

# LEARNING UNIT 5 – COMPANIES ACT NO 71 OF 2008



Duration: 5 hours

Your time should be divided between two aspects:

- **Obtaining the required knowledge**  
This entails working through this learning unit. It is important to note that a significant part of this learning unit has been covered in your undergraduate studies. Since The Auditing Profession Act (APA) was covered in your undergraduate studies (it is assumed knowledge), we allow some time in this LU to refresh your memory and work through some notes and questions to assist in honing your critical thinking and decision-making skills. If the time allowed is not enough, you will have to refresh your memory regarding sections you already covered in your prior studies **in your own time**.
- **Application of knowledge**  
This entails the completion of the self-assessment questions included in this learning unit. After completion of the learning unit, you will have the opportunity to test your knowledge by completing some questions which will comprise of integrated activities covering other learning units, these integrated questions will be included in your additional resources folder.

The following time allocation is recommended:

<b>APA</b>	<b>Minutes</b>
5.1 Introduction	1
5.2 Learning Outcome and Assessment Criteria	1
5.3 Learning Assumed to be in Place	2
5.4 Examination Technique	18
5.5 Self-assessment question 5.1	35
5.6 Announcements	3
5.7 Lectures	240
<b>Total</b>	<b>300</b>



## 5.1 INTRODUCTION

As a future accountant and auditor, it is essential that you have a sound understanding of the legal environment within which organisations operate. The Companies Act No. 71 of 2008 forms the cornerstone of corporate regulation in South Africa and directly informs director responsibilities, stakeholder protection and organisational accountability.

From an auditing perspective, the Companies Act is frequently examined through scenarios involving non-compliance, governance failures and director misconduct. Candidates are therefore expected not only to recall the relevant statutory provisions, but to apply them critically when evaluating the legality of transactions, assessing the implications for directors, and determining appropriate audit and governance responses. This learning unit focuses on developing these applied skills, which are essential for professional judgement and ethical decision-making.

## 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 Companies Act, corporate governance and statutory requirements in practical simulations.	Discuss and apply the Companies Act corporate governance and statutory requirements in given case studies.

## 5.3 LEARNING ASSUMED TO BE IN PLACE

The Companies Act includes critical sections for understanding and applying corporate governance principles. For purposes of this learning unit, you are expected to have a working knowledge of key Companies Act provisions from an audit and governance perspective. These include company classifications and foundational concepts, capital structure and share transactions, directors' duties and liability, transparency and accountability mechanisms, as well as remedies for non-compliance. Where necessary, you should revise these sections independently to ensure that you are able to apply them effectively in examination-style scenarios. Sections 2 and 3 define relationships, such as consanguinity and affinity, to prevent circumvention of the Act. Section 4 introduces the solvency and liquidity test, vital for validating transactions. Section 8 categorizes companies into non-profit and for-profit, each with unique requirements. Incorporation (sections 15-16) involves the Memorandum of Incorporation (MOI), foundational for company governance, while sections 36-48 cover capital structuring and share issuance. Governance aspects, including director conduct (sections 75-77) and board responsibilities (sections 66-72), ensure accountability. Transparency is addressed via requirements for records, financial statements (sections 24-30), and audit committee duties (section 94). The Act also emphasizes remedies for reckless trading, whistleblower protection (section 159), and enforcement mechanisms, highlighting its role in fostering ethical and transparent corporate practices.

**Please refer to your undergraduate studies for more information.**

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 ultimate 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 2027 ITC.

The sections below were highlighted in the SAICA Competency Framework as sections students need to have basic-intermediate knowledge on:

### Companies Act

- Chapter 1:  
sections 1 to 4; 8
- Chapter 2:  
Part B: sections 15 to 16; 20 to 22  
Part C: sections 23 to 34  
Part D: sections 35 to 48  
Part F: sections 57 to 78
- Chapter 3:  
Part A: sections 84 to 85  
Part B: sections 86 to 89  
Part C: sections 90 to 93  
Part D: section 94
- Chapter 6:  
Part A: sections 128-137
- Chapter 7:  
Part A: section 159
- Chapter 9:  
Part A: sections 213-214

From an examination perspective, these sections are rarely assessed in isolation. Questions often require candidates to integrate statutory requirements with ethical considerations, director conduct and governance principles. Simply listing relevant sections is insufficient; marks are awarded for the correct application of these provisions to the facts of a given scenario.

## 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.

In Companies Act questions, marks are primarily awarded for applied legal reasoning. Typically, candidates earn marks for identifying the relevant statutory provision, briefly explaining the requirement, and applying it clearly to the facts of the scenario before reaching a supported conclusion. Answers that merely quote sections without application will not earn sufficient marks.

You will earn most of the marks for applying your knowledge. To build a logical argument in any question, you need to start with basic theory and definitions, whether you recall

them from memory or access them from a textbook. Use the information in the prescribed textbook as building blocks in formulating an applied answer to a given scenario.

Students are often unable to identify all the related Companies Act and Companies Regulations sections relevant to a specific scenario. There is skill involved in identifying the key issues in a scenario involving the Companies Act and Companies Regulations. To develop this skill, you need to practice answering questions. It is essential to only review the solutions after attempting the questions independently to ensure skill development.

Many students do not work through enough questions in auditing. Remember, you must train yourself to be "test-fit" and "examination-fit" by working through enough questions during the year.

