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## MAY/JUNE 2012

### Question 1

1.1. Reference sec. 36 sec 38 (1)

Board may shares of a company to the extent and within classes that have been authorized by the memorandum of corporation.

The memorandum of incorporation sets out classes of shares and number of shares that the company is authorized to issue.

Also specifies for each class distinguishing designation for that class and preference rights and limitations.

The memorandum of incorporation may authorize a stated number of unclassified shares which are budget to classification by the board.

Copter services limited all need to comply will all related details listed above in its memorandum of Incorporation.

1.2. sec 36 (2)

- The authorization and classification of shares, the number rights and limitations associated with shares set put in the memorandum of incorporation may be changed only by amendment of memorandum of incorporation by board to the extent that the memorandum of incorporation provides.
- The board may therefore increase or decrease number of authorized shares.
- Computer services limited at the moment has fully worked its authorized shares of 100 000 and will need to amend the memorandum of incorporation or board may increase authorized shares to the extent provided in the memorandum of incorporation.
- There is need to have increased number of authorized shares.

1.3. Board may issue shares but after a special resolution of shareholders as shares are being issued to directors.

1.4. Reference : sec : 40

Shares are to be issued at adequate consideration in terms of conversion rights associated with previous issued securities of the company.

Board must consider the consideration before issuing of shares.

Shares issued to directors of computer services Ltd are to be issued at adequate consideration before issuing of shares.

Shares issued to directors of computer service Ltd are to be issued at adequate consideration, preferably market value and not par value.

1.5. When some shares to be issued to directors there is need for shareholders' approval by special resolution.

1.6. Reference : s 62 (1)

The company must deliver a notice of each shareholders meeting in prescribed manner and form to all shareholders of the company as of record date of meeting at least.

- 15 days before meeting of a public or nonprofit company.
- 10 days before of other ; before meeting

1.7. Shareholders meeting may not begin until sufficient persons are present at meeting. At least 25% of all rights entitled to exercise in respect of matter to be decided on at meeting.

If a company has more than two shareholders a meeting may not begin unless at least (3) three shareholders are present and the requirements of the memorandum of Incorporation have been satisfied.

1.8. reference : sec 65 (4)

- Proposed resolution must be
- Expressed with sufficient clarity and specify.
- Accompanied by sufficient information.

- 1.9. Resolution being voted on will need either ordinary resolution (more than 50 %) or special resolution (at least 75%) - reference sec (65 (8) (9). As it is an issue to directors there is need for special resolution.
- 1.10. Reference sec 40 (4)  
After recovering approved consideration, and those shares are fully paid. The company must issue.  
Those shares and cause name of holder to be entered on the company's securities register.

## **Question 2**

### 2.1. Reference s 75

As Grey is related to Brother and he has major shareholding in Technical system Ltd. The director indirectly has personal financial interest in the proposed transaction.

In terms of the companies Act, Person with personal financial interest must

- Disclose interest before matter is considered at meeting.
- Disclose any material information known to director concerned.
- May disclose any observations if requested by other directors.
- If present at meeting must leave
- Must not take part in consideration of matter.
- Must not execute any documents on behalf of the company unless requested by other board members.
- Considered present of the meeting for sake of considering adequate directors present but not considered for voting in terms of resolution.

## **Conclusion**

The above requirements must comply with in order to be a legal transaction, before traction is approved in a meeting.

- 2.2. in terms of companies act a contract is considered valid after being ratified by an ordinary resolution of the shareholders following disclosure of that interest – sec 75 (7)

## Sec 63 (2)

A shareholder meeting can be conducted entirely by electronic communication as long as notice of meeting informs shareholders of the availability of form of participation and provide any necessary information to enable shareholders to access available medium.

Access to medium is at the expense of shareholder to the extent that the company provides.

2.3. When voting show of hands, each shareholder at meeting is entitled to one votes despite number of voting rights held.

Whereas voting by polling, person present at meeting is to vote with regards to voting rights associated with securities held.

## 2.4. Reference sec 46.

### Company must not make any distributions unless

- Distribution is pursuant to existing legal obligation of company or court order on .
- Board of company is resolution has authorized the distribution.
- Board must be satisfied that immediately after distribution by resolution and acknowledges that company meets solvency and liquidity test.

### Application

- Board of company must authorize distribution.
- Consider if assets exceed liabilities after distribution is done.
- After distribution = R4000 000 + 500 000 – 200 000 liabilities after distribution = R5000 000
- The assets do not exceed liabilities after distribution.
- Liquidity test shares the following

$$\frac{\text{current assets}}{\text{current liabilities}} = \frac{R1000\ 000}{R300\ 000} = 0.333$$

Recommended liquidity Ratio is 2

**Conclusion:**

Company does not meet the solvency and liquidity test therefore board should not authorize distribution of dividends.

**Question 3**

3.1. As the MOI of the company states that the company is to be audited. The company has to be in compliance with its standards and rules set out in the memorandum of incorporation.

- The company also has to comply with the companies act. In terms of regulations a company is to be externally audited if it has a public interest score of at least 100 and its financial statements were internally computed.
- The memorandum of incorporation and the companies' regulation both state that the company should be externally audited.
- Painters Ltd should therefore comply with its memorandum of incorporation, as it is a requirement.

**Preference sec 94**

3.2. An audit committee shall be appointed by a public company, state owned company or other company that is required by its memorandum of incorporation.

Audit committee must comprise of at least three members of which must be:

- A director of company
- Non – executive director must not be involved in daily management of the business.
- Independent, thus not a previous employee for the past three years or be a material customer or supplier, and must not be related to the mentioned.
- Must hold prescribed minimum qualifications and have adequate knowledge and experience.

**Duties of the audit committee included:**

- Nominate for appointment as auditor of company and ensure that auditor is independent.

- Determine fees to be paid and the terms of the engagement.
- Ensure that appointment of auditors complies with the act and legislation.
- Determine nature and extent of any non – audit services that auditor may / must not provide.
- Prepare a report to be included in the annual financial statement.
- Any other valid points Refer sec 94 (7)

### **3.3. Removal of Director Sec 71**

If a company has more than two directors and a shareholder or director has alleged that directors:

- Is ineligible or disqualified
- Is incapacitated and unlikely to regain capacity.
- Has neglected functions or performance as director.

Board other than director concerned must determine matter by resolution and director but only after during notice of meeting, including copy of proposed resolution and reasons. Must also give concerned director, reasonable time or opportunity to make a presentation.

As Painter Ltd has six directors the above requirements must be followed:

The concerned director (Ryan) is considered by another director (John) to be neglecting his performance thus complies with one of the requirements of being able to remove a director.

