



FACULTY/COLLEGE	College of Business and Economics
SCHOOL	School of Management
DEPARTMENT	Business Management CEP's
CAMPUS	APB
MODULE NAME	Corporate Governance & Compliance Management
MODULE CODE	HC1CGCM
SEMESTER	Second
ASSESSMENT OPPORTUNITY, MONTH AND YEAR	Final Summative Assessment November 2020

ASSESSMENT DATE	2 November 2020	SESSION	8:30
ASSESSOR	DR S HUNEBERG		
MODERATOR	MRS Z MABUSE		
DURATION	2 hours	TOTAL MARKS	100

NUMBER OF PAGES OF QUESTION PAPER (Including cover page)	7
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INFORMATION/INSTRUCTIONS:

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- This is an online assessment.
 - Read the questions carefully and answer only what is asked.
 - The general University of Johannesburg policies, procedures and rules pertaining to written assessments apply to this assessment.
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SECTION A

Question 1

Define the following terms: (15)

- a) Business Rescue (3)
- b) Insider Trading (3)
- c) Executive Director (3)
- d) Non-executive Director (3)
- e) Corporate Governance (3)

Question 2

List any 10 (ten) principles as laid down by the King IV Report. (10)

Question 3 (5)

Identify the type of officer in the following scenarios:

- a) Peter presides over the meeting of directors in order to ensure the smooth running of the meeting as in line with good corporate governance. (1)
- b) Nonhlanhla is responsible for the implementation of policies and strategies adopted by the board. (1)
- c) Kingsley is responsible for providing financial leadership through financial planning in the company. (1)
- d) Raashi is responsible for ensuring that the directors of the company are aware of all relevant laws affecting the company. (1)
- e) Sivan is responsible for developing the company's risk management framework. (1)

Question 4 (5)

Identify the type of business entity in each of the following instances:

- a) Blue Bird is an entity that carries on an auditing business, it has directors who are jointly and severally liable for the debts of the entity. (1)
- b) Insure-4-All is an entity which may sell shares to the public and its shares are freely transferable. (1)
- c) Patrick draws up a contract whilst he is still alive which aims to protect his assets for his three children. (1)
- d) Jane and Jenny start a business entity between themselves to sell hand sanitizers, the entity does not have legal personality and also does not have continuity. (1)
- e) Cherry Designs is a business entity that has separate legal personality but it may not sell shares to the public and its shares are not freely transferable. (1)

(Sub-total: 35 marks)

SECTION B

Question 1

Bandile approaches you to provide him with advice on director's liability within a company. He is currently an executive director of Masuku Building Corporation (Pty) Ltd and is wanting advice on the following issues:

- 1.1. Bandile is worried about the type of liability a director may incur in terms of the Companies Act. Explain to Bandile what a director's fiduciary duty entails? (4)
- 1.2. Bandile believes that directors can be held both criminally and civilly liable in terms of the law. Should Bandile provide fraudulent information to another, would he face criminal or civil liability? Explain your answer. (3)
- 1.3. Explain to Bandile the difference between the fiduciary duty of a director and the duty of skill, care and diligence. (3)

(10 marks)

Question 2

Anna is a shareholder of Sacred Insurance (Ltd). Recently, Sacred Insurance (Ltd) has not been performing very well financially. Their books reflect that the company has not been making a profit for a few months. Anna is getting worried about the financial viability of the company. She believes that the company may be financially distressed and should possibly undergo business rescue proceedings. Anna has only heard of business rescue through the media, however. She is not entirely sure exactly what it means and what it entails. Anna approaches you for advice.

- 2.1. Explain to Anna what it means to be "financially distressed" in terms of chapter 6 of the Companies Act 71 of 2008. (4)
- 2.2. Should the company undergo business rescue, explain to Anna what business rescue proceedings entail? (6)

(10 marks)

Question 3

Tshepo Maluleka is the current CEO of Future Airways Ltd. The company has recently faced major financial issues due to poor governance and corruption within the company. The company has also been responsible for severe environmental pollution in recent years. The company is now facing liquidation and evidence has been led indicating that Tshepo, along with the rest of the board of the company, knew of the issues within the company but did not do anything to prevent it. The company also did not abide by applicable legislation and failed to take the necessary steps to acquaint itself with the relevant legislation. You need to evaluate the above set of facts with reference to the **relevant** King IV principles in this specific case and elaborate on the outcomes of the relevant principles to this specific case.

