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PREFACE

1. GENERAL OVERVIEW

This auditing module deals with the legal aspects of accounting. The study guide should be used as your first point of reference for each topic covered in this module. Read each topic carefully. Various activities have been included under each topic. Here you need to pause and review what you have learned.

The focus of the module is on company law, and students are required to develop the ability to interpret the law that regulates companies. This is a new challenge that can initially make learning difficult, but once you understand what a company is and how company law fits in, it will be easier.

A company is a form of a business organisation. After a company has been formally registered, it becomes a separate legal entity or a so-called “legal person”. A company exists separately from the person/s who formed it and it can buy and sell inventory; own property; and perform other business transactions similar to those of other types of business organisations. Company law deals with the formation and continuing regulation of companies. You should also note that as with a company, a close corporation is a business organisation which is a separate legal entity, and even though the focus of this module is on the Companies Act, certain aspects are also applicable to close corporations. This will be pointed out to you.

The Companies Act consists of various chapters and sections (225 in total) that regulate the formation and all the responsibilities of companies, their directors, secretaries, etcetera. The Act deals with the formation of a company, accountability and transparency, fundamental transactions, share capital, and business rescue, to name but a few aspects. The Regulations to the Act serve the purpose of explaining the applications of the Act and providing more information, where necessary.

2. OBJECTIVE OF THIS MODULE

The aim of this module is to enable students to gain insight into aspects of the Companies Act 71 of 2008, the Companies Regulations, 2011 and limited aspects of the Close Corporations Act 69 of 1984 that are all of importance to companies, their directors, accountants, auditors, the company secretary, and other parties. The learning outcome for this module is that students should be able to comprehend and apply the different topics prescribed in this module. As mentioned above, the focus of this module will be specifically on the Companies Act and its Regulations.

It is important for accountants/auditors to have sound knowledge of laws and regulations that govern the profession as well as of their clients; otherwise, they may not be able to perform their duties properly.

You do not have to study all of the sections of the Act, as your studies will be limited to the specific sections of the Act as indicated in table 1. You will also have to study certain Schedules and Regulations to the Act, which relate to the sections of the Act on which you will be examined.

3. TEACHING STRATEGY

The focus of our teaching role is on *facilitating* your learning experiences towards achieving specific assessment criteria. Furthermore, for each of the topics that comprise this module, these learning experiences are designed with the aim of enabling you to master the learning content at a predetermined competence level.

3.1 Study material

The teaching strategy we have adopted to enable you to complete this module involves utilising all the elements of the study package in an integrated manner.

The study material for mastering this module consists of:

- the prescribed **textbooks** (Companies Act 71 of 2008 and the Companies Regulations, 2011)
- the **study guide** in which study material is grouped into learning units on the basis of topics. (The study guide serves as a key to the study material you have to study in the prescribed textbook(s) and also contains activities that will enable you to test your individual learning progress)
- **tutorial letters** which contain information to which we want to draw your attention
- **assignments.** (The assignments are contained in Tutorial Letter 101.)

When you commence this module, a relationship begins in which you and your lecturers interact primarily through the medium of study material contained in the study package. An important implication of this arrangement is that while your lecturers take responsibility for the appropriateness of the study material which we place at your disposal for this module, you have sole responsibility for ensuring that you use each component of the study package to the fullest possible degree.

3.2 Learning outcomes and levels of mastery

The learning outcomes we have formulated indicate what you should do to be able to complete each topic successfully. We have indicated these learning outcomes for each topic in this study guide. The learning outcomes are based on the different levels of mastery that you will have to achieve in this module. These levels vary from basic to intermediate. The learning objectives are ultimately reflected in the examination paper that you will have to pass in order

to complete the module successfully. **The examination will consist of questions testing knowledge and comprehension (level 1) and application questions (level 2).** You should bear in mind that learning objectives merely indicate the highest level of mastery, and that particular topics may be examined at a lower level of mastery. For examination purposes, a maximum of 70% of the paper will consist of application questions while the balance will consist of questions concentrating on knowledge and comprehension.

The various levels of mastery used to set range statements for learning outcomes and assessment criteria are defined as follows in the *Education requirements of the South African Institute of Chartered Accountants* (2010:13–14):

Level 1: Basic

At this level, the candidate has to acquire knowledge and understanding of the core/essence of the subject matter, including its significance, relevance, and defining attributes.

Consequently, the candidate should have knowledge and understanding

- of the purpose and objective of the subject matter,
- of the underlying principles/practices/legislation/requirements (hereafter called “content”),
- of how the content relates to the discipline as a whole and to other disciplines (that is, how it “fits in”),
- at a broad conceptual level.

At this level, knowledge and understanding of detail, including procedural or numerical aspects specific to the subject matter, are not required.

At this level, candidates should have gained such an extent and depth of knowledge and understanding that they are able to recognise issues when encountered and to seek further depth of knowledge and understanding.

