



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

SSA EXAMINATIONS January 2021

SUBJECT NAME: Company Law

DURATION: 4 HOURS (plus 1 hour extra)

SUBJECT CODE: CFL9X1C

MARKS: 75

EXAMINERS: Internal: Prof KE van der Linde

THIS PAPER RUNS TO 3 PAGES.

INSTRUCTIONS:

1. This examination paper consists of 2 questions counting a total of 75 marks.
2. Answer both questions in writing (either typed or handwritten).
3. Save or scan your work to a single file with the following naming convention: Surname_student number_CFLEXAM.
4. Upload your answer on Blackboard under the assignment link in the EXAMINATION 2020 folder on the module page no later than 17:00 (5 pm) on Thursday 21 January 2021. Late submission will not be accepted.
5. This is an open source examination. However, you are expected to answer the questions based on your prescribed material. **Submit your own original work.** Do not breach university regulations. **Do not waste time finding internet sources (and if you do, reference your source, and avoid plagiarism).** You may not discuss the questions or answers with other students or any other persons. You may not collaborate on answers. You may also not give or allow any other student access to your answers. **By submitting your answers, you declare that they are your own work and that you are aware that dishonesty, including plagiarism, can have serious consequences for your studies.**
6. If you have technical queries about the paper or submission of answers, contact Professor Kathleen van der Linde on 0836324895 or by email on kevdlinde@uj.ac.za.

[See next page.]

QUESTION 1

The following is an extract from the memorandum of incorporation of Venfin Ltd:

1. The authorised capital of the company consists of
 - a. 2 000 class A ordinary shares with a par value of R10 each
 - b. 10 000 class B ordinary shares with a par value of R1 each.
 - c. 1 000 class C redeemable preference shares without par value.
2. Class A shares have ten votes per share.
3. Class B shares have one vote per share.
4. Class C shares have one limited voting right per share which can be exercised only when the dividend on class C shares is in arrears or when the rights attaching to class C shares are proposed to be amended.
5. Class C shares are entitled to receive an annual dividend of R40 per share in preference to ordinary shares.
6. The class C shares are redeemable at the option of the shareholders at any time after 31 December 2020 at a price of R500 each.

Venfin Ltd has issued all the class A shares; 8 000 of the class B shares; and all the class C shares.

- A. Venfin Ltd now wants to grow its business by acquiring control of one of its competitors, Targetfin Ltd. The board of Targetfin Ltd does not support Venfin Ltd's proposal. Accordingly, Venfin Ltd intends making an offer to the shareholders of Targetfin Ltd to acquire their shares from them. In terms of this offer, Venfin will give a combination of money and class B shares in itself as consideration for the Targetfin Ltd shares. If all the shareholders of Targetfin Ltd accept the offer, a total of 3 000 further class B shares will need to be issued.
- B. Venfin Ltd wants to create a further class of ordinary shares, class D ordinary shares, comprising of 500 000 authorised shares. The board intends offering these shares to one of Venfin Ltd's large creditors. The consideration for these shares will comprise three elements: an amount in cash that will be paid upon issue of the shares, the writing off of a debt that will become payable three months after the issuing of the shares, and a balance that will be paid in cash six months after the issue.
- C. To compensate its directors for the additional work pertaining to the transaction, Venfin Ltd will grant options to its directors to each acquire 100 class C shares at a favourable price.
- D. The board of Venfin Ltd has agreed to acquire 800 of the class A shares from a shareholder who is opposed to the transaction. The purchase consideration will be funded partially from the contributed tax capital (CTC) account of Venfin Ltd and partly from accumulated profits.
- E. Once the class A shares have been acquired by Venfin Ltd, the company will issue 400 class A shares to the remaining class A shareholders, in proportion to their shareholding. They will not be required to pay any consideration to Venfin Ltd.

[See next page for instructions and question 2.]

Instructions for question 1:

Draft a legal opinion advising the board of the legal nature of, as well as the requirements for, each element of this plan. Identify any legal pitfalls and suggest alternative solutions where possible. Set out any applicable shareholder and creditor protection mechanisms. Explain the impact of the board's decision in relation to the CTC account on the tax consequences of the acquisition of the class A shares for the shareholder in question.

[50]

QUESTION 2

Critically analyse the special arrangements made for groups of companies and related companies in the Companies Act 71 of 2008 in relation to the "capitalisation of profit companies" (Part D of Chapter 2 of the Act and accompanying provisions such as definitions) and fundamental and affected transactions, takeovers and offers (Chapter 5 of the Act, s 112-127 and accompanying provisions). Evaluate the purpose of each of these special arrangements and express your informed opinion as to whether each arrangement is justified. In your analysis, also comment on uncertainties and anomalies raised by scholars in relation to these arrangements.

Do not discuss the principle of separate legal personality or the concept of piercing of the corporate veil.

[25]

TOTAL [75]