

QUESTION 1

31 marks

1.1

(a) PUBLIC INTEREST SCORE

The public interest score for Mastering Chef at the end of 30 June 2012 is calculated as the sum of the following:

- (a) Mastering Chef had **50 employees on average which is equal to 50 points;** (2)
- (b) Mastering Chef had **third party liabilities in the amount of R500 000, which is equal to 1 point;** (2)
- (c) Mastering Chef had a turnover of **R1 200 000 which is equal to 2 points;** (2)
- (d) **Kate and Michael are both shareholders, which equal to 2 points;** (1½)

Kate issued the remaining share capital to **100 of her most loyal fans, which equals 100 points since they are all shareholders.** (1½)

Therefore the **public interest score** for Mastering Chef at the end of 30 June 2012 is **155 (50+1+2+2+100).** (½)

Maximum marks 7

Comment [C1]: OR – student could have combined it into one sentence to earn all 3 marks for the total of 102 points. Student should still indicate how he/she to 102 to earn all marks.

Comment [C2]: Should flow logically from the above.

(b) SHOULD MASTERING CHEF BE AUDITED

- (a) Any company other than a public company, state owned company, or profit company that holds assets in a **fiduciary capacity** for persons not related to the company with an aggregate value exceeding **R5 million, must have its annual financial statements for that financial year audited.** (1)
 - (i) If its public interest score in that financial year, as calculated in accordance with regulation 26 (2)
 - **is 350 or more;** or (1)
 - **is at least 100 but less than 350, if its annual financial statements for that year were internally compiled.** (1)

Mastering Chef is a private company and does not hold R5 million of assets in a fiduciary capacity, so the public interest score must be considered to determine whether or not the company should be audited. (1½)

The **public interest score** for Mastering Chef for the 2012 year-end is **155** and is therefore **at least 100 but less than 350.** (1½)

Michael prepared the financial statements for the year ending 30 June 2012 and therefore the annual financial statements were **internally compiled.** (1½)

Mastering Chef is therefore required by the Companies Regulations 2011 to have its annual financial statements audited for the financial year ending 30 June 2012, since the public interest score for Mastering Chef is at least 100 but less than 350 and its annual financial statements for the current year were internally compiled. (1½)

Maximum marks 6

Comment [C3]: Conclusion

1.2

(a) REQUIREMENTS TO BE APPOINTED AS AN AUDITOR

In terms of section 90, to be appointed as an auditor of a company a person or firm:

- (a) must be a **registered auditor**; (1)
- (b) must **not be**
- (i) **a director** or prescribed officer **of the company**; (1)
- (ii) **an employee** or consultant **of the company** who was or has **been engaged for more than one year in the maintenance of any of the company's financial records or the preparation of any of its financial statements**; (1)
- (iii) a director, officer or employee of **a person appointed as company secretary**; (1)
- (iv) **a person** who, alone or with a partner or employees, habitually or regularly **performs the duties of accountant or bookkeeper, or performs related secretarial work, for the company**; (1)
- (v) **a person** who, at **any time during the five financial years immediately preceding the date of appointment**, was a person contemplated in any of the subparagraphs **above**; or (1)
- (vi) **a person related to a person** contemplated in the subparagraphs **above**; and (1)

Maximum marks 5

Comment [C4]: Either one is sufficient

Comment [C5]: Anyone of the three

(b) CANDIDATES PERMISSIBLE TO BE APPOINTED AS THE AUDITOR

Michael Knife is a Registered Auditor, however he is also the **financial manager of Mastering Chef**. He therefore **regularly performs the duties of accountant or bookkeeper** for Mastering Chef and is **ineligible** to be appointed as the auditor of Mastering Chef. (1½)

Adam Fork is a **director** of Mastering Chef and is therefore **ineligible** to be appointed as the auditor of Mastering Chef. (1½)

Marion Fork is a Registered Auditor, however **she is the wife of Adam Fork who is a director** of Mastering Chef. Marion is therefore related to a director of the company and is **ineligible** to be appointed as the auditor of Mastering Chef. (1½)

No Repeat Incorporated is a **firm of Registered Auditors** and has no relationship to Mastering Chef. Therefore No Repeat Incorporated is **eligible** to be appointed as the auditors of Mastering Chef for the financial year ended 30 June 2012. (1½)

Maximum marks 6

1.3 **AMENDING THE MEMORANDUM OF INCORPORATION ("MOI")**

In terms of section 16, a company's MOI **may be amended**:

- (a) in compliance with a **court order**; (1)
- (b) at any other time if a **special resolution to amend it** (1)
- (i) is proposed by (1)
- **the board** of the company; or (1)
 - **shareholders entitled to exercise at least 10% of the voting rights** that may be exercised on such a resolution; and (1)
- (ii) is **adopted at a shareholders meeting**. (1)