(10 marks)

(Sub-total: 30 marks)

SECTION C

Multiple Choice Questions

(10)

1. In terms of the different types of entities recognised in South African law, the following is an example of an entity which does not have separate legal personality:
 - a) Private Company
 - b) Public Company
 - c) Personal Liability Company
 - d) Partnership

2. When registering a company with the CIPC, the following is not a requirement:
 - a) Filing a notice of incorporation
 - b) Filing a copy of the memorandum of incorporation
 - c) Providing a run-down of all capital acquired
 - d) Paying a prescribed fee

3. Regarding the shareholders of a company, the following statement is incorrect:
 - a) They are the owners of the company
 - b) They are responsible for the day-to-day running of the company
 - c) The Board must account to them
 - d) They have the power to elect directors of the board

4. Regarding the board of directors, the following statement is incorrect:
 - a) The board are accountable to the shareholders of the company
 - b) The board have the power to remove directors in certain circumstances
 - c) The board may remove shareholders in the company
 - d) The board is responsible for identifying risk areas in the company

5. The fiduciary duty of a director entails certain duties, which one of the following is not considered part of the fiduciary duty:
 - a) Avoiding a conflict of interest
 - b) Acting in the best interest of the director, himself
 - c) Acting in good faith
 - d) Disclosing a personal interest in a matter

6. Which of the following companies is not required to have an audit committee:
- a) A public company
 - b) A state-owned company
 - c) A private company whose MOI allows for the establishment of an audit committee
 - d) A personal liability company whose MOI does not make mention of having an audit committee
7. The duty of skill, care and diligence requires the following:
- a) Acting for a proper purpose
 - b) Managing the business in a manner expected of a reasonable, prudent person in that position
 - c) Avoiding a conflict of interest
 - d) Disclosing a personal interest in a matter
8. The following statement regarding the King IV report is incorrect:
- a) It is rules based
 - b) It contains 17 principles
 - c) It is principles based
 - d) It contains specific rules on institutional investors
9. Piercing the corporate veil is a mechanism introduced by the 2008 Companies Act aimed to:
- a) Hold directors liable for the losses incurred by the company where there has been an abuse of the separate legal personality of the company
 - b) Holding the company liable for losses sustained
 - c) A defence available to directors who have breached their fiduciary duty
 - d) Rehabilitate a financially distressed company
10. Business rescue proceedings entail various steps and mechanisms aimed at rehabilitating a financially distressed company, which of the following statements is not part of the proceedings:
- a) The temporary supervision of the company, its management and its affairs
 - b) The temporary moratorium on all creditor's claims
 - c) The implementation of a business rescue plan aimed at making the company financially viable
 - d) The appointment of new staff members

True and False**(10)**

1. Executive directors are not salaried employees of the company.
2. Kendrick as the CEO of the company is responsible for ensuring that the company complies with all relevant legislation.
3. Business rescue proceedings are utilised when a company that is financially distressed is capable of rehabilitation.
4. Insider trading is the sharing of public information to outsiders.
5. King IV is principles based rather than rules based.
6. Directors may be removed by shareholders of the company in terms of a special resolution.
7. To pierce the corporate veil means to separate the company from the directors.
8. King IV recommends the majority of the board should be executive directors.
9. Shareholders have the right to elect a certain amount of directors on the board.
10. If a company is already insolvent, it can still elect to undergo business rescue proceedings.

Fill In the missing word/words:**(10)**

1. Directors common law duties have been partially [] in terms of the 2008 Companies Act. (1)
2. In order to register a company, one must file a notice of incorporation together with the company's []. (2)
3. A [] trust is a trust created upon the death of the founder. (1)
4. An *inter vivos* trust is created during the [] of the founder. (1)
5. A [] is a business entity that may no longer be registered since the promulgation of the 2008 Companies Act. (2)
6. The King IV report contains far less principles than the King III report, the number of principles laid down by King IV is []. (1)
7. The [] of a company are the owners. (1)
8. A [] is a business entity formed by two or more persons in agreement to form such an entity and which has no separate legal personality. (1)

Match the column**(5)**

Chair of the Board	Functions include running effective board meetings
Social and Ethics Committee	Review the adequacy and effectiveness of the company's interaction with stakeholders

Audit Committee	Responsible for reviewing the functioning of the internal audit department
Nomination Committee	Ensure the establishment of a formal process for the appointment of directors
Remuneration Committee	Responsible for recommendations of acceptable remuneration packages for directors
	Must consist of majority executive directors
	Functions include ensuring the company's strategies are implemented

(Sub-total: 35 marks)

[TOTAL: 100 MARKS]