

Tutorial Letter 201/2/2015

Legal aspects in Accountancy

AUE1601

Semester 2

Department of Auditing

This tutorial letter contains the suggested solution and comments on assignment 01.

Bar code

Question	Alternative	Reference to the study guide
1	2	Topic 4
2	2	Topic 4
3	1	Topic 4
4	2	Topic 10
5	1	Topic 6
6	3	Topic 3
7	3	Topic 2
8	2	Topics 2 and 4
9	3	Topic 2
10	2	Topic 3

MOI = Memorandum of Incorporation, Companies Act = Companies Act 71 of 2008, as amended and the Companies Regulations

COMMENTS ON ASSIGNMENT 01/2015

Specific comments

Question 1

Alternative 2 is the correct answer. The authorised share capital of the company can also be increased by the board of the company, if the MOI of the company does not prohibit it (section 36(3)). The statement is false.

Question 2

Alternative 2 is the correct answer. In accordance with section 48 of the Companies Act, X-men (Pty) Ltd will not be able to exercise any voting rights attached to the shares held in Avengers Ltd, whilst it remains a subsidiary of Avengers Ltd. The statement is false.

Question 3

Alternative 1 is the correct answer. Except to the extent that the MOI of a company provides otherwise, the board may alter the rights and limitations attached to a company's shares, but only in the manner as contemplated in section 36(3). The statement is true.

Question 4

Alternative 2 is the correct answer. Since the introduction of the Companies Act 71 of 2008, no new close corporations are being incorporated. Fantastic Five (Pty) Ltd will thus also not be allowed to convert itself into a close corporation. The statement is false.

Question 5

Alternative 1 is the most correct answer. The duties of the company secretary are set out in section 88 of the Companies Act.

Question 6

Alternative 3 is the correct answer. In accordance with regulation 26 of the Companies Act, the public interest score is calculated as follows:

- 1 point for every R1 million in turnover or part thereof; and
- 1 point for every employee of the company (based on the average number of employees during the year); and
- 1 point for every beneficial interest holder of the company (such as its shareholders); and
- 1 point for every R1 million or part thereof, that is owed to third parties.

Question 7

1. Government Suppliers (Pty) Ltd is not permissible due to the following:
According to section 11 (2)(c)(ii) of the Companies Act, the name of a company must not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company is an organ of state or is operated, sponsored, supported or endorsed by the State or by any organ of state.
2. Xenophobic Contractors Limited is not permissible due to the following:
According to section 11 (2)(d) of the Companies Act 11(2)(d), the name of a company must not include any word, expression or symbol that, in isolation or in context within the rest of the name, may reasonably be considered to constitute propaganda for war; incitement of imminent violence; or advocacy of hatred based on race, ethnicity, gender or religion, or incitement to cause harm.
3. Mobile123 (Pty) Ltd is permissible.
4. Bling Bling Company is not permissible due to the following:
According to section 11 (3)(c) of the Companies Act, a company name, irrespective of its form or language, must end with one of the following expressions, as appropriate for the category of the particular company:
 - (i) The word "Incorporated" or its abbreviation "Inc.", in the case of a personal liability company.
 - (ii) The expression "Proprietary Limited" or its abbreviation, "(Pty) Ltd.", in the case of a private company.
 - (iii) The word "Limited" or its abbreviation, "Ltd.", in the case of a public company.
 - (iv) The expression "SOC Ltd." in the case of a state-owned company.
 - (v) The expression "NPC", in the case of a non-profit company.

Question 8

Alternative 2 is a false statement. In accordance with section 48 of the Companies Act the voting rights attached to the shares of a holding company held by its subsidiary may **not** be exercised while held by the subsidiary and whilst it remains a subsidiary.

Question 9

Alternatives 1, 2 and 4 are all true in accordance with section 8 of the Companies Act. Alternative 3 is false in terms of section 10 of the Companies Act, as a not for profit company is not allowed to distribute its profits to its incorporators, members, directors or officers.

Question 10

Alternative 1 is true. Section 24 sets out the records to be kept by a company, and it include the MOI as well as a record of all the directors of the company. Alternatives 3 and 4 are both true as per the requirements of section 30 of the Companies Act. Alternative 2 is false. Whether a private company needs to be audited is determined by its public interest, having regard to the requirements of section 30 and regulation 28 of the Companies Act.