Maximum marks 4

1.4 RELEVANT PARTIES INVOLVED IN THE BINDING RELATIONSHIPS IN TERMS OF THE MEMORANDUM OF INCORPORATION (“MOI”)

In terms of section 15 (6), a company’s MOI is **binding**:

- (a) between the **company and each shareholder**; (1)
- (b) between or **among the shareholders** of the company; and (1)
- (c) between the **company and**
 - (i) **each director** or prescribed officer of the company; or (1)
 - (ii) **any other person serving the company as a member of a committee of the board**, in the exercise of their respective functions within the company. (1)

Maximum marks 3

Total marks 31

QUESTION 2

31 marks

2.1 RELATED PARTY TO I-ROLL

In terms of Section 2, an individual is **related** to another individual if the two individuals **are separated by no more than two degrees of natural** or adopted **consanguinity** (relationship by **blood**) or affinity (relationship by marriage). (1)

Minnesh Crossing is the son of Wasseem Crossing, the financial director of I-Roll. Therefore, they are not separated by more than **two degrees of consanguinity**. (1½)

Comment [C6]: Or blood relationships

Therefore **Minnesh Crossing is a related party of Wasseem Crossing**. (1½)

Maximum marks 3

2.2 GRANTING OF THE LOAN TO MINNESH CROSSING

In terms of section 45, a company **may grant direct or indirect financial assistance for any purpose to a director or to a person related to such director** provided that: (1)

- **any conditions or restrictions** in respect of the granting of financial assistance set out in the MOI are satisfied; (1)
- the board of directors is satisfied that immediately after providing the financial assistance **the company will satisfy the solvency** (1)
- and **liquidity requirements**; (1)
- a **special resolution** is obtained within the **previous two years**, approving the loan to the recipient/category of potential recipients; and (1)
- **written notice** of the resolution is given to **all shareholders**; (1)
- and to any **trade union** representing the company’s employees (1)
- within **10 business days after adoption** of the resolution; (1)
- if the **value of the financial assistance exceeds 0.1%** of the net worth of I-Roll; (1)
- **ELSE the notice must be given within 30 business days after the end of the company’s financial year**. (1)

Comment [C7]: Must mention the time frame as well in order to earn the full mark.

Comment [C8]: Must indicate to whom the notice should be given in order to earn full mark.

Comment [C9]: Both factors must be mentioned to earn full mark.

Comment [C10]: Both factors must be mentioned to earn full mark.

Minnesh Crossing is the son of Waseem Crossing (financial director) and is therefore a person related to a director. (1½)

The loan was granted after the board of directors **evaluated that all the conditions and restrictions in respect of the granting of financial assistance** set out in the MOI were satisfied. (1½)

I-Roll does **satisfy the solvency requirements** after granting the loan considering all reasonable foreseeable financial circumstances of the company, (1½)

the **assets** of the company fairly valued, **exceed the liabilities** of the company fairly valued, since the **net asset value is R5 million**. (1½)

I-Roll is liquid, since the current assets (R5 million) exceed the current liabilities (R2.5 million). (1½)

This is the **first time this type of loan was approved and granted since the incorporation** of I-Roll and **therefore a special resolution would not have been obtained within the previous two years**, approving the loan to the recipient/category of potential recipients. (1½)

A notice of the resolution was sent to all the shareholders on 20 July 2012, therefore not within 10 business days after adoption of the resolution. (1½)

It should have been sent out within 10 business days after adoption of the resolution, as **the loan of R1 million to Minnesh Crossing exceeds 0.1% of the net worth of I-Roll of R500 000 (R5 million x 0.1%)**, (1½)

Based on the information provided **a loan was made illegally to Minnesh as the requisite approval was not obtained**, thereby constituting a breach of section 45 of the Companies Act, 2008. (1½)

Maximum marks 17

Comment [C11]: Could earn 1 mark incorrect conclusion IF it flows logically from argument

2.3 REMOVAL OF DIRECTOR

In terms of section 71, **despite anything to the contrary in the MOI** (1)

A director may be removed by an ordinary resolution at a shareholders meeting by the person entitled to exercise voting rights in the election of a director. (1)

Before the shareholders of a company may consider such a resolution:

The director must be given notice of the meeting and the resolution to remove him (1)

The notice **period** must be at least equivalent to that which a **shareholder** is entitled to receive, (1)

15 business days for public companies, or **any longer notice per MOI**; and (1)

The director must be **afforded a reasonable opportunity to make a presentation** (in person or through a representative) to the meeting before voting takes place. (1)

If a **company has more than two directors**, (1)

and a shareholder or **director has alleged that a director of the company has become ineligible or disqualified in terms of section 69**, other than on the grounds contemplated in section 69 (8) (a); or (1)

Comment [C12]: NB – Not an ordinary resolution by the directors or board.

