



<u>FACULTY</u>	: Law		
<u>DEPARTMENT</u>	: Mercantile Law		
<u>CAMPUS</u>	: APK		
<u>MODULE</u>	: BEL41A0/ KPR0011		
	BUSINESS ENTERPRISES LAW		
<u>SEMESTER</u>	: First		
<u>EXAM SSA</u>	: 13 July 2020 08:00 – 11:00		
<u>ASSESSOR(S):</u>	Prof KE van der Linde		
<u>MODERATOR:</u>	Prof A Loubser (Unisa)	<u>MARKS:</u>	[90] (60 + 30)

INSTRUCTIONS:

1. This is Part B of your examination. It counts 30 marks and consist of two questions. (Part A is an online test counting 60 marks.) Both parts are due by 11:00.
2. Answer the two questions in this part in writing (either typed or handwritten and scanned).
3. Include your details (name, student no) in your answer file and include your surname in the file name.
4. Upload your answer on Blackboard under the assignment link in the July 2020 SSA Exam folder on the module page no later than 11:00.
5. If there is a submission problem, email your answer to kevdlinde@uj.ac.za.
6. 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). 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 allow any other student access to your answers. By submitting your answers, you declare that the answers are your own and that you are aware that dishonesty, including plagiarism, can have serious consequences for your studies as well as your career.

NUMBER OF PAGES: [3 PAGES]

QUESTION 1 (15 marks)

Below is extract from the memorandum of incorporation (MOI) of A (Pty) Ltd. The clause numbers are as in the complete MOI but the letters between brackets have been inserted for ease of reference in your answer. [Clauses 1 to 3, 13 and 20 ff not included].

- (a) 4. The company is authorised to issue 1 000 class A ordinary shares and 400 class B preference shares, entitled to a non-cumulative preference dividend of R2.00 per year.
- (b) 5. The board will not have the power to increase the number of authorised shares.
- (c) 6. Shares may be transferred only with the prior consent of the board of directors.
- (d) 7. Any further issue of shares must be approved in advance by special resolution of the shareholders.
- (e) 8. Despite section 39 of the Companies Act, the shareholders will only have pre-emptive rights when the company issues shares for cash consideration.
- (f) 9. The company must always have at least 5 directors.
- (g) 10. Mr Y will, while he remains a shareholder, have the right to appoint one director.
- (h) 11. The company may remunerate directors for their services, subject to approval of the shareholders by ordinary resolution.
- (i) 12. The company will be a regulated company for purposes of Chapter 5 of the Companies Act.
(Clause 13 omitted.)
- (j) 14. The notice period for shareholder meetings will be 5 business days.
- (k) 15. Any shareholder is entitled to appoint one of the other shareholders of the company as proxy to participate in, and speak and vote, at meetings.
- (l) 16. Proxy appointments must be in writing in the prescribed form and must be lodged with the company no later than 48 hours before the meeting.
- (m) 17. The quorum for any meeting is three or more shareholders who can together exercise at least 40 per cent of the voting rights that are entitled to be exercised on at least one matter to be decided at the meeting.
- (n) 18. Any special resolution will be adopted if it is supported by at least 70 per cent of the voting rights exercised on the resolution.
- (o) 19. Any ordinary resolution will be adopted if it is supported by more than 60 per cent of the voting rights exercised on the resolution.

You are tasked with drafting a revised MOI for A (Pty) Ltd, focusing on the clauses extracted above. Consider whether each of the above clauses is valid or needs to be revised. Draft revised clauses to replace any existing clauses that conflict with the Companies Act, changing them only as much as is needed to align them with the Companies Act. Where the problem could be fixed in various ways, you are free to choose any acceptable solution. Do not, however, revise clauses or parts of clauses that do not conflict with the Companies Act.

Structure your revision as follows, under (a) – (o):

(a) Either write “Acceptable” or write out your revised/corrected clause in full.

(b) “Acceptable” or write out your new clause.

etc.

QUESTION 2**(15 marks)**

Upmarket Development Holdings Ltd sells shares to the public, the investments of which are used for property development projects. The company owns an impressive collection of modern art which it proudly displays in its head office building. The company has numerous subsidiaries. The various companies in the group are managed by separate boards of directors and there is a clear separation between the different assets of the companies. As a result of economic pressures caused by a national state of disaster, Upmarket Development Holdings Ltd agrees to sell its art collection to Nomasonto, a millionaire with a passion for art. However, the board soon regrets the decision to sell the company's collection to an outsider. As delivery has not yet taken place, the board transfers the artworks to other companies in the group for amounts far below their market value. When Nomasonto attempts to enforce the contract against Upmarket Development Holdings Ltd the directors inform her that the company can no longer transfer the artworks to her because they now belong to other entities. It is obvious that the directors of Upmarket Development Holdings Ltd have an improper influence over the directors of the subsidiary companies in the group.

- (a) Nomasonto is thinking of approaching the court for an order disregarding the separate legal personality of the companies in the group so that she can get the art collection. Evaluate her chances of success in a claim to pierce the corporate veil on these specific facts. Refer to relevant statutory provisions as well as case law.
- (b) Nomasonto is upset that Upmarket Development Holdings Ltd has not taken any steps against the directors in relation to their unacceptable conduct of splitting up the art collection and transferring artworks to other group entities at a fraction of what they are worth. She is shocked that the shareholders do not want to take this matter further. Advise her if she has, or can obtain, legal standing (*locus standi*) to force Upmarket Development Holdings to proceed against the directors or alternatively act on behalf of the company. (Do not discuss aspects other than legal standing.)

TOTAL FOR PART B**[30]**