



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

SSA EXAMINATIONS DECEMBER 2021

SUBJECT NAME: Corporate Finance Law
SUBJECT CODE: CFL9X1C

DURATION: 4 HOURS
MARKS: 100

EXAMINERS: Prof KE van der Linde

THIS PAPER RUNS TO 3 PAGES.

Instructions

The supplementary examination for CFL9X1C takes place on 3 December 2021 from 12:30 to 16:30 (submission allowed until 17:30). It is a non-venue-based examination, and you need to submit your answers on Blackboard under the examination submission link which will be available in the SSA Examination Folder.

You may type or write out your answers or submit a combination of typed and handwritten and scanned answers. Please download the paper as soon as you can to avoid issues arising from load-shedding. Contact me if you experience any technical issues. Make sure your devices are fully charged, to lessen any adverse consequences of power interruptions.

The paper is drafted as a 4-hour paper, but you will have 5 hours to complete it. Do not underestimate the time needed to scan handwritten answers and to upload your work – this is part of the reason for the additional time. Please try out your scanning application or software before the time. Make absolutely sure that the file you submit contains all the pages!!

You may use any of your study material and other sources when answering questions, although we strongly discourage the use of other sources. Bear in mind that you must submit your own original work and acknowledge all sources, including prescribed articles. You need not provide full citations but at least identify the author. By submitting, you also make a plagiarism declaration, which you can find on Blackboard. Do not abuse the WhatsApp group or any other social media to co-operate with others or to obtain assistance. UJ is on high alert. If you experience technical issues, please contact me on 0836324895 or kevdlinde@uj.ac.za.

QUESTION 1

Word limit: 2500 words, including references.

Write a critical essay on the following topic: “A new approach to regulating financial assistance by companies: did (or will) the legislature get it right this time?”

In your essay need to comment on the provisions of the Companies Act, 2008, as well as any relevant proposed amendments in the Draft Companies Amendment Bill, 2021, a copy of which is available in the SSA examination folder. Your essay can also make recommendations for further reform of this area.

[20]

QUESTION 2

Pepper (Pty) Ltd has two classes of shares: class A ordinary shares and class B preference shares. The MOI provides that Pepper (Pty) Ltd is authorised to issue 5 000 class A shares and 100 class B shares. It has issued 4 800 of the class A shares and all the class B shares. Pepper (Pty) Ltd has also issued 500 convertible debt instruments that may be converted into class A shares on an equal basis, ie one share per debenture. The conversion is at the option of the company.

Pepper (Pty) Ltd wants to expand its business by acquiring the business of Nutmeg (Pty) Ltd as a going concern. It intends relying mostly on accumulated reserves to fund this expansion. The board has decided that instead of declaring a normal dividend to the class A shareholders, it will improve liquidity by making use of a so-called “scrip dividend”. It will offer the shareholders 1 further share for each share held. However, shareholders who do not wish to take up further shares will have the option of receiving a cash amount of R30 per share. The normal annual dividend will be declared to the preference shareholders. The board will also exercise the company’s right to convert the debt instruments into class A shares. Finally, part of the purchase consideration for the business will be in the form of shares that Pepper (Pty) Ltd will issue to Nutmeg (Pty) Ltd. This will be shares in a new class – class C redeemable preference shares.

Although most of the shareholders are satisfied with this transaction, there are shareholders who oppose the expansion and intend obstructing it in whatever manner legally open to them.

Advise the board of Pepper (Pty) Ltd on this transaction. Your answer should deal with the authorisation, issuing and offering of shares and other securities and with the dividends. Consider whether it is necessary to amend the MOI of Pepper (Pty) Ltd. If there are any problems with the current capital structure of Pepper (Pty) Ltd, you should explain what the implications might be and recommend how it could be fixed. You should also advise on the opposition expected from the opposing shareholders.

[20]

QUESTION 3

Cumin is one of 15 founding shareholders of Cloves Ltd. She is the first of the shareholders who wants to sell her shares. Cumin has been unable to find a purchaser and wants to post a short advertisement on her Facebook page (464 friends) and on her Linked profile (1067 contacts), offering to sell her Cloves Ltd shares at R23.50 per share.

Advise Cumin whether her idea can be lawfully implemented and, if not, what the Companies Acts requires if she wishes to approach these friends and contacts to purchase the shares from her.

[15]

QUESTION 4

Saffron (Pty) Ltd has the following three shareholders: Tarragon Ltd, that holds 65% of the shares in Saffron; Ginger, who holds 22% of the shares, and Paprika CC, that holds 13% of the shares. Paprika CC acquired these shares from Rosemary 8 months ago. Saffron (Pty) Ltd operates three upmarket restaurants. The memorandum of incorporation of Saffron (Pty) Ltd provides that a special resolution requires the support of at least 65% of the votes and that the quorum for all meetings is 70% of the votes.

A company has approached the board of directors of Saffron (Pty) Ltd about acquiring the restaurant Decadence as a going concern. The board is keen to enter into this transaction provided the price is right. They explain that this restaurant constitutes 60 per cent of Saffron (Pty) Ltd's total business. The board of Tarragon Ltd also supports the sale. The shares it holds in Saffron (Pty) Ltd are its only asset of any notable value. The other two shareholders, Ginger and Paprika CC, have not yet made up their minds as to whether they support the sale of this signature restaurant.

Advise the board of Saffron (Pty) Ltd whether the proposed transaction will be subject to regulation by the Takeover Regulation Panel and also set out the specific requirements of the Companies Act that will have to be satisfied as well as the remedies available to opposing shareholders. Explain whether the application of any of these rules or remedies will differ in any respect depending on whether either Ginger or Paprika CC, or both of them, oppose the transaction. Finally, explain how your answer might differ, if at all, if the amendments proposed in the Draft Companies Amendment Bill, 2021, were to be enacted.

[20]

TOTAL [75]