Ryan could be removed as director, after notice has been given to him prescribed form and manner and reasonable opportunity has been given for him to make a presentation Removal is also done after approval of directors at meeting to be held.

### **3.4. Reference 590 (2)**

Lee Westwood cannot be appointed as auditor as he is not independent. He is related to one of the major shareholders of the client (Painters Ltd).

Advisors Inc. cannot be auditors of Painters Ltd as one of the partners is not a registered auditor.



**OCTOBER / NOVEMBER 2012**

**Question 1**

**1.1. (a) calculation of public interest score**

	<b>Points</b>
One (1) point per employee 50 x 1	50
One point for every R1 million turnover  R1 200 000 ÷ R1 m	1.2
One point for every R1 million in third party liability  R500 000 ÷ Rm	0.5
One point for every individual who has Direct or indirect beneficial interest in the securities of the company Kate has 51% = 1 person Michael 20% = 1 person Remaining 100fans = <u>100</u> people	102
<b>Total public interest score</b>	<b>153.7</b>

(b) reference: companies Regulations sec 28 (2)

Master Chef is required to be audited as a public interest score of at least 100 (answer above : 153.7) as calculated.

The financial statements of Matter Chief were internally compiled by Michael who was appointed by Kate.

If a requirement that companies other than state owned or public companies with a public interest score of at least 100, of which its financial statements for that year were internally complied should be audited.

1.2. (a) requirements for Person / or firm to be appointed as auditor.

Reference: sec 94 (2)

- Must be a registered auditor.
- Must be acceptable to the company's audit committee as being independent of the company
- Must not be
  - ✓ Director of the company
  - ✓ Employee of company
  - ✓ Director or employee of company secretary
  - ✓ Person who regularly performs duties of accountant or bookkeeper or secretarial work for the company.
  - ✓ Person who at any proceeding five years was person listed above.
  - ✓ Person related to any person listed above.

(b) Michael Knife cannot be auditor as he is an employee of the company.

- Adam Fork cannot be auditor as he is the director of the company.
- Wife of Adam Fork cannot be an auditor to Master Chief as she is related to the director of the company in concern.
- No repeat Incorporated can be the auditors as they meet the companies act requirements.
- They are registered auditors and hence no direct or indirect relations to directors or employees of master chief and are considered to be independent as they are one of the biggest auditing firms in South Africa.

1.3. Reference sec 16

Memorandum of Incorporation may be amended by

- Court order
- Special resolution proposed by board or shareholders entitled to at least 10% of voting rights on such resolution.

- Special resolution may be adopted at a shareholders meeting.

#### 1.4. Reference sec 25 (6)

Memorandum of Incorporation and any Rules of the company are binding

- Between the company and each shareholder.
- Between or among shareholders.
- Between the company and each director and or any other person serving company as board member in terms of memorandum of Incorporation and rules are binding on Kate (owner), Michael, (financial manager). Adam Fork (managing director) and Shareholders.

### Question 2

#### 2.1. Related Party Reference sec:

Reference: sec 2 (1) companies Act

In terms of the companies Act an individual is related to another individual if:

Married or

Separated by no more than two degrees of natural or adopted consanguinity.

Munesh Crossing is related party of Wassen Crossing as he is son to Wassen crossing as he is a son to Wassen and complies with the related party definition.

#### 2.2. Reference se 45

Legality of granting loan

The companies act provides that except to the extent that the memorandum of incorporation of a company provides otherwise, the board may authorize company to provide financial assistance to a director or related person to the director.

Further on, despite any provision despite any provision of the memorandum of incorporation the board may not authorize financial assistance unless

- ✓ Assistance is in terms of an employee since scheme or
- ✓ Pursuant to a special resolution of shareholders adopted within previous two years and board must be satisfied that immediately after financial assistance the company would

meet solvency and liquidity test and that the terms of the financial assistance are fair and reasonable to the company.

The board must also ensure that any conditions or restrictions out in the memorandum of incorporations with regards to granting of financial assistance are satisfied.

When board adopts resolution they must provide written notice of that resolution to all shareholders unless every shareholder is a director.

The resolution must be provided:

- ✓ Within 10 business days after board adopts resolution if total value of loan being given exceeds one tenth of 1% of the company's net worth or
- ✓ Within 30 days after end of financial year.

### **Application**

- The directors were in compliance with companies act requirements as they ensured that the conditions and restrictions set out in the memorandum of incorporation were satisfied.

The directors did not comply with the companies act with regards to the authorization a no special resolution by shareholders authorized the transaction and there was no mention that the directors considered the solvency and liquidity test and did not consider the fairness of the loan terms to the company.

The liquidity ratio calculated as follows:

Current assets R5m = 2

Current liabilities R2.5.

Recommended Ratio = 2

From the above the company would satisfy the solvency and liquidity ratio / test as fall within the recommended ratio.

With regards the notice of adopted resolution. A was sent to all shareholders 15 business days after the day the resolution was made.

Calculation

$$190 \times R5m = R50\,000 \times 1/10 = R5000$$

The loan is R1m and therefore exceeds R5000

In terms of the Act the notice should have been sent to all shareholders within 10 business days after board adopts the Resolution.

**Conclusion :**

The granting of the loan was not legal as not in compliance with companies act, in terms of authorization and notice requirements.

2.3. Process and requirements to remain a director

Reference s . 71

- Removal may be approved by an ordinary resolution of shareholders adopted at shareholders meeting.
- Before considering resolution, director must be given notice of meeting and the resolution. Must also be given reasonable opportunity to make presentation.
- If a company has more than two directors and a director / shareholder has alleged that the director has neglected functions of director.
- The board, other than director concerned (Bonolo Avenue) must determine matter by resolution and may remove director, but before doing so the board must :
  - ✓ Given director concerned, notice of meeting and resolution and statement providing reasons for resolution.
  - ✓ Give director concerned, reasonable opportunity to make presentation.
- The board determines that director is ineligible or disqualified the director concerned may apply within 20 business days to a court to review determination of Board.
- Person removed from office as director may apply to court for damages or other compensation for
  - ✓ Loss of office as director or
  - ✓ Loss of any other office as consequence of being removed as director.

### Question 3

Matter 1 Reference se 36 36 and sec 38.

The issuing of shares (30 000) will comprise of the 20 000 unissued authorized shares and 10 000 shares that are to be authorized.

Items of sec 38 (1) the board may issue shares but only within classes and to the extent that shares have been authorized in the memorandum of Incorporation of the company.

The authorization and classification of shares the numbers may be changed only by:

- ✓ Amending memorandum of Incorporation by special resolution of shareholders or
- ✓ By board, to the extent the memorandum of Incorporation provides. Board may increase or decrease number of authorized shares.

