

AUE1601 Revision slides



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Disclaimer

Kindly note that these slides are for extra revision purposes. **It should by no means replace your study material.** All material covered in topics 1-9 of your study guide is examinable (including all tutorial questions). Nothing in these slides is more important than the rest of your study material. Please note that these slides are only available in English.

Topic 1

Related parties and control

- Relationship between individual and individual
 - Married or living together as if married
 - Siblings
 - Parents and Children
 - Parents and Adopted Children
 - Grandparents and grandchildren
- Relationship between individual and juristic person (company)
 - Individual holds majority of shares in company (51% or more)
 - Individual together with related/inter related person holds majority of shares (e.g. John, his wife, and his brother together holds 51% or more)
 - Individual's wife or brother or child or parents holds 51% or more (even though the individual may hold nothing)
 - Individual, although holding 0% or less than 50% of the shares, has the right to appoint or choose directors who controls the board.

Topic 1

- Relationship between juristic person and juristic person (company and company)
 - Company A holds 51% or more of the shares in Company B
 - Company A is able to appoint or choose the directors that controls the board of Company B
 - John and/or his wife together holds 51% or more of the shares in both Company A and Company B
 - Company A holds 51% in Company B and Company B holds 100% in Company C (all three are related and part of the same group).

Topic 1

Solvency and Liquidity

Solvency test

- Assets fairly valued => Liabilities fairly valued

Liquidity test

- Company can pay its debts
- As it become due
- In the normal course of business (i.e. if it is a fruit and veg company, this would mean that their normal course of business is selling fruit and veg – e.g. not selling their building and their cars and obtaining additional loans etc.)
- For a period of 12 months
- Current assets fairly valued => Current liabilities fairly valued

Solvency and Liquidity tests are used when

- Buying back shares
- Granting financial assistance
- Declaring a dividend (distributions).

Topic 1

Categories of Companies

- Not for profit companies (NPC)
- For profit companies
- State owned (SOC)
- Public companies (Ltd)
- Private companies (Pty (Ltd))
- Limited liability companies (Inc.)

Familiarize yourself with diagram 1.1.3 on page 37 of the study guide.

Topic 1

Memorandum of Incorporation (MOI)

- Incorporation document of a company that includes
- aspects not dealt with in the Companies Act as well as
- alterations to certain aspects that are dealt with in the Companies Act (stricter requirements, additional prohibitions etc.).

Pre-Incorporation contracts

- Must be in writing
- After incorporation the directors has three months to ratify or reject the contract (confirm the contract)
- After three months have expired the contract becomes automatically ratified
- If the company is not incorporated, the person who entered into the contract will be personally liable
- If the contract is rejected the person who entered into the contract will be liable, but may also claim any benefits already received from the company.

Topic 1

Reckless trading

A company may not:

- Trade reckless;
- With gross negligence;
- With the purpose of defrauding any person;
- For fraudulent purposes;
- Or under insolvent circumstances

The test for determining whether a company is trading reckless is a subjective test and it should be asked whether a reasonable person under the same circumstances would have acted in the same way.

Topic 2

Company records

- Must be kept in written format
- For 7 years
- Review activity 1 and 2 on page 51 of the study guide.

Financial statements must:

- be prepared within 6 months of each year end
- Comply with the standards of financial reporting
- Must provide a reasonable representation of the company's business
- Must explain the financial position and transactions of the company
- Must state whether the financials have been audited/reviewed/neither
- Must state the name and capacity of the person who prepared the financials
- May not be incomplete, false or misleading

Topic 2

Requirement for financial statements to be audited

The following must always be audited

- All state owned companies (SOC) must be audited
- All public companies (Ltd) must be audited
- All companies who holds assets in a fiduciary capacity (i.e. assets that are held for other persons such as consignment stock; deposits; trust monies etc.) that exceeds R5 million must be audited

