



AUE1601

May/June 2012

LEGAL ASPECTS IN ACCOUNTANCY

Duration 2 Hours

100 Marks

EXAMINERSFIRST
SECONDMR FN VAN NIEKERK
MR K JOUBERT

Use of a non-programmable pocket calculator is permissible.

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

THIS PAPER CONSISTS OF **SIX (6)** PAGES

This paper consists of the following questions and main topics:

QUESTION	MAIN TOPIC	MARKS
1.1	The Companies Act Share issue	30
1.2	The Companies Act Director's interest in a contract and meeting requirements	30
1.3	The Companies Act Various	40
		100

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 refer to the Companies Act 71 of 2008, as amended, of the Republic of South Africa

QUESTION 1

30 marks

Computer Services (Pty) Limited is a large computer services firm which specialises in the implementation of computer networks. As would be expected, its own financial and related systems are fully integrated and make use of leading edge technology.

The company has fifteen ordinary shareholders.

The chief executive officer, Mr Buys, has informed you as the company's secretary and Companies Act expert of his intention to raise additional finance amounting to R2 500 000 for the company by issuing additional ordinary shares. The company's authorised share capital is 100 000 ordinary shares of no par value. However, these shares have already been issued in full. It is intended that the directors of Computer Services (Pty) Limited will be offered shares. None of the directors currently hold shares. The new shares to be issued are to be of the same class as the existing shares and will have the same rights and limitations. The company's Memorandum of Incorporation (MOI) prohibits shareholders' meetings from being held electronically. Computer Services (Pty) Limited does not have uncertificated shares.

Mr Buys has therefore asked you for advice in this regard and would like further advice on any Companies Act requirements relating to the share issue.

REQUIRED

Marks

Discuss the requirements of the Companies Act with which Computer Services (Pty) Limited will need to comply in respect of the proposed issue. You must accept that a special resolution will not be proposed by the directors if the MOI may require an amendment.

You must answer the question under the following headings:

- | | | |
|-----|---|------|
| 1.1 | MOI requirements regarding the issue of shares (private company & shareholders' rights) | (6) |
| 1.2 | Authorised shares available for issue & possible amendments to the MOI | (4½) |
| 1.3 | Authority required for the share issue | (1½) |
| 1.4 | Requirements applicable where shares of no par value are issued and the consideration for the issued shares | (3) |
| 1.5 | Requirements applicable where some shares are issued to directors | (1½) |

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REQUIRED	Marks
1.6 Requirements regarding notices for the meeting where the issue to directors is to be authorised	(3)
1.7 Quorum requirements for the meeting referred to above (in 1.6) and related matters in determination of the validity of the persons making up the quorum	(3)
1.8 Requirements regarding the content of the resolution to be voted upon	(1½)
1.9 Voting rights required to be exercised for a valid resolution	(3)
1.10 Secretarial requirements after receiving the consideration for the shares	(3)

QUESTION 2

30 marks

The Memorandum of Incorporation (MOI) of Shipping Engineers (Pty) Limited, a manufacturing company in the marine engineering sector contains, inter alia, the following clause

"Any director or prescribed officer of the company who has a personal financial interest in a contract in which this company has entered or will enter, either directly or indirectly, shall comply with the Companies Act 2008. The contract will be binding provided that the authority of the company in a general meeting is obtained by poll for the contract prior to the contract being entered into."

The minutes of the directors' meetings reveal that the company entered into a contract with Technical Systems (Pty) Limited for the purchase of five highly sophisticated and expensive radar systems valued at approximately R1,5 million each. Greg O'Reilly, is a director of Shipping Engineers (Pty) Limited, and his brother Brian is the majority shareholder of Technical Systems (Pty) Limited.

The board of Shipping Engineers (Pty) Limited decided to declare a R200 000 dividend at the end of the financial year to the members after having its property revalued in January 2012. The resolution was passed with no director opposing the decision. The valuator is a registered person and the excess value exceeded the current book value by R500 000 and is of a permanent nature.