If board issues shares not authorized or in excess of the authorized shares. The shares may be retroactively authorized by special resolution of shareholders within 60 business days.

### Consideration of shares sec 40

Board may issue shares only for adequate consideration. Thus must be determined by board if company issues shares issue of shares must be approved by special resolution of shareholders if issued to

- ✓ Director or
- ✓ Related or interrelated persons to the company

Issue of shares requires approval by special resolution. Voting power of the class of shares issued or issuable as a result of transaction equal to or exceed 30 % of voting power of all shares before transaction.

$$\text{Calculation} = \frac{30\,000}{80\,000} = 37.5\%$$

= greater than 30%

## **Application**

The shares being issued require a special resolution of shareholders as shares are being issued to a related company.

- The issue was not appropriately authorized as was authorized by directors. In noncompliance with the companies act.
- The shares being issued also exceed 30 % in voting power of shares before share issue and therefore there is need for special resolution of shareholders to approve the issue.
- The shares were issued at current market value and are considered to be an adequate consideration.

## **Conclusion**

The issue of shares to Animalia is not in compliance with the companies Act requirement, therefore is not a legal transaction as it was not appropriately approved.

## **MATTER 2**

### 3.2.1. Reference sec 48

Board of company may determine that company will acquire a number of own shares.

Board may determine that it will acquire shares of its holding company but not more than 10% in aggregate of the number of issued shares and no voting rights to those shares may be exercised and if remain a sub ordinary.

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;

- ✓ Shares held by one or more sub ordinaries of the company or
- ✓ Convertible or redeemable shares.

### 3.2.2. Acquisition of shares

Solvency requirements sec 4

At the time of transaction and after transaction.

- Assets of the company fairly valued must exceed liabilities as fairly valued.
- Company must be able to meet debt as if becomes due 12 months after test has been satisfied.
- Assets do not exceed liabilities therefore the solvency test is not met.
- Liquidity test =  $\frac{\text{current Asset}}{\text{current liabilities}} = \frac{R5m}{9m} = 0.56$
- Company does not meet the liquidity test as the recommended is 2.
- Multiset is to acquire shares that consist  
 $\frac{30\ 000}{80\ 000}$  37.5% of shares of Barking Mad

: Thus constitutes more than 10% of the number of issued shares.

As result of the share buy back there will not be any shares remaining in issue.

### Conclusion

This transaction is not legal as if is in non-compliance with the companies act requirements.

### Matters 3

Pre incorporation contracts

Reference sec 21

A person may enter into a written agreement in the name of or behalf of an entity but the entity does not yet exist at the time.

The person who enters contract is grandly severely liable if entity is not subsequently incorporated or after incorporation the company rejects part of or entire agreement that had been entered into on its behalf.

If after incorporation the company enters into the same terms of that agreement the liability of the person who entered the agreement is discharged.

Within three months of incorporation board of company may completely, partially or conditionally ratify or reject pre incorporation contract.



If three months lapses without board ratifying or rejecting action it is regarded as ratified.

R should follow the above companies act requirements and may enter a pre incorporation contract on behalf of the company.

## MAY / JUNE 2013

### Question 1

1.1. In terms of section 2 an individual is related to an individual if they are married or live in a relationship similar to marriage.

Andrew and Eva are therefore related as they have been living together for several years and have two children.

1.2. (i) Yes, the liquidity ratio is considered after the provision of loan so as to see that business is not financial strained and can pay creditors after providing loan.

(ii) Yes, this is with regards to sec 65 (9) special resolution must be at least 75% but the memorandum of incorporation may permit different percentages as long as all times there should be a margin of at least 10% between ordered and special; resolution.

1.3. Yes as it states what the company is about and what it is incorporated for.

1.4. (i) No, a special resolution for the issue of shares is needed when shares are being issued to director of company, person related to interrelated to the company. Phantom is not a director and not related to Webber Productions

Reference = sec 41

Issue of shares also requires special approval of shares being issued exceed 30% of voting power of all shares before the transaction.

$$\frac{10\,000}{100\,000} = 10\% \text{ therefore less than } 30\%$$

*no need for a special resolution*

(ii) Yes: Reference: sec 36 (3)

Companies Act states that to the extent that the memorandum of incorporation provides, board may determine preferences rights limitations or other terms of shares in a class.

(ii) No

The companies act does not have any limit actions as to the number of shares being issued to a related party, in this case Cats is a subsidiary.

The only limitation is that the shares being issued should be authorized share capital that hasn't been issued.

1.5. No. The amended companies Act of 2008 does not allow for transferring a company to a close corporation.

## Question 2

### 2.1 (i) Issuing of shares: sec 38 (1)

Board of company may resolve to issue shares at any time but only within classes and to extent that shares have been authorized or items of the memorandum of incorporation.

There is need for shareholder approvals by special resolution of shares are being issued to a director or persons related or interrelated to the company or to a director of company.

Issue of shares also requires special resolution shareholders shares being issued will equal to or exceed 30% of the voting power of all shares before the transaction is considered.

The number of authorized shares set out in memorandum of incorporation may be changed only by amending memorandum of incorporation by special resolution of shareholders or by board to the extent that the memorandum of incorporation provides. Therefore the board by increase or decrease number of authorized shares.

### **Application**

As Fox Pictures is related to one of the directors of Bond Limited, there was need for a special resolution lowest instead the director's approval the transaction.

Therefore in non-compliance with the companies act as shares issue was not appropriately approved.

#### (ii) Consideration for shares

Reference sec 40(i)

Board may issue authorized shares only for adequate consideration and must be determined before company issued shares.

- ✓ Shares are to be issued at fair market value which is adequate.
- ✓ Directors in compliance with requirement of companies act in terms of the consideration of shares.

### **2.2. Reference 75(5)**

If a director has personal financial interest in a matter to be considered at a board meeting, the director concerned must:

- ✓ Disclose interest before meeting.
- ✓ Disclose any material information relating to matter and known to the director.
- ✓ May disclose any observations if requested to do so by other directors.
- ✓ Not take part in consideration of the matter
- ✓ Not execute any document on behalf of the company in relation to matter unless specifically requested by other board members.
- ✓ While absent from meeting director is regarded as present for purpose of determining sufficient directors present at meeting but is regarded as absent when determining resolution.

### **Application**

Mr. Danny did not disclose personal financial interest before meeting.

Mr. Danny did not leave meeting after making such disclosure. Mr. Danny took part in the consideration of matter and therefore was part of the resolution as all directors approved.

### **Conclusion**

Mr. Craig's actions were not in compliance with the companies act and therefore actions were not legal.

