

Revision question 1

Pitch Perfect (Pty) Ltd has a public interest score of 210 for the year ended 2014 and had its financial statements internally compiled. Discuss whether Pitch Perfect will be subject to an audit for the 2014 year under review. Formulate your answer by first listing the Companies Act requirements and then applying it to the scenario. (10)

In order to be able to successfully answer this question, you first need to revise the table on page 30 of your study guide. You also need to revise question 1.1(b) on page 17 of tutorial letter 101 (this is the first semester assignment 1 – the solution is uploaded under the “announcements” tab on myUnisa. You are now ready to answer the question above.

*The solution follows below. Note that I have highlighted important aspects in the solution. These aspects **must** be present in your answer.*

Solution question 1

Any company other than a

- public company; (1)
- state owned company; or (1)
- profit company that holds assets in a fiduciary capacity for persons not related to the company with an aggregate value exceeding R5 million; (1)

must have its annual financial statements for that financial year audited if by having regard to its public interest score (1)

an audit will be required if its public interest score in that financial year as calculated in accordance with regulation 26(2)

- is 350 or more; or (1)
- is at least 100 but less than 350; and (1)
- its annual financial statements for that year were internally compiled. (1)

Pitch Perfect is a private company and does not hold R5 million of assets in a fiduciary capacity, (2)

thus the public interest score must be considered to determine whether or not the company should be audited. (1)

The public interest score for Pitch Perfect for the 2014 year-end is 210 and is therefore at least 100 but less than 350. (1)

The financial statements of Pitch Perfect for the 2014 year and therefore the annual financial statements were internally compiled. (1½)

Pitch Perfect is therefore required by the Companies Regulations 2011 to have its annual financial statements audited. (1)

Max 10

Revision question 2

Bella is a newly appointed director of a company named Twilight Ltd. List the standards of directors conduct with which she must comply as a director of Twilight.

(12)

Note from lecturer: The question requires you to “list”, which indicates that you only need to state the requirements of the Companies Act – no application is required.

In order to successfully answer this question, you first need to revise **study unit 5.4.1 on page 70 of your study guide**. Thereafter, you should attempt **activity 4.3 on page 71 of the study guide** (solution on pages 72 and 73 of the study guide from point 3.1 to 3.7). You are now ready to answer the question above.

Solution question 2

The standards of conduct with which she must comply as a director:

- Firstly, you may not use the position of director, or any information obtained while acting in the capacity of director, to
 - gain an advantage for yourself or any other person; or
 - knowingly cause harm to the company.
- Secondly, you must communicate to the board, at the earliest practicable opportunity, any information that comes to your attention (about the company), unless you
 - believe the information is immaterial to the company;
 - believe the information is generally known to the public or other directors.
- Thirdly, you are required to exercise the powers and perform the duties of a director
 - in good faith and for proper purpose;
 - in the best interests of the company;
 - with the degree of care, skill and diligence that may be reasonably expected of a person performing the same functions as a director; and
 - having a general knowledge, skill and experience of that director.
 - Essentially this will require you to take reasonably diligent steps to become informed about matters serving before the board.
 - You should have a rational basis for supporting a board decision and believing it was in the best interests of the company (in other words, you must be able to justify your decision when voting on a matter before the board).
 - You are expected to be conscientious, diligent and enquiring.
 - If you or anyone related to you has an interest in any matter related to the company you should notify the board of the nature of the interest.
 - As a director, in making decisions, you are entitled to rely on other people who provide information, reports or opinions to the board, for example, employees, accountants and legal counsel, unless you have reason to believe they are not reliable or competent.

Revision question 3

The board of a company named Darcy Ltd approved **interest-free, unsecured loans** in the amount of R250 000 to its financial **director**, Mrs Bridget Jones. **No other authorisation** was obtained to approve this loan. Darcy Ltd's financial records indicate that the **company was solvent and liquid** before and after granting this loan.

