Winding-up Procedures for company unable to pay debts

The procedures described below apply to court ordered winding up:

- Issuing a written demand for debt repayment to the target company
- Presenting a winding-up petition to the Court and the company
- Court hearing for the petition.
- Granting of winding-up order by the Court.
- Meeting of creditors and other relevant parties
- Appointment of liquidator
- Realization and distribution of company's assets to the creditors
- Release of duties for liquidator
- Dissolution of the company

(b)

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

A liquidator has the following duties:

- To collect, realize and distribute assets or the proceeds of the assets of the company;
- To take custody and control of all the company's assets;
- To keep the company's money, separate from other money which he or she holds or is under his or her control;
- To keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the liquidation and retain the accounts and records of the liquidation of the company for not less than six (6) years after the liquidation ends;
- To permit the accounts and records of the company to be inspected by any committee of inspection, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation or to be inspected by any creditor or shareholder if the court so orders.

ii. The candidate is expected to demonstrate knowledge and understanding on the legal implication on the appointment of a liquidator by the court

- On appointment of a liquidator, all the powers of director's cease and the affairs of the company as well as its assets are vested in the liquidator
- All court proceeding present and past are stayed
- Assets of the company cannot be sold or transferred without the permission of the liquidator, and all company cash must be transferred to an estate bank account managed by the liquidator.
- settle any legal disputes or outstanding contracts.
- sell off the company's assets and use any money to pay creditors.

SECTION B

QUESTION FIVE

Marking guide

QN 5	DISTRIBUTION OF MARKS	MARKS
a) i	0.5mark for any correctly identified form of business (0.5x4) =2 and 0.5 mark for correctly stating the (0.5x4) =2	4
ii	1mark for any 3 correctly identified difference between public company and a cooperative	3
b) i	1mark for the three correctly identified type of shares	3
ii	2marks for correct explanation of pre-emption right in relation to new shares and pro rata issue	2
c)	1mark for any 8 correctly identified obligation that demonstrates understanding of foreign companies	8
d)i	1 mark for Identifying of invalidity that demonstrate understanding of violation and 2marks for correct Justification for invalidity demonstrating understanding of shareholders rights	3
ii	1mark for any 4 correctly and strictly identified right that demonstrates understanding of shareholders access to information companies	4
e)	1mark for any 3 correctly identified reasons that demonstrates understanding of lifting of corporate veil reasons companies	3
	Total	30

MODEL ANSWERS

(a)

i. The candidate is expected to demonstrate knowledge and understanding on forms of business

- Sole proprietor- Liability is unlimited
- Partnership- Liability is unlimited
- Company- Liability limited
- Co-operative society-unlimited liability

ii. The candidate is expected to demonstrate knowledge and understanding on the difference between a cooperative and a public Limited company

cooperative	Public company
Free entry free exit from membership based on economic benefit	Entry and exit is subject to acquisition and disposal of share
By registration one becomes a member rather shareholder	By acquisition of shares, one become a shareholder
Profitability/economic benefit is based on economic level of contribution and participation	Share of profit is subject to number of shares acquired

Concern for Community.	Concern of profitability and economic growth by shareholders
Voluntary and Open Membership.	Membership is restricted based of share owned

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

- Ordinary shares
- Redeemable shares
- Preference shares
- Cumulative preference shares

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

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.

(c) The candidate should demonstrate knowledge and understanding on the obligation of foreign companies

OBLIGATIONS APPLICABLE TO FOREIGN COMPANIES

- The law sets out obligations related to foreign companies, notably:
- Obligation to file with the Registrar General a court order (art. 328);

- Obligation by the Registrar General to approve changes (article 329);
- Obligation of a foreign company to deposit to the Registrar General has copy of a– Balance Sheet (art. 330);
- Obligation to comply with requirements to local companies Rwanda of (art. 331);
- Obligation to comply with international accounting standards (art. 332);
- Obligation to give Notice by a foreign company of particulars of its business in Rwanda (art. 333);
- Obligation to keep at the head office, branch registers (art. 334);
- Filing with the Registrar General a notice as to a place where the register is kept (art. 335 and 336)

(d)

i. The candidate should demonstrate knowledge and understanding on the powers of the directors

- Yes, the decision was right
- The articles provide the limit upon which the directors can borrow (Frw 24,000,000,000)
- If they would have borrowed beyond the set limit then they were required to hold a meeting with the shareholders to seek authority to borrow but the Frw 50,000,000 was within their powers

ii. The candidate should demonstrate knowledge and understanding on the shareholders right to information

- Shareholders rights to information Documents to be disclosed annually to shareholders
- The Board of Directors of a company sends to every shareholder of the company within the specified time limits the following documents:
 - ✓ a copy of the company’s annual accounts approved and signed;
 - ✓ a copy of the auditor’s report on those accounts;
 - ✓ a copy of the Board of Directors’ report relating to the same accounting period as those accounts;
- The time limits for disclosure of such information are:
 - ✓ within four (4) months of the company’s accounting reference date, in the case of a private company;
 - ✓ within four (4) months of the company’s accounting reference date, in the case of a public company.