### 2.3. Reference: s112 (2)

Requires for disposal of the greater part of company's assets.

- ✓ Disposal must be approved by a special resolution of shareholders
- ✓ Must satisfy all other requirements in section 115.
- ✓ Notice of meeting to consider a resolution to approve disposal must be delivered within prescribed time and must include resolution summary and provisions of section 115 and 164.

### 2.4. Legal of the disposal

Disposal was not approved by a special resolution of shareholders.

As the directors deemed it unnecessary to inform shareholders thus means a notice was not delivered to the shareholders in prescribed time and form.

All requirements in s115 were not considered as shareholders did not partake in the approval.

- Assets being disposed must be fairly valued in prescribed manner as at date of disposal.
- There is no mention of assets being fairly valued as they are considered at their book value of R3million.
- The disposal of printing machines did not comply with companies act requirements and is therefore an illegal transaction.

## 2.5. Reference sec 4 (1)

Solvency and liquidity test.

Assets of the company as fairly valued equal or exceed liabilities of the company and if appears that company will be able to pay its debts as they come due in the ordinary course of business for 12 months following that distribution.

### **Application**

Total assets do exceed liabilities by R15 million

After distribution the company will still be able to meet its debtors as they fall due as current assets will exceed current liabilities by R2million.

### **Conclusion**

The board does satisfy the solvency and liquidation test as defined by the companies Act.

## **S46**

### **2.6. Declaration of dividend**

(i) a company must not make any proposed distribution unless

- Distribution in proportion to an existing legal obligation of the company or court order.
- Reasonably appears that company will satisfy the solvency and liquidity test immediately after distribution.
- Board by resolution has acknowledged that it applied the solvency and liquidity test.

(ii) Company has no existing legal obligation or court order.

The solvency and liquidity test was applied and satisfied however did not acknowledge by resolution that the solvency and liquidity test was applied.

### **The Board**

### **Conclusion**

Did not comply with all companies Act requirements with regards to dividend declaration.

## 2.7. Reference s 89

A company secretary may resign by giving company

- ✓ One month written notice or
- ✓ Less than one month written notice with approval of board.
- ✓ Ms. Geraldine gave her notice of resignation in writing.
- ✓ Notice was given 21 days before date of proposed resignation.

## Conclusion

Actions of Geraldine were not compliance with the companies act as she did not provide notice one month before and the 21 days was not approved by directors.

## 2.8. Reference: sec 86 (2)

Every company secretary must:

- ✓ Have required knowledge or experience in relevant laws.
- ✓ Be permanent resident of the Republic and remain so while serving.

## Application

Auditors of the company may not be appointed as company secretary as it will affect the independence of auditors and objectivity.

Quantum cannot be company secretary as they are incorporated and not a permanent resident of the Republic.

## Reference 5 88 (1)

### 2.9. Five duties of company secretary

- ✓ Providing directors of company with guidance as to their duties, responsibilities and power.
- ✓ Making directors aware of any law relevant to or affecting the company.
- ✓ Ensuring that a copy of the annual financial statements is sent to every person entitled to it.
- ✓ Reporting to the company's board any failure on part of company or director to comply with memorandum of incorporation of rules of the company or companies.

- ✓ Ensuring minutes of all shareholders meetings, board meetings and meetings of any committees are properly recorded.

### **Question 3**

#### 3.1. Vacancy of auditor

Reference: s 90 (60)

No vacancy arose as Ms. Kate resigned from position of director in the audit firm. The audit firm is the one appointed by the client (Buckingham Ltd) and not the individual (Ms. Kate). Therefore the audit firm is still the auditor appointed by Buckingham Ltd.

#### 3.2. Requirement to have an audit committee

Reference s94 (2)

Kensington Ltd is not required to have an audit committee as it is not a public or state owned company and there was no mention of the requirement on the memorandum of incorporation.

#### 3.3. Composition of audit committee

Reference: sec 94 (2)

- ✓ At least three members
- ✓ Each member must be a director of the company
- ✓ Each member must not be involved in day to day management of business.
- ✓ Each member must not have been full time employee in the previous three years.
- ✓ Members must not be a material supplier or customer of the company. Of which relationship lead to compromise of integrity or objectivity.
- ✓ Members must not be related to a director of company, employee major supplier or customer.
- ✓ Members must hold prescribed minimum qualification, adequate knowledge and experience.

### **Application**

There are at least three members in the audit committee but:

Mr. Spencer cannot be a member as he is the managing director of the company and is involved in daily management of business and is therefore not a non – executive director.

Son of Spencer cannot be a member as he is related to the managing director and is therefore not independent.

Ms. Sarah cannot be a member as she is a major customer of Kensington Ltd and is therefore not independent.

### **Conclusion**

The composition of audit committee of Kensington Ltd is not within the legal requirement of the company Act.

3.3. Four factors that contribute to the calculation of public interest score are:

- ✓ Number of employed
- ✓ Turnover during the year (financial )
- ✓ Individuals holding interest in the securities of the company at year e nd.
- ✓ Party liabilities held by the company.



## OCTOBER / NOVEMBER 2013

### Question 1

1.1. 4 examples of when a special resolution is required

Reference: Companies Act sec 65 (11)

- ✓ To amend company's memorandum of incorporation
- ✓ To ratify actions by company / or directors in excess of their authority.
- ✓ To approve an issue of share or grant of rights
- ✓ Authorize the board to grant of rights
- ✓ Authorize the board grant financial assistance
- ✓ To approve voluntary winding up.

Any other point from sec 65 (11)

1.2. (i) at least one director

(ii) At least one director reference :

(iii) At least three directors companies Act s66 (2)

(iv) At least three directors

1.3. Fair persons not eligible or disqualified to be appointed as directors

Reference: sec 69 (7) and 69 (8)

Ineligible if one is a juristic person or an emancipated minor or does not satisfy any qualification set out in company's memorandum of incorporation.

A person is disqualified if one is an unrehabilitated insolvent, or is prohibited in terms of any public regulation or has been removed from an office of trust due to dishonesty.

1.4. (i) No – Not considered as a director of company.

(ii) No – auditor is independent of company operations and decision. Does not have voting rights as not a shareholder.

(iii) Yes – is a director and has voting rights in the company, is also a member of the company's board.

1.5. Reference : s76 2 (b)

A director is not required to disclose any information known by him if he/she reasonably believes that information is;

- ✓ Immaterial or
- ✓ Generally available to the public or known to other directors or
- ✓ Is not to disclose that information by a legal or ethical obligation of confidentiality.