All other companies should calculate their Public Interest Score

- 1 point for every R1m in Turnover, or part thereof
- 1 point for every R1m in 3rd party liabilities, or part thereof (NB! Not ALL liabilities should be included, only 3RD PARTY liabilities)
- 1 point for every known security holder (such as shareholders)
- 1 point for every 1 employee employed on average during the year

Topic 2

Public interest score of 350 or more

- Must be audited

Public interest score of 100 or more, but less than 350

- Is the financial statements compiled by a person that works for the company?
- If yes then must be audited
- If no then:
- Is all the shareholders also directors?
- If no then must be independently reviewed
- If yes then there is no audit/review requirement

Public interest score of less than 100

- Is all the shareholders also directors?
- If no then must be independently reviewed
- If yes then there is no audit/review requirement

Topic 3

Authority to issue shares available for issue

- The **board of directors** has the **authority to issue** shares in as far as those shares are authorized in the MOI of the company.
- This decision is exercised by means of a **board resolution**
- **Unless: if the shares are issued to a director/future director or a prescribed officer/future prescribed officer, or to a person related to a director or prescribed officer then a special resolution of shareholders are required.**
- Notice and quorum requirements must be adhered to regarding the board meeting and resolution

Topic 3

Authority to increase shares available for issue

- If the board is not specifically prohibited in the MOI to increase the authorized shares, they may increase the number of authorized shares available for issue by means of a board resolution; OR
- The shareholders may by special resolution increase the number of authorized shares
- If the above requirements were not met (i.e. the board issued shares in excess of the authorized shares, while being prohibited to do so in the MOI; or without obtaining a special resolution); then the shareholders can still ratify the increase of authorized shares by means of a special resolution.
- In all circumstances notice and quorum requirements should be met.
- In all circumstances a notice of the amendment to the MOI must be filed.

Topic 3

Declaration of dividends or other distributions

- Study the definition of a distribution in section 1 and section 46 of the Companies Act
- When a distribution is made it should either be
- To a court order
- To a board resolution
- The company must meet the solvency and liquidity requirements
- The company then has 120 days to make the distribution
- If it is not done within 120 days, the solvency and liquidity tests should be repeated
- If any of these requirements are not met, the directors may be held liable for any losses suffered by the company.
- The transaction will be void.

Topic 3

Share buy-backs

- A company and/or its subsidiary may buy back the shares of the company.
- This is authorized by a **board resolution** of the company and/or a board resolution of the subsidiary
- **Unless: If the shares are bought back from a director or from a prescribed officer, or a person related to a director or prescribed officer – then a special resolution of shareholders will be required.**
- After the shares are bought back there **must still be shares in issue** of the same class and type (i.e. if there was 100 000 issued shares, the company may not buy back the full 100 000 shares, leaving 0 shares in issue).
- All the **subsidiaries of the company may not, in aggregate, hold more than 10%** of the shares of the company
- **Subsidiaries may not exercise voting rights** in terms of these shares.

Topic 3

Shareholders meetings and resolutions

Notices:

- Notice of a shareholders' meeting should be issued at least 15 business days before the meeting is to be held(public or a non-profit company). Other companies is 10 business days
- Notice should include:
 - Date, time and place of meeting
 - Purpose of meeting
 - Copy of proposed resolutions
 - Percentage of votes required (when a special resolution is required)
 - The rights of the shareholders (that they may appoint a proxy).
 - That the shareholders must provide identification at the meeting.

Meeting quorum:

- A meeting may only commence if 25% of shareholders who are able to vote are present.

Voting quorum:

- Before deliberation of a matter commences at least 25% of shareholders who are able to vote on a matter must be present.

Topic 3

Shareholders meetings and resolutions

Ordinary resolution:

Must be supported by 50% (or more) of votes exercised (The MOI may require a higher percentage).

Special resolution

Must be supported by 75% (or more) of votes exercised (The MOI may require a higher OR lower percentage, as long as there is it is at least 10% more than that of an ordinary resolution). (page 50 in the study guide includes a list (a-m) of examples where special resolutions are required).

