



PROGRAMME : Higher Certificate in Business Management

MODULE : Corporate Governance, Compliance and Management

CODE : HC1CGCM

DATE : 1 December 2021
Supplementary Examination

DURATION : 2 Hours

TOTAL MARKS : 100

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MODERATOR : Mr A Aziz Ismail

NUMBER OF PAGES : 6 (including this one)

INSTRUCTIONS:

1. Ensure the correct use of grammar and spelling.
2. Please note that this is an online examination and all of the relevant University of Johannesburg rules apply.

Match the column: (10 marks)

Match the question/statement in column A to the most accurate answer/description in column B:

Column A	Column B
Criminal liability of a director.	Falsification of accounting records.
Civil liability of a director.	Signing or authorising the publication of any false or misleading financial statements.
Issue that must be considered during an annual general meeting (AGM).	Appointment of an auditor.
Board of directors.	Tasked with corporate governance.
Shareholders.	Appoint board of directors.

Additional/alternative unmatched answers to also be provided in Column B:

Removal of director.	Responsible for the day to day running of a company.	
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Match the column: (10 marks)

Match the question/statement in column A to the most accurate answer/description in column B:

Column A	Column B
Business rescue proceedings.	Temporary supervision of company and its management.
Director should act within his/her powers and for a proper purpose.	Fiduciary duty of a director.
Duty of care, skill and diligence.	Requires both an objective and a subjective test.
Piercing the corporate veil.	Interested parties may approach the court for an order that the incorporation, use or any act on behalf of the company constitutes an unconscionable abuse of juristic personality.
Business judgment rule.	Defence available to directors who can prove that they acted in the best interests of the company; had no personal financial interest in the matter, or if they

	did, they disclosed it as such; and made an informed decision.
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Additional/alternative unmatched answers to also be provided in Column B:

The trading of a company's shares or other securities by individuals with access to public information about the company.	To maintain the separate legal personality of a company.	
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Multiple choice: (12 marks)

1. Which of the following statements regarding business rescue is **incorrect**:
 - i. Business rescue allows for the rehabilitation of a financially distressed company;
 - ii. Business rescue can be utilised by companies that are already insolvent;
 - iii. Business rescue requires a plan drawn up by the business rescue practitioner to make the company financially viable once again;
 - iv. Business rescue allows for the permanent supervision of a company and of the management of its affairs;
 - v. Business rescue allows for a temporary moratorium on the rights of claimants against the company.
 - a) All of the above are correct.
 - b) Only ii, iii and iv are incorrect.
 - c) Only i, iii and iv are incorrect.
 - d) Only ii and iv are incorrect.
 - e) None of the above are correct.

2. When registering a company with the Companies and Intellectual Property Commission (CIPC), the following is **not** a requirement:
 - a) Providing a run-down of all capital required.
 - b) Filing a notice of incorporation.
 - c) Filing a copy of the memorandum of incorporation.
 - d) Paying a prescribed fee.

3. Which of the following is **incorrect** in relation to shareholders:
 - a) They may elect directors to the board.
 - b) The board is accountable to them.
 - c) They may remove a director from office by means of an ordinary resolution.
 - d) They are responsible for the day-to-day running of the company.

4. Which of the following is **incorrect** in relation to directors:
 - a) The board is accountable to the shareholders.
 - b) The board has the power to remove directors under certain circumstances.
 - c) The board may remove shareholders of the company.
 - d) The board is responsible for identifying risk areas in the company.

5. Which of the following is **not** one of the principles laid down in King IV:
 - a) Leadership.
 - b) Risk governance.
 - c) Committees.
 - d) Shareholders.

6. Joseph would like to register a company. The office to register a company is called the:
 - a) Companies Commission.
 - b) Companies and Intellectual Property Commission (CIPC).
 - c) Financial Services Board.
 - d) Consumer Tribunal.

Fill in the missing word: (18 marks)

1. To ensure optimal board performance, it is recommended that the performance of the board be assessed _____. **(2)**
2. In order for _____ to “reasonably believe” that their actions are in the best interest of the company, they must be adequately informed on the matter under consideration in order to rely on the defence contained in the business judgement rule. **(2)**
3. When a company is under business rescue, its creditors are not entitled to institute any legal proceedings against it. This is referred to as a _____. **(2)**
4. The common law duties of directors have been partially _____ in the Companies Act, 2008. **(2)**
5. A _____ is a business entity that may no longer be registered since the Companies Act, 2008 became effective. **(2)**
6. _____ trading is the trading of a company’s shares or other securities by individuals with access to _____ information. **(4)**
7. A board should preferably consist of a majority of _____ directors. **(4)**

True or false: (10 marks)

1. Private companies may sell shares to the public and shares are freely transferable. **(1)**
2. A partnership has legal personality. **(1)**
3. A company should have a mixture in its board structure, consisting of both executive and non-executive directors. **(1)**
4. It is recommended that all board committees be chaired by an executive director. **(1)**
5. Public companies may choose whether to appoint an auditor or not. **(1)**
6. King IV is principle based rather than rule based. **(1)**
7. Directors may be removed by shareholders of the company by means of a special resolution. **(1)**
8. Shareholders have the right to elect a certain number of directors to the board. **(1)**
9. If a company is already insolvent it can still elect to undergo business rescue. **(1)**
10. The King IV report is legislation, meaning it is law. **(1)**

Short questions: (10 marks)

1. Is it legally completely correct to say that shareholders are the “owners” of a company? **Briefly** motivate your answer. **(3)**
2. Define the following term: “Non-executive director”. **(3)**
3. Define the following term: “Corporate governance”. **(4)**

Essay style questions: (30 marks)

1. You are approached by Katlego, an executive director of ABC (Pty) Ltd. He requires some advice in relation to directors’ liability. Advise him on the following issues: **(10)**
 - 1.1 Katlego is worried about the type of liability that a director might incur in terms of the Companies Act 2008. Explain to Katlego what a director’s fiduciary duty entails. (5)
 - 1.2 Katlego has heard that directors can be held both criminally and civilly liable in terms of the law. Should Katlego provide fraudulent information to a creditor of the company, would he face criminal or civil liability? Explain your answer. (2)

- 1.3 After your explanation to Katlego in question 1 above, he asks you whether there is a difference between a director's fiduciary duty and the duty of skill, care and diligence. Explain the position to Katlego. (3)
2. Amelia is a shareholder of XYZ Limited. XYZ Limited has not been performing well financially, and the latest quarterly statements indicate that the company has not been making a profit for the last few months. As a result, Amelia is concerned about the future of XYZ Limited, as she believes that the company may be financially distressed. Amelia approaches you for some information on business rescue. **(10)**
- 2.1 Explain to Amelia what "financial distress" means in terms of the Companies Act, 2008. (4)
- 2.2 Explain to Amelia what the business rescue process entails. (6)
3. Sipho Ngwenya is the chief executive officer (CEO) of Neinhoff Limited. The company has recently faced major financial issues due to poor governance and corruption within the company. Criminal prosecution for some of the directors are looming, and evidence has emerged that Sipho, along with the rest of the board, knew of the issues within the company but failed to do anything to prevent it. The company also did not abide by applicable legislation and failed to take the necessary steps to acquaint itself with this relevant legislation. You are required to evaluate this set of facts with reference to the **relevant** King IV principles, and elaborate on the outcomes of the principles relevant to this specific case. **(10)**