Comment [C13]: Must indicate that can be longer, to earn the full mark

Comment [C14]: Any one for one mark

become **incapacitated** to the extent that the director is **unable to perform** the functions of a director, and is unlikely to regain that capacity within a reasonable time; or (1)

Comment [C15]: Any one for one m

neglected, or been derelict in the performance of, the functions of director. (1)

Comment [C16]: Any one for one m

The **board, other than the director concerned**, must determine the matter by resolution and may remove that director. (1)

Before the board of a company may consider a resolution **the director concerned must be given notice** of the meeting, (1)

including a copy of the **proposed resolution** and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and (1)

a **reasonable opportunity to make a presentation**, in person or through a representative, to the meeting before the resolution is put to a vote. (1)

Maximum marks 11

Total marks 31

QUESTION 3

38 marks

1 Presentation mark is awarded for communication skills and logical flow of arguments (1)

3.1 MATTER 1: SHARE ISSUE OF 30 000 SHARES

Authority to issue shares

In terms of section 38, the **board** of Barking Mad may resolve to issue shares of the company at any time, (1)

but only within the classes and to the extent that the shares have been **authorised** by or in terms of Barking Mad's MOI, in accordance with section 36. (1)

Marks limited to (1)

Comment [C17]: Ignore limit for marking purposes

Authorised shares available for issue

In terms of section 38, if the board issues shares which have not been authorised or are **in excess of the number of authorised shares** per the MOI. (1)

The issue can be retroactively **ratified by special resolution** (section 36). (1)

Barking Mad Limited has an **authorised share capital of 100 000 ordinary shares, 80 000 of which are issued** (1½)

and therefore **10 000 of the 30 000 shares are in excess of the number of authorised shares and the issue has to be retroactively ratified.** (1½)

Marks limited to (3)

Comment [C18]: Ignore limit for marking purposes

Consideration for the shares

In terms of section 40 the board **may issue authorised shares only for adequate consideration** as determined by the board. (1)

Before a company issues any particular shares, the **board** must determine the consideration for which, and the terms on which, those shares will be issued. (1)

A determination by the board of a company as to the adequacy of consideration for any shares may **not be challenged** on any basis other than in terms of section 76, read with section 77(2). (1)

The shares will be issued at the **current market value** of the shares, which can be **regarded as adequate consideration** as determined by the **board**. (1½)

Marks limited to (3)

Comment [C19]: Half mark each

Comment [C20]: Ignore limit for marking purposes

Share issue to Anamalia

In terms of section 41, an issue of shares must be approved **by special resolution** of the shareholders of a company, (1)

IF the shares are issued to a person/company **related to a director** of the company (1)

Shares are going to be issued to Anamalia, **controlled** by the managing director Rinus Terrier of Barking Mad. Rinus Terrier controls Anamalia since he **owns 75%** of the shares in Anamalia. (1½)

Therefore Anamalia is related to a director of Barking Mad and is therefore a related party. (1½)

Marks limited to (4)

Comment [C21]: Ignore limit for marking purposes

Voting requirements for a special resolution to be approved by shareholders

In terms of section 65, for a special resolution to be approved by shareholders, it must be **supported by at least 75%** of the voting rights exercised on the resolution. (1)

Marks limited to (1)

Comment [C22]: Ignore limit for marking purposes

Notice of shareholders meeting

In terms of section 62, the company **must deliver a notice of each shareholders meeting** in the prescribed manner and form **to all of the shareholders** of the company as of the record date for the meeting, at least (1)

15 business days before the meeting is to begin, in the case of a public company or a non-profit company that has voting members; (1)

Marks limited to (1)

Comment [C23]: Ignore limit for marking purposes

Requirements for a shareholders meeting quorum

In terms of section 64, a shareholders' **meeting may not begin until**

- (a) sufficient persons are present at the meeting to exercise, in aggregate, **at least 25% of all of the voting rights** that are entitled to be exercised in respect of **at least one** matter to be decided at the meeting; and (1)
- (b) **a matter to be decided at the meeting may not begin to be considered unless** sufficient persons are present at the meeting to exercise, in aggregate, **at least 25% of all of the voting rights that are entitled to be exercised** on that matter at the time the matter is called on the agenda. (1)

If a company **has more than two shareholders**, a meeting **may not begin**, or a matter begin to be debated, **unless at least three shareholders are present** at the meeting. (1)

