

Tutorial Letter 201/1/2016

LEGAL ASPECTS IN ACCOUNTANCY

AUE1601

Semester 1

Department of Auditing

IMPORTANT INFORMATION:

This tutorial letter contains the suggested solution and comments on Assignment 01

BAR CODE

Question	Alternative	Reference to the study guide
1	3	Topic 3 (learning unit 3.1.3)
2	4	Topic 6 (learning unit 6.3.1)
3	2	Topic 1 (learning unit 1.1.3)
4	3	Topic 1 (learning unit 1.2.2)
5	4	Topic 1 (learning unit 1.2.3)
6	3	Topics 1 & 3 (learning units 1.1.3 & 1.2.1 & 3.3.2 & 3.3.3)
7	2	Topic 4 (learning unit 4.1.2)
8	1	Topic 3 (learning units 3.3.2 & 3.3.3)
9	1	Topic 4 (learning units 4.4.1 & 4.4.2 & 4.4.3)
10	3	Topic 2 (learning unit 3.1.2)

MOI = Memorandum of Incorporation, Companies Act = Companies Act 71 of 2008, as amended and the Companies Regulations

COMMENTS ON ASSIGNMENT 01/2016

Specific comments

Question 1

Alternative 3 is the correct answer. If there are more than one class of shares, the MOI must provide that **at least one** class of share must have voting rights in respect of all matters which can be voted. The statement is therefore false.

Question 2

Alternative 4 is the correct answer. Solvency and liquidity tests are **not done** when a company is selling the greater part of its assets. It is not required in terms of sections 112 and 115 of the Companies Act.

Question 3

Alternative 2 is the correct answer. Non-profit companies should have a minimum and not a maximum of three directors (alternative 1) and their income is not distributable amongst their incorporators (alternative 3). Non-profit companies are indeed companies without personal liability.

Question 4

Alternative 3 is the correct answer. If the company, in whose name the pre-incorporation contract has been entered, is not subsequently incorporated, the **director** who entered into the contract on behalf of the company will be liable for any liabilities as a result of the pre-incorporation contract.

Question 5

Alternative 4 is the correct answer. Alternatives 1 to 3 can constitute reckless trading in terms of section 22 of the Companies Act. In all three scenarios the company's financial position will be worsened, without any prospect to recover losses or to settle outstanding debt.

Question 6

Alternative 3 is the correct answer. Alternatives 1, 2 and 4 are not in compliance with the requirements of the Companies Act as in alternative 1 a public company cannot have only two directors. In alternative 2 the notice period should have been 15 days and in alternative 4 a public company must convene an annual general meeting of its shareholders initially, no more than 18 months after the company's date of incorporation; here it is more than 18 months since 3 June 2013 (section 61(7)(a)). Alternative 3 is in compliance with the requirements of the Companies Act. According to section 64 of the Companies Act, a shareholders' meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting. A voting quorum of persons holding 30% of all the voting rights that are entitled to be exercised in respect of the matter, were present; therefore it exceeds the required 25%.

Question 7

Alternative 2 is the correct answer. Alternatives 1, 3 and 4 are not in compliance with section 69 of the Companies Act. In alternative 1, an unemancipated minor is ineligible to be a director of a company (section 69 (7)(b)), and in alternative 3, a person involved in dishonesty is disqualified to be a director of a company (section 69 (8)(b)(iv)(aa)). Alternative 2 will be in compliance with section 69 as the person is a rehabilitated insolvent, not an unrehabilitated insolvent (section 69 (8)(b)).

Question 8

Alternative 1 is a false statement according to the Companies Act. According to section 58 of the Companies Act, a shareholder of a company may, at any time, appoint any individual, including an individual who is not a shareholder of that company, as a proxy to participate in, and speak and vote at, a shareholder's meeting on behalf of the shareholder.

Question 9

Alternative 1 is the correct answer. In terms of section 78 of the Companies Act, a company may not indemnify (protect against loss or damage) a director against liability arising from which one of the following examples:

- wilful misconduct or breach of trust by the director
- the director acting without the necessary authority
- reckless trading
- trading under insolvent circumstances
- fraudulent acts of the director
- a fine relating to an offence committed by the director

Question 10

Alternative 3 is the correct answer. In accordance with regulation 26 of the Companies Act, the public interest score is calculated as follows:

- 1 point for every R1 million in turnover or part thereof; and
- 1 point for every employee of the company (based on the average number of employees during the year); and
- 1 point for every beneficial interest holder of the company (such as its shareholders); and
- 1 point for every R1 million or part thereof, that is owed to third parties.