Please note: Do NOT write “special resolution of directors/the board” or “ordinary resolution of directors/board as both these resolutions are SHAREHOLDERS resolutions and NOT board/directors resolutions.

Topic 4

Number of directors

- Review the table on page 76 (4.1.1) of the study guide regarding the minimum number of directors required for each type of company.

Appointment of directors

- Appointed by shareholders
- Must be voted on individually
- The MOI may have additional requirements

Ineligible (disallowed) to be appointed

- Juristic person (e.g. a company)
- Unemancipated minor (a child that is not yet 18)
- Any person not meeting the requirements of the MOI

Disqualified to be appointed

- A person prohibited by court
- A person declared a perpetrator/felon (delinquent)
- A person removed from a previous position due to misconduct that involved dishonesty
- A person who was convicted and imprisoned without the option of a fine for: theft, fraud, forgery, perjury or other offences

Topic 4

Removal of directors

- **Ordinary resolution of shareholders** (unless stated otherwise in the MOI)
- Director must be given notice
- Notice must include reference to the resolution to remove him/her
- Director must be afforded opportunity to make a presentation

However, if a shareholder or a director alleges that a director

- Became ineligible or disqualified
- Incapacitated to perform his duties
- Neglected his duties or became derelict as a director (abandoned his duties)

Then...

- The **board of directors** may vote to remove the director
- The director in question may not vote
- Director must be given notice
- Notice must include reference to the resolution to remove him/her
- Director must be afforded opportunity to make a presentation

NB! This does not apply to companies with fewer than 3 directors!

Topic 4

Removal of directors (continues)

...A director removed by the board after the said allegation may

- Apply to court for a review
- Within 20 days

...If he was not removed after the said allegation

- The person who made the allegation or voted for his removal
- May apply to court for a review
- Within 20 days

Directors (Board) meetings **Topic 4**

- Director may call a meeting of the board of directors at any time, or
- A meeting must be called if required by 25% of the board (if there is at least 12 directors), or
- If there is less than 12 directors, a meeting must be called if 2 directors request a meeting
- All directors must receive notice of the meeting (or acknowledge notice or waive the notice)
- Voting may commence if majority of directors are present
- Majority of directors must vote in favour for resolution to be passed

Directors interest in contract

- If a director or person related to a director has a financial interest
- Must disclose the general nature of the interest
- Must disclose any material information
- If requested, must disclose other observations or insights
- Must leave the meeting before voting commence
- Must not vote
- Part of meeting quorum
- Not part of voting quorum
- Must not execute documents relating to the matter on behalf of the company

Topic 4

Directors conduct

Review the list on page 87 under 4.4.1

Topic 5

Company secretary

Duties

- Provide guidance to directors regarding duties, responsibility, powers
- Make directors aware of relevant law
- Report failure of company/director to comply with the Act or MOI
- Record minutes of meetings
- Certify in AFS that returns and notices have been filed, are true, correct and up to date
- Distribute copy of AFS to all entitled to receive it

Topic 5

Company secretary

Appointment

- All public, state owned or companies required by MOI must appoint company secretary
- Must be appointed within 40 days of incorporation or 60 days from vacancy
- Notice of appointment must be filed within 10 days
- Must be resident of RSA
- Must have required knowledge and experience
- Must not be disqualified to be a director (refer back to topic 5 for list of disqualified persons)
- Can be juristic person or partnership if:
 - No partner or employee is disqualified to be a director
 - at least one employee or partner is a resident
 - At least one employee or partner has requisite knowledge and experience

Topic 5

Company secretary

Resignation/Removal

- Must give 1 month notice
- Notice must be in writing
- May be less than 1 month if the board of directors approves
- If removed from office, may request to include a presentation regarding his/her removal in the AFS
- Notice of removal must be filed within 10 days

