



**PROGRAM** : LLB  
**FACULTY** : LAW  
**SUBJECT** : BUSINESS ENTERPRISES LAW  
**CODE** : KPR0011/ BEL41A0  
**DATE** : 26 MAY 2018  
**DURATION** : 2 HOURS  
**TOTAL MARKS** : 70

---

**EXAMINER** : MR F ADAMS  
  
**MODERATOR** : PROF SF DU TOIT (UJ)  
MS J KATZEW (WITS)  
  
**NUMBER OF PAGES** : NINE (9) PAGES

---

**INSTRUCTIONS TO CANDIDATES:**

1. Answer all questions in your SCRIPT.
2. Write legibly.
3. Number your answers carefully.
4. In longer questions, please write in paragraphs. You also need to comply with general English grammar and spelling rules.

**SECTION A**

**[30]**

**QUESTIONS ONE (1) AND TWO (2) MUST BE ANSWERED ON THE BASIS OF THE NOTICE OF MEETING OF FLICKS GROUP LIMITED WHICH APPEARS BELOW.**

**FLICKS GROUP LIMITED**

Dear Shareholder

**NOTICE OF MEETING**

We have pleasure in enclosing the notice of meeting and form of proxy for the Flicks Group Limited's general meeting of shareholders to be held on Tuesday, 21 August 2018 at the group's head office, corner Searle and Pontac Streets, Johannesburg.

Kindly contact Natalie Klopp on [natalie.klopp@flicksgroup.co.za](mailto:natalie.klopp@flicksgroup.co.za) to request a printed copy.

Yours faithfully

David Yanks

Company Secretary

26 May 2018

Notice is hereby given that a general meeting of shareholders of Flicks Group Limited ("the company") will be held at the registered office of the company, corner Searle and Pontac Streets, Johannesburg on 21 August 2018 at 9:00. The board of directors of the company have determined that the date for all purposes of determining which shareholders are entitled to participate in and vote at this meeting is 15 August 2018. The last date to trade in order to be eligible to vote is 10 August 2018. At the meeting the following resolutions will be proposed, considered, and if deemed fit, passed with or without amendment, and such other business will be conducted as is required to be dealt with at the meeting in terms of the Companies Act, No 71 of 2008, as amended ("the Companies Act").

[...]

---

**SPECIAL RESOLUTION NUMBER 1 – GENERAL APPROVAL TO PROVIDE FINANCIAL ASSISTANCE**

Explanatory note

The reason for this special resolution is to provide general authority for the company to assist the Ndhela family in subscribing for shares in the company. Nkosi Ndhlela was the original founder of the company. The company resolves to assist his children and grandchildren in subscribing for shares in the company.

To consider and, if deemed fit, to pass, with or without modification, the following ordinary resolution:

“Resolved that the board of directors of the company may, subject to compliance with the requirements of the company’s MOI and the Companies Act, each as presently constituted and as amended from time to time, authorise the company to provide direct or indirect financial assistance by way of a loan, guarantee, the provision of security or otherwise, to any descendant being children or grandchildren of Nkosi Ndhlela. The financial assistance may be provided at any time during the period commencing on the date of the adoption of this resolution and ending 2 (two) years after such date.”

**SPECIAL RESOLUTION NUMBER 2 – APPROVAL FOR DONATIONS**

Explanatory note

The reason for the special resolution is to allow the company to make donations from time to time to surrounding community initiatives. This would include support for sports clubs, charities and other non-profit organisations. The directors require the resolution to be taken as clause 4.6.1 of the memorandum of incorporation requires that in order for the company to make donations of any kind a special resolution must first be taken by the shareholders.

To consider and, if deemed fit, to pass, with or without modification, the following ordinary resolution:

“Resolved that the company hereby vests the board of directors with the authority to grant donations up to a maximum value of R100 000.00 per annum.”

### **ORDINARY RESOLUTION NUMBER 1 – REMOVAL OF DIRECTOR**

Explanatory note

The reason for the ordinary resolution is to remove Thabo Mokone as a director of the company, subject to the terms and conditions set out in the resolution. The directors require that the resolution be taken as it is in the best interests of the company.

To consider and, if deemed fit, to pass, with or without modification, the following ordinary resolution:

“Resolved that the company hereby approves the removal of Thabo Mokone as a director of the company in terms of section 71 (1), with immediate effect.”

[...]

### **TO TRANSACT SUCH OTHER BUSINESS AS MAY BE TRANSACTED AT A MEETING OF SHAREHOLDERS**

All shareholders of ordinary “A” shares in the company are entitled to attend, speak and vote at the meeting. If you hold certificated shares or are registered as an “own name” dematerialised shareholder (i.e. have specifically instructed your Central Securities Depository Participant (“CSDP”) to hold your shares in your own name on the company’s sub-register), then:

- you may attend and vote at the meeting (identification at the meeting must be produced); alternatively
- you may appoint a proxy to represent you at the AGM by completing the attached form of proxy and returning it to the company’s transfer secretaries or the registered office of the company by not less than 2 (two) business days (being 17:00 Thursday 30 May 2018) prior to the time appointed for the holding of the meeting. A proxy need not also be a shareholder.

---

### **APPROVALS REQUIRED FOR RESOLUTIONS**

The following is in accordance with the Memorandum of Incorporation of the company: Ordinary resolution number 1, contained in this Notice of Meeting, requires the approval of more than 60% of the total votes cast on the resolutions by shareholders present or represented by proxy at the meeting

Special resolutions numbers 1 and 2 contained in this Notice of Meeting require the approval by at least 75% of the total votes cast on the resolutions by shareholders present or represented by proxy at the Meeting.

