



AUE1601

May/June 2017

LEGAL ASPECTS IN ACCOUNTANCY

Duration 2 Hours

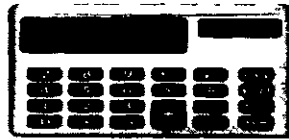
100 Marks

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 the following questions and main topics

QUESTION	MAIN TOPIC	MARKS
1	Categories of companies, Public interest score, Type of engagement, Company records, Appointment of auditor, Removal of director from the board	50
2.	Issuing of shares, Consideration of shares, Financial assistance, Disposal of major part of company's assets, Solvency and liquidity tests, Business rescue, Whistle-blowers	<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 and the Companies Regulations of the Republic of South Africa

QUESTION 1

50 marks

Background information

You are a specialist in company law and are currently advising a number of clients about compliance issues and various aspects of the Companies Act and Company Regulations

Information relating to each of the clients is indicated below

Gold Products (Pty) Ltd

Susan Gold established Gold Products (Pty) Ltd (GP), a company that buys and sells gold jewellery to the public, in 2011. She held 100% of the shares in GP before she recently transferred all her shares to her adopted son, David as a birthday present.

Katy, David's wife, invited him for lunch and discussed the possibility of her brother Kevin starting a career at GP. She is aware that her brother is struggling to find work due to the current economic situation.

Giving Hope NPC

Amy Jacobs and her two best friends incorporated Giving Hope NPC (GH) in 2012. It is a non-profit organisation that supports children's homes by providing them with basic necessities such as clothes, blankets, toiletries, nappies and formula milk. The three friends, currently the only directors at GH, studied medicine together and after qualifying as medical doctors, regularly visited children's homes to provide free medical assistance. At the children's homes they realised the need for basic necessities and decided to start an organisation to collect goods or money donations from the public for the distribution to children's homes. All income and goods are applied towards the children's homes.

Since its incorporation, GH has grown considerably and the need arose for another director to assist with the day-to-day activities. Debbie Stone, an old school friend that is currently unemployed after being dismissed for dishonesty, was appointed as a director by Amy. Debbie assured Amy and her friends that the allegations of dishonesty were not true.

Wine time (Pty) Ltd

Wine time (Pty) Ltd (Wine time), was incorporated on 1 February 2017 by Bernie Els, a well-known wine maker in the Western Cape. The company exports 80% of its wine to Europe and sells 20% locally in the leading supermarkets. The board of directors consist of four executive directors, including Bernie Els.

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On 18 January 2017, prior to the incorporation of Wine time, Bernie Els on behalf of Wine time, entered into a written agreement (contract) with a wine merchant in Greece to export its finest wines on a monthly basis

On 2 March 2017, the board of directors resolved that the contract entered into between Bernie and the foreign wine merchants should be rejected in full, due to incorrect selling prices that appear on the contract

For the financial year ended 30 April 2017

- On average 25 employees were employed during the year
- The board of directors consisted of four directors
- There were eight shareholders
- Total assets equal R20 million
- Total third-party liabilities equal R6 million
- Share capital equals R2 million
- Turnover for the year was R10 million

The board members need advice from you on the following matters

- 1 Whether accounting/company records should be kept (retained) or not, and for how long
- 2 Whether a company secretary should be appointed and what the requirements are in terms of the Companies Act

REQUIRED

Marks

- 1.1 With reference to the information relating to **Gold Products (Pty) Ltd**:
- 1.1.1 **Discuss** whether Susan is **related** to Gold Products (Pty) Ltd after the share transfer (4)
- 1.1.2 **Discuss** whether David and Kevin are **related** to each other (3)
- 1.2 With reference to the information relating to **Giving Hope NPC**:
- 1.2.1 **Discuss** whether Giving Hope NPC qualifies to be a **non-profit company** in terms of the Companies Act (6)
- 1.2.2 **Discuss** the **legality** of the appointment of Debbie Stone as director of Giving Hope NPC, in terms of the Companies Act (2)
- 1.3 With reference to the information relating to **Wine time (Pty) Ltd**:
- 1.3.1 **Discuss** the **legality** and consequences of the decision to reject the contract entered into between Bernie Els (on behalf of Wine time) and the wine merchants by
- **Stating** the requirements of the Companies Act (8)
 - **Applying** the requirements of the Companies Act to the scenario (6)
- Communication skills: Application to theory** (1)

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REQUIRED (continued)	Marks
1.3.2 Calculate the public interest score for Wine time (Pty) Ltd for the year ended 30 April 2017 Show your workings and give reasons	(8)
Communication skills: Clarity of expression	(1)
1.3.3 Based only on the public interest score calculation in 1.3.2, advise whether Wine time (Pty) Ltd should be audited or reviewed Give a reason for your answer	(2)
1.3.4 Advise Wine time (Pty) Ltd on whether or not to keep accounting/company records and if so, for how long	(2)
1.3.5 Advise Wine time (Pty) Ltd whether it is required to appoint a company secretary	(2)
1.3.6 Describe the duties of the company secretary in terms of the Companies Act	(5)

QUESTION 2

50 marks

Background information

You are a trainee auditor at the auditing firm, Zet Incorporated (Zet) which also specialises in company law

Babula (Pty) Ltd (Babula) conducts business in the tourism industry. The company owns eight game lodges in South Africa that mainly provide accommodation to tourists. The standard of accommodation varies considerably, from rustic bush camps, sometimes tented, to luxury lodges with the character of upmarket hotels.

