



# LEARNING UNIT 5 – COMPANIES ACT NO 71 OF 2008



## 5.1 INTRODUCTION

As a future accountant and auditor, it is of the utmost importance for you to have a sound knowledge of the legal environment you will be operating in. Your knowledge of the Companies Act will therefore be enhanced and tested in this Learning Unit.

This Learning Unit is not intended to be read as a checklist of legal requirements. Instead, it should be approached as a framework for understanding how the Companies Act supports ethical leadership, accountability and prudent control within organisations.

At Level 1, your focus should be on understanding what each requirement seeks to regulate, why it exists, and how it affects the role of directors and auditors in practice. This foundational understanding is essential before more complex application and integration are expected.

**Why this matters:** In assessments, students often lose marks by listing sections of the Act without explaining their relevance. Examiners expect evidence of understanding, not rote recall.



## 5.2 LEARNING OUTCOME AND ASSESSMENT CRITERIA

The content of this learning unit is based on the following learning outcome and assessment criteria:

Learning outcome	Assessment criteria
Exercise ethical judgments, corporate governance principles, and statutory requirements in practical situations.	<ul style="list-style-type: none"> <li>Review how selected aspects of the Companies Act affect the auditor and the audit work he/she performs.</li> </ul>

Although this Learning Unit focuses on the Companies Act, the application of these statutory requirements cannot be separated from ethical judgment and corporate governance. Compliance with the Act represents a minimum standard of conduct.

King V expands this perspective by requiring the governing body to demonstrate ethical and effective leadership, accountability and responsibility. As a result, many Companies Act requirements are examined not only as legal rules, but also as indicators of governance quality.

## 5.3 LEARNING ASSUMED TO BE IN PLACE

The Companies Act no 71 of 2008 was covered as part of your undergraduate studies. You must revise the content below if you are not familiar with the content. SAICA Student Handbook 2025/2026, volume 2B:

Companies Act no 71 of 2008 and Companies Regulations



## COMMENT

We recommend that you study directly from the SAICA Student Handbook, volume 2B, and flag all the important sections. If the sections come up in a test or examination, they will be easy to find.

The SAICA syllabus provides the overall framework that you should benchmark your knowledge against, as your aim is to qualify as a CA(SA).

The topics listed here are important statutory requirements that candidates need to know from an audit perspective. Professional accountants may hold statutory positions, such as judicial manager, liquidator or accounting officer. Therefore, candidates must be aware of the relevant legal requirements and be able to identify these readily from **texts brought into the open book examination**.

Please refer to both the SAICA Examinable Pronouncements as well as the Competency Framework and note the level of knowledge required for each section that is examinable in the SAICA Competency Framework.

### Levels of learning

Level 1 – knowledge and comprehension

Level 2 – application and analysis

Level 3 – integration



## 5.4 EXAMINATION TECHNIQUE

As you know, the examination will be conducted under limited open book conditions. However, you should bear in mind that you will not be able to merely look up the answers to questions in the examination but will have to integrate and apply your knowledge.

At Level 1, application does not require complex scenarios or calculations. Instead, it requires you to explain the purpose of a requirement and demonstrate that you understand its relevance.

For example, when referring to a Companies Act section, a short explanation of why the requirement exists or what risk it seeks to prevent is often sufficient to demonstrate understanding depending on what the required asked of you.

**Why this matters:** Simply quoting section numbers or definitions rarely attracts full marks. Even a brief explanation can significantly improve the quality of an answer.



## COMMENT

Students are often unable to identify all the related Companies Act and Companies Regulations sections that are relevant to a specific scenario.

There is skill involved in identifying the key issues in a scenario involving the Companies Act and Companies Regulations. You will need to practice answering questions to develop this skill. It is essential that you only review the solutions after attempting the questions on your own to ensure that you develop this skill.

What are the Companies Regulations? Please refer to page 3/3 of Auditing Notes for a detailed description as well as examples on the Companies Regulations.



## COMMENT

We find that students do not work through enough questions in auditing. Remember that you must train yourself to be "test-fit" and "examination-fit", and you need to work through enough questions during the year to achieve this.

## 5.5 PROPOSED GUIDANCE FOR SOLVING PROBLEMS



### COMMENT

**Please note** that it is your responsibility to study the Act and to be familiar with important aspects contained therein. The textbook provides good guidance in this regard, and we also emphasise some of the important aspects in this Learning Unit. The Act also forms part of the documents you are allowed to have with you during tests and examinations in terms of the open book policy.

Your knowledge of the relevant legislation may be tested in one or more of the following ways:

- A question may provide a scenario and require you to evaluate the legality of any transactions or schemes that are contemplated or were implemented. You may also need to advise regarding alternatives and/or further requirements that have to be met.
- A question may set out certain transactions or schemes that are contemplated or were implemented and require you to describe the audit procedures that should be performed to obtain sufficient appropriate audit evidence on them.

We suggest that you approach questions as follow:

#### **A. Questions that require advice on or the evaluation of a given situation**

Before identifying specific sections of the Companies Act, it is important to understand the nature of the transaction or decision being described. Most Companies Act requirements regulate decisions taken by directors and shareholders.

From a governance perspective, these decisions also reflect how the governing body exercises accountability, responsibility and ethical leadership, as required by King V.

**Why this matters:** Students who start by identifying the decision or conduct in question are better able to select the correct legal requirements and apply them meaningfully.

- Identify **all** transactions/events.
- Determine which requirements of the relevant acts relate to each transaction or event. These requirements may relate to the following:
  - the powers of the entity (memorandum; sections of Act);
  - specific authorisation required (e.g. a special or ordinary resolution); and/or
  - special preconditions (liquidity and solvency).
- Reproduce the theory applicable to each transaction or event.
- Apply the theory to the facts given in question.

- Conclude on the legality of each transaction or event.
- Make recommendations or discuss alternatives (if required by the question).



### COMMENT

**Additional tip:** Pay attention to the wording of the requirements. If asked about concerns, you should only discuss non-compliance. The best way to deal with a concern is to **start** your sentence with "It is a concern that..." Some questions require discussion of both compliance and non-compliance, in which case you should not limit your answers just to non-compliance.

## B. Questions requiring audit procedures

Normally, only substantive procedures will be possible since transactions affected by specific legal requirements usually occur sporadically and no or limited internal controls will be present to mitigate the risks related to them.

