CERTIFIED PUBLIC ACCOUNTANT

INTERMEDIATE LEVEL EXAMINATIONS

I1.3: COMPANY LAW

DATE: WEDNESDAY 28, FEBRUARY 2024

MARKING GUIDE AND MODEL ANSWERS

SECTION A

QUESTION ONE

Marking Guide

SN	Distribution of Marks	Marks
(a) i	1 mark for affirmation and 1.5 marks for any 4 legal positions	**7**
ii	1 mark for explaining what is a cellular holding and 1.5 for any 4 positions on cellular holdings	**7**
(b) i	1 mark for affirmation and 1 mark for justification	**2**
ii	1 mark each for any 4 positions on general offer	**4**
(c)	1 mark each for affirmation and 2 marks on powers and 2 marks on notice	**5**
	Total	**25**

Model Answers

- **(i) The candidate is expected to demonstrate knowledge and understanding on holding and subsidiary companies**
- Yes, they are justified
- A subsidiary must not hold shares in its holding company.
- An issue of shares by a holding company to its subsidiary is void.
- A transfer of shares in a holding company to its subsidiary is void.
- However, this Article does not prevent

✓ a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company, but the subsidiary has no right to vote at meetings of the holding company or any class of members thereof;

✓ and the subsidiary, within the period of twelve (12) months or such longer period as the Registrar General may allow after becoming the subsidiary of its holding company, disposes of all of its shares in the holding company.

✓ This paragraph ceases to apply if the subsidiary ceases to be a subsidiary of the holding company;

✓ a subsidiary continues to be a member of its holding company until the commencement of this of law governing companies

However, the subsidiary has no right to vote at meetings of the holding company or any class of members thereof. With respect to any share referred to in this Article:

✓ where the holding company has shares of only one class, the aggregate number of shares held by all the subsidiaries of the holding company or by the holding company as treasury shares, must not at any time exceed ten percent (10%) of the total number of shares of the holding company at that time;

(ii) The candidate is expected to demonstrate knowledge and understanding on Circular holdings

Article 175: Circular holdings

- A subsidiary must not hold shares in its holding company.
- An issue of shares by a holding company to its subsidiary is void.
- A transfer of shares in a holding company to its subsidiary is void.

However, this Article does not prevent

- ✓ a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company, but the subsidiary has no right to vote at meetings of the holding company or any class of members thereof;
- ✓ and the subsidiary, within the period of twelve (12) months or such longer period as the Registrar General may allow after becoming the subsidiary of its holding company, disposes of all of its shares in the holding company.
- ✓ This paragraph ceases to apply if the subsidiary ceases to be a subsidiary of the holding company;
- ✓ a subsidiary continues to be a member of its holding company until the commencement of this of law governing companies

However, the subsidiary has no right to vote at meetings of the holding company or any class of members thereof. With respect to any share referred to in this Article:

- ✓ where the holding company has shares of only one class, the aggregate number of shares held by all the subsidiaries of the holding company or by the holding company as treasury shares, must not at any time exceed ten percent (10%) of the total number of shares of the holding company at that time;
- ✓ where the share capital of the holding company is divided into shares of different classes, the aggregate number of the shares of any class held by all the subsidiaries of the holding company or by the holding company as treasury shares, must not at any time exceed 10% of the total number of the shares in that class;
- ✓ where item 1° or item 2° of this Article is contravened, the holding company disposes of or cancels the excess shares, or procures the disposal of the excess shares by its subsidiary before the end of the period of six (6) months beginning with the day on which that the breach of item 1° and 2° occurs, or such further period as the Registrar General may allow;
- ✓ where the subsidiary is a wholly owned subsidiary of the holding company, no dividend may be paid, and no other distribution, whether in cash or otherwise, of the holding company's assets, including any distribution of assets to members on a winding up, may be made, to the subsidiary in respect of the shares referred to above;
- ✓ where the subsidiary is not a wholly owned subsidiary of the holding company, a dividend may be paid and other distribution, whether in cash or otherwise, of the holding company's assets, including any distribution of assets to members on a winding up, may be made, to the subsidiary in respect of the shares referred to above.