The following is an extract from Babula's statement of financial position for the year ended 30 April 2017

	2017 R
ASSETS	
Total non-current assets	55 000 000
Total current assets	<u>25 000 000</u>
	<u>80 000 000</u>
LIABILITIES	
Total non-current liabilities	32 000 000
Total current liabilities	<u>23 000 000</u>
	<u>55 000 000</u>

The company is in a net asset position of R25 000 000 as at 30 April 2017

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1. Financial assistance to a director to acquire shares

Mr Solomon, the marketing director of Babula, approached the board of directors to obtain a loan of R1 million to enable him to purchase shares in Babula. Mr Solomon is of the opinion that a shareholding in Babula will be an excellent investment. It is his first time acquiring shares in a company.

The board of directors approved the granting of a loan to Mr Solomon to acquire shares in Babula with no director opposing the resolution. This is the first time this type of loan will be approved and granted since the incorporation of Babula.

The loan application guarantees that the loan will be repaid in full over two years and that interest at the prime overdraft rate will be applicable. The board evaluated that all the conditions and restrictions in respect of the granting of financial assistance, as set out in the Memorandum of Incorporation (MOI) of Babula, will be satisfied if the loan is granted to Mr Solomon. Notice of these resolutions will be provided to all shareholders in writing within 18 business days.

2. Disposal of the greater part of the company's assets

In an effort to improve Babula's financial position and generate cash flow, Mr Buck, the managing director of Babula, proposed that Babula dispose of all the game lodge properties it owns, and focus solely on the renting and cleaning segments of the business. The book value of these properties is R50 million.

The board sent a notice, within the required number of days in terms of the MOI, to Babula's shareholders to inform them of the board's intention to dispose of all game lodge properties. The directors explained that the decision would not have any negative impact on turnover.

A special resolution was adopted by 80% of shareholders entitled to exercise voting rights on the relevant matter. The minutes of the shareholder meeting indicated a quorum of 32% of shareholders entitled to exercise voting rights was present.

3. Contract with major supplier

In February 2017, Mr Wilson, the financial director of Babula, convinced the board members to enter into a contract with Cleaning Supplies (Pty) Ltd (Cleaning) to deliver cleaning products to Babula for the next five years. A board meeting, which was held for a board resolution to be taken on the contract between Babula and Cleaning, was attended by all directors, including Mr Wilson. All attendees voted in favour of the contract.

Mr Wilson only remembered at the meeting to inform the board members that his daughter, Ms Samuel, is the managing director of Cleaning. Mr Wilson knows it is imperative for all directors to comply with the standards of director's conduct in terms of the Companies Act. The board members agreed that family should stand together, as there is immense pressure on the economy due to the global financial crisis. No further information was requested by the board members.

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4. Possible business rescue

Mr Bird, Babula's managing director, stated that the board is unsure whether a company can voluntarily enter into business rescue proceedings. The board is currently considering various techniques to radically improve the company's financial position to attract more investors. It was resolved that business rescue proceedings will be discussed at the next board meeting.

5. Whistle-blowers

The company secretary discussed the content of section 159 of the Companies Act "Protection for whistle-blowers" at a workshop on corporate governance.

REQUIRED

Marks

2.1 Refer to matter 1 Financial assistance to a director to acquire shares.

Evaluate and conclude on the **legality** of providing financial assistance to Mr Solomon for him to acquire shares in Babula (Pty) Ltd in terms of the requirements of the Companies Act. Present your answer under the following headings.

2.1.1 Financial assistance to a director (8)

2.1.2 Issuing of shares to a director (6)

Communication skills: Application to theory (question 2.1.1 and 2.1.2) (1)

2.2 Refer to matter 2 Disposal of the greater part of the company's assets.

2.2.1 Discuss the legality of the disposal of the game lodge properties in terms of the Companies Act (assuming that the company is not under business rescue) (9)

Communication skills: Application to theory (1)

2.3 Refer to matter 3 Contract with major supplier.

2.3.1 Discuss the legality of the contract between Babula (Pty) Ltd and Cleaning Supplies (Pty) Ltd, particularly in view of the relationship between Mr Wilson and Ms Samuel, in terms of the requirements of the Companies Act (10)

Communication skills: Application to theory (1)

2.3.2 List the requirements for the standards of a director's conduct in terms of the Companies Act (9)

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REQUIRED (continued)	Marks
2.4 Refer to matter 4: Possible business rescue	
2.4.1 Explain whether or not Babula can voluntarily begin with business rescue proceedings	(3)
2.5 Refer to matter 5: Whistle-blowers.	
2.5.1 List two instances when "Protection for whistle-blowers" in terms of section 159 of the Companies Act, can be applied in a company	(2)