- Identify **all** transactions or events.
- Determine which requirements of the Act relate to each transaction or event (see the list given above of aspects that requirements may relate to).
- Visualise and note the accounting journal entry underlying each transaction described in the question.
- Identify source(s) of audit evidence.
- Develop audit procedures, using the following audit assertions:
  - occurrence (power, authorisation, special requirements)
  - accuracy (amount or calculation, all aspects of each transaction)
  - completeness (all transactions)
  - cut-off (correct period)
  - classification (as current or non-current asset or liability, or income or expense)
  - disclosure (based on statements of IFRS/GAAP)

Remember that the purpose of performing audit procedures is to obtain sufficient appropriate evidence that the financial statements are fair. Possible **sources of evidence** include:

- |  |  |
|--|--|
| • memorandum of incorporation  | • notes to the annual financial statements |
| • notices of meetings  | • deposit slips                            |
| • minutes (always be specific as to those of directors' meetings or members' meetings) | • general ledger account(s)                |
| • statutory registers  | • paid cheques                             |

Due to the extensive documentary evidence available concerning statutory matters, the term **inspect** is of great importance when formulating procedures.



### COMMENT

**VERY IMPORTANT:** In the examination and in the test, the Companies Act may be integrated with the rest of your auditing syllabus as well as with other statutory, regulatory and ethical matters, such as the King V Report on Corporate Governance. Certain sections of the Companies Act have a direct link

with the King V Report, therefore you should not study them in isolation.

**Remember:** We explain some of the sections in more detail below. However, you should study all the relevant sections directly from the Act.



## LEARNING ASSUMED TO BE IN PLACE

Sections 5.6 to 5.14 have already been covered in undergraduate studies. Therefore, these sections have been provided as a summary. Please refer to your undergraduate studies for more information.

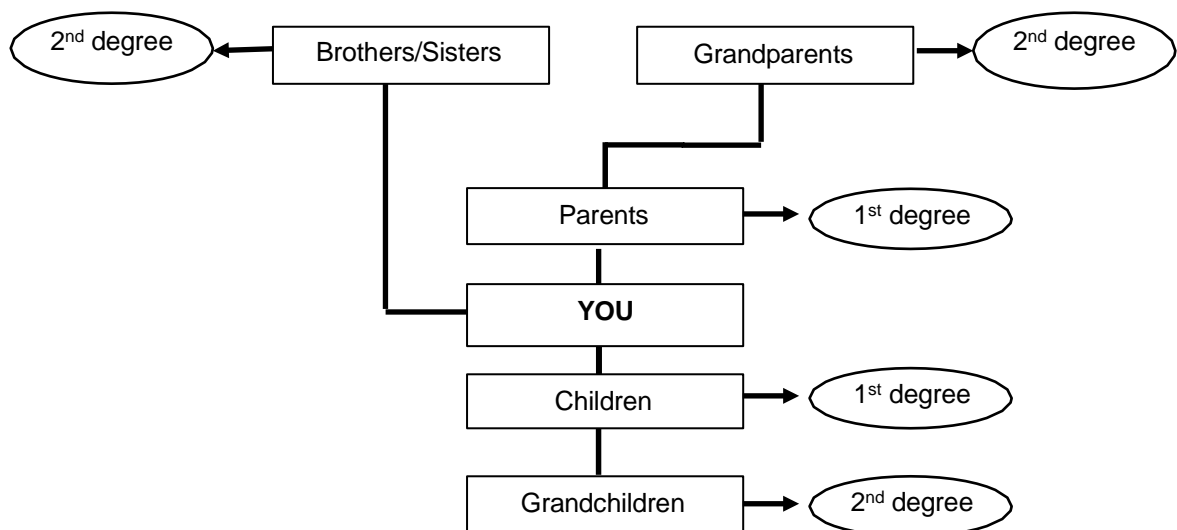
## 5.6 INTERPRETATION, PURPOSE AND APPLICATION

### 5.6.1 Related and inter-related persons, and control (section 2) and subsidiary relationships (section 3)

These two sections are very important, since a number of other sections in the Companies Act refer to related persons and subsidiary relationships. The purpose of these sections is to prevent individuals or companies to circumvent certain prohibitions of the Act by using another individual or company as a medium.

#### CONSANGUINITY AND AFFINITY

Section 2 uses the terms **consanguinity** and **affinity**. With regard to **consanguinity**, it is important to note the following:



#### **Blood relationship (consanguinity)**

Your brothers, sisters, grandparents and grandchildren are thus related to you in the second degree of consanguinity (second degree of blood relationship). In other words, there is one other generation between you and a person related to you in the second degree. The persons who are related to you in the first degree of consanguinity are your children or your parents.

#### **Relationship by marriage (affinity)**

A relationship by marriage is sometimes referred to as being related by affinity. A husband and wife are related to the first degree by marriage. For other relationships by marriage, the degree of relationship is the same as the degree of underlying relationship by blood.

Example: John and Steve are brothers and are therefore second-degree relatives by blood. John's wife, Linda, is related to Steve to the second degree by marriage.

### **5.6.2 Solvency and liquidity test (section 4)**

In terms of various sections of the Companies Act, the solvency and liquidity test must be applied to particular transactions. Conducting the solvency and liquidity test forms part of the requirements for that transaction to be valid and it must be proved before certain resolutions can be passed. Students should be able to apply the requirements of this section and especially note the requirements relating to the financial information being used to perform the test.

The solvency and liquidity test is not merely a numerical exercise. It reflects the governing body's responsibility to protect stakeholders, particularly creditors, from reckless or imprudent decisions.

Directors are expected to apply this test in good faith and with due care, which links directly to their duties under sections 76 and 77 of the Companies Act and the King V outcome of conformance and prudent control.

### **5.6.3 Categories of companies (section 8)**

The Act provides for two categories of companies, namely non-profit and for-profit (or profit) companies. These companies have different characteristics, and different requirements may apply to each of them in terms of the Act. The diagram below illustrates the differences between the different categories of companies as prescribed by the Companies Act:

**Non-profit companies (section 10)**

- public benefit purpose
- except for reasonable compensation for services rendered, the income and property of these companies are not distributable to incorporators/members/directors/officers
- apply assets and income to advance their objectives
- minimum of three incorporators
- minimum of three directors

**Profit companies (section 8(2))**

- state-owned companies
- private companies
- personal liability companies
- public companies



**State-owned companies (section 1):**

- state-owned enterprise; or
- company owned by a municipality

**Private companies (section 8(2)(b)):**

- fewer disclosure and transparency requirements than that of public companies
- transferability of securities restricted
- minimum of one incorporator
- minimum of one director

**Personal liability companies (section 8(2)(c)):**

- meets criteria of private company
- memorandum of incorporation states that it is a personal liability company.

