



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

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SUBJECT NAME: Corporate Finance Law
SUBJECT CODE: CFL9X1C

DURATION: 4 HOURS
MARKS: 75

EXAMINERS: Prof A Loubser/ Prof KE van der Linde
External Prof PA Delpont (UP)

THIS PAPER RUNS TO 4 PAGES.

ANSWER ALL QUESTIONS. THIS IS A PARTIALLY OPEN BOOK EXAMINATION. YOU MAY HAVE WITH YOU COPIES OF LEGISLATION AS WELL AS A MAXIMUM OF 20 PAGES OF NOTES PREPARED BY YOU.

QUESTION 1

Desperado (Pty) Ltd has been in business for 15 years and is currently experiencing financial difficulties. Its memorandum of incorporation states that the authorised share capital is 1000 class A ordinary shares with a par value of R10 each and 200 class B preference shares with a par value of R100 each. Opaque (Pty) Ltd has issued 700 class A ordinary shares at an issue price of R15 each. None of the class B preference shares have ever been issued. Opaque (Pty) Ltd has not converted its par value shares into no par value shares.

Desperado (Pty) Ltd has three shareholders: Storm, who is also the only director, holds 400 of the shares, while Rain and Sky each hold 150 shares.

Storm has approached Breeze, a turnaround specialist, to advise on strategies to save the business. Her advice is that in addition to an injection of equity, Desperado (Pty) Ltd's balance sheet should be restructured by a debt to equity conversion. One of the major creditors, Lenient Solutions (Pty) Ltd, is prepared to convert part of its claim into 1 500 newly issued class. Angel Investments (Pty) Ltd is keen to take up all 200 class B preference shares.

Breeze has indicated that, depending on the attitude of the shareholders, the restructuring could either be implemented in the ordinary course of business or by means of a business rescue plan. Rain and Sky are opposed to the specialist's proposal as it would entail the dilution of their stakes in Desperado (Pty) Ltd. Sky is prepared to inject further equity. They have also discovered that Storm happens to be the controlling shareholder of Angel Investments (Pty) Ltd.

Given the attitude of Rain and Sky, explain whether the proposals are viable. Do a detailed comparison of the requirements and implications of resorting to business rescue proceedings as opposed to implementing the various elements of the proposal in the ordinary course of business.

[15]

QUESTION 2

(a)

Bigger (Pty) Ltd is the holding company of Smaller (Pty) Ltd and it holds 60 percent of the ordinary shares in Smaller (Pty) Ltd.

Bigger (Pty) Ltd wishes to become the sole shareholder in Smaller (Pty) Ltd so that Smaller (Pty) Ltd will become its wholly-owned subsidiary. In order to achieve this, Smaller (Pty) Ltd proposes to re-acquire all its own issued shares that are not currently held by Bigger (Pty) Ltd but by other shareholders. Smaller (Pty) Ltd intends paying cash for these shares.

Mary holds 5% of the ordinary shares in Smaller (Pty) Ltd. She is also a director of Smaller (Pty) Ltd. Mary is opposed to the proposed transaction because Smaller (Pty) Ltd has had to replace some old equipment and there may be more expenses related to failing equipment in the near future. These unforeseen expenses have already resulted in a short-term cashflow problem in Smaller (Pty) Ltd. She is not convinced that Smaller (Pty) Ltd can or should incur the additional financial burden of re-acquiring its shares. However, as far as she knows it is a board decision if a company wishes to re-acquire its shares and although she could vote against the above-mentioned plan at the board meeting of Smaller (Pty) Ltd, she believes that she would be outvoted. She feels that if the re-acquisition proposal was put to a shareholder vote in Smaller (Pty) Ltd then the outcome might be different. However, she knows that some of the directors of Bigger (Pty) Ltd are also shareholders in Bigger (Pty) Ltd and Smaller (Pty) Ltd and that this might influence the outcome of any vote on the proposal by the shareholders of Smaller (Pty) Ltd.

Advise Mary fully about the procedure specified in the Companies Act 2008 that must be followed in order to authorise the re-acquisition by Smaller (Pty) Ltd of all the ordinary shares in that company not held by Bigger (Pty) Ltd. Included in your answer must be a specific and reasoned explanation (with clear application to facts given and assertions made) as to whether:

- (i) the proposed re-acquisition of the shares by Smaller (Pty) Ltd is a board decision or whether the shareholders of Smaller (Pty) Ltd would have any say in the matter.

- (ii) if it is a shareholder decision, any shareholder could be prevented from participating in the making of the decision, and if so, why.
- (iii) there is any risk that Mary may incur personal liability as a director of Smaller (Pty) Ltd if the board resolves to acquire its shares. **(20)**

(b)

Smaller (Pty) Ltd in question (a) above has 100 shares in issue, all belonging to a single class. The shares were issued for cash consideration of R10 per share and the idea is that the repurchase above will be at a price of R15 per share. It is not yet clear against which account or accounts the repurchase consideration will be debited. Mary is concerned about the tax consequences for her (and other selling shareholders) if Smaller (Pty) Ltd were to proceed with the repurchase. Advise her of the basic principles in this regard. **(5)**

[25]

QUESTION 3

(a)

A South African author once criticised the supreme court of appeal for creating even more confusion regarding the definition of "offer to the public". Explain why and on what grounds this remark was made, whether it was justified, and evaluate to which extent the corresponding definition in the 2008 Companies Act addresses these issues. **(10)**

(b)

The directors of Happy Homes Ltd, a company which owns a farm known as Lions Lair, would like to buy the adjoining farm, Bushveld Haven, to consolidate the two farms into one big game farm. Bushveld Haven is owned by Fine Holdings (Pty) Ltd of which Fred Fine is the sole shareholder and director.

Fred is prepared to sell his shares to Happy Homes Ltd for R15 million on condition that his loan account of R5 million in Bushveld Haven, is also bought by Happy Homes Ltd.

Rickety Bank is prepared to advance a loan of R15 million to Happy Homes Ltd against registration of a bond over Lions Lair, and R5 million to Fine Holdings (Pty) Ltd against registration of a bond over Bushveld Haven. As Lion's Lair is already bonded, the bank insists that Fine Holdings (Pty) Ltd must bind itself as surety for the loan of R15 million to Happy Homes Ltd.

Fully discuss whether any or all of these transactions would constitute a contravention of the Companies Act 71 of 2008 and if so, what the consequences of such contravention would be. **(15)**

[25]

Total [75]