Any (1) one point

1.6. Reference sec 93

(i) No

In terms of sec 93 1 (a) the auditor has right of access at all times to the accounting records and all books and documents of the company. The storage warehouses are not mentioned and therefore do not have right of access at all times.

(ii) No

In terms of sec 93 (c) , the auditor is entitled to attend any general shareholders meeting not that of directors.

(iii) No

In terms of sec 93 ( c) the auditor is entitled to receive all notice of any shareholder meeting and any other communication concerning general shareholders meeting and not communication of transactions conducted by the company.

1.7. Reference se 112

1.8. With regards to the companies Act the company may not dispose of all or greater part of its assets unless ;

- ✓ Disposal has been approved by a special resolution of shareholders
- ✓ Company has satisfied all other requirements in sec 115

A notice of shareholders meeting to consider special resolution to approve disposal must;

- ✓ Be deterred within prescribed time, manner and to each shareholder
- ✓ To be accompanied by a written summary of terms of the transaction and provisions of section 115 and 164.

Assets being disposed of must be fairly valued as calculated in the prescribed manner.

At date of proposal

Yes,

- 1.8. Yes, as elementary Ltd is either a public company or a state company. Its public interest will need to be calculated in order to determine whether or not it needs to be audited.

Reference: companies regulations s 28 (2)

- 1.9. Reference sec 80 and sec 81 and sec 79.

A company may be liquidated voluntary (s80) or by court order (sec 81)

As stated in section 79 (1)

## Question 2

- 2.1. Reckless trading reference sec 22 (1)

In terms of section 22 a company must not carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose.

From the financial statements it states that the business is currently not liquid.

### Calculation

$$\text{Liquidity Ratio} = \frac{\text{current Assets}}{\text{current liabilities}} = \frac{R2000\ 000}{R5\ 000\ 000} = 0.4$$

Recommended liquidity Ratio = 2

The company is recklessly trading as if it is currently not liquid, therefore will not be able to meet debt as it falls due and is unable to operate its daily activities.

Thus has an intention to defraud its creditors.

## 2.2. Reference s 45

**(i) In terms of the companies act s45(3)**

Board may not authorize any financial assistance unless if it is terms of an employee share scheme or assistance has been approved by a special resolution of the shareholders adopted when the previous two years.

Board must also be satisfied that immediately after providing assistance, the company satisfies the solvency and liquidity test and that the terms of the financial assistance are fair and reasonable to the company.

**(ii) Application**

The loan was not appropriately approved as there was no consideration of a special resolution of the shareholders.

The memorandum of incorporation was also not considered just incase there was any provision that prohibited such assistance.

As the company was uncertain about the course of action to be taken, as the company has never granted a loan of this nature. This means that the board did not take to account the solvency and liquidity test as required by the companies act and did not consider the terms of the financial assistance.

From the scenario it shows that the terms of the financial assistance are in the favour of Mr. Elton John as he gets to repay the loan as soon as his company starts making a profit. This is not a favor of the company providing the assistance (Rocknri;; Ltd).

**(iii)Conclusion**

The granted of the loan was not illegal as it did not comply with compliance act requirements.

**2.3. Reference sec 90 (2)**

(i) to be as auditor of the company person or firm

- must be a registered auditor
- Must not be
  - ✓ Director of the company
  - ✓ Employee of the company as has been engaged for more than one year in maintenance of company's financial statements or its preparation

- Director of next appointed as company secretary
- Person who regularly performs duties of accountant or look keeper or secretarial work for the company.
- That person in the current previous five years was a person stated above.
- That person is related to any of the above mentioned persons
- Must be acceptable to audit committee as being independent of the company.

### **Application**

The recommended auditors to don't comply with companies act requirements as one of the partners (Pricilla Presley) is related to the director of the client (Mr. Presley).

the auditors are not considered to be independent due to the relationship that exists between Mr. Presley and Priscilla Presley (wife).

(ii) Requirements to be met when vacancy arises in office of an auditor:

Reference sec 91 (2) (3)

Board must appoint new auditor within 40 business days if there was one incumbent auditor and may appoint at any time (i) there was more than one incumbent.

### **Before making an appointment**

Board must propose to the company's audit committee within 15 business days after vacancy occur to consider name of at least one registered auditor Board.

May proceed to make appointment of within five business days after giving proposal the audit committee does not give notice in writing to board rejecting the proposed auditor.

### **(iii) Reference sec 94(8)**

Considerations to be taken to account in order to determine whether or not Blues Incorporated is independent are the following.

The audit committee of the company must ensure that auditor does not receive any direct or indirect remuneration except as auditor or for rendering other services.

The audit committee must consider whether the auditor independence may have been prejudiced as result of previous appointment as auditor or having provided consultancy advisory and other work to that company.

The audit committee must consider compliance with other criteria relating to independence or conflict of interest as provided in the Auditing Profession Act.

#### 2.4. Remaining duties of the audit committee

**Reference: sec 94 (7)**

**Duties include**

- Determine fees to be paid to the auditor and terms of engagement.
- Determine nature and extend of any non – audit services that the auditor may provide to the company and must not provide to the company.
- Prepare report to be included in the annual financial statements for that financial year.
- Make submissions to the board on any matter concerning the company's accounting policies, financial control, records and reporting.
  
- Receiving deal appropriately with any concerns or complaints, whether from within or outside the company relating to :
  - ✓ Accounting practices and internal audit of company.
  - ✓ Auditing of the company's financial statements
  - ✓ Internal financial controls

#### 2.5. Dismissal of Directors

Reference: sec 71

Director may be removed by an ordinary resolution adopted at a shareholders meeting by persons entitled to exercise such rights.

**Sec 71 (3)**

If a company has more than two directors and a director or shareholder has alleged director of the company as ineligible or dignified or incorporated or has neglected his / her functions as director.

The board must determine matter by resolution and may remove director.

Before board may consider resolution director concerned must be given notice of meeting , including copy of proposed resolution and reason for resolution.

Director concerned must be given reasonable opportunity make presentation to the meeting before resolution to put to vote.

### **Application**

According to the companies act requirements the matter was not dealt with appropriately as a active of meeting was not ponded to the concerned director and no reasonable opportunity to make presentation was provided.

Mr. Presely did not act in compliance with companies act requirements and should therefore follow procedures stated in sec 71 (4).

### **Question 3**

3.1. Reference s 65 and sec 41 (1)

Decision to issue shares to directors requires a special resolution sec 65 (11) as the issue of shares is to director and also need authorization to increase the number of unissued authorized shares.

3.2. Reference s 62 and

Requirements of a shareholders meeting

### **Notice of meeting s62**

Company must deliver a notice of each shareholders meeting in prescribed manner and form to all shareholders of the company.