Level 2: Intermediate

At this level, the candidate has to acquire detailed knowledge and understanding of the central ideas and issues contained in the subject matter.

Consequently, the candidate should have knowledge and understanding of

- those aspects of the content, which are central to the subject matter, in order to achieve a sound conceptual understanding; and
- detail, including procedural and numerical aspects specific to the subject matter, where appropriate.

Knowledge and understanding of complexities and unusual/exceptional aspects are not required, however.

At this level, candidates should have gained sound knowledge and understanding of the substance of the subject matter. In this way, they would be able to deal with issues and solve problems central to the topic. Moreover, sound conceptual knowledge will enable them to explore and understand complexities further, if

necessary. This level of knowledge and understanding is required for level 1 (basic).

3.3 Meaning of words

Throughout this module, we communicate learning outcomes and self-assessment criteria phrased in terms of what you should be able to do. This process involves the use of action words, which are typically verbs or phrases containing verbs, describing what the student is expected to do in the learning activity. It is our objective to ensure that the words we use to indicate a requirement clearly state what you have to do, and you should also ensure that you clearly understand the requirements that are conveyed by the range of words that we will use in the study material for this module.

We list below (in alphabetical order) examples of some of the action words that you will come across in this module, together with their meanings for the purposes of this module.

Advise	Give advice; express an opinion as an expert
Apply	Make use of in a practical sense; use where relevant or appropriate
Calculate	Ascertain by mathematical procedure/exact reckoning
Compare	Examine in order to observe resemblances, relationships and differences
Complete	Finish/add what is required
Define	State precisely the meaning/scope/total character of; make clear (especially the outline of); give a concise description of the distinguishing features of
Describe	Give clearly the distinguishing details or essential characteristics of
Determine	Decide; come to a conclusion/make a decision include reasoning
Discuss	Examine/consider the opposing arguments
Draft	Prepare a preliminary version of
Examine	Investigate carefully/in detail
Explain	Set out the meaning of something; clarify the meaning, provide supporting evidence; argue the truth of something
Identify	Establish by consideration, select, recognise
Illustrate	Explain, clarify by means of an example to illustrate the nature, meaning and importance of something (see

	explain)
Interpret	Convey/explain/set out in detail the nature/meaning/significance of
List	Record/itemise names or things belonging to a class
Mention/Name/State	Specify by name; cite names, characteristics, items, elements or facts
Motivate	Cite facts/reasons as support for a viewpoint or argument and conclude
Organise	Arrange in an orderly structure/sequence; place into classes/groups according to certain criteria
Prepare	Make ready/complete; make something ready on the basis of previous study
Record	Put in writing; set down for reference and retention
Summarise	Give a condensed version of; state the key aspects of
Tabulate	Arrange/organise in table form

4. LEGISLATION TO BE STUDIED

You should study the Companies Act and the Companies Regulations from the original source and focus on all the important sections.

Flag all the important sections indicated in tables 1 and 2 of the preface in your copy of the Companies Act and in the Companies Regulations. In this way, you will find the sections easily when studying.

You should bear in mind the following:

In the examination, you will have to apply your knowledge to the questions asked. You will have to identify and resolve the key issues relating to the Companies Act.

The majority of the marks will be awarded for the application of knowledge. However, to build a logical argument in any question, it is necessary to start with basic theory and definitions. The theory and definitions should therefore be used as building blocks to formulate an answer applied to a given scenario.

4.1 Companies Act 71 of 2008

4.1.1 Introduction

A programme of corporate law reform has been underway for several years. The Companies Act no. 61 was first promulgated in 1973. However, since that time, the economic, social and political landscape of South Africa has changed in many ways. In view of this, the need arose for updated legislation – which resulted in the new Companies Act, 2008, amended in 2011.

As you will note, some sections are explained in detail by means of diagrams or examples. Your approach, however, should be first to study all the relevant sections directly from the source (the Companies Act 71 of 2008).

If you want your dreams to come true, don't oversleep.

(Woody Allen)

4.1.2 Sections of the Companies Act

Table 1, includes all the examinable sections of the Companies Act. It also shows how each topic in the study guide links to the various sections of the Companies Act. The knowledge level refers to the levels of mastery explained in section 3.2 of the preface.