(e) The candidate should demonstrate knowledge and understanding on circumstances under which the veil of incorporation is lifted

The corporate Veil has been lifted in the following cases:

Determination of Character:

- A Company is not a natural person with mind or conscience.
- So, when the enemies of a company are behind its control, the corporate character cannot defer Law from knowing the character of such a company.

Protection of Revenue:

- The courts may disregard the corporate entity of a company where it is used for tax evasion or to circumvent the tax obligation.

- Further where it is desired to establish for tax purposes in what country a company is resident, the court will lift the veil and find out where its central management is and that place determine its residence.

Company avoiding legal Obligation:

- The court will refuse to uphold the separate existence of the company where it is formed for a fraudulent purpose or to avoid legal obligations.
- Example: James was appointed as the managing director of the plaintiff company on the condition that he shall not at any time solicit or entice a way the customers of the company;
- He; however, formed a new company to carry on the same business.
- The new company solicited the plaintiff’s customers.
- An injunction was granted against both Mr. James and the Company.
- The court held that the company was a mere cloak for the purpose of enabling the defendant to commit a breach of his agreement against solicitation.

Where a company is a Sham:

- The court will lift the veil where the device of incorporation is used for some illegal or improper purpose.

Thus, where a seller of land sought to avoid an action for specific performance by transferring the land in breach of contract to a company he had formed for the purpose, the court treated the company as a mere sham and made the order applied for by the purchaser.

Where the Company is acting as the agent of the Shareholders:

- Where a Company is acting as an agent for its shareholders, they will be reliable for its acts.
- Whether it is acting as an agent is a question of fact in each case

QUESTION SIX

Marking guide

QN	DISTRIBUTION OF MARKS	MARKS
a)i	1mark for any 4correct listed criteria which demonstrate understanding release of liquidator as a process to winding up	4
ii	1mark for any 3 correct listed content which demonstrate understanding release of liquidator effects as the last stage of winding up	3
iii	1mark for any 3correct listed content of liquidators’ report which demonstrate understanding release of liquidator	3
b)i	2marks for correct definition of amalgamation,1mark for correct explanation of merger by difference and 1mark for correct explanation of takeover by difference	4
ii	1mark for any 6correct chronological correct procedure	6
c	1mark for any correct exercise of control that student demonstrating clear understanding	4

d	1mark for any 6 correct difference between incorporated and non-incorporated entities that a student demonstrating clear understanding	6
	TOTAL	30

MODEL ANSWERS

(a)

i. The candidate should demonstrate knowledge and understanding on the criteria for liquidator application and release and the consequences of such release

- 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.
- This, it will do after hearing the liquidator.

ii. The candidate should demonstrate knowledge and understanding on the effects of the release of the liquidator in case of winding up

- Liquidation exercise stand concluded.
- Cessation of company existence
- Dissolution by removal of company register of companies by the registrar
- Unpaid debts become unpayable due to bankruptcy

iii. The candidate should demonstrate knowledge and understanding on the contents of the liquidator's report to court before release

Article 109: Completion of liquidation

- The liquidation of a company is complete when the liquidator delivers to the Registrar General a final report and final accounts of the liquidation and a statement that indicates:
 - ✓ All known assets have been disclaimed, realized or distributed without realization;
 - ✓ all proceeds of realization have been distributed;
 - ✓ the company is ready to be removed from the register. Without prejudice to the court supervision of liquidation and enforcement of a liquidator's duties, the liquidator ceases to hold office on delivering to the Registrar General the documents referred to above.

(b)

i. The candidate should demonstrate knowledge and understanding on the difference between amalgamation, merger and take over as concepts of restructuring

- Mergers are generally driven by the absorbing company only.
- A takeover occurs when one company makes a successful bid to assume control or acquire another.

- Takeovers can be done by purchasing a majority stake in the target firm.
- Amalgamation, a distinct form of merger, involves the integration of operations from two or more companies to establish an entirely novel entity.
- Typically preferred by companies within the same industry, the principal aim of amalgamation is to curtail operational expenses and attain synergies by forming this fresh corporate entity.
- Amalgamation is initiated generally by both the companies with an equal interest.
- For its part a merger is the operation whereby two or more companies merge to form a single company either by creating a new company or by one company acquiring the other (s).
- All the companies involved in the merger operation are each required to take and publish the decision in accordance with the rules regulating amendment of import aspects affecting the company in default in accordance with the requirements for constituting a new company.
- A merger entails the dissolution without liquidation of the disappearing company and the universal transfer to the beneficiary company of their assets and liabilities in the state in which they are on the date of wrapping up of the operation.
- Note that third parties (creditors) shall maintain their rights over the company prior to the merger.
- Furthermore, they may request the court within three months from the date of publication of the act of merger to declare the merger void if they fail to receive adequate guarantee from the company.
- In addition, a company may either alone or together with other companies create a new company by the partial transfer of its assets to the new company

ii. The candidate should demonstrate knowledge and understanding on the legal pre-requisite procedure to be followed by companies in amalgamation in amalgamation process