**Public companies:**

- unrestricted transferability
- offers to public permissible
- minimum of one incorporator
- minimum three directors (for governance purposes)

## 5.7 INCORPORATION AND LEGAL STATUS OF COMPANIES

### 5.7.1 Memorandum of Incorporation (MOI), Shareholder agreements and rules a company (sec 15 to 16)

In terms of the Act, the founding document of a company is known as the Memorandum of Incorporation (MOI) which sets out shareholders, directors and others' duties, responsibilities and rights. Please take note that sections 15 and 16 does not only deal with the MOI, but also include rules of companies and shareholder agreements as well as the amendment thereof.

The MOI of a company is subject to the Companies Act, and it must therefore be consistent with the provisions of the Act. To the extent that a provision of the MOI contravenes or is inconsistent with the Act, it will be void in terms of section 15(1) of the Act. Always remember to consider the provisions of the MOI as part of your considerations/procedures in a question!

### 5.7.2 Pre-incorporation contracts (sec 21)

Pre-incorporation contracts are entered into, with, or on behalf of a company that is not yet incorporated. This section is necessary, as the company does not exist as a juristic person prior to incorporation, which implies that it cannot exercise its powers.

### 5.7.3 Reckless trading prohibited (sec 22)

This is an important section, as it links to other sections in the Act as well as to other topics in the auditing environment. It should also be studied in conjunction with **Regulation 19** of the Act.

In terms of **section 22**, "*a company must not carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose; or trade under insolvent circumstances*". A fair amount of subjectivity is involved in determining whether the directors have been reckless, but the key will be whether the directors have acted as reasonable persons within good faith and in the best interest of the company.

Please note the link between **section 22** and the going concern assumption as well as possible reportable irregularities arising from reckless trading. At this point, the integration of your knowledge should be focused on a possible reportable irregularity and not the going concern assumption.

A director may be liable to the company for any loss suffered by the company while trading under insolvent circumstances [**section 77(3)**] and be liable to third parties who have had dealings with the company and suffered a loss.

The question is whether a reasonable person would have acted in the same manner under a situation of factual insolvency.

Consider the following examples in conducting the reasonable person test:

- (a) Assuming the company is factually insolvent, would it be reasonable for a company to enter into a lease agreement for a very expensive fleet of company vehicles for its directors?
- (b) Alternatively, would it be reasonable for three or four directors to go on an extensive overseas trip to visit trade fairs when one director would have been sufficient?
- (c) Would it be reasonable for the directors to vote in favour of large bonuses for themselves or substantial salary increases?
- (d) Would it be reasonable for the directors to continue incurring debt when there is, to the

knowledge of the directors, no reasonable prospect of the company creditors ever receiving payment for those debts?

All of the above may constitute reckless trading, and thus a breach of **section 22** would have taken place.

In terms of **Regulation 19** of the Act, the Commission may, if it has reasonable grounds to believe that a company is engaging in prohibited conduct or is unable to pay its debts as they become due, issue a notice to the company ordering it to give reasons why it should be permitted to continue the prohibited conduct.

If the company cannot satisfy the Commission that it is not engaging in prohibited conduct or that it is able to pay its debts as they become due, the Commission may request the company to cease the prohibited conduct.

## 5.8 TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY OF COMPANIES

### 5.8.1 Form and standards of company records (sec 24), accounting records (sec 28) and financial statements (sec 29).

All companies must keep accurate and complete accounting records as well as all the documents set out in **section 24** of the Act. In addition to the requirements of **section 24(5)**, a company's record of directors must include additional information as set out in **Regulation 23** of the Act.

A company's accounting records, and financial statements should adhere to the requirements of **Regulation 25** of the Act in order for it to comply with **section 28(1) and 29(1)** of the Act.

The table on page 3/7 of Auditing Notes sets out the financial reporting standard requirements as referred to in **section 29(4) to (5)** of the Act.

### 5.8.2 Annual financial statements (sec 30)

Each year, a company must prepare annual financial statements within six months after the financial year end [**sec 30(1) to (7)**].

To determine whether a company should be audited or independently reviewed (in terms of the International Statement on Review Engagements, **ISRE 2400**, please refer to the table below:

Category of company	Audit / Independent Review requirement
<b>1. Public companies and state-owned companies</b>	<b>Audit</b> (must be performed by a registered auditor)
<b>2. Non-profit companies</b> • incorporated by the state, or • that are required by the Act or MOI to be audited	<b>Audit</b> (by a registered auditor)
<b>3. Profit companies and non-profit companies</b> that hold assets in a <b>fiduciary capacity exceeding R5 million</b> at any time during the financial year	<b>Audit</b> (by a registered auditor)
<b>4. Other companies (including close corporations)</b> with a <b>Public Interest Score (PIS)</b> of: • <b>350 or more</b> , or • <b>100 or more but less than 350</b> , and whose annual financial statements are <b>internally compiled</b>	<b>Audit</b> (by a registered auditor)

<b>5. Other companies</b> with a <b>PIS of at least 100 but less than 350</b> , whose annual financial statements are <b>independently compiled</b>	<b>Independent review</b> (by a registered auditor or a chartered accountant (SA))
<b>6. Other companies</b> with a <b>PIS of less than 100</b>	<b>Independent review</b> (by a registered auditor, chartered accountant (SA), or accounting officer), unless exempt
<b>7. Companies and close corporations</b> where <b>all issued securities are held by the directors</b> , and which are <b>not subject to a mandatory audit</b> in terms of categories 3 or 4 above (section 30(2A))	<b>No audit or independent review required</b>
<b>8. Voluntary audit:</b> Companies falling within categories <b>5, 6 or 7</b> may elect to have an audit in terms of: • the MOI; • a shareholders' resolution; or • a board resolution	<b>Audit</b> (by a registered auditor)

In order to understand the concept of a “public interest score”, study the section that deals with **Regulation 26** in Auditing Notes.

Refer to **Regulation 26** on how to calculate the public interest score of a company.

**Regulations 27 to 29** are discussed in Auditing Notes and you need to study these Regulations regarding the financial reporting standard requirements, as well as the audit or review requirements referred to above.

## 5.9 CAPITALISATION OF PROFIT COMPANIES

### 5.9.1 Authorisation for shares (sec 36)

In its MOI, a company must set out the different classes and number of shares that it is authorised to issue. Please note that a company is not allowed to **issue** shares to itself (not to be confused with a company **buying back** its own shares in terms of section 48 of the Act).