Topic 5

Auditors

- Must be appointed within 40 days from incorporation
- Must be appointed within 40 days from vacancy
- Directors must nominate at least one auditor within 15 days from vacancy
- Audit committee has 5 business days to reject the auditor in writing
- **NB!** Review the table on pages 103 and 104 (diagram 5.3.1.1 & 5.3.1.2) regarding appointment, vacancies and rotation of the auditor (**Note: Diagram 5.3.1.1 should have the heading Appointment of auditors not Audit Committees**)

NOTE: The auditor and audit committee members are NOT the same thing. An auditor is an **EXTERNAL** person/firm. Members of the audit committee must be **DIRECTORS** of the company. The auditor may **NOT** be a member of the audit committee

Topic 5

Audit Committees

- At least 3 members
- Must be directors
- Must adhere to minimum qualifications prescribed
- Must have adequate financial knowledge and experience

Must NOT: (NB! Students forget to write "NOT" and then lose a lot of marks)

- Be involved in day to day management (or have been during the past year)
- Be a prescribed officer, full time executive employee of the company or of a related person of the company (or have been during the past 3 years)
- A material supplier or customer of the company
- A person related to any of the above

Topic 5

Audit Committees

Duties

- Nominate auditor for appointment determine fees and conditions of audit
- Ensure appointment of auditor meets legal requirements
- Determine nature and extend of non-audit services
- Approve agreement with auditor for performing audit services
- Compile report to be included in AFS including:
 - How services was performed
 - Whether they are satisfied that auditor is independent
 - Comment on the financial statements, accounting practices and internal control
- Deals with any concerns/complaints regarding:
 - Accounting practices and internal audit
 - Contents of the audit of the AFS
 - Internal controls
 - Other related matters
- Make presentations to the directors regarding accounting practice, financial controls, records, and reporting
- Perform other functions as required by board of directors

Topic 6

Financial assistance to purchase shares

- Must be approved by directors
- Must meet MOI requirements
- Special resolution obtained within previous 2 years
- Must determine beforehand whether solvency and liquidity tests will be met after the assistance was granted
- Must be fair and reasonable towards the company
- Must meet quorum and notice requirements

Does not apply if the primary business of the company is the lending of money

Topic 6

Financial assistance to directors/related parties of directors

- Must be approved by directors
- Must meet MOI requirements
- Special resolution obtained within previous 2 years
- Must determine beforehand whether solvency and liquidity tests will be met after the assistance was granted
- Must be fair and reasonable towards the company
- Must meet quorum and notice requirements
- Must give notice to unions
- Must give notice to shareholders

Does not apply when

- Primary business is lending of money
- The loan is to cover legal costs relating to the company
- The loan is to cover expenses paid on behalf of the company
- The loan is to cover costs relating to the removal of the director

Topic 6

Sale of the greater part of assets

Use the information in a given scenario to determine whether it is in fact the sale of the greater part of assets

- Special resolution of shareholders must be obtained
- Shareholders must receive notice of the plan to sell the assets which should include, in addition to the information that must always be on the notice (can you remember them?)
- Written summary of the transaction
- Sale value must be fair towards company

Topic 7

Liquidation of solvent company

- Company can be voluntarily liquidated by special resolution of shareholders OR
- Liquidated by a court order

Business rescue

- Business rescue proceedings are available for companies that
- Faces a financial crisis, but
- There must still be a reasonable chance that the company can be rescued

Protection for whistle blowers

The companies act provides protection for **certain** persons who in good faith discloses that a company or director might be guilty of **certain** misconduct

Refer to page 135 of your study guide, 7.3.1 sets out a list of the specific misconduct referred to, as well as a list of the persons who will be protected in terms of this section.

Exam Technique

- Write in point format
- Do not write long paragraphs with a lot of information in, rather structure your answer line by line
- Write neatly
- Leave lines open
- Do not include section numbers – it is not required
- Read what is required, if you are only asked to list requirements then you should only list theory from the Act
- If you are required to discuss a matter you should:
 - Give the theory
 - Apply it to the given scenario
 - Draw a conclusion
- Limit your answer to what is required
- Number properly!

Good luck! All the best!

AUE1601 lecturers