



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

NOVEMBER EXAMINATIONS 2020

SUBJECT NAME: Company Law

DURATION: 4 HOURS (plus 1 hour extra)

SUBJECT CODE: CFL9X1C

MARKS: 75

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

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 26 November 2020. 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 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

A. The following is an extract from the memorandum of incorporation of Datanext (Pty) Ltd:

1. The authorised capital of the company consists of
 - a. 2000 class A ordinary shares, carrying one vote each
 - b. 500 class B redeemable cumulative preference shares entitled to receive an annual dividend of R40 per share in preference to ordinary shares
2. Each class B preference share has one limited voting right. This voting right can be exercised only when the dividend on class B shares is in arrears or when the rights attaching to class B shares are proposed to be amended.
3. The class B preference shares are redeemable at the option of the company at any time after 30 September 2020 at a price of R200 each.
4. Class B shareholders will not have pre-emptive rights.

You can assume that apart from the above, the memorandum of incorporation has not altered any of the other alterable provisions of the Act.

B. Datanext (Pty) Ltd has issued 1800 class A shares and all the class B shares. During the previous financial year Datanext (Pty) Ltd could not pay the full preferential dividend on the class B shares and paid a dividend of only R3 per share. The class A shareholders did not get any dividend.

C. Datanext (Pty) Ltd now wants to raise R5 million by issuing 10000 debt instruments (debentures) that are convertible into class A ordinary shares after 30 June 2021.

D. The idea is to offer these convertible debt instruments to Datanext (Pty) Ltd's customers and the marketing department is preparing a digital flyer/banner that will appear on the company's website to draw attention to this investment opportunity.

E. Datanext (Pty) Ltd wants to use part of the proceeds of the convertible debt instruments to pay the arrear dividend on the class B shares and, once that has been done, to redeem the class B shares at the redemption price of R200 each.

F. R150 of the redemption price per share will be funded from contributed tax capital (CTC). This means that the CTC account will be reduced by R150 x 500 in the aggregate). The remaining R50 of the redemption price will not come from CTC.

G. In order to keep the class A shareholders happy, Datanext (Pty) Ltd further intends issuing free shares to them at a rate of one additional class A share for each ten (10) class A shares held by a shareholder.

[See next page for instructions for this question.]

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 redemption of the class B shares for the class B shareholders.

[50]

QUESTION 2

"The proposition that a company has a separate legal personality from its incorporators 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 the extent to which the Companies Act 71 of 2008 responds to the "commercial reality" of corporate groups in its regulation of the "capitalisation of profit companies" (Part D of Chapter 2 of the Act, s 35-48) and "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]

TOTAL [75]