Should a company want to change the classification, authorisation or number of shares, the MOI must be amended in terms of section 26, as explained below.

#### Special resolution

- The shareholders may amend the MOI by means by a special resolution [**sec 36(2)(a)**].
- The board may (unless prohibited by the MOI) [**sec 36(2)(b)**]
  - make changes to the number of authorised shares;
  - reclassify unissued, authorised shares;
  - classify unclassified shares; and
  - determine the preferences, rights and limitations of authorised shares [**sec 36(3)**].
- In terms of section 38, the board may also increase the shares and the shareholders may retroactively ratify the increase by means of a special resolution.

In any instance, a notice of amendment of the MOI [**sec 36(4)**] must be filed.

### 5.9.2 Preferences, rights, limitations and other share terms (sec 37)

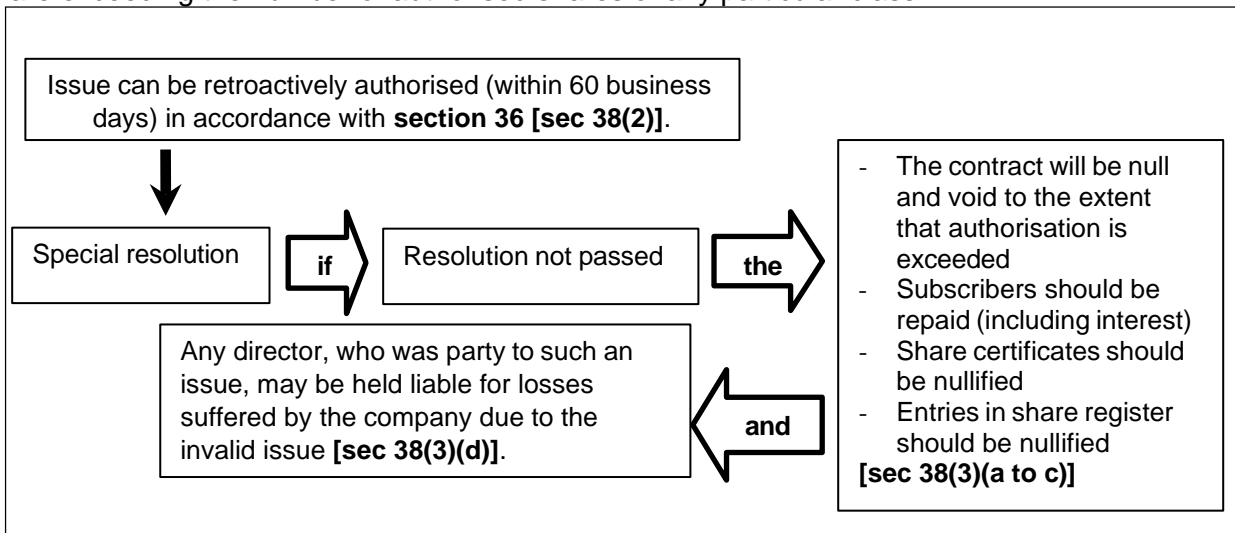
**Section 37** deals with the voting and other rights of shareholders.

In terms of **section 37** of the Act, if a company has only one class of shares, all these shares will have equal preferences, rights, limitations and terms.

### 5.9.3 Issuing shares (sec 38)

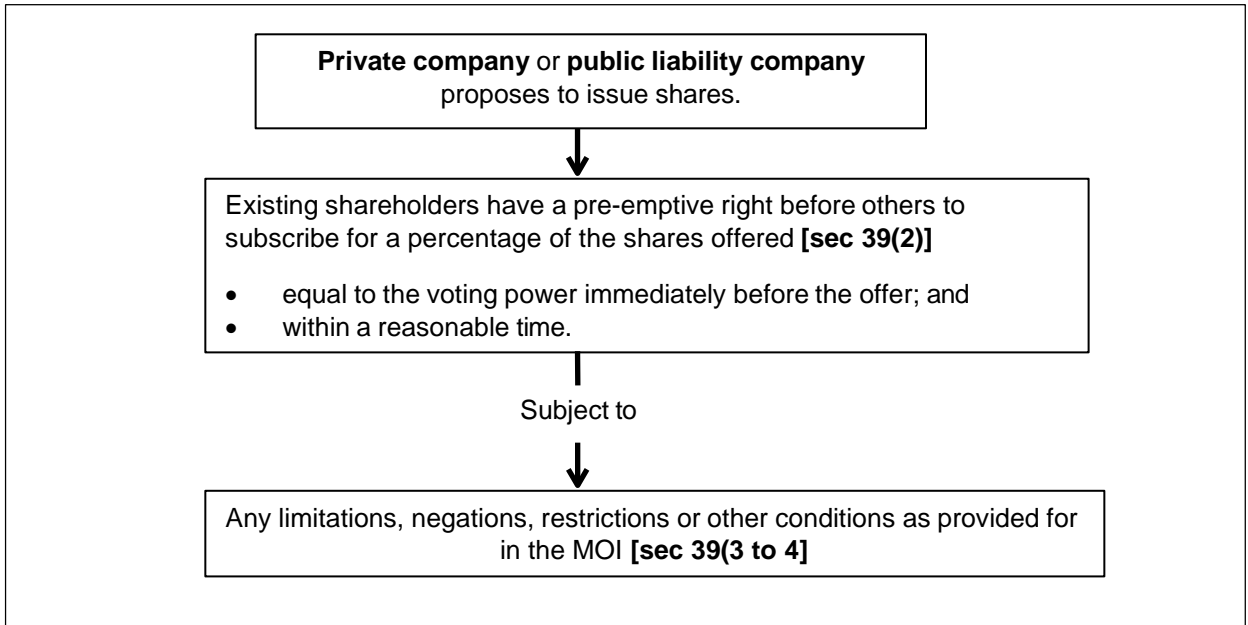
The board of directors has the power to issue shares in terms of section 38(1) of the Act. However, such a share issue must be approved by a special resolution if the issue is to a director or prescribed officer (or a person related to or interrelated to the director, prescribed officer or the company), or to a future director or prescribed officer. (Note that these requirements do not apply to a business rescue scheme where the practitioner may issue shares and determine the consideration.)

Actions, if the board issues shares that either are not authorised (**in terms of section 36**), or are exceeding the number of authorised shares of any particular class:



#### 5.9.4 Subscription of shares (sec 39)

This section does not apply to public or state-owned companies (except if provided otherwise in the MOI) [sec 39(1)(a)].



#### 5.9.5 Financial assistance for subscription of securities (sec 44)

May financial assistance be provided by a company for the subscription of its own/related company's securities (such as shares)?