This notice must be delivered at least 15 business days before meeting is to begin if a public or nonprofit company. If other company at least 10 business days.

A notice of shareholders meeting must be in writing and must include:

- ✓ Date, time and place for meeting and record date for the meeting.
- ✓ General purpose of meeting.
- ✓ Copy of any proposed resolution of must company has received a notice.

- ✓ A statement that a shareholder is entitled to attend and vote at meeting and may appoint a proxy to attend and participate and vote in place of the shareholder.

### **Conduct of meeting s63**

#### **Before any person may attend shareholders meeting**

- ✓ Person must present reasonably satisfying identification.
- ✓ Person presiding at the meeting must be satisfied that the right of that person to participate and vote has been reasonably verified.

If company provides participation in meeting by electronic communication.

- ✓ Notice of meeting must inform shareholders of such and provide any necessary information to enable shareholders to access the available medium or means.
- ✓ Access to medium or means of electronic communication is at expense of shareholder or proxy.

At meeting voting can be by show of hands or by polling.

If acting by show of hands, any person present at meeting is entitled to one vote irrespective of member of voting rights held by that person.

If voting matter is by polling, any person present at meeting has number of votes determined by voting rights held in terms of securities held by that shareholder.

### **Meeting quorums s 64**

Shareholders meeting may not begin until officiant persons are present at the meeting. At least 25% of all of the voting rights that are entitled to be exercised in respell of at least one matter should be present at the meeting.

A matter to be decided on at a meeting may not began to be considered unless sufficient pardons are present. At least 25% of all voting rights that are entitled to excise their rights on that are present. At least 25% of all voting rights that are entitled to excise their rights on that matter should be present.

If a company has more than two shareholders a meeting may not begin unless.



At least 93) three shareholders are present at meeting and requirements of the memorandum of incorporation are satisfied.

## MAY/JUNE 2014

### Question 1

1.1. Reference = companies Act section 112

In terms of s 112 of the companies act a company may not dispose all or the greater part of its assets unless.

(i) Disposed has been approved by special resolution of shareholders.

### Application

No the directors of the company cannot approve this transaction through board resolution. Only a special resolution by shareholders may approve this transaction.

1.2. Reference = companies Act section 80 (1)

Yes the directors of Psych Ltd may resolve to voluntarily liquidate company if the company has adopted a special resolution to do so.

1.3.

Column A	Column B
(i)	e
(ii)	a
(iii)	d
(iv)	b
(v)	c

1.4. Reference companies Act section 38.4

As Psych Ltd has 20 000 unissued ordinary shares and wishes to issue 50 000 shares to the public. There is need for 30 000 authorized shares of the board wished to issued 50 000 shares.

With regards to the 50 000 issuing of ordinary s hares the following apply.

The board of a company may resolve to issue shares all any time but only within classes and to extent that shares have authorized in terms of the memorandum of incorporation (s36).

S361 (c)

A company's memorandum of incorporation may authorize a stated number of unclassified shares which are subject to classification by board.

S36 (2)

The authorization and classification of shares and the number of authorized shares set in the memorandum of incorporation may be changed only by

- (i) Amendment of memorandum of incorporation by special of shareholders or
- (ii) Board of company to extent that memorandum of incorporation provides.

S40 - consideration for the shares

Board may issue authorizes shares only

S40 (1)

- (i) For adequate consideration
- (ii) In terms of conversation rights associated with previously issued securities of the company or
- (iii) As a capitalization share.

S40 (2)

Before issuing shares the board must determine the consideration and terms of issue.

1.5. 3 examples where s45 of the companies act will not apply are:

- (i) Lending money in ordinary course of business by company whose primary business lending of money.
- (ii) Amount to defray person's expenses for removal of company's request.
- (iii) An accountable advance to meet legal expenses in relation to matters of the company or anticipated expenses incurred on behalf of the company.

## **Question 2**

### **2.1.**

#### **Appointment of Directors (Ms Aldrin and Ms Sherbatsky)**

### **Requirements of companies Act**

- Directors should be appointed through a formal process

### **Application**

- There was a formal process as a meeting was held on 30 September 2013.

### **Requirements of companies Act**

- Background check and reference checks should be performed before nomination and appointment of directors.

### **Application**

- No background check was done due to the accusation that was made against Ms. Sherbatslay (accused of dishonesty).

### **Requirements of companies Act**

- The board should make full disclosure regarding individual directors to enable shareholders to make their own assessment of directors.

### **Application**

- No disclosure was made to shareholders as they were not present at meeting

### **Requirements of companies Act**

- Shareholder of company should appoint board of directors.

### **Application**

- The shareholders of company did not appoint the directors as they were not present at meeting and were not aware of appointment.

### **Conclusion**

In noncompliance with legal requirements regarding appointment of directors.

### **Companies Act s.69**

#### **S69 (7)**

A person is ineligible to be a director of a company if the person.

- (a) Is a juristic person.
- (b) An unemployment minor or under legal disability or
- (c) Does not satisfy any qualification set out in the company's memorandum of incorporation.

**Application**

- None of the two directors appointed are juristic persons therefore in compliance with the companies act.
- The directors have memorandum qualifications meet the requirement of the memorandum of incorporation.

Companies Act s.69

S69 (8)

A person is disqualified to be director of company if

- (a) Court has prohibited that person to be a director.
- (b) Person is an rehabilitated insolvent, prohibited by public regulation, was removed from an office of trust on grounds of misconduct involving dishonesty or convicted in the Republic.

**Application**

Ms. Sherbatsky is disqualified from being a director as was previously dismissed from an office of trust due to dishonesty.

**Conclusion**

Ms. Aldnn is a legally appointed director as her appointment does not contravene with the memorandum of incorporation or the companies act.

Ms. Sherbatsky is not legally appointed as her appointment contravenes with the companies act.

2.1. Appointment of Auditors

2.2.1. Calculation of Public Interest score as at date of meeting

Reference: Companies Regulation 26(2)

1 point x 120 employees

120

1 point x (125m / r1m) liability	125
1 point x (7m / R1m) Revenue	7
1 point x (1 + 20 + 70)	91
Direct or indirect interest	
In the securities of	
The company	
Public interest score	<b>343</b>

Requirement for private company to be audited.

### Companies regulation 28 (2)

#### Requirement for a private company to be audited are as follows:

- If on the ordinary course of business the companies hold assets in judiciary capacity for unrelated persons and assets exceed an aggregate value of R5million at any time during the financial year when held.
- If nonprofit company was incorporation directly or indirectly by the state or incorporated primarily to perform a statutory or regulatory function in terms of any legislation or to carry out a public function company has a public interest score in that financial year calculated as 350 or more, or at least 100, if its annual financial statements for that year were internationally complied.