### **Proposed Guidance for Solving Problems**

It is your responsibility to study the Act and be familiar with its important aspects. The textbook provides good guidance, and important aspects are emphasised in this learning unit. The Act is part of the documents allowed during tests and examinations under the open-book policy.

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

#### **1. Evaluating Transactions or Schemes**

A question may provide a scenario and require you to evaluate the legality of any transactions or schemes. You may also need to advise on alternatives and further requirements.

#### **2. Audit Procedures**

A question may describe certain transactions or schemes and require you to explain the audit procedures needed to obtain sufficient and appropriate audit evidence.

### **Approach to Questions**

#### **A. Questions Requiring Advice or Evaluation**

1. Identify all transactions/events.
2. Determine the relevant requirements from the Act, which may relate to:
  - The powers of the entity (e.g., memorandum, sections of the Act).
  - Specific authorisation required (e.g., special or ordinary resolution).
  - Special preconditions (e.g., liquidity and solvency).
3. Reproduce the theory applicable to each transaction/event.
4. Apply the theory to the facts given in the question.
5. Conclude on the legality of each transaction/event.
6. Make recommendations or discuss alternatives, if required.

Pay attention to the wording of requirements. For example:

- If asked about concerns, focus on non-compliance.
- Begin sentences with "It is a concern that..." when addressing concerns.
- If both compliance and non-compliance are required, address both aspects.

When concluding your answer, clearly state whether the transaction or conduct is valid or invalid in terms of the Companies Act and briefly explain the consequences of any non-compliance. Unsupported or vague conclusions will not earn marks.

## **B. Questions Requiring Audit Procedures**

- Identify all transactions/events.
- Determine relevant requirements of the Act for each transaction/event.
- Visualise and note the accounting journal entry underlying each transaction described.
- Identify sources of audit evidence.
- Develop audit procedures based on assertions such as occurrence, accuracy, completeness, cut-off, classification, and disclosure.

Sources of evidence may include:

- Memorandum of incorporation.
- Notices of meetings and minutes (directors' or members' meetings).
- Statutory registers.
- Notes to financial statements.
- Deposit slips and general ledger accounts.

The term "inspect" is crucial when formulating procedures involving statutory matters.

## **Integration with Other Topics**

The Companies Act is frequently integrated with ethical and governance considerations, particularly those contained in the King V Report on Corporate Governance. Failures to comply with provisions relating to director conduct, conflicts of interest and reckless trading directly undermine the governance outcomes of ethical culture, legitimacy and sustainable value creation. Candidates should therefore be prepared to evaluate Companies Act compliance not only from a legal perspective, but also in terms of governance quality and ethical impact.

Remember to study all the relevant sections directly from the Act for comprehensive understanding.

## 5.5 Self-assessment Question

This self-assessment question illustrates a high-risk examination area involving financial assistance to related parties, conflicts of interest and director liability. When attempting the question, focus on identifying the relevant Companies Act provisions, evaluating whether the statutory requirements have been met, and considering the consequences for both the company and the director involved.

### Question 5.1

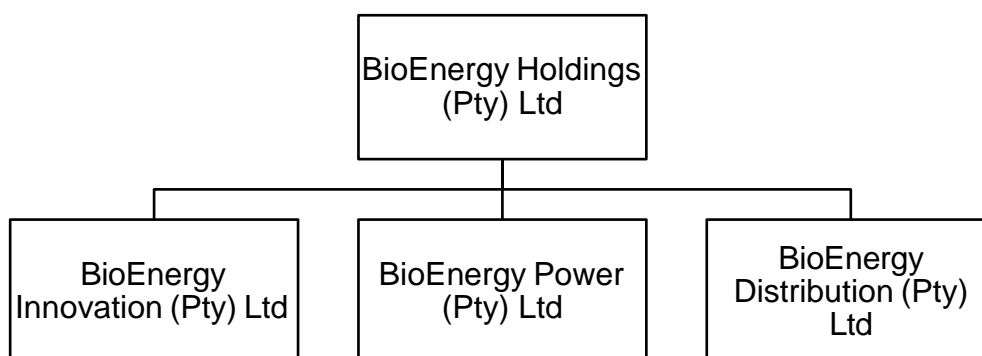
10 marks

Activity	Estimated Time		
	Reading and Writing	Marking and review	Total
IAC June 2025 Paper 3 (c)	25 minutes	10 minutes	35 minutes

The BioEnergy Group is a group of companies that operates in the sustainable energy solutions industry. The main operations of the group are located in the north-western region of Limpopo and the focus of operations have primarily been the use of biogas for the generation of electricity. Biogas is a gas produced by the break-down (fermentation) of natural substances (organic matter). All companies in the BioEnergy Group have a 30 June financial year end.

### 1 Group structure and background

BioEnergy Holdings (Pty) Ltd ('BioEnergy Holdings') was incorporated in 2006 and has grown into an industry leader in Southern Africa, mainly due to the demand for independent energy solutions in sub-Saharan Africa, as well as international financial support for research and development in the field. The Group's vision is to be the first zero-waste energy provider in Southern Africa. BioEnergy Holdings has been expanding its operations through the following group of entities:



### 2 Procurement

In order to operate the biogas plant, BioEnergy Power needs a continuous supply of organic matter and, in keeping with its vision of sustainable solutions, the directors of BioEnergy Power have opted to uplift the local community by using local service providers. BioEnergy Power entered into agreements ('supply contracts') with logistics companies for the trucks that will be used to transport organic matter from local farms to the BioEnergy Power