**Remember:** Financial assistance may be in the form of a loan, a guarantee, a provision of security, etc. Another form (apart from loans) of financial assistance is often hidden in the scenario.

Is the primary business of this company the lending of money?

No

Yes

This is financial assistance in terms of **section 44**.

Section 44 does not apply if the lending is in the ordinary course of business [**sec 44(1)**].

### Requirements

The following conditions should be met:

- Any conditions set out in the MOI in this regard should be adhered to [**sec 44(3)(b)(i to ii)**].
- Liquidity/solvency test should be satisfied immediately after the financial assistance has been granted [**sec 44(3)(b)(i)**].
- Fair and reasonable terms should apply to the financial assistance [**sec 44(3)(b)(ii)**].
- A special resolution should be obtained (must have been passed within previous two years) [**sec 44(3)(a)(ii)**], if not pursuant to an employee share scheme [**sec 44(3)(a)(i)**].

If these requirements (of **section 44**) are not adhered to:

- the transaction will be void; and
- the directors may be held liable for losses incurred by the company in this regard [subject to (**sec 44(6)(a) to (b)** and **sec 44(5 to 6)**].

### 5.9.6 Loans or other financial assistance to directors (sec 45)

To determine if a company may provide financial assistance to any of the parties as set out in **section 45(2)** of the Act, you can consider the following:

**Remember:** Financial assistance may be in the form of a loan, a guarantee, a provision of security, etc. Apart from loans, another form of financial assistance is often hidden in the scenario, as with **section 44** on the previous page.

### **Exclusions [sec 45(1)(b)]**

- The primary business of the company is the lending of money (and the loan in question is in the ordinary course of business).
- The financial assistance is for meeting legal expenses (relating to a matter concerning the company).
- The financial assistance is for expenses to be incurred by the person on behalf of the company.
- The financial assistance comprises an amount to defray the person's expenses for removal at the company's request
- Giving financial assistance to subsidiary is now excluded from section 45.

### **Requirements**

The following conditions should be met before providing the assistance:

- Any conditions set out in the MOI in this should be adhered to **[sec 45(4)]**.
- A liquidity/solvency test should be satisfied immediately after the financial assistance has been granted **[sec 45(3)(b)(i)]**.
- The terms should be fair and reasonable **[sec 45(3)(b)(ii)]**.
- A special resolution should be obtained (must have been passed within previous two years) **[sec 45(3)(a)(ii)]**, except if the financial assistance is pursuant to the employee share scheme.
- Written notice of the meeting and of the intended assistance should be given to all shareholders (unless all shareholders are directors) **[sec 45(5)]**.
- Written notice of the meeting and of the intended assistance should be given to any trade union that is representing the employees of the company **[sec 45(5)]**.



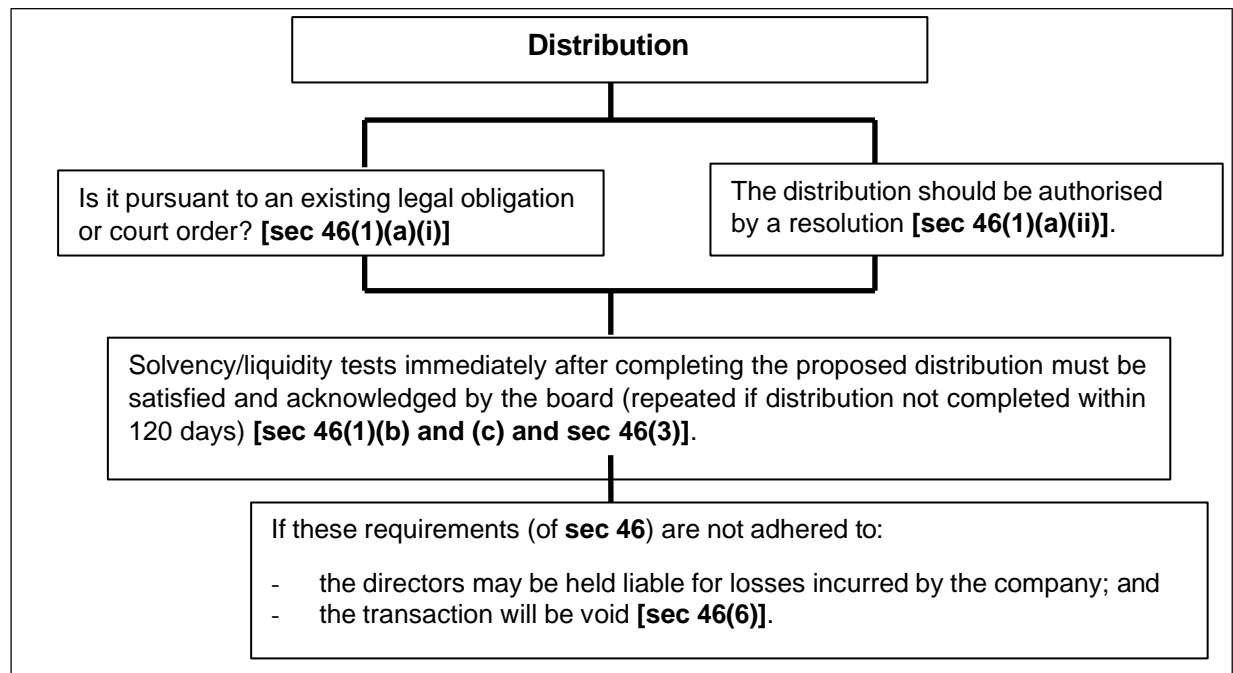
If the requirements of **section 45** are not adhered to:

- the transaction will be void **[sec 45(6)]**; and
- the directors may be held liable for losses incurred by the company [subject to **[sec 45(7)]**].

## **5.9.7 Distributions must be authorised by board (sec 46)**

Study the definition of a distribution as set out in **sections 1 and 46** of the Act.

It is important to note that distributions include payments for share buybacks and the payment of dividends.



### 5.9.8 Company or subsidiary acquiring company's shares (sec 48)

#### *May a company buy back its own shares?*

Yes, provided that the requirements **section 48** are met.

#### *May a subsidiary of a company buy the shares of that company?*

Yes, provided that:

- no more than 10%, in aggregate, of any class of share is held by or for the benefit of all the subsidiaries taken together **[sec 48(2)(b)(i)]**; and
- the voting rights attached to those shares are not exercised **[sec 48(2)(b)(ii)]**.