Table 1

Sections to be studied

Topic	Company Act Section number	Description	Knowledge level
	–	General overview of the module	Level 2
1	1	Relevant definitions	Level 2
1	2–6	Interpretation	Level 2
1	8,10	Categories of companies	Level 2
1	11, 13, 15–16 and 19–22	Incorporation and legal status of companies	Level 2
2	24 and 27–30	Company records	Level 2
3	35–43 and 46–48	Capitalisation of profit companies	Level 2
3	49–56	Securities registration and transfer	Level 1
3	57–65	Governance of companies	Level 2
3	95–97 and 99–111	Public offerings of company securities	Level 1
4	66–78	Directors	Level 2
5	84–85	Application and general requirements regarding enhanced accountability and transparency	Level 2
5	86–89	Company secretary	Level 2
5	90–93	Auditors	Level 2
5	94	Audit committees	Level 2
6	44–45, 112 and 115	Transactions	Level 2
7	79–83, 128–155, 159, 162, 163 and 168–184	Business rescue, compromise with creditors, winding up, and deregistration of companies	Level 2
8	185–204	Regulatory agencies	Level 2

8	213–216, 218 and 219	Offences, penalties and miscellaneous matters	Level 2
9	–	Schedules 2, 3 and 5 to the Companies Act, Close Corporations Act (general overview) and other legislation applicable to companies	Level 2

4.2 Companies Regulations of 2011

4.2.1 Introduction

The Companies Regulations (Regulations) follows directly after the Companies Act in the prescribed text book.

We do not expect you to study specific form names or numbers as indicated in the various Regulations. Form names such as **Notice of Incorporation** [sec 13(2) or 14(1)] or **Notice of Amendment** [sec 16(1) and 36(4)] referred to in the Companies Act **are important**. However, specific form names and numbers, for example, for the Notice of Incorporation (Form CoR 14.1) or for the Notice of Amendment (Form CoR 15.2), referred to in the respective **Regulations** (for example, 14 and 15), are **not important for your studies**.

Quite a number of the Regulations contain the same information stated in related sections of the Companies Act, but then these Regulations also refer to the specific form to be submitted. That is why our list of Regulations to be studied below in table 2 does not include all these Regulations.

You will notice that in many instances, the related section number in the Companies Act is stated directly after the heading of the particular Regulation, for example, “**15. Memorandum of Incorporation**” and below that, the words “**see sec 13(1) and sec 16**”. This should assist you in linking the specific Regulation to the related sections of the Act.

4.2.2 Sections of the Companies Regulations

Table 2, includes all the examinable sections of the Companies Regulations. It also indicates how the relevant examinable Regulations are related to the specific sections in the Companies Act. The knowledge level refers to the levels of mastery explained in section 3.2 of the preface.

Table 2
Regulations to be studied

Topic	Companies Act Section number	Regulation number
1	8	26 & 27
1	13(1) & 16	15
1	21	35
2	27 & 28	25(3)–(6)
2	28(1)(b)	26(1)(b) & (c)
2	29(4)	27

2	30(2) & (7)	28
2	30(2) & (7)	29(1)–(10)
3	35	31(3) & (5)
3	50	32
4	66(10)	38
4	72(4)	43(1)
5	84 & 85	26, 27 & 28
5	94(5)	42

5 STUDY APPROACH

The following are some important aspects that you should bear in mind when approaching your studies in auditing, and also some useful hints and aids that will help you to improve your learning experience.

5.1 Time required for academic studies in this module

The study material for this module has been developed on the basis of the assumption that you will have a total period of 15 weeks available to study this module. You will need to use the final three weeks prior to the examination for revision and preparation for the exam.

You ought to be able to devote a minimum of eight hours per week to your studies for this module. The following breakdown of the estimated time required to work through the different topics contained in the study material, including the completion of assignment work, is provided. It should be helpful to make use of this when drawing up your personal study schedule for your Auditing studies. Please remember this is **only a guideline**, you may find certain topics more difficult and thus require more hours.

Topic		Number of study hours required
Preface	General overview	4
1	Interpretation, purpose, application and formation of a company	10
2	Company records	10
3	Shareholders and shares	12
4	Directors	12
5	Enhanced accountability and transparency	8
6	Transactions	8
7	Business rescue, compromise with creditors, winding up and deregistration of companies	8
8	Regulatory agencies, offences and penalties	4

9	Schedules to the Companies Act and other legislation applicable to companies	4
	Completion of assignments	16
	Revision and final examination preparation	24
	Total time	120 hours

5.2 Proposed guidance for solving problems

Please note that it is your responsibility as a student to study the Companies Act and stay up to date with important aspects contained therein. We will emphasise some of the important aspects in this study guide.

We suggest that you approach questions as follows:

- Identify all transactions/events referred to in the scenario
- Determine which requirements of the relevant acts relate to each transaction/event. These requirements may include, for example:
 - powers of the entity (Memorandum; sections of the Act)
 - specific authorisation required (for example, special resolution; ordinary resolution)
 - special preconditions (liquidity and solvency)
- Reproduce the theory applicable to each transaction/event.
- Apply the theory to the facts given in the question.
- Conclude on the legality of each transaction/event.
- Make recommendations or discuss alternatives (if required by the question).

6. CONCLUSION

We trust that you will find your studies both rewarding and enjoyable. The effort that you put into this module will provide you with a solid basis for the rest of your studies in the Auditing field.