On a poll only the holders of ordinary "A" shares shall be entitled to one vote per share in accordance with the rights preferences and other limitations in the MOI of the company.

By order of the board



DW Yanks

(as authorised by the board)

Company secretary 26 May 2018

**QUESTION 1****[16]**

- 1.1 Identify three points, in the Notice of Meeting, that are a mandatory requirement of the act, and determine whether the Notice is in compliance with the Act. (4)
- 1.2 Comment on provisions on the appointment of proxies with reference to the recent Supreme Court of Appeal judgment on proxies. (3)
- 1.3 Karl, one of the shareholders of Flicks Limited, has 3500 certificated ordinary "A" shares, 2000 uncertificated ordinary "A" shares and 4500 certificated preference "B" shares. Karl determines that he will be able to exercise 10 000 votes at the meeting, as each share carries one vote Explain to Karl why this may not necessarily be the case, and how many votes he would likely be able to exercise at the meeting. Your answer should include an explanation on the meaning of the different types of shares. (5)
- 1.4 Determine whether **Ordinary Resolution Number 1** may be taken (in compliance with the Act), if the default requirements for a quorum are met and the necessary votes are obtained (4)

**QUESTION 2****[14]**

- 2.1 Rethabile, a director of the company, determines that the company may stand as surety for a bank loan from ABC Bank in favour of Yusuf Ndhlela (the son of Nkosi Ndhlela). The company's financial records indicate that the company is in a very delicate financial position and must not deviate even slightly from its projected plans in order for the company to be able to service the debts of its creditors. Rethabile advises the board that no further requirements are necessary on the part of the shareholders as **Special Resolution Number 1** was adopted at the general meeting. Advise the board on whether the statement made by Rethabile is in fact correct, by advising them on the type of transaction involved and the requirements necessary for the type of transaction under consideration. (10)
- 2.2 Assume that one of the directors who was aware that the requirements of the transaction were not complied with, attended the board meeting where the resolution to repurchase these shares was taken but chose to vote in favour of the resolution. As

a seasoned director of the company he is fully aware that he is protected by the company's limited liability. Advise the director on the correctness of this assumption, and the possible personal consequences that may flow from the decision to vote in favour of the resolution.

(4)

**SECTION B**

[40]

**QUESTION 3**

[6]

Suppose that New Africa Properties Ltd wants to issue further shares and it issues a prospectus. They neglect to mention in the prospectus that a tender that was awarded to them by the Government has been suspended pending an enquiry into alleged irregularities. Rajesh subscribed for shares of New Africa Properties Ltd, relying on the prospectus. When it emerges that the company may have been involved in tender fraud, the price of the company's securities plummets. Rajesh claims that he would never have subscribed for shares in New Africa Properties Ltd had he been aware of the allegations.

Consider whether Rajesh may hold anyone liable for the untruths contained in the prospectus.

**QUESTION 4**

[7]

Kgosi is a director of Black Frames Ltd. He is also a director and majority shareholder of Artisan Photography (Pty) Ltd. Black Frames Ltd is considering a three-year supply contract with Artisan Photography (Pty) Ltd for the purchase of the photographs of young up-and-coming photographers. Black Frames Ltd is also considering a separate contract for the lease of Artisan Photography (Pty) Ltd's studios every alternative weekend. Kgosi determines that as a shareholder of Artisan Photography (Pty) Ltd he should receive a substantial return on his investment when these agreements are concluded.

Advise Kgosi on how he must proceed to ensure that the contract between Black Frames Ltd and Artisan Photography (Pty) Ltd is valid in spite of his interest therein. Your answer should include any requirements necessary either under the common law or the Companies Act of 2008.

**QUESTION 5****[7]**

Clean Sweep (Pty) Ltd is operated as a family business. In the past three years only 5% of its total shares have been traded to shareholders within the family. It conducts two major business ventures. The one is as a supplier of industrial cleaning services. The other is for the manufacturing of cleaning products. The services part of the business has been struggling. The board of directors wants to sell the services part of the business in order to focus on the more profitable part. However, in terms of value, the services part of the business constitutes 53% of the value of the company's undertaking.

Consider whether the proposed transaction is an affected transaction as defined in the Companies Act. The MOI of the company is silent on affected transactions.

**QUESTION 6****[5]**

Shrek and his wife, Fiona, are the members of Faraway Kingdom Resort CC, a close corporation that operates a hotel. After many years of wedded bliss, Fiona becomes disenchanted with her marriage and she leaves Shrek. Shrek does not have the money to buy Fiona's member's interest and Faraway Kingdom Resort CC does not have the reserves to repurchase her member's interest. Prince Charming, however, makes a good offer to purchase the hotel from Faraway Kingdom Resort CC. This would enable the close corporation to repurchase Fiona's member's interest. Shrek refuses this offer, because it would mean that the close corporation would lose its greatest asset.

With reference to case law and relevant statutory provisions, advise Fiona on the remedy she should use in this situation.

**QUESTION 7****[5]**

Adam and Khalil enter into a valid partnership agreement. Adam contributes R2 million and Khalil contributes his continued labour. The agreement makes no mention of the division of profits between Adam and Khalil and also makes no mention of the division of losses. Suppose that the partnership suffers a loss of R300 000 and that Khalil's labour is estimated to be worth R1 million. How much of the loss will be attributed to Adam? Explain fully.



---

**QUESTION 8**

**[10]**

Critically discuss ostensible authority in light of the Constitutional Court judgment in *Makate v Vodacom (Pty) Ltd* 2016 (4) SA 121 (CC). Your answer must include a discussion on both the majority and concurring judgments.

**TOTAL [70]**