

LML4806

May/June 2016

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

ANSWER ALL QUESTIONS.

QUESTION 1**[28]**

- 1 1 Distinguish between a person who is ineligible to be a director of a company and a person who is disqualified to be a director of a company (2)
- 1 2 Explain how shareholders can pass resolutions without having to convene a formal meeting (4)
- 1 3 Explain what the business judgement rule (test) in section 76(4) of the Companies Act 71 of 2008 entails (5)
- 1 4 State three grounds upon which a director may be placed under probation by a court (3)
- 1 5 Explain the personal liability of directors of a personal liability company (3)
- 1 6 Define the term 'inside information' for purposes of the Financial Markets Act 19 of 2002 (5)
- 1 7 Name and explain what the codified duties of a director in terms of the Companies Act 71 of 2008 entail (6)

QUESTION 2**[22]**

Stein Gold (Pty) Ltd is a private company that owns and operates five underground goldmines throughout South Africa. The company also owns two gold processing plants and a gold refinery. The consolidated market value of the five underground goldmines is worth R8.5 billion. The market value of the two gold processing plants is R3 billion and the gold refinery is worth R500 million. The directors of Stein Gold (Pty) Ltd have decided to sell four of its underground mines in order to *inter alia* raise capital towards reducing the company's debts, fund the operational costs of the company and upgrade the gold processing plants.

Stein Gold (Pty) Ltd is approached by a potential buyer, Global Resources (Pty) Ltd, which makes an offer to purchase the four mines at a price of R8 billion. Advise the directors of Stein Gold (Pty) Ltd on the following should they wish to proceed with the sale.

- 2 1 The nature of the transaction and the requirements of the Companies Act 71 of 2008 that must be complied with in order for Stein Gold (Pty) Ltd to proceed with the sale of the four mines (10)
- 2 2 Name the circumstances under which the requirements that you have discussed in your answer to question 2.1 above need not be complied with (4)
- 2 3 Explain and motivate whether the Takeover Regulation Panel has jurisdiction over this transaction (4)
- 2 4 Discuss the requirements that must be complied with in terms of section 58 of the Companies Act 71 of 2008 should a shareholder wish to appoint a proxy to represent him or her at a shareholders' meeting (4)

QUESTION 3**[17]**

The directors of Xtreme Automotive (Pty) Ltd have reasonable grounds to believe that the company is financially distressed and the board considers the adoption of a resolution to commence business rescue proceedings. However, the directors are worried about another person taking over the management of

[TURN OVER]

the company when business rescue proceedings commence. They want to know if they have control over the appointment and removal of a business rescue practitioner. Advise the directors of Xtreme Automotive (Pty) Ltd on the following aspects:

- 3.1 Name the various persons, organs of the company and/or institutions who may appoint a business rescue practitioner with reference to the circumstances during which such a person, organ or institution may appoint a business rescue practitioner under the Companies Act 71 of 2008. (8)
- 3.2 List any five qualifications for the appointment of a business rescue practitioner in terms of the Companies Act 71 of 2008. (5)
- 3.3 Discuss any four grounds on which a business rescue practitioner may be removed from his or her office in terms of the Companies Act 71 of 2008. (4)

QUESTION 4

[15]

Maxi-Care Ltd is a company specialising in the distribution of pharmaceutical products to major clinics. Recently the company has been experiencing financial strain as a result of a new competitor in the market, Direct Link Ltd. Direct Link Ltd distributes pharmaceutical products to a wider clientele and is much cheaper than Maxi-Care Ltd. Maxi-Care Ltd wants to expand its business, but will need more funds to be able to do this. Faizel, a director of Maxi-Care Ltd, proposes that the company offer 1500 ordinary shares for subscription to existing shareholders of the company in the form of non-renounceable rights offers.

- 4.1 Explain with reference to the relevant provisions of the Companies Act 71 of 2008 whether the offer to subscribe for the new shares in Maxi-Care Ltd should be accompanied by a prospectus. (5)
- 4.2 For purposes of this question assume that the company is required to issue a prospectus. Walter has recently been appointed as a director of Maxi-Care Ltd. When he joined the company, it was already in the process of offering the additional shares for subscription. The prospectus was issued two weeks after he became a director and he consented to the issuing of the prospectus. Three weeks after the issuing of the prospectus, Walter realised that the prospectus contained an error in that the annual financial statements attached to the prospectus overstate the income of the company for the previous financial year. Advise Walter, with reference to the provisions of the Companies Act 71 of 2008, as to whether he could be held liable for inaccurate information in the prospectus and whether he could take any steps to avoid liability. (10)

QUESTION 5

[9]

Sound of Light Ltd is a company specialising in hosting major international music events and musicians. As a result of its strong international presence, the company has seen an increase in its profits. Tietso, one of the directors of Sound of Light Ltd, proposes that the subsidiary of the company, Colour Blind (Pty) Ltd should acquire shares in Sound of Light Ltd.

- 5.1 Advise Tietso regarding the requirements and conditions that must be met in terms of the Companies Act 71 of 2008 for the subsidiary to acquire shares in Sound of Light Ltd. (5)
- 5.2 Advise Sound of Light Ltd on the requirements under the Companies Act 71 of 2008 that must be met if Sound of Light Ltd wants to repurchase some of the shares issued to the company's shareholders. (4)

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- 6 1 Name and discuss the requirements that a third party has to prove to hold a company liable to a contract on the basis of estoppel (4)
- 6 2 Name the matters that must be dealt with during the annual general meeting of a public company (5)

TOTAL: [100]

THE END

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