(i) The candidate is expected to demonstrate knowledge and understanding on acquisition by the company of its own shares

- The directors were not justified
- They did not follow the law on acquisition of shares

(ii) **The candidate is expected to demonstrate knowledge and understanding on requirements for general offers**

Article 178: Requirements for general offers

- Directors may make a general offer or special offer to acquire shares only if they have previously resolved:
- That the acquisition in question is in the best interests of the company;
- That the terms of the offer and the consideration offered for the shares are fair and reasonable to the company;
- That they are not aware of any information not available to shareholders:

✓ which is material to an assessment of the value of the shares;

✓ as a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer; any such resolution sets out full reasons for the board of directors' resolution.

- Directors who vote in favor of a resolution required by Paragraph one of this Article sign a certificate as to the matters set out in that Paragraph which may be combined with the certificate required by Article 68 of this Law and any certificate required under Article 179 of this Law.

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

Article 65; Notification of alteration of incorporation documents due to allotment of shares

Yes, they violated the law

- When a company issues shares, the Board of Directors submits to the Registrar General a notice of alteration of the company's incorporation documents within fifteen (15) working days from such an allotment

Article 192: Power to alter incorporation documents

- When a company alters its incorporation documents, the directors, within ten (10) working days of the alteration, deliver to the Registrar General:
- A completed notice of alteration of incorporation documents in the prescribed form;
- Completed consent in the prescribed form signed by any person named in the notice as a new director or secretary. In the case of an allotment of shares, the notice must specify:

✓ The number of shares allotted;

✓ The rights, privileges, limitations and conditions attached to each allotted share or class, and its transferability, if different to Article 85 of this Law.

- In the case of a cancellation of shares, the notice specifies for shares of each class the number cancelled and the date of cancellation. In the case of an alteration of the company's name, the Registrar General issues an amended certificate of incorporation.
- Paragraph One of this Article does not apply to any part of a company's incorporation documents relating to the internal management of the company.
- Where the shareholders of a company are unable to alter the articles of association in the manner provided by the articles of association or this Law, a competent court may upon the application of the shareholders or directors make an order altering the articles of association on terms and conditions as it deems fit.
- The applicant for such an order delivers a copy of the order together with the altered articles to the Registrar General in fifteen (15) working days.

Article 193: Notice of alteration of incorporation documents

- Subject to the provisions of Paragraph 4 of this Article, when a company alters its incorporation documents, the directors, within ten (10) working days of the alteration deliver to the Registrar General:

✓ A completed notice of alteration of incorporation documents in the prescribed form;
✓ Completed consent in the prescribed form signed by any person named in the notice as a new director or secretary. In the case of an allotment of shares, the notice specifies:
✓ The number of shares allotted;
✓ The rights, privileges, limitations and conditions attached to each allotted share or class, and its transferability, if different to Article 85 of this Law.

- In the case of a cancellation of shares, the notice specifies for shares of each class the number cancelled and the date of cancellation.
- In the case of a Paragraph One of this Article does not apply to any part of a company's incorporation documents relating to the internal management of the company n alteration of the company's name, the Registrar General issues an amended certificate of incorporation.

QUESTION TWO

Marking Guide

	Distribution of Marks	**Marks**
(a) i	1 mark each for any 2 legal advices well explained	**2**
ii	2 marks for any 3 positions well explained	**6**
(b) i	1.5 marks each for any 4 responsibilities well explained	**4**
ii	1 mark each for any 4 persons identified	**4**
(c) i	1 mark each for the 4 issues explained in the context	**4**
ii	1 mark for overall overview and 1 mark each for any 4 positions	**5**
	Total	**25**

Model Answers

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

- Munyangabo and Mahoro should go to court and apply for the application for compulsory liquidation
- Because it is not practical under the prevailing circumstances for the shareholders to sit together and pass a resolution for voluntary winding up of the company

(ii) **The candidate is expected to demonstrate knowledge and understanding on appointment of the insolvency practitioner**.

Article 9: Appointment of insolvency practitioner

- The court is solely competent to appoint an insolvency practitioner.
- However, the Registrar General may appoint an insolvency practitioner on a provisional basis in either of the following circumstances:
- If it is to save a loss that may happen to the debtor's assets;
- If the appointed insolvency practitioner has not been approved by the creditors' meeting;
- If the insolvency practitioner has resigned from his or her duties due to different reasons;
- If the appointed insolvency practitioner has failed to execute his or her duties;
- Any other circumstance he or she may deem necessary. A provisional insolvency practitioner appointed by the Registrar General ceases to act in that capacity only by a further decision of the Registrar General or by court order.
- When the court appoints an insolvency practitioner, a provisional insolvency practitioner appointed by the Registrar General ceases to perform his or her duties and submit a report to his or her successor.
- A copy of the report is given to the Registrar General.