#### Conclusion

Mac Larens will require to have its annual statements audited as from the calculation they have at least 100 and its financial statements are internally generated.

#### 2.2.2. Appointment of the auditor s90

##### Companies Act Requirement

Must appoint an auditor at the annual general meeting.

##### Application

The auditor was appointed at an annual general meeting

**Companies Act Requirement**

The person or form being appointed

- (a) Must be a registered auditor.
- (b) Must not be a director of the company, an employee or consultant of the company who has been engaged in maintenance of the company’s financial statements, a director or employee of person appointed as company secretary, a person who regularly performed duties of accountant for the company, any person related to the above and fall under list of persons and took that duty at any time in the proceeding (5) five years.

**Application**

As Bays and Thomas they are in practice it means they are registered auditors. Bays and Thomas do not fall under any category of persons listed as being prohibited.

**Companies Act Requirement**

- Audit committee must be independent of the company

**Application**

The audit firms not independent as performed other non – audit services. The audit firm drew up the business plan, was included for the payroll administration and tax officers of the client. This may lead to self-review threat as they perform function for the company internationally and will then need to audit their own functions. If threat to objectivity and thus not independent of client.

**Conclusion**

Appointment of Bays and Thomas Inc is not in compliance with the companies act as the auditors are not independent and no safeguards have been put in place in order to reduce threat to independence to a significant and appropriate level.

2.3. Contract with meat supplier

Requirements of companies Act s21	Application
Person may enter into written agreement on behalf of and in name of company but does not yet exist at the time.	Complies with companies Act as a pre incorporation contract as Mr. Ericson entered into a written agreement on behalf of Mac Lareens on 1 August 2013.

	(incorporation date : 28 August 2013)
Subsequently incorporated or offer incorporation the company rejects any part of the agreement or action.	As company rejected agreement. Mr. Ericson is liable.
If after incorporation company enters into same terms of same contract the liability of person who entered on behalf of company is discharged.	The company does not agree with terms of contract as supplier has proven to be very pricey.
Within 3 months after date of incorporation board may completely, partially or conditionally ratify or reject in full any pre – incorporation contract.	Rejection is within the specified time frame of 3 months (90days) was rejected after 32 days of incorporation and may reject in full.
If company rejects an agreement person who had previously entered into agreement may assert a claim against the company for any benefits it has received or is entitled to receive.	If company benefited from the contract in the past month Mr. Ericson may claim against company for any benefits the company received.

### Conclusion

Rejection of agreement with supplier in full is in compliance with the companies Act.

### Question 3

3.1 as the director (Mr. Sheldon) submitted a fraudulent tax return thus is noncompliance with the companies act with regards to s76.

<b>Companies Act Requirement</b>	<b>Application</b>
Director of company must not use position of director. Reference s762(a)	As the director submitted a fraudulent tax return this excess harm to the company as if once result in fines and lack of continuity of the company.
Directors must exercise powers and perform functions in good faith, in best interests of the company with degree of care, skill and diligence.	The director (Mel Sheldon) didn't act in the best interests of the company and was not in good faith as his actions will cause harm to the company. (Fines and effect on going concern).

3.2. Persons who will be protected in terms of s159 include:

Shareholders

-employee of supplier



Director	-supplier of goods/ services
Company secretary	-to the company
Prescribed officer	-any other representative of
Employee of a company	-employees of that company
Registered trade union representing employees of company	

**Conclusion**

Mr. Ltofstadter does not fall under the list in the companies act s159(4) as he is a neighbors' a and is thus not protected by s159.

**Question 4**

Granting of loan to Mr. Patrick (unrelated third party)

Reference s44

Companies Act Requirements	Application
Financial assistance does not include lending money in ordinary course of business by a company whose primary business is the lending of money.	CB1 does not lend money in the ordinary issue of its business. Thus complies with s44(1)
The bound may authorize the company to provide financial assistance by way of loan to any person in connection to subscription of shares.	Mr. Jane, the CEO approved the granting of loan in non – compliance with the companies act as the directors did not authorize.
The board may not authorize any financial assistance unless if. (i)loan is part of employee share scheme or Authorized through special resolution by shareholders adopted within previous two years and had approved such assistance	The board was in compliance as they did not authorize the financial assistance due to there not having mention of special resolution approval by shareholders.
(ii)the boards satisfied that immediately after providing financial assistance the company will satisfy the solvency and liquidity test and terms of financial assistance are fair and reasonable to the company.	In noncompliance with the companies act as board did not take part in authorization of shares. This means that the solvency and liquidity test was not considered and also terms of the loan.  Liquidity test = $\frac{\text{current assets}}{\text{current liabilities}}$  $= \frac{2500}{3500} = 0.071$  Recommended = 2

	<p>In noncompliance with the companies act as the liquidity test was not satisfied.</p> <p>The terms of the financial assistance were fair and reasonable to the company as being repaid in a favorable time and market related interest rate (above prime)</p>
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**Conclusion**

The granting of loan in non-compliance with the companies act and it was not appropriately approved and did not satisfy the solvency and liquidity test.

## OCOBER / NOVEMBER 2014

### Question 1

#### 1.1. Composition of audit committee and duties

- (i) Reference companies Acts 94 (2) and (4).

The companies act requires that the audit committee should hold at least three members who are directors of the company but should not be involved in the day to day management of the business thus should be independent non-executive directors. The directors should be suitably qualified.

#### Application

- The audit committee of Lila – Cola Ltd has at least three members as required by the companies act.
- Mr. Sparlotta cannot be part the audit committee as he is a managing director of cola and is involved in the daily management of Cola Cola therefore he is not a non-executive director.
- Mr. Pipsi CA (SA) is recently resigned from Cola and is therefore not independent as he is a previous employee of Cola and three years has not elapsed from his resignation. He cannot be a member.
- Mrs. Swchappes qualifies to be an audit committee member as she meets all requirements of sec 94(2) and (4).

- (ii) Five other duties of the audit committee include by receiving and commenting on financial statements.

- ✓ Overseeing of integrated reporting.
- ✓ Ensuring that a combined assurance model as adopted applied to provide a coordinated approach to all assurance activities.
- ✓ Responsible for overseeing of internal audit.
- ✓ Overseeing the external audit process by receiving the quality and effectiveness of the external audit process.
- ✓ Should be satisfied with expertise resources and expense of the company's finance function.

- 1.2. (i) Audited - Public owned companies must be audited.

- (ii) Audited - as the public interest exceeds 350, company must be audited.

