



AUE1601

October/November 2017

Legal Aspects in Accountancy

Duration 2 Hours

100 Marks

EXAMINATION PANEL AS APPOINTED BY THE DEPARTMENT.

Use of a non-programmable pocket calculator is permissible.

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

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THIS PAPER CONSISTS OF EIGHT (8) PAGES

This paper consists of the following questions and main topics

QUESTION	MAIN TOPIC	MARKS
1.	Shares held by subsidiaries, Standards of directors' conduct, Removal of director from the board, Financial assistance for the subscription of shares, Whistle-blowers, Director placed on probation	50
2.	Pre-incorporation contracts, Company secretary requirements, Public Interest Score, Alterable/unalterable provisions in the Memorandum of Incorporation, Board meeting quorum and voting rights, Appointment of auditors	<u>50</u>
		<u>100</u>

NOTE:

The main objective of the examination is to test a candidate's knowledge and ability to apply the study material, although the examiners will also take into account the candidate's ability to organise and present that knowledge in writing and according to an acceptable standard

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In this paper, references to the Companies Act are to the Companies Act 71 of 2008, as amended and the Companies Regulations 2011, of the Republic of South Africa

QUESTION 1

50 marks

Background information

Armstrong (Pty) Ltd ('Arms') is a company that develops and packages aerosol and liquid products. Arms was founded in 1994 by David Doberman (Managing director), Peter Pitbull (Financial director), Richard Rottweiler (Marketing director) and Andre Akita (Sales director). Arms has two factories in operation.

Arms holds an equity interest of 85% in Mattheson (Pty) Ltd ('Mats'). Mats is also in the packaging business with its main business activities concentrating on the packaging of shampoos, conditioners and lotions.

The following extract is from Arms' annual financial statements at 30 September 2017.

	2017
	R
ASSETS	
Total non-current assets	19 000 000
Total current assets	15 000 000
	<u>34 000 000</u>
LIABILITIES	
Total non-current liabilities	13 000 000
Total current liabilities	19 000 000
	<u>32 000 000</u>

The following extract is from Arms' notes to the annual financial statements for the financial year-end of 30 September 2017.

	2017
	R
8. SHARE CAPITAL	
Authorised share capital	
100 000 ordinary shares	100 000
Issued share capital	
80 000 ordinary shares	80 000

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Legal matters

You are a trainee auditor. The engagement partner on the audit, who is an expert on the Companies Act, has requested that you assist him in evaluating the following proposed matters that have come to his attention during the audit of Arms.

Matter 1

Mats currently holds 5 000 shares in Arms. The directors of Arms plan to issue a further 10 000 shares. All of the existing shareholders were offered a pre-emptive right to subscribe for these shares, however only Mats and a third party were interested in subscribing for 5000 shares each. Thus, after the share issue Mats will own 10 000 shares.

The purchase of the remaining 5000 shares by the third party will be separately dealt with under matter 3.

Matter 2

David Doberman, Richard Rottweiler and Peter Pitbull decided to remove Andre Akita as a director of Arms during an informal discussion while on a fishing excursion to Sodwana Bay. They did not give a specific reason for dismissing him other than they feel that Andre Akita is not performing adequately. They still have to formally advise Andre Akita of their decision.

Matter 3

David Doberman approved the granting of a loan of R500 000 to Mrs Rissik (an unrelated third party) in order to purchase 5000 shares in Arms. The loan is to be repaid in fixed monthly instalments at an interest rate of 13.5% over a period of two years. The prime lending rate is currently 10.5%.

Matter 4

Peter Pitbull confidentially approached the engagement partner and advised that the waste disposal practices of Arms are resulting in environmental damage to the area surrounding the factories. He has asked you for more information regarding protection for whistle-blowers.

He is also concerned that David Doberman is going to put him on probation because of Peter's dissatisfaction with the current waste disposal practices. Peter has raised his issues with David Doberman on several occasions and David Doberman has continuously dismissed him as a troublemaker.

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REQUIRED	Marks
1.1 With reference to the background information and matter 1 of the scenario:	
State whether or not it is legal for Mats to hold 10 000 shares in Arms Give a reason for your answer	(3)
1.2 With reference to the background information and matter 2 of the scenario:	
1.2.1 List six (6) of the requirements for the standards of directors' conduct in terms of section 76 of the Companies Act	(6)
1.2.2 Describe the Companies Act requirements, in terms of section 71, which should be considered when removing a director from his position	(7)
1.2.3 State , based on the requirements described in 1 2 2 above and information given in the scenario, whether or not Andre Akita was legally removed from his position as a director Give reasons for your answer	(9)
Communication skills question 1.2.3: Application to theory	(1)
1.3 With reference to the background information and matter 3 of the scenario:	
1.3.1 Describe the Companies Act requirements, in terms of section 44, that need to be complied with in order to provide financial assistance for the subscription of its shares	(6)
1.3.2 Explain with reasons whether or not the granting of the loan by David Doberman to Mrs Rissik is considered legal in terms of the Companies Act requirements as described in 1 3 1 above and information given in the scenario	(10)
Communication skills question 1.3.2: Clarity of expression	(1)
1.4 With reference to matter 4 of the scenario:	
1.4.1 Advise whether or not Peter Pitbull will be offered protection as a whistle-blower and what type of protection may be offered to whistle-blowers in terms of the Companies Act	(3)
1.4.2 Describe the requirements that must be met in order to put Peter Pitbull on probation and whether David Doberman is permitted to put him on probation	(4)

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QUESTION 2

50 marks

You are currently enrolled at UNISA for AUE1601. You are also a trainee auditor assigned to assist a senior director at your firm on dealing with client matters with regard to the Companies Act.