(b) (i) The candidate is expected to demonstrate knowledge and understanding on responsibilities of Registrar General in insolvency proceedings

Article 4: Responsibilities of Registrar General in insolvency proceedings

- The Registrar General is the chief administrator responsible for insolvency proceedings.
- Particularly, he or she is in charge of the following:
- to receive and keep an insolvency administration document with regard to the services he or she is going to perform in insolvency proceedings;
- To carry out or set up, if considered necessary, control procedures or investigations on insolvency works and all other related matters;
- To file a claim or intervene in court at any given time in insolvency cases;
- To establish requirements in determining what the individual debtor should be given for subsistence;
- To inform the prosecution of the offence committed against the property of the debtor;
- To appoint a provisional administrator.

(ii) The candidate is expected to demonstrate knowledge and understanding on application for commencement of insolvency proceedings

Article 8: Application for commencement of insolvency proceedings

- An application for commencement of insolvency proceedings for a company is done by filing the application with a competent court.
- An application for commencement of insolvency proceedings may be filed by the following persons:
- Creditors;
- The debtor
- The Directors or one of them;
- The Registrar General;
- Shareholders or partners;
- The regulatory authority.
- Secured creditors are summoned for hearing on the application for the commencement of insolvency proceedings before the court decides.
- A creditor's application is admissible if he or she has an interest and if he or she shows his or her claim as well as the reason why insolvency proceedings should be commenced.
- The court does not appoint an insolvency practitioner if it is manifestly evident that the value of the assets of the debtor is insufficient to cover the costs of the insolvency proceedings.
- In such a case, the court issues a declaration of debtor's insolvency and orders the Chief Administrator to carry out the distribution of available assets to creditors.
- The Registrar General may not be appointed administrator by the court unless he or she was a party to the case in which such a decision was rendered.

(c) (i) The candidate is expected to demonstrate knowledge and understanding on prescription relating to the extinction of rights by lapse of time

- The issues raised in the case scenario relates to the prescription and lapse of time for taking legal action before a court of law
- Acts of promotors of the company like sale of land and making secret profit contrary to the fiduciary relationship is time barred
- Dividend arrears outstanding for the period of six years is barred because action to recover them could have been done before the lapse of five years
- Those that received more than their share of dividends were equally to have returned it back within a period of five years
- Action against some board members is also time barred

(ii) **The candidate is expected to demonstrate knowledge and understanding on prescription relating to the extinction of rights by lapse 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 10years from the date the right of action accrued.
- 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;

✓ 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 THREE

Marking Guide

SN	Distribution of Marks	Marks
(a) i	1 mark for affirmation and I mark for justification	**2**
ii	1 mark for any 3 explanations	**3**
iii	1 mark each for any 3 elements	**3**
(b) i	1 mark for the legal actin and 1 mark for basis for the action	**2**
ii	1 mark for any 2 justifications	**2**
(c) i	1 mark for the affirmation and 1 mark each for any 3 justifications	**4**
ii	1 mark each for any for explanations on the legal status	**4**
	Total	**20**

Model Answers

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

- No there is no contract
- All has happened before the company was formed and so far there is no law which has been violated

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

- There is no breach of contract as none of such contract had been entered
- The money had been provided to be safely kept which was done and no co-relation between the said money and the loan
- It can be a case from a remote point of view of mistrust and not breach of law

- The company having not been incorporated the aspect of ties is out

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

There is no company contract unless there is a combination of the following elements:

- The shares from one or several shareholders;
- The vocation of all to the profits;
- The affectio societatis

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

- They can initiate a civil legal proceeding under breach of trust
- affectio societatis basically requires that the parties to the contract promote the common purpose for their best interest
- The formation of the parallel company by Nyinawimana Divine was in bad faith
- Taking advantage of her position of trust violates even the vocation in sharing profits

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

- Nyinawimana Divine shall not be allowed to share in the profits of the company because already she has made millions out of the company's name
- She can only be party to any share nor profit after she has fully returned all the money earned through the company

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

- No, Gasasira is not the owner of the company
- The moment the company is registered it becomes a legal entity separate from its members
- This is to say that it is treated as an entity separate and distinct from that of its owners.
- The company is capable of enjoying rights and of being subject to duties which are not the same as those enjoyed or borne by its members except to the extent and in the manner provided by law.
- Notwithstanding the shares held by Gasasira he is still a member like any other members and thus entitled to his rights

(ii) **The candidate is expected to demonstrate knowledge and understanding on legal status of a company**

The separate entity principle for KHTC has several important consequences among which include:

- **Company is Liable for its Own Debts**; The shareholders are not liable for the debts and liabilities of the company and cannot be sued by the company's creditors. A shareholder can be a debtor or creditor of the company and can sue or be sued by the company.
- **Limited Liability**; The liabilities of the company stay with the company and do not extend to its members who have fully paid up for their shares.

