

**LML4806**

October/November 2015

**COMPANY LAW**

Duration 2 Hours

100 Marks

**EXAMINERS**

FIRST

SECOND

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Closed book examination

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This paper consists of 4 pages

**INSTRUCTIONS**

- 1 This examination paper consists of 5 (five) questions and 4 (four) pages
- 2 It is compulsory to answer all the questions
- 3 Please complete the attendance register on the back page, tear off and hand to the invigilator

**[TURN OVER]**

**Question 1****[25]**

- 1 1 Briefly discuss the main similarities and differences between a shareholders' meeting and an annual general meeting with reference to public and private companies **(5)**
- 1 2 Briefly discuss the differences between an ordinary resolution and a special resolution **(5)**
- 1 3 What does the solvency and liquidity test in terms of the Companies Act 71 of 2008 entail? Give two examples of circumstances when this test should be applied **(5)**
- 1 4 Discuss the meaning of the following types of directors
- 1 4 1 *ex officio* director **(1)**
- 1 4 2 alternate director **(2)**
- 1 4 3 temporary director **(2)**
- 1 5 Name two instances when a person would be ineligible to be appointed as a director, and three instances when a person would be disqualified from being appointed as a director **(5)**

**Question 2****[25]**

- 2 1 The following paragraph is an extract from the judgment of Rogers J in *Visser Sitrus (Pty) Ltd v Goede Hoop Sitrus (Pty) Ltd* 2014 5 SA (WCC)

" [74] Section 76(4) makes clear that the duty imposed by section 76(3)(b) to act in the best interests of the company is not an objective one, in the sense of entitling a court, if a board decision is challenged, to determine what is objectively speaking in the best interests of the company. What is required is that the directors, having taken reasonably diligent steps to become informed, should subjectively have believed that their decision was in the best interests of the company and this belief must have had a 'rational basis' "

Discuss the business judgment test/rule with specific reference to the provisions of section 76(4) of the Companies Act 71 of 2008, the performance or advice of the people and committees which a director is entitled to rely on to make his/her judgement, the effect and general gist of the test, and the arguments for and against the business judgment rule **(15)**

- 2 2 A Ltd holds 51 percent of the shares issued in B (Pty) Ltd. A Ltd also holds 20 percent of the shares issued in C (Pty) Ltd, and 60 percent of the shares issued in D (Pty) Ltd. B (Pty) Ltd holds 20 percent of the shares issued in E (Pty) Ltd. C (Pty) Ltd holds 45 percent of the issued share capital in E (Pty) Ltd. D (Pty) Ltd also holds a 35 per cent shareholding in E (Pty) Ltd. Explain whether E (Pty) Ltd is a subsidiary of A Ltd **(10)**

**[TURN OVER]**

**Question 3****[25]**

- 3 1 Carol wants to buy shares in Dakota Hotel Limited. She does not have money available to do so, but she offers to sell some catering equipment she had left over from an unsuccessful business to Dakota Hotel Limited. The company agrees to pay R500 000 for the catering equipment. Carol then uses the money to purchase 10 000 shares in Dakota Hotel Limited.
- 3 1 1 With reference to the relevant case law, advise the board of directors of Dakota Hotel Limited whether or not the purchase of the catering equipment would qualify as *financial assistance* as contemplated in section 44 of the Companies Act 71 of 2008. **(8)**
- 3 1 2 Name four (4) requirements of section 44 of the Companies Act 71 of 2008 that a company must comply with before it will be allowed to provide financial assistance. **(4)**
- 3 2 Your friend, Jeanette, who is a chartered accountant by profession, has recently been appointed as the company secretary of Stein Holdings Limited, a company listed on the Johannesburg Securities Exchange in the Consumer Services-Retail Sector. This company has many subsidiaries, including Stein Hardware (Pty) Ltd, Stein Investment (Pty) Ltd, Stein International Holdings Ltd, Central Timbers (Pty) Ltd, Green Apple Supermarkets (Pty) Ltd, Becko Foods (Pty) Ltd and other smaller subsidiaries. Stein Holdings Limited's shareholding and voting power in most of these subsidiary companies is 100 percent. The Stein group operates in the wholesale and retail industries. It is one of the largest retail groups in Africa. Explain to Jeanette how 'control' in the context of a group of companies is defined in the Companies Act 71 of 2008. **(3)**
- 3 3 The board of directors of Aviation Supplies (Pty) Ltd intends to issue new ordinary shares in order to among other things settle the company's existing debt obligations, incentivise employees and raise cash for the expansion of the company's operations. The board anticipates that the shares will be issued to quite a number of people including people who are not currently shareholders of Aviation Supplies (Pty) Limited. The board has heard that the Companies Act 71 of 2008 regards the decision to issue shares as a management decision. However, the board is unsure whether or not they may issue the new ordinary shares without shareholder approval. Upon hearing about the board's intentions, Reona, one of the current shareholders of Aviation Supplies (Pty) Ltd, is concerned that an issue of a large quantity of new ordinary shares will dilute the interests of the present shareholders of the company. Explain fully what is meant by "shareholders' pre-emptive rights" and advise Reona on whether the current shareholders of Aviation Supplies (Pty) Ltd have any pre-emptive rights. You should also indicate in your answer the circumstances when shareholders' pre-emptive rights will not apply. **(10)**

**[TURN OVER]**

**Question 4****[18]**

- 4 1 Dolphin Hides Ltd is a company trading in the production and distribution of leather products. It owns a production site in Randburg to the value of R100 million and a couple of distribution outlets to the value of R20 million. Due to the 2008 financial crises, the company has not been doing well. In light of this the general meeting adopted a resolution to sell the production site, which is the company's biggest income producing asset.

Maite, Peter and Mike, three of the shareholders of Dolphin Hide Ltd and each having 5 (five) percent of the voting rights, object to the sale of the production site. The objection is raised on the basis that the procedure followed for the sale of the production site, does not comply with the requirements of the Companies Act 71 of 2008. In light of the above mentioned facts, advise the aggrieved shareholders on the following aspects:

- 4 1 1 In terms of the Companies Act 71 of 2008, explain what type of transaction the company wishes to enter into and whether the Take-over Regulations will apply to the transaction. (6)
- 4 1 2 Explain how the objection of Maite, Peter and Mike to the sale of the production site may impact upon the prescribed procedure that should be followed in terms of the Companies Act 71 of 2008. (5)
- 4 2 Suppose Dolphin Hides Ltd is on the brink of financial collapse. The board of directors has adopted a resolution to commence with business rescue proceedings. Mpho, a creditor of Dolphin Hides Ltd feels aggrieved by the decision as his claim will be subjected to a moratorium and he does not approve of the appointed business rescue practitioner. Advise Mpho of the grounds on which the resolution of the directors of Dolphin Hides Ltd to commence with business rescue proceedings and the appointment of the business rescue practitioner can be set aside in terms of the Companies Act 71 of 2008. (7)

**Question 5****[7]**

Define the terms *insider* and *inside information* for purposes of the Financial Markets Act 19 of 2012. (7)

**TOTAL: 100**