

AUE1601
Revision slides
Topics 1 - 4

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Disclaimer

Kindly note that these slides are for extra last minute revision purposes. It should by no means replace your study material. ~~All material covered in topics 1-8 of your study guide is examinable (including all tutorial questions).~~ Nothing in these slides are more important than the rest of your study material.

Topic 2

Related parties and control

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

Topic 2

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

Topic 2

Solvency and Liquidity

Solvency test

- Assets fairly valued \Rightarrow Liabilities fairly valued

Liquidity test

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

Solvency and Liquidity tests are used when

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

Topic 2

Categories of Companies

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

Familiarize yourself with table 2.1.6 on page 19 of the study guide.

Topic 2

Memorandum of Incorporation (MOI)

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

Pre-Incorporation contracts

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

Topic 2

Reckless trading

A company may not:

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

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

Topic 3

Company records

- Must be kept in written format
- For 7 years
- Review activity 1 on page 31 of the study guide.

Financial statements must:

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

Topic 3

Requirement for financial statements to be audited

The following must always be audited

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

All other companies should calculate their Public Interest Score

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

Topic 3

Public interest score of 350 or more

- Must be audited

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

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

Public interest score of less than 100

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

Topic 4

Authority to issue shares available for issue

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

Topic 4

Authority to increase shares available for issue

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

Topic 4

Declaration of dividends or other distributions

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

Topic 4

Share buy-backs

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

Topic 4

Shareholders meetings and resolutions

Notices:

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

Meeting quorum:

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

Voting quorum:

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

Topic 4

Shareholders meetings and resolutions

Ordinary resolution:

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

Special resolution

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

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

Topic 5

Number of directors

- Review the table on page 58 (5.1.1) of the study guide regarding the minimum number of directors required for each type of company.

Appointment of directors

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

Ineligible (disallowed) to be appointed

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

Disqualified to be appointed

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

Topic 5

Removal of directors

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

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

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

Then...

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

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

Topic 5

Removal of directors (continues)

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

- Apply to court for a review
- Within 20 days

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

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

Directors (Board) meetings **Topic 5**

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

Directors interest in contract

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

Topic 5

Directors conduct

Review the list on page 70 under 5.4.1

Topic 6

Company secretary

Duties

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

Topic 6

Company secretary

Appointment

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

Topic 6

Company secretary

Resignation/Removal

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

Topic 6

Auditors

- Must be appointed within 40 days from incorporation
- Must be appointed within 40 days from vacancy
- Directors must nominate at least one auditor within 15 days from vacancy
- Audit committee has 5 business days to reject the auditor in writing
- **NB!** Review the table on pages 87 and 88 (table 6.3.1.1) regarding appointment, vacancies and rotation of the auditor

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

Topic 6

Audit Committees

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

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

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

Topic 6

Audit Committees

Duties

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

Topic 7

Financial assistance to purchase shares

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

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

Topic 7

Financial assistance to directors/related parties of directors

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

Does not apply when

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

Topic 7

Sale of the greater part of assets

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

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

Topic 8

Liquidation of solvent company

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

Business rescue

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

Protection for whistle blowers

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

Refer to page 120 of your study guide, 8.3.1 sets out a list of the specific misconduct referred to, as well as a list of the persons who will be protected in terms of this section.

Exam Technique

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

Good luck! All the best!

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