- **Company Property** The company owns its property. The shareholders have no direct right to the full or any share of the company's property. A person who no longer wishes to be a member is only entitled to whatever price he can get for his shares. A shareholder has no legal ownership interest in the company's property and cannot insure or deal with it in his personal capacity.
- **Contractual Capacity**; The company has full contractual capacity. The company can negotiate, execute or sign any contract and only the company can enforce its contracts.
- **Crimes**; Generally, a company cannot be convicted of a crime that requires physical acts or for which the only available sentence is imprisonment. The owners, directors, or officers will be convicted for crimes committed for or on behalf of the company. More often, a fine is imposed to be paid by the company for an offence or breach of any law.
- **Borrowing**; A company can borrow money and grant security for its debt. Only a company can create a floating charge. Floating charges are securities that do not attach to any particular asset, but floats over the company's assets as they exist from time to time.
- **Acts of the Company** Although an incorporated company attains a separate legal entity, it acts through certain individuals also known as the agents or authorized representatives of the company.

QUESTION FOUR

Marking Guide

SN	Distribution of Marks	Marks
(a) i	1 mark each for any 4 legal positions of promoters of a company	**4**
ii	1 mark for 4 well elaborated positions of pre-incorporation contracts	**4**
(b) i	1 mark for affirmation and 1 mark for justification	**2**
ii	2 marks for any 3 positions well elaborated	**6**
(c) i	1 mark for affirmation and 1 mark each for any 3 positions of law	**4**
	Total	**20**

Model Answers

(a) (i) The candidate is expected to demonstrate knowledge and understanding on Formalities of carrying on business

- Bategeka Bushoro is the promoter of the company who laid the foundation of the company
- In relation to the role of a promoter to the company he forms he has a fiduciary relationship
- He is expected at all time to work in good faith based on the relationship of trust which he enjoys
- He is not expected to take any advantage whatsoever from the company that he is forming as evidenced in the case scenario

(ii) **The candidate is expected to demonstrate knowledge and understanding on Pre-incorporation contracts**

Article 49: Pre-incorporation contracts

- A pre-incorporation contract may be ratified by the company after its incorporation and thereupon the company is bound by it and entitled to the benefit of it as if the company was in existence at the date of the reincorporation contract and as if the company had entered into the contract.
- A pre-incorporation contract may be ratified within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.
- Before ratification by the company, the person who purported to act in the name or on behalf of the company is, in the absence of express agreement to the contrary, personally bound by the pre-incorporation contract and entitled to the benefit of it.
- A pre-incorporation contract is ratified by a company in the same manner as a contract or other enforceable obligation may be entered into by a company under this Law.
- A party to a pre-incorporation contract that is not approved in all or a part of its provisions by the company after its registration may file a claim to the competent court.

(b) (i) **The candidate is expected to demonstrate knowledge and understanding on the method of contracting**

- No, the contract is not binding
- The company secretary has no power to enter into a contract on behalf of the company

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

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
✓ 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

(c) **The candidate is expected to demonstrate knowledge and understanding on application for company name reservation**

- Ngendahimana Regis is not justified to take legal action because he had not complied with law

Article 36: Application for company name Reservation

- An application for a name reservation is made by a person who wishes to form a company or who wishes to change the name of a company.

- Instructions of the Registrar General determine modalities for company name reservation.
- Where the Registrar General approves such an application, the name is reserved in the company register for a period of three (3) months renewable only once upon application.
- Where the Registrar General rejects an application for a name reservation, the Registrar General notifies the applicant in writing within two (2) working days from the date on which such an application was received stating the reasons for rejection.
- However, the reservation of a name does not by itself entitle the proposed domestic or foreign company to be registered under that name, either originally or on a change of name.