## 5.10 GOVERNANCE OF COMPANIES

### 5.10.1 Shareholder's resolutions (sec 65)

Shareholder's resolutions can be either:

- ✓ ordinary resolutions (must be supported by more than 50% of voting rights exercised); or
- ✓ special resolutions (must be supported by at least 75% of voting rights exercised).

The MOI may require a higher percentage of voting rights for ordinary resolutions to be approved (except for the removal of a director under **section 71**), or one or more higher percentages of voting rights in order to approve ordinary resolutions on one or more specific matters **[sec 65(8)]**. The percentage required for special resolutions to be approved may be lower, as provided for in the MOI.

There should be at least a 10% difference between the percentage approval required for ordinary and special resolutions **[sec 65(8)]**.

Refer to Auditing notes for a list of instances where a special resolution is required in terms of the Companies Act.

### 5.10.2 Board, directors and prescribed officers (sec 66)

Minimum number of directors required for different types of companies (MOI may specify a higher number):

Type of company (as explained in 15.2.3 of this Learning Unit)	Minimum number of directors
Private company ((Pty) Ltd)	1
Personal liability Company (Inc)	1
Public company (Ltd)	3
Non-profit company (NPC)	3

In addition to the minimum number of directors as prescribed (by the Act or MOI), a company must also satisfy the requirements of **section 72(4)** to appoint an audit committee or a social and ethics committee [but see **sec 66(12)**].

A profit company (other than a state-owned company) must allow shareholders to elect a minimum of 50% of the directors and 50% of alternate directors may be appointed by any other person stipulated in the MOI [**sec 66(4)(b)**].

Directors' remuneration for services acting as directors is required to be approved by a special resolution. This special resolution will be valid for two years.

### 5.10.3 Board committees (sec 72)

The Act provides that, except when the MOI provides otherwise, the board of directors may appoint any number of committees and may delegate any of its authority to a committee. However, the board remains ultimately responsible for the proper performance of its duties, and neither the board nor individual directors may rely on the appointment of a committee as a means of avoiding or diminishing their accountability. You should study **Regulation 43** of the Act with regard to the social and ethics committee, in conjunction with this section.

Section 72 recognises that modern boards require committees to assist with oversight in specialised areas such as audit, risk, social and ethics, or remuneration. However, the delegation of authority to a committee does not transfer responsibility away from the board.

From a governance perspective, this reflects the principle that accountability remains with the governing body as a whole. Directors are therefore expected to exercise ongoing oversight over committees and to apply judgment when relying on committee recommendations.

**Micro-example:** Even if a risk committee or social and ethics committee fails to identify a significant issue, the board remains accountable for the consequences of that failure.

**Why this matters:** In examination questions, students often incorrectly assume that responsibility shifts to a committee. Marks are awarded for recognising that delegation does not remove director accountability.

**Note:** This section should be studied in conjunction with the board committee requirements of the King V Code. King V reinforces that while committees may be established to assist the governing body, the governing body retains collective responsibility for ethical leadership, accountability and effective governance. This linkage is frequently tested in examination and test scenarios.

#### 5.10.4 Director's personal financial interests (sec 75)

This is always an important section.

The Act sets out procedures required for a director to disclose a personal financial interest of that director, or of a person related to that director, in respect of any matter to be considered by the board. Study the definition of personal financial interest in terms of **section 1**.

While section 75 prescribes the legal process for declaring personal financial interests, ethical leadership requires more than procedural compliance.

King V emphasises that directors should avoid not only actual conflicts of interest, but also situations where their objectivity may reasonably be questioned.

Why this matters: In exam scenarios, lawful disclosure does not automatically mean ethical conduct.

#### 5.10.5 Standards of directors conduct (sec 76)

For the purpose of this section, directors include prescribed officers and members of board committees.

A director of a company must exercise the powers and functions of a director in good faith and in the best interest of the company, and must act with a certain degree of care, diligence and skill. The section also extends the duty to apply to a subsidiary.

Familiarise yourself with the duties and functions of a director.

#### 5.10.6 Liability of directors and prescribed officers (sec 77)

This section deals with instances where a director and prescribed officer may be held liable for losses suffered by the company. In addition to the list of officers outlined in this section, directors could be liable to shareholders for fraudulent acts or acts of gross negligence [**sec 20(6)**] or to any third party who has suffered a loss by virtue of the directors breaching the Act [**sec 218(2)**].

Please note that members of board committees and audit committees will have the same liability that directors have under **section 77**, even if the members of the board committees are not directors and even though they have no right to vote on any matters considered by board committees.



#### COMMENT

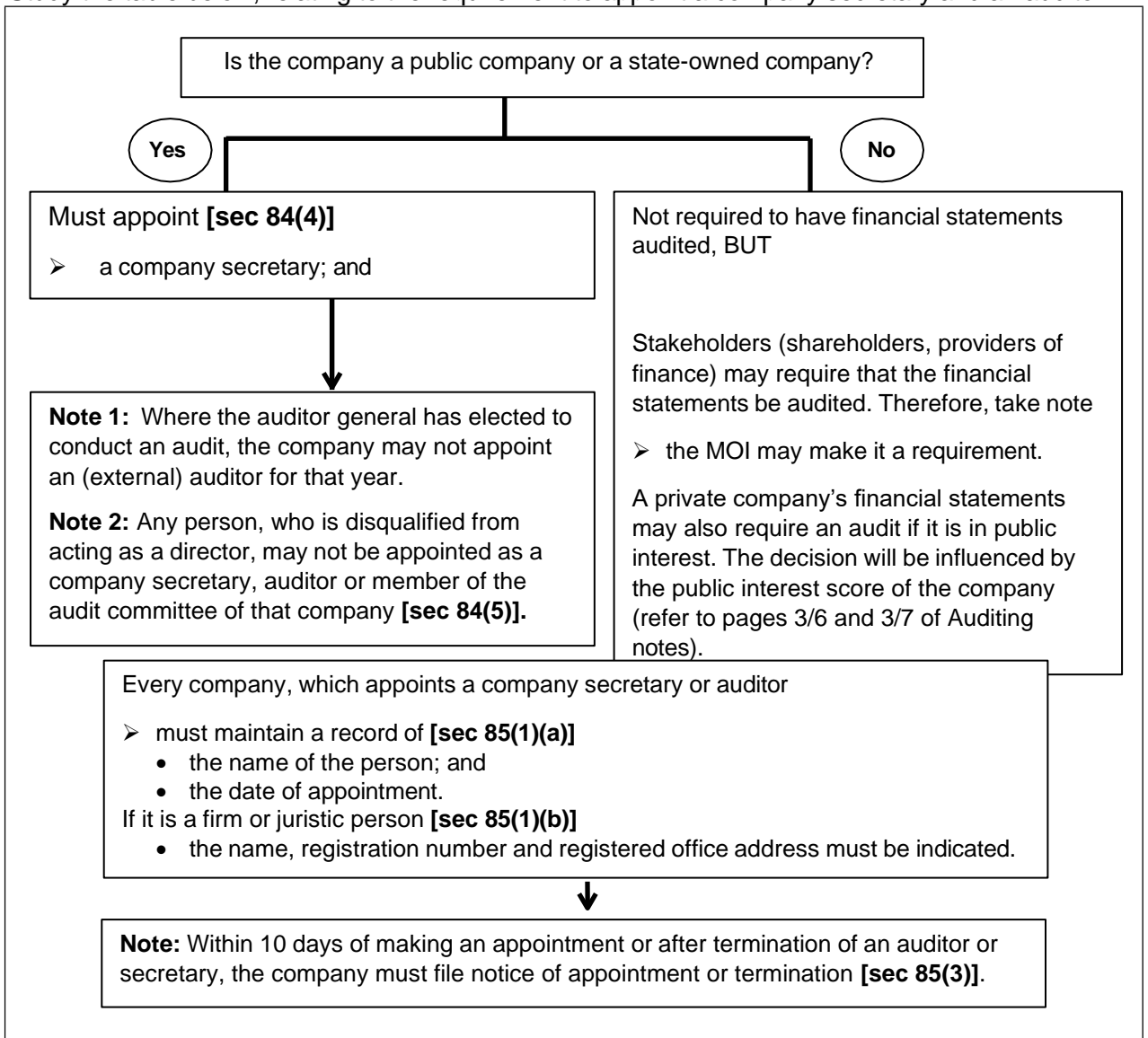
#### Important!