The process of amalgamation

- Amalgamation is when 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.
- 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.
- An amalgamation proposal sets out the terms of the amalgamation, and in particular:
 - ✓ the manner in which shares of each amalgamating company are to be converted into shares of the amalgamated company;
 - ✓ if any shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the

- ✓ holders of those shares are to receive instead of shares of the amalgamated company;
- ✓ any payment to be made to any shareholder or director of an amalgamated company,
- ✓ details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated company.
- ✓ An amalgamation proposal specifies the date on which the amalgamation is intended to become effective.
- If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal provides for the cancellation of those shares when the amalgamation becomes effective without any payment in respect of those shares, and no provision may be made in the proposal for the conversion of such shares into shares of the 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.
 - ✓ 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 is to become effective.
- 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 proposal;
 - ✓ 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.
 - ✓ the amalgamation is authorized by the shareholders of each amalgamating company by special resolution.

(c) The candidate should demonstrate knowledge and understanding on the shareholder's rights to exercise control of the company through resolutions

Ways shareholders can exercise powers by regulations

At a shareholders' annual general meeting:

- It is the meeting whereby the Board of directors invite the shareholders to be held once a year and not later than fifteen (15) months after the last preceding meeting not later than six (6) months after the date of approval of the company's balance sheet.
- A company may not hold its first annual meeting in the calendar year of its incorporation but shall hold that meeting within eighteen (18) months of its incorporation. At an annual meeting shall deal with the following business:
 - ✓ the consideration and approval of the financial statements;
 - ✓ the receiving of any auditor's report;
 - ✓ the consideration of the annual report;
 - ✓ the appointment of any directors;
 - ✓ the appointment of any auditor;
 - ✓ other issues as may be deemed necessary by the annual meeting

At a shareholders' extraordinary general meeting:

- A special meeting of shareholders entitled to vote on an issue put before it is called by the Board of Directors or a person who is authorized by the constitution to call the meeting.
- It is called by the Board of Directors upon request made by written notice served on the company signed by one or more persons holding the right to exercise not less than five per cent (5%) of the votes entitled to be cast on the issues to be discussed at the meeting as set out in the notice

By shareholders' written resolution in lieu of general meeting:

- A resolution in writing, signed by shareholders, is valid as if it has been passed at a meeting of those shareholders, where the resolution
 - ✓ is signed by shareholders are entitled to vote on that resolution at a meeting of shareholders; and hold not less than seventy-five (75%) per cent of the votes entitled to be cast on that resolution, or such percentage above seventy-five (75%) per cent as is required under the incorporation documents
 - ✓ by a unanimous shareholder agreement: a resolution which has the assent of all shareholders entitled to vote on the matter which is the subject of the resolution.

d) The student should demonstrate knowledge and understanding key difference between the incorporated and unincorporated business forms

Limited Liability:

- incorporated business enjoy legal personality is that it provides a form of limited liability to the owners or shareholders.
- This means that the personal assets of individuals associated with the company are generally protected from the company's debts and legal obligations unlike unincorporated.

Perpetual Succession:

- Legal personality allows a company to have perpetual succession, meaning its existence continues even if the ownership or management changes.

- The death, withdrawal, or insolvency of individual members does not lead to the dissolution of the company unlike partnership and sole traders.

Contractual Capacity:

- A legally recognized entity can enter into contracts, sue and be sued in their own name.
- This allows the company to engage in various legal transactions independently of its owners.
- Partnership and sole traders can only enter contract in their own personal names.

Ownership of Property

- A company with legal personality can own property, assets, and intellectual property in its own name.
- This simplifies the transfer and management of assets associated with the business unlike non-incorporated entity that can only own in their sole individual names.

Regulatory Compliance

- Legal personality also subjects the company to certain legal regulations and obligations.
- It must comply with tax laws, employment regulations, and other legal requirements as a separate entity.
- Partnership and sole traders may be exempted from this.

Management:

- the board of directors, whole time directors, managing director or manager, manages a company.
- These persons are selected in the manner provided by the Act and the Articles of Association of the company.
- Partnership and sole traders are directly involved in management of the business.

Common Seal

- A company being an artificial person cannot sign documents.
- The law has provided for the use of a common seal, with the name of company engraved on it, as a substitute for its signature.
- No document issued by the company shall be binding on it unless it bears the common seal, which is duly witnessed by at least two directors of the company.
- Partnership and sole traders can only enter contract in their own personal names and signatures.

Shares and shareholding

- Membership of the company is based on the number of shares held by each member for those companies where capital is denoted in shares and for those whose capital is not denoted in shares the percentage of contribution towards the capital of the company upon which is dividends may be based upon
- On other form of business, the amount contributed by each member is equal and it thus implies that profit is shared equally