SECTION B

QUESTION SEVEN

Marking Guide

SN	Distribution of Marks	Marks
(a) i	1 mark for the arrangement and 1 mark each for any 3 areas of such arrangement	**4**
ii	2 marks each for any 3 legal opinions provided	**6**
(b)	2 marks each for any 5 legal rights well explained	**10**
(c) i	1 mark for affirmation and 3 marks for any 3 information not provided	**4**
ii	1 mark each for any 6 legal positions well elaborated	**6**
	Total	**30**

Model Answers

(a) (i) The candidate is expected to demonstrate knowledge and understanding on scheme of arrangement

- The case scenario is a bout the scheme of arrangement intended to caution a company which otherwise may be forced out of business
- A scheme of arrangement is a court-approved agreement between a company and its shareholders or creditors.
- In order to affect a scheme of arrangement, the scheme must receive approval from the relevant creditors and/or members and be sanctioned by the court.
- It is important to remember that the court will consider the scheme and the process used carefully; court approval of the scheme is not a foregone conclusion.
- The terms of the scheme of arrangement must therefore be reasonable, fair and legitimately aim for an agreement to be reached between the company and its creditors and/or members.

(ii) The candidate is expected to demonstrate knowledge and understanding on scheme of arrangement

- The transformation of a company is the operation whereby a company changes its legal form by decision of its partners.
- The transformation of the company does not result in the creation of a new corporate body.
- The act of transformation amounts to an amendment of the Articles of Association which is subject to the publication formalities seen above.
- Nevertheless, if the transformation of a company has the effect of increasing the commitment of a shareholder in which the shareholders liability is limited to their contributions into one in which their liability is unlimited the consent of the shareholder in question is required.
- 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.
- Note that the decision transferring part of the assets of the company is taken and published in accordance with the rules to be observed when amending important aspects of the company.
- In default the rules regulating the reduction of the capital of the company must be strictly followed.

(b) The candidate is expected to demonstrate knowledge and understanding on the rights of creditors under scheme of arrangement

- Rights of creditors transformation does not destroy the rights of creditors of the company
- Accordingly, creditors shall maintain their rights over the company prior to such transformation.
- In addition, the creditors may petition the court to nullify the transformation if they fail to obtain sufficient guarantee from the company

- Scheme of arrangement is an agreement which allows a company in financial distress to fulfil its obligations to its creditors by restructuring the debts of the debtor company and varying, whenever appropriate, the rights of its creditors.
- In a moratorium scheme of arrangement, the creditors and the debtor company agree that the debt will be restructured.
- Although the payments are postponed, the creditors will be paid in full.
- In a compromise scheme of arrangement, the creditors agree that they will not be paid the full amount owed to them.
- Once the discounted amount agreed upon is paid, the debtor company will be discharged by the creditor
- Equally their right to approach the court when the scheme of arrangement entered is not respected.
- The creditors right to sit on the table and receive what is due to them during liquidation is also respected

(c) (i) The candidate is expected to demonstrate knowledge and understanding on registration of foreign company

- The information provided was not sufficient for critical information was missing as indicated below

- A foreign company that establishes a place of business dealing with share transfer or establishing a place of business.

- To apply for the registration of a foreign company, a duly completed application for registration in the prescribed form, signed by the representative of the foreign company is delivered to the Registrar General.

The application states:

- The name of the foreign company;

- The full names, residential addresses of the directors of the foreign company;

- The principal place of business and address of the company;

- The foreign company's accounting reference date; and the application has in attachment:

✓ A copy of evidence of registration certificate of the foreign company;

✓ Subject to Paragraph 3 of this Article, a certified copy of the instrument defining the constitution of the foreign hare registration office within Rwanda applies for registration within ten (10) working days of company, and if the instrument is not written in the English language, a certified translation of it;

✓ A memorandum of understanding or power of attorney to represent the company in Rwanda;

✓ A declaration indicating the authorized representatives of the company.

(ii) The candidate is expected to demonstrate knowledge and understanding on registration of foreign company

- The information provided was not sufficient for critical information was missing as indicated below

Article 247: Application for registration

- A foreign company that establishes a place of business dealing with share transfer or establishing a place of business.

- To apply for the registration of a foreign company, a duly completed application for registration in the prescribed form, signed by the representative of the foreign company is delivered to the Registrar General.

The application states:

- The name of the foreign company;
- The full names, residential addresses of the directors of the foreign company;
- The principal place of business and address of the company;
- The foreign company's accounting reference date; and the application has in attachment:

✓ A copy of evidence of registration certificate of the foreign company;

✓ Subject to Paragraph 3 of this Article, a certified copy of the instrument defining the constitution of the foreign hare registration office within Rwanda applies for registration within ten (10) working days of company, and if the instrument is not written in the English language, a certified translation of it;

✓ A memorandum of understanding or power of attorney to represent the company in Rwanda;

✓ A declaration indicating the authorized representatives of the company.

