



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

NOVEMBER EXAMINATIONS 2021

SUBJECT NAME: Corporate Finance Law
SUBJECT CODE: CFL9X1C

DURATION: 4 HOURS
MARKS: 100

EXAMINERS: Prof KE van der Linde
External Prof A Loubser (Unisa)

THIS PAPER RUNS TO 3 PAGES.

Instructions

The examination for CFL9X1C takes places on 3 November 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 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.

“The proposition that a company has a separate legal personality from its corporators survived the coming into existence of the large numbers of fully-owned subsidiaries of companies and their complete domination by their holding company ... There was continued adherence to the principle recognised by Salomon, notwithstanding that for a number of purposes, legislation recognised the existence of a group of companies as a single unit.” (per Rogers AJA in *Briggs v James Hardie & Co Pty Ltd* (1989) 7 ACLC 841 NSW CA)

Critically analyse and evaluate the extent to which the Companies Act 71 of 2008 responds to the “commercial reality” of corporate groups in its regulation of

- a) the “capitalisation of profit companies” (Part D of Chapter 2 of the Act, s 35-48), and
- b) “fundamental and affected transactions, takeovers and offers” (Chapter 5 of the Act, s 112-127).

In addition to providing an account of the various special arrangements, extended provisions, exceptions, or other adjustments applicable to companies in a group, your analysis must comment on uncertainties and anomalies that have been identified by scholars in your prescribed material in relation to the application of the relevant provisions in this context. You should conclude with a brief evaluation of the appropriateness of the provisions addressing group commercial reality. Despite the reference to “fully-owned” subsidiaries in the quotation, do not restrict your answer to wholly-owned subsidiaries, but include all holding company-subsidary relationships as well as the relationship between co-subidiaries in a group. Further include instances where the holding company subsidiary relationship is recognised through broader concepts such as “related company” or “acting in concert”. Do not, however, discuss the principle of separate legal personality or the concept of piercing of the corporate veil.

[25]

QUESTION 2

Predator Ltd holds 20% of the voting securities in Target Ltd. The board of directors of Target Ltd has been approached by Predator Ltd regarding a proposal to join forces through a merger. The Target Ltd board rejected this idea outright. Predator Ltd then decided to make a general offer to the shareholders of Target Ltd to acquire their shares. The consideration will be newly issued shares in Predator Ltd, plus cash. The offer will be subject to the condition that it is accepted in respect of 90% of the remaining shares (ie those not yet held by Predator Ltd). The board of Target Ltd does not support the offer and will advise shareholders against accepting it.

The board has approached Predator Ltd with a view to Target Ltd repurchasing the 20% stake held by Predator Ltd. Predator Ltd would then abandon the general offer. These negotiations hold promise, but Target Ltd would have to pay a considerable premium over the current market price to acquire the shares from Predator Ltd.

(a)

You have been approached by a shareholder of Target Ltd for legal advice pertaining to the offer and the possible repurchase transaction. She is curious to know whether any aspects could possibly contravene the Companies Act. Advise her fully on the requirements that the two companies would have to comply with to implement each of these alternative transactions and on the protection shareholders enjoy in each instance, whether through shareholder approval requirements or through remedies if either of these transactions materialise. Refer to relevant authority.

(20)

(b)

Briefly outline the tax implications for Predator Ltd if the repurchase by Target Ltd were to be implemented. If there is more than one possible position, explain what they are and what would determine which one is applicable.

(5)

(c)

Explain to what extent your advice in (a) would differ if the Draft Companies Amendment Bill of 2021 were to be enacted. Briefly evaluate the merits of the proposed amendment.

A copy of the draft bill is available in the exam folder.

(10)

[35]

QUESTION 3

Chapter 6 of the Companies Act creates a number of special arrangements pertaining to the reorganisation of a company's share structure in terms of a business rescue plan, inter alia to facilitate debt equity conversions. Evaluate these arrangements and express a considered view as to whether they should be abolished, retained, or expanded.

[15]

TOTAL [75]