Students should remember to consider sections 76 and 77 as part of their answers as a consequence of the transgression of certain of the other sections in the Companies Act.

### 5.11 ENHANCED ACCOUNTABILITY AND TRANSPARENCY

### 5.11.1 Secretaries and auditors (sec 84 and 85)

Study the table below, relating to the requirement to appoint a company secretary and an auditor.



Companies must also maintain a record with detail of their secretaries and auditors (if any), as required in terms of **section 85(1)**.

### 5.11.2 Company secretary (sec 86 to 89)

The board of directors appoints the secretary and the directors must be satisfied that the person is suitably qualified with the necessary experience to perform the duties of a company secretary. The secretary is accountable to the board of directors. Section 88 includes the duties of the company secretary.

You should study the requirements regarding the appointment and resignation/removal of the company secretary in Auditing notes.

### 5.11.3 Auditors (sec 90 to 93)

Sections 90 to 93 deal with the appointment, resignation, rotation, rights and restricted functions of auditors. These sections are very topical, particularly section 90, which governs the appointment and independence of the auditor. Section 90 applies to an auditor engaged to perform a statutory audit of a company or a close corporation (CC).

Section 90(2) prohibits an auditor from providing certain non-audit services to the same audit client, as these services may create self-review, self-interest or familiarity threats to auditor independence. In addition, section 90(2)(b)(v) specifically prohibits an auditor from performing any other services that the regulatory board for auditors may determine to be inappropriate, having regard to the need to safeguard auditor independence.

Due to practical uncertainty regarding the interpretation and application of these restrictions, SAICA and the IRBA issued guidance ("Guidance on section 90 of the Companies Act, 2008"), which should be consulted together with the Act. The guide is available on the IRBA website.

The guide may be accessed by copying this link into your web browser:  
[www.irba.co.za/upload/2%20Section%20S90\(2\)%20Guidance%20document.pdf](http://www.irba.co.za/upload/2%20Section%20S90(2)%20Guidance%20document.pdf)

Section 90(2)(b)(v) allows the regulatory board for auditors to respond to emerging independence risks by restricting additional services that may not have been explicitly listed in the Act. This reflects a principles-based approach to auditor independence, rather than a closed list of prohibited services.

From an ethical perspective, this aligns with the SAICA Code of Professional Conduct, which requires auditors to identify, evaluate and address threats to independence, even where a specific prohibition is not explicitly stated.

**Why this matters:** In assessments, students should recognise that compliance with section 90 is not limited to checking a list of prohibited services. Professional judgment is required to evaluate whether any additional service could reasonably be perceived to impair independence.

### 5.11.4 Audit committees (sec 94)

Familiarise yourself with the composition and duties of an audit committee.

Study **Regulation 42** of the Act regarding the required qualifications of members of the audit committee.

It is important to note that King V recommends that all other companies establish an audit committee and define its composition, purpose and duties in the MOI.

Also, note that King V aligns with, and expands on, the duties of an audit committee as set out in **section 94(7)** of the Act.

## 5.12 REMEDIES AND ENFORCEMENT

### 5.12.1 Protection for whistle blowers (sec 159)



**Section 159 applies to whistle blowers who disclosed in good faith that the company or director**

- contravened the Companies Act or another act enforced by the Commission;
- failed (or was failing to) to comply with any legal obligation to which the company is subject;
- engaged in conduct that holds a health or safety risk for any individual, or a risk of environmental damage;
- unfairly discriminated against any person; and
- contravened any legislation that could expose the company to risk/liability  
**[sec 159(3)(b)].**

**By offering**

- qualified privilege in respect of the disclosure; and
- immunity from civil, criminal or administrative liability with regards to the disclosure  
**[sec 159(4)]**

**To the following whistleblowers with regard to the company**

- shareholders;
- director;
- company secretary;
- prescribed officer;
- employee;
- trade union;
- to other representatives of employees;
- suppliers of goods or services; and
- employees of such suppliers.

## 5.13 OFFENCES AND PENALTIES

Study this chapter on your own, with reference to the knowledge level required in terms of the SAICA syllabus.

## 5.14 SCHEDULES TO THE COMPANIES ACT

Study the schedules on your own, with reference to the knowledge level required in terms of the SAICA syllabus.

This Learning Unit should equip you to recognise legal, ethical and governance implications arising from company decisions. While detailed application is tested in examination questions, your foundation is built through understanding why requirements exist and how they support ethical and effective governance.

**Why this matters:** Strong conceptual understanding improves performance across Companies Act, ethics and King V–based questions.