- (iii) Neither -as all shareholders are also directors there is no need for an audit or review.
- (iv) Audit - all public companies are required to audited.

Reference: companies Regulations s28 (2)

1.3. Companies act Requirement for a company to be audited.

Reference: companies act s.28(20)

- The company must either be a public or state owned company or
- Any profit or nonprofit company that held assets in capacity for persons not related to the company at any time during the year for a value that exceeds R5 Million or
- Any nonprofit company incorporated directly or indirectly by the state or
- Any non – profit company that performs a statutory or regulatory function or public function for the state.
- Any company whose public interest score is more than 350 or at least 100 where its annual financial statements are internally compiled.

### **Application**

Lupton has a public interest score of 167 points and is therefore at least 100 points.

The financial statements of Lupton Ltd are internally generally by the director (Mr. Pipsi).

### **Conclusion**

The financial statements of Lupton Ltd should be audited with regards to s28 (2).

1.4. Reference : companies Acts 75(5)

As Mr. Pops had personal financial interest, the following companies act requirements should have been complied with;

- If a director has personal financial interest in any matter that is to be considered at a meeting of the board (the purchasing of share in Lupton Ltd).
- The director with personal financial interest must:
  - ✓ Disclose the interest before meeting.
  - ✓ Disclose any material information known to the director.
  - ✓ May disclose any observations if requested by other directors.

- ✓ If present at meeting must leave immediately after disclosing.
- ✓ Must not take part in consideration of matter
- ✓ Must not execute any document on behalf of the company in relation to matter unless requested by board.
- ✓ While absent from meeting the director with interest on matter as regarded as present at meeting for purpose of determine efficient directors present.
- ✓ However directors are not regarded as present with regards to obtaining efficient resolution.

## Question 2

### 1.2.1. (i) Reference : Companies Act sec 112

If the board want to proceed with sale of production studios, this is considered as disposed of all or greater part of assets which falls under sec 112.

According to sec 112 (2) a company may not dispose all or the greater part of its assets unless;

- ✓ Disposal has been approved by special resolution of shareholders and
- ✓ The company satisfies all requirements of sec 115.

A notice of shareholders meeting to consider special resolution to approve the transaction must be sent and delivered within the prescribed time, manner, to each shareholder of the company.

The notice should be accompanied by a written summary of terms of the transaction to be considered at meeting and provisions of s115 and s164.

Assets to be disposed and must be fairly valued, in prescribed manner, at date of proposal.

- (ii)(a) financial distressed                      reference sec 129(1)
- (b) reasonable prospect
- (c) rescuing

(iii)Reference s71 (3)

If a company has more than two directors (there are 5 directors) and a director (Ms. Steep) has alleged that a director (Ms. Nyongo) has become ineligible or disqualified, incapacitated or has neglected functions of being a director.

In this case Ms. Nyongo was said to be negligent in that she was to be named for paired cuts that caused financial problems and poor planning.

In terms of the companies act s71(#) board other than director concerned (Ms. Nyongo) must determine matter by resolution and may remove director when they have determined negligent.

However before board may consider the resolution, the director concerned (Ms. Nyongo) must be given notice of meeting, copy of proposed resolution and its reasons therefore. The director must also be given reasonable opportunity to make a presentation in person to the meeting before matter is put to vote.

- ✓ Companies act requirements were not complied with as no notice of meeting was issued to Ms. Nyango and she was not given any reasonable opportunity to make a presentation.

(iv)(a) Standards of compliance for directors

Reference : s76

With regards s76 a director (Ms. Nyango) of a company must :

- ✓ Not use position of director on any information known as director to gain personal advantage or knowingly cause harm to the company.
- ✓ Communicate at the earliest any known information by director of which he / she considers to be material unless if believes information is immaterial or is generally known by the public or bound not to disclose by legal or ethical obligation.
- ✓ Perform in good faith and for proper, act in best interests of the company.
- ✓ Act with degree of care, skill and diligence.

(b)Reference: Sec 88

Ms. Nyongo should officially direct queries if she require assistance in understanding her duties and responsibilities as a director to the company secretary.

In terms of sec 88 2(a) of the companies act the company's secretary is accountable to company's board to provide directors of the company with guidance as to their duties, responsibilities and powers.

2.2.(i) Reference : sec 22

The companies Act states that a company must not carry on its business recklessly, with gross negligence with intent to defraud any person or for any fraudulent purpose.

### **Application**

As the company is going through financial problems rescuer the shows that the company has no capacity for extra spendings yet the directors have authorized a 21% salary increase. With thus they are defrauding shareholders and not acting in the best interests of the company thus is trading recklessly.

(ii) Shareholders should approve the company's remuneration policy.

The 21% salary increase was accepted by directors and was not authorized by shareholders and is therefore in non – compliance with legal requirements.

### **Question 3**

3.1. Reference s45 – loans or other financial Assistance to Directors.

According to the companies act the board may not authorize any financial; assistance unless financial assistance.

- ✓ To an employee share scheme or
- ✓ There has been a special resolution by shareholders that was adopted within the previous two years which approved such assistance and
- ✓ Board is satisfied that immediately after providing financial assistance the company would satisfy the solvency and liquidity test and
- ✓ Terms under which financial assistance is proposed are fair and reasonable to the company.

## **Application**

With regards to the companies act requirements the authorization of loans to directors was not legal due to the following:

- There was no special resolution by shareholders that was adopted within the previous two years to approve such assistance. Instead the directors approved the transaction.
- The terms of the financial assistance are not favorable to the company as the loans are interest free thus of no benefit to the company. The loans are also unsecured therefore no security to the company if loans are not repaid.

## **Conclusion**

In noncompliance with companies act requirements, therefore the approval of loans is not legal.

In terms of s 45 (6)

A resolution by board is void to extent that provision of that assistance is inconsistent with the companies Act.

The directors of the company are liable for any financial loss to company was present at meeting and failed to vote against the resolution.

### 3.2. Rights associated with shares issued.

- As the rights obtained do not have voting rights, the directors may not use these rights / exercise rights when voting.
- In terms of s 63 (s)
- Any person present at meeting entitled to exercise voting Rights has one vote, irrespective of the number of voting rights they are entitled to exercise. This is the case when voting is by show of hands.

## **Application**

Voting Rights do not change, each of the directors (Mr. Bellagio and Mr. Ceasar) each have one voting right at meetings.

- In terms of s 63 (6)  
If voting on a particular matter is by polling.



Any person present at the meeting has number of votes determined in accordance with voting Rights associated with the securities held by that shareholder.

**Application**

As the rights obtained do not held any voting rights. The voting in terms of polling does not change before and after the rights issue.