

**LML4806**

May/June 2018

**Company Law**

Duration 2 Hours

80 Marks

EXAMINATION PANEL AS APPOINTED BY THE DEPARTMENT

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Partial/limited open book examination Specified material  
as indicated on examination paper, permissible

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**Instructions.**

This paper consists of 3 pages.

**ANSWER ALL THE QUESTIONS.**

Students may bring a clean copy of any edition of *Juta's Pocket Statutes: Companies Act 71 of 2008 and Regulations* or any edition of the *LexisNexis* version of the Companies Act 71 of 2008 into the exam venue.

No other versions of the Companies Act 71 of 2008 may be brought into the exam venue.

**QUESTION 1****[15]**

Deedee is a shareholder of Magnesia (Pty) Ltd. She receives a notice calling for a meeting of shareholders of the company to vote on the appointment of Sipho as the company's finance director. Having known Sipho for a few years, Deedee attends the meeting with the specific purpose of voting in favour of his appointment. Magnesia (Pty) Ltd has five shareholders but out of these, only Deedee and Thabo, who each hold 10% of the voting rights, attend the meeting. Clause 20 of Magnesia (Pty) Ltd's Memorandum of Incorporation states that an ordinary resolution must be supported by 70% of the voting rights exercised on the resolution.

Answer the following questions with reference to the facts provided.

- 1.1 Advise Magnesia (Pty) Ltd whether a quorum is present at the meeting with reference to the relevant provisions of the Companies Act 71 of 2008. **(10)**
- 1.2 Assuming that a quorum is present at the meeting of Magnesia (Pty) Ltd, advise Magnesia (Pty) Ltd on the type of resolution that has to be passed to appoint Sipho as the finance director of the company. Also mention the minimum voting support required to pass this type of resolution. **(5)**

**QUESTION 2****[30]**

- 2.1 Discuss whether the statutory duty of a director to act with care, skill and diligence as set out in the Companies Act 71 of 2008 is a fiduciary duty. Also consider whether a subjective test and/or an objective test must be applied to determine a breach of this duty. Discuss with reference to case law, the effect of the business judgment rule on the statutory duty of care, skill and diligence. **(15)**
- 2.2 Taamane (Pty) Ltd is a company that specialises in designing diamond rings. Mapula, an existing shareholder and employee of the company, wants to purchase more shares in the company. She however does not have sufficient funds, but she offers to sell her art collection to the company for R2 million. She will then use the money from the sale of her art collection to purchase more shares in Taamane (Pty) Ltd.
  - 2.2.1 Advise Taamane (Pty) Ltd on whether the purchase of Mapula's art collection would qualify as financial assistance in connection with the purchase of its shares. Refer to relevant case law where applicable. **(10)**
  - 2.2.2 Assuming the purchase of the art collection qualifies as financial assistance, discuss the requirements that must be satisfied in terms of the Companies Act 71 of 2008 for this transaction to be validly executed. **(5)**

**QUESTION 3****[20]**

The board of directors of a well-known publishing company, Buka (Pty) Ltd, wants to place the company under business rescue. They are not sure how to go about doing this, and whether the approval of the shareholders of the company will be required or whether they will need to apply to court to place the company under business rescue. The board is also concerned about how a business rescue practitioner has to be appointed. They wish to appoint Sam as the business rescue practitioner of the company, but they are not sure whether they may do this. Sam is the son of one of the major shareholders of the company and is a qualified engineer. The board of Buka (Pty) Ltd approaches you for advice. Advise the board of directors with reference to the Companies Act 71 of 2008 on the following:

- 3 1 Discuss the circumstances under which the board of directors of Buka (Pty) Ltd may place the company under voluntarily business rescue and the procedure that must be followed to do so. Also mention whether the approval of the shareholders has to be obtained and whether a court order is required to place the company under voluntary business rescue (10)
- 3 2 Discuss the procedure that has to be followed by the board of directors to appoint a business rescue practitioner, and whether Sam may be appointed as the business rescue practitioner of Buka (Pty) Ltd (10)

**QUESTION 4****[15]**

Cars for Everyone (Pty) Ltd is experiencing financial problems. Its revenue has shrunk as a result of a crippling six-month labour strike that plagued the motor industry. In order to remain financially stable, the company retrenched some of its employees. Notwithstanding its cost-cutting measures, the company is struggling to stay financially viable. It has numerous creditors. Some of these creditors are contemplating taking legal steps against the company. The company is now considering entering into a compromise with its creditors. Advise the directors of Cars for Everyone (Pty) Ltd on the following:

- 4 1 Explain what a compromise is (2)
- 4 2 Identify who may propose a compromise (2)
- 4 3 Without discussing the role of the court or the contents of the compromise proposal, briefly explain how a compromise is to be effected (5)
- 4 4 Discuss the role of the court in a compromise procedure (4)
- 4 5 Discuss whether a compromise would be an appropriate option for Cars for Everyone (Pty) Ltd to pursue (2)

**TOTAL: [80]****THE END**

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