### Question 5.1

40 marks

Activity	Estimated Time		
	Writing	Marking and review	Total
Revolution Partners Ltd	24 minutes	48 minutes	72 minutes

### Background information

You are a third-year audit trainee at BOTLHALE Auditors Inc (BOTLHALE) a firm of registered auditors with five directors and 50 staff members. BOTLHALE is currently busy with the 2024 audit of Revolution Partners Ltd (RevPartners), an Information Technology (IT) company that provides a variety of IT products and support. RevPartners is the holding company with seven subsidiaries and is listed on the Johannesburg Stock Exchange (JSE). RevPartners' financial year end is 31 December.

As a result of RevPartners' strong performance, its board approved a share incentive scheme whereby employees and executive directors can exercise options to purchase shares at an attractive price. This was also done to improve staff retention and retain technical skills within RevPartners.

The following two outstanding matters were highlighted in the audit file:

### Matter 1

The following transactions relating to RevPartners' Chief Executive Officer, Arthur McCarthy, were documented by a first-year trainee in the audit file as "unaudited transactions". These transactions still require your attention:

1. Three board meetings were held during the 2024 financial year for which each director received a director's fee of R15 000 per meeting attended. Arthur McCarthy attended all three board meetings.
2. Arthur McCarthy paid R400 000 to purchase his company vehicle which was the book value at that time. The vehicle's market value at that time was R520 000.
3. During the 2024 financial year Arthur McCarthy's wife, Catherine, accompanied him on one of his international business trips. RevPartners covered her portion of the expenses, which amounted to R120 000. These expenses were approved at a board meeting where all the board members were present.
4. During the salary audit, the audit trainee identified the following salary increase payments to Arthur McCarthy with the payroll and other relating salary files. These salary increases were approved at the last board of directors' meeting:

	<b>R</b>
Salary	1 600 000
Entertainment allowance	120 000
Employer contributions to pension fund and medical aid	320 000
Other benefits	72 000
Bonus	880 000

5. In accordance with the newly approved employee share incentive scheme, Arthur McCarthy was entitled to purchase 1 200 000 RevPartners' shares at R1 each. On 30 June 2024 he exercised this right when the price of the shares was R4 each and paid RevPartners R1 200 000 for the shares he purchased. On 15 November 2024, he sold 600 000 of the shares at R8 each when the shares hit a high after excellent interim results were published. At year end the price of the shares had fallen back to R3,75 per share.
6. During the year, RevPartners purchased a penthouse in Cape Town. Arthur McCarthy's daughter, a real estate agent, facilitated the purchase on behalf of RevPartners and received her normal estate agent's commission of R130 000 from RevPartners. The penthouse's purchase was approved at a board meeting where all the board members were present. A resolution was passed that each director has the right to use the penthouse during the year for three weeks. The costs for similar accommodation in Cape Town will be approximately R25 000 per week. Arthur McCarthy stayed at the penthouse for two weeks during the 2024 financial year.



<p><b>Transaction 1 to 6 relating to Arthur McCarthy:</b></p> <ul style="list-style-type: none"> <li>➤ Inspect the <b>minutes</b> of the three (3) board meetings for a <b>majority decision</b> in favour of Arthur McCarthy for (Section 73 (5)(d)) for the following: <ul style="list-style-type: none"> <li>• Remuneration of R15 000 per board meeting (3 meetings) of which all three were attended [Transaction 1].</li> <li>• Company car purchased (not in terms of an employment contract, but due to his position as a director) [Transaction 2].</li> <li>• Catherine McCarthy’s additional expenses of R120 000 incurred during one of Arthur McCarthy’s overseas business trips by virtue of Arthur McCarthy’s declaration [Transaction 3].</li> <li>• Salary increases and any other increases paid to directors that it was not authorised by the board as they may <u>not</u> authorise their own remuneration (Transaction 4).</li> <li>• Purchase of penthouse in Cape Town that was arranged by Authur McCarthy’s daughter</li> </ul> </li> </ul>	<p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>
<ul style="list-style-type: none"> <li>• <b>Inspect</b> RevPartners Ltd <b>MOI</b> to confirm if there are any conditions /restrictions to pay its directors remuneration for services rendered (Transaction 1 to 6).</li> <li>• <b>Inspect</b> the <b>minutes of the shareholders meetings/Annual General Meeting (AGM)</b> to confirm the following: <ul style="list-style-type: none"> <li>➤ The directors’ fees were paid in accordance with a <b>special resolution</b> approved by the shareholders within the previous two years. [<b>section 66 (8) and (9)</b>]. ([Transaction 1, 2,4,5)</li> <li>➤ Thus, a <b>special resolution</b> will also be needed to <b>approve the remuneration benefit of R120 000 (R520 000-R400 000)</b>, as this would represent directors’ fees.</li> <li>➤ Approval of the R120 000 for the personal benefits received from RevPartners for the payment of Catherine McCarthy additional expenses. (Transaction 3).</li> <li>➤ Approval of salary increases paid to Aurthur McCarthy (Transaction 4).</li> <li>➤ Inspect the minutes if the shareholders of RevPartners <b>ratified (if necessary)</b> the purchase the transaction through a <b>special resolution</b> if it was limited in terms of the MOI (transaction 6).</li> </ul> </li> </ul>	<p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>
<ul style="list-style-type: none"> <li>• <b>Inspect</b> the <b>director’s interest register</b> that the transaction relating to the purchase of the penthouse involving Arthur McCarthy’s daughter was disclosed (Section 75) [transaction 6].</li> </ul>	<p>1</p>

<b>Inspect the minutes of board meeting and ensure the following:</b>	1
➤ Arther McCarthy disclosed the interest and its general nature before the matter was considered at the meeting (Section 75 (5)(a)).	1
➤ Arther McCarthy did not form part of the quorum of 25% of the directors (Section 75 (5) (f) (i)).	1
➤ Arther McCarthy left the room after his presentation.	1
• <b>Inspect the penthouse purchase agreement/contract</b> signed and ensure that Arther McCarthy was not involved in executing the paperwork.	
<b>X1: Communication skills/layout</b>	See above
<b>Available</b>	18
<b>Maximum</b>	8

AUE4862 2024 Adjusted



### EXAM TECHNIQUES IN ANSWERING THIS QUESTION

#### Substantive procedures – Companies Act

This was a straightforward section, but many students struggled with formulating substantive audit procedures.

Remember that formulating substantive procedures is not difficult. Think of **HOW, WHAT, WHY?**

**HOW** do you intend executing the procedure?

**WHAT** is your source document?

**WHY** are you doing this procedure?

Exam techniques Tip: When you have to formulate substantive audit procedures in relation to the companies act, the most substantive procedures will always begin with **Inspect**.