Marks limited to (3)
Maximum marks **16**

Comment [C24]: Ignore limit for marking purposes

3.2.1 MATTER 2: SUBSIDIARY AND COMPANY ACQUIRING COMPANY'S OWN SHARES

In terms of section 48,

- (a) **the board of a company may determine** that the company will acquire a number of its own shares; and (1)
- (b) the **board of a subsidiary** company may determine that it **will acquire shares of its holding company**, but (1)
- (c) **not more than 10%, in aggregate, of the number of issued shares** of any class of shares of a company may be held by, or for the benefit of, all of the subsidiaries of that company, taken together. (1)

Despite any provision of any law, agreement, order or the MOI of a company, the company **may not acquire its own shares, and a subsidiary of a company may not acquire shares** of that company, **if, as a result of that acquisition, there would no longer be any shares of the company in issue** other than (1)

- (a) **shares held by one or more subsidiaries** of the company; or (1)
- (b) **convertible or redeemable shares.** (1)

The decision for a subsidiary or the company **to acquire the company's shares must satisfy the requirements of section 46:**

- (a) In terms of section 46, a company must not acquire any of the company's own shares unless
 - (i) **pursuant to an existing legal obligation** of the company, (1)
 - (ii) **or a court order;** or (1)
 - (iii) **the board of the company, by resolution, has authorised** the transaction; (1)
- (b) it reasonably appears that the company will **satisfy the solvency and** (1)
- (c) **liquidity test immediately after completing the proposed transaction;** and (1)
- (d) the **board of the company, by resolution, has acknowledged that it has applied the solvency and liquidity test, and reasonably concluded** that the company will satisfy the solvency and liquidity test immediately after completing the proposed transaction. (1)

Maximum marks 9

3.2.2

Barking Mad does not satisfy the solvency requirements after acquiring the company's own shares because considering all reasonable foreseeable financial circumstances of the company, the **liabilities (R15 000 000)** of the company fairly valued, **exceed the assets (R90 000 000)** of the company fairly valued. (1½)

Barking Mad is not liquid, since the **current liabilities (R9 000 000)** exceeds the **current assets (R5 000 000).** (1½)

Based on the information provided **the acquisition of the company's own shares will be illegal, since it does not satisfy the solvency and liquidity requirement**, thereby constituting a breach of section 48 of the Companies Act 71 of 2008. (1)

Multivet acquires 37.5% (30 000/80 000) of the number of issued shares of Barking Mad which is **more than 10% in aggregate.** (1½)

As Multivet **is not permitted** to acquire more than 10% of the issued shares of Barking Mad and will **be in contravention** with the Companies Act 71 of 2008. (1)

Comment [C25]: The keyword here "current" however, students could also have written that the company will be unable to pay its debts as they become due.

Barking Mad and Multivet **will acquire 80 000 issued** shares of Barking Mad which will result in **there no longer being any shares of Barking Mad in issue.** (1½)

Therefore the **acquisition of all 80 000** shares in issue by Barking Mad and Multivet **will be in contravention** of the Companies Act 71 of 2008. (1)

Maximum marks 7

3.3 MATTER 3: PRE-INCORPORATION CONTRACTS

A person **may enter** into a **written** agreement in the **name of or on behalf of**, an entity that is contemplated to be incorporated, but **does not yet exist at the time.** (2)

Comment [C26]: 1 mark for the fact that it MUST BE IN WRITING

A person who does anything as explained above, is **jointly and severally liable** with any other such person **for liabilities created as provided for in the pre-incorporation contract** while so acting, if (1)

- (a) the **contemplated entity is not subsequently incorporated**; or (1)
 (b) **after being incorporated**, the **company rejects** any part of such an agreement. (1)

If, after its incorporation, a company enters into an agreement on the same terms as, or in substitution for, an agreement contemplated above, the **liability of the person** in respect of the substituted agreement **is discharged.** (1)

Within three months after the date on which a company was incorporated the board of that company **may** completely, partially or conditionally **ratify or reject any pre-incorporation contract** purported to have been made in its name or on its behalf. (1)

If, within three months after the date on which a company was incorporated, the board has neither ratified nor rejected a particular pre-incorporation contract, the company will be regarded as having ratified that agreement. (1)

To the **extent** that a **pre-incorporation contract has been ratified**

- (a) the **agreement is enforceable against the company as if the company had been a party to the agreement when it was made**; and (1)
 (b) the **liability of a person who entered** into the pre-incorporation contract in respect of the ratified agreement is **discharged.** (1)

If a company **rejects the agreement before the incorporation** of the company, a **person who bears any liability for that rejected agreement** may assert a **claim against the company** for any benefit it has received, or is entitled to receive, in terms of the agreement. (1)

Maximum marks 6

Total marks 38