Discuss the legality of the loan granted to Bridget Jones as well as the **possible consequences** for the company and the directors who authorised this loan in terms of the Companies Act.

(10)

***Note from lecturer:** I have highlighted certain aspects in this question. This question deals with section 45 of the Companies Act – loans to directors. Firstly, note that the company has granted interest-free, unsecured loans (is this fair and reasonable terms?). Secondly, the board of directors approved the loan (remember that the board and the directors are the same thing), without obtaining any other authorization. The Companies Act clearly states that the shareholders also need to have approved this loan within the previous two years. Note that you need to discuss the legality of the loan, as well as the possible consequences thereof. This means that you need to list the requirements of the Companies Act, where after you need to apply them to the given scenario. You also need to come to a conclusion on whether this loan was in fact legal or not.*

*Before attempting this question, first revise **activity 3 on page 105 of your study guide** (solution on pages 105 and 106). You are now ready to attempt the question above.*

Solution question 3

- The loan were granted in **contravention** of the Companies Act 2008. (1)
- The loan were granted on the strength of the **board's approval** that required a **special resolution of the shareholders**. (1)
- A special resolution was required, as the loans were granted to **directors** of the company. (1)
- **The board of directors also failed to ensure that the conditions of the loan were fair** to the company. Providing **unsecured interest-free** loans, is not **fair to the company**. (2)
- As these loans were given in contravention of section 45, they will be **void**. (1)
- As all directors voted in favour of these loans, they will be jointly and severally **liable for any losses** that the company may suffer. (1)
- Then there is the matter of the directors' standards of conduct. In terms of

section 76, a director must exercise the powers and functions of a director

- in good faith and for a proper purpose
- in the best interest of the company
- with the degree of care, skill and diligence reasonably expected of a director.

} (3)

- This means that the directors should take reasonable, diligent steps to be informed of the authority and procedures required for the proper authorisation of a loan to a director, which they did not do. (1½)

- In terms of section 77, the directors may be held liable for acting in bad faith when approving the loans or committing a delict regarding any breach of the directors' duty to act with the necessary degree of care, skill and diligence.

(1)
Max 10

Revision question 4

Mrs Angelina Jolie purchased shares in a company called Brangelina Ltd. She has been informed that the shares she has purchased will have no voting rights. Brangelina Ltd has only one class of share.

Comment on the rights associated with the shares issued to Mrs Jolie in terms of the Companies Act. (10)

Note from lecturer: I have highlighted certain aspects in this question. Firstly, note that the company has only one class of share. Secondly, note that Mrs Angelina was informed that she will have no voting rights.

In order to successfully enable yourself to answer this question, you first need to revise study unit 4.1.3 on page 40 of your study guide.

Solution question 4

Comment on the rights associated with the shares issued to Mr Bellagio and Mr Caesar.

In terms of section 37(2), every share, irrespective of its class, has associated with it one voting right, subject to the provisions of the Companies Act and the MOI. (1)

The MOI may determine the preferences, rights and limitations. This means that a voting right can be limited, but not excluded. (2)

The "provisions of the Act" mentioned above are as follows:

- If there is only one class of shares, those shares must have voting rights in respect of all voting matters (sec 37(3)(b)). (1)
- If there is more than one class of share, the MOI must provide that at least one

class of share must have voting rights in respect of all matters on which can be voted.

(1)

- Shares with limited voting rights will, irrespective of the provisions of the MOI, nevertheless have voting rights on any proposal to amend the rights associated with that share (sec 37(3)(a)).
- All the shares of a particular class must have the same preferences, rights, limitations and other terms (sec 37(1)).

(1)

(1)

As Brangelina has only one class of share; and

(1½)

as all of the shares of a particular class should have the same rights;

(1)

it would not be in compliance with the Companies Act to have the shares held by Mrs Jolie to carry no voting rights as

(1½)

Max 10