- The instrument constituting or defining the constitution of the foreign company need not be delivered to the Registrar General if it deals with solely the internal management of the company, and if a part of the instrument so deals, that part need not be delivered.

QUESTION SIX

Marking Guide

SN	Distribution of Marks	Marks
(a) i	2 marks for any 2 actions well explained	**4**
ii	2 marks for any 3 positions well explained	**6**
(b) i	1 mark for affirmation and 1 mark for	**2**
ii	1.5 marks for the removal and 1.5 marks for the effect thereof	**3**
(c)	1 mark each for any 5 pertinent provisions	**5**
(d) i	1 mark each for any 4 legal positions	**4**
ii	1 mark each for any 4 legal positions	**4**
iii	1 mark each for any 2 legal positions	**2**
	Total	**30**

Model Answers

(a) (i) The candidate is expected to demonstrate knowledge and understanding on investigation ordered by the minister

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
- That the company is endangering the public as a result of substandard products
- That the company is contradicting the laws of the land including morality

(ii) The candidate is expected to demonstrate knowledge and understanding on cessation of a foreign company in Rwanda.

- In the terms of the article 340, where a foreign company ceases to have a place of business or to carry on business in Rwanda, it shall, within seven (7) days of the date of the cessation, file with the Registrar General a notice to that effect, and as from the day on which the notice is filed, its obligation to file any document other than a document that ought to have been filed shall cease to operate, and the Registrar General shall within three (3) months after the filing of the notice remove the name of the company from the register.
- 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

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

- Yes, Ngororero were justified to go to court
- The procedure laid down by law was not followed as evidenced in the case study

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

Article 322: Removal from the register of companies

- Where the 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.

- 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.

- **Article 323: Effects of removal from the register of companies**

- The removal of a company from the register of companies under this Law cannot:

- Prejudice or affect the identity of the company that was constituted or its continuity as a company;

- Affect the property, rights, or obligations of that company;

- Affect proceedings by or against that company. Proceedings that have been commenced or continued by or against a Company before the company was removed from the register of companies in Rwanda may be commenced or continued by or against the company that continues in existence after the removal of the company from the register of companies in Rwanda

(c) The candidate is expected to demonstrate knowledge and understanding on pertinent provisions in relation to the removal from the register of companies

- A company shall be removed from the register of companies when a notice, signed by the Registrar General states that the company is removed from the register (art. 354). Concerning reasons for removal from the register of companies article 355 specifies that The Registrar General shall remove a company from the register of companies where :
- The company is an amalgamating company, other than an amalgamated company, on the day on which the Registrar General issues a certificate of amalgamation;
- The Registrar General is satisfied that the company has ceased to carry on business.
- However, article 357 provides for possible objections in the following manner: Where a notice is given of an intention to remove a company from the register, any person may deliver to the Registrar General, not later than the date specified in the notice, an objection to the removal on grounds that:
- The company is still carrying on business or there is other reason for it to continue in existence;
- The company is a party to legal proceedings;
- The company is in receivership or liquidation, or both;
- A person is a creditor or a shareholder, or a person who has an undischarged claim against the company;
- The person believes that there exists, and intends to pursue, a right of action against the company;
- For any other reason, it would not be just and equitable to remove the company from the register.

(d) (i) **The candidate is expected to demonstrate knowledge and understanding on investigation ordered by the minister**

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
- That the company is endangering the public as a result of substandard products
- That the company is contradicting the laws of the land including morality

(ii) **The candidate is expected to 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: a) one shareholder or a group of shareholders holding at least one-tenth (1/10) of the issued shares in the company;
- Debenture holders holding not less than one-fifth (1/5) in nominal value of not less than one-fifth (1/5) in number of the persons on the share register; 3
- 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.

(iii) **The candidate is expected to demonstrate knowledge and understanding on appointment of inspector of the business of the company**

Article 293: Appointment of inspector of the business of the company

- An inspector of the business of a company appointed by the Registrar General has the power to investigate the business of a company pursuant to Article 292 of this Law.
- The appointed person must be a qualified, skilled and experienced professional manager.
- The appointed inspector prepares a report according to the format and procedure required by the Registrar General.

END OF MARKING GUIDE AND MODEL ANSWERS