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The following extract is from Shipping Engineers (Pty) Limited's annual financial statements at 30 June 2012

	2012
	R
ASSETS	
Total Non-Current Assets	3 000 000
Total Current Assets	<u>1 000 000</u>
	<u>4 000 000</u>
LIABILITIES	
Total Non-Current Liabilities	2 000 000
Total Current Liabilities	<u>3 000 000</u>
	<u>5 000 000</u>

REQUIRED

Marks

- 2.1 Discuss the requirements of the Companies Act in relation to the contract entered into by Shipping Engineers (Pty) Limited with Technical Systems (Pty) Limited, particularly in view of the relationship between Greg and Brian (12)
- 2.2 Comment on whether the shareholders' meeting to ratify the contract could be held by electronic communication (5)
- 2.3 Describe the difference between voting on a show of hands and by poll (3)
- 2.4 Discuss the requirements of the Companies Act in respect of the R200 000 dividends declared. You may accept that in terms of common law, such surplus forms part of the distributable income and is subject to section 46 like any other income (10)

QUESTION 3

40 marks

Painters (Pty) Limited is a private company in the paint wholesaling business. John Smit, the newly appointed chief executive officer, is keen to improve the company's corporate governance and has approached you for some advice on various aspects of the Companies Act which directly affect governance. Currently the company's public interest score is about one hundred (100) and the company's annual financial statements are subject to independent review. However, John Smit informs you that he wants the company's annual financial statements to be externally audited annually and an audit committee to be appointed. He tells you that the directors have agreed to have the current year's financial statements audited voluntarily, but that he wants to make the annual external audit a requirement in terms of the company's Memorandum of Incorporation (MOI). He believes that an external audit would be very beneficial and that it should not be dependent on the company's public interest score.

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With regard to appointing an audit committee, John Smit requires that the audit committee be constituted as required by the Companies Act and that its duties be at least those which are required by the Act

For the voluntary audit of the current financial statements, the board of directors will appoint the auditor, but for future years, the auditor will be appointed as laid down in the Companies Act. This is of course, assuming that the annual audit becomes mandatory in terms of the MOI

John Smit also tells you that since joining the company, he has been somewhat concerned about the attitude and performance of one of the directors, Ryan Hansen. He wants to know whether Ryan Hansen could be removed from his position as a director and if so, what procedures would have to be followed. John Smit is aware that Ryan Hansen will not resign his directorship. The company has six directors in total

Painters (Pty) Limited's MOI is consistent with the Companies Act and contains no variations on quorums, notice periods, approval of resolutions, appointments of directors, etc. It does provide for the appointment of an audit committee. The company has twenty shareholders

John Smit has also given you a list of potential firms/individuals which the board is considering for appointment as auditor for the upcoming audit. The list is as follows

Lee Westwood – a registered auditor (RA) and brother of Peter Westwood, one of the major shareholders of Painters (Pty) Limited

Fin Advisors Inc – a dynamic company, the shareholders of which are Don Roets RA, Anne Naidoo, BComm LLB and Mark Wilkes RA

REQUIRED

Marks

- | | | |
|------------|--|-------------|
| 3.1 | Explain to John Smit how the external audit of Painters (Pty) Limited's annual financial statements can become a requirement in terms of the company's MOI. Your answer must not include details of, or requirements for, meetings which may have to be held ie quorums, notice, etc | (5) |
| 3.2 | Describe to John Smit the requirements applicable to appointing an audit committee and outline the duties of the audit committee in terms of the Companies Act (do not concern yourself with King III) | (20) |

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REQUIRED

Marks

- 3.3** Advise John Smit on whether Ryan Hansen could be removed from his position as a director of Painters (Pty) Limited (do not include any meeting requirements such as notices, quorums, etc in your advice) **(12)**
- 3.4** Advise John Smit as to which, if either, of the two firms/individuals listed for appointment as auditor for the voluntary audit, would be suitable for appointment **(3)**