Background information

Baobab (Pty) Ltd ('Baobab') is a company that was incorporated on 30 June 2017. It holds a chain of coffee shops throughout South Africa. The majority of the shares in Baobab is owned by Ms Oak and Ms Acacia. The remaining minority shareholding is owned by a further ten shareholders.

The average number of employees is 55. The turnover from incorporation until 31 July 2017 is R10.3 million. The company has a long-term loan with Kiepersol Bank for an amount of R12 million. Short-term liabilities, owed to third parties, amount to R3.8 million.

On 1 June 2017, Mr Fever entered into a written contract in the name of Baobab with Regal Robusta, a supplier of coffee beans that will be used in all the coffee shops.

BAOBAB (PTY) LTD
MINUTES OF MEETING OF THE BOARD OF DIRECTORS HELD ON
31 July 2017

Present:

Ms Mopane, chairman and independent non-executive director
Mr Marula, non-executive director
Mr Fever, sales and marketing director
Ms Acacia, finance director
Ms Oak, managing director
Ms Willow, company secretary
Mr Ficus, chief audit executive

Matters for discussion:

Matter 1: Contract with Regal Robusta

The board resolved that the written contract entered into by Mr Fever be rejected as Regal Robusta has turned out to be unreliable with regard to timely delivery of coffee beans.

Matter 2: Company secretary

Ms Willow, an expert on company law, is an Australian citizen. She is, however, in possession of a South African work permit and has resided in Johannesburg for the past six years. She is concerned that she does not adhere to the necessary requirements to act as company secretary. She has requested more information on these requirements.

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Matter 3: Calculation of public interest score

Ms Acacia has calculated the public interest (PI) score as 92 up until 31 July 2017. She presented her calculations to the board as follows.

	Number/Amount	PI Score
Average number of employees	55	55
Long-term liabilities	R 12 million	12
Number of directors	5	5
Number of shareholders	10	10
Turnover	R10 3 million	10
Total		92 points

Matter 4: Provisions in the Memorandum of Incorporation requiring alteration

The directors would like to include the following requirements/provisions in the company's Memorandum of Incorporation (MOI). Ms Mopane has undertaken to obtain more information on which of these provisions mentioned below may be included in the MOI by finding out which of them are alterable or unalterable in terms of the Companies Act

- (i) Par value shares of R1 00 each will be issued to the shareholders
- (ii) Changes to the Memorandum of Incorporation may be authorised by the board as long as all of the directors are present
- (iii) The notice period for a shareholders meeting will be 15 business days
- (iv) The solvency test and liquidity test does not need to be applied when performing a share capitalisation
- (v) Shares issued to directors may be authorised by ordinary resolution of shareholders
- (vi) For an ordinary resolution of shareholders to be approved it must be supported by 55% of the voting rights exercised on the resolution
- (vii) For a special resolution of shareholders to be approved it must be supported by 70% of the voting rights exercised on the resolution

Matter 5: Quorum and voting at board meetings

Ms Mopane requested the following information from Ms Willow

- (i) Who of the seven (7) people present at the board meeting are not permitted to form part of the quorum at a directors' meeting?
- (ii) What percentage of the voting rights need to vote in favour of a resolution for a directors' resolution to be approved?

Matter 6: Appointment of auditors

The directors would like the annual financial statements of Baobab to be audited annually. Ms Willow informs them that they will have to amend the Memorandum of Incorporation by including a clause requiring that Baobab's annual financial statements be externally audited on an annual basis.

Bella, Ms Acacia's daughter, has her own public practice and is a registered auditor. The directors would like to appoint her as their external auditor.

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REQUIRED	Marks
2.1 With reference to the background information and matter 1 of the minutes:	
2.1.1 Describe the Companies Act requirements that need to be considered when entering into a pre-incorporation contract in the name of a company	(6)
2.1.2 Discuss the legality and consequences of the decision to reject the contract entered into between Mr Fever and Regal Robusta	(8)
Communication skills question 2.1.2: Application to theory	(1)
2.2 With reference to matter 2 of the minutes:	
2.2.1 Describe two (2) conditions in terms of the Companies Act that must be satisfied in order to be legally appointed as a company secretary	(2)
2.2.2 State whether Ms Willow's appointment as the company secretary is legal. Give reasons for your answer	(2)
2.3 With reference to the background information and matter 3 of the minutes:	
2.3.1 Indicate, with a reason, which of the points, calculated by Ms Acacia and included in her total public interest score, you do not agree with and for those you do not agree with give the correct score	(7)
2.3.2 Calculate the correct total public interest score based on the available information	(3)
Communication skills: Clarity of expression and communication skills	(1)

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REQUIRED (continued)

Marks

2.4 With reference to matter 4 of the minutes:

State whether the proposed requirements/provisions in (ii) – (vii) are **permitted** to be **alterable** or **unalterable** in Baobab’s Memorandum of Incorporation **Give a reason** for each answer

(12)

Present your answer in the following format:

Note the following answer to point (i) is provided as an example of what is required No marks will be awarded for repeating the information in the example

Requirement/Provision	Alterable or unalterable (1 mark each)	Reason (1 mark each)
(i)	Unalterable	A share does not have a nominal or par value
(ii)		

Communications skills: Answer presented in tabular format.

(1)

2.5 With reference to matter 5 of the minutes and the individuals present at the directors’ meeting:

2.5.1 Name the individuals who may not form part of the quorum for the directors’ meeting

(2)

2.5.2 State the percentage of voting rights that need to vote in favour of a directors’ resolution for approval of the resolution

(1)

2.6 With reference to matter 6 of the minutes:

2.6.1 Describe who can propose the amendment to the Memorandum of Incorporation and what **authorisation** is required

(2)

2.6.2 State whether or not Bella is eligible to be appointed as the auditor of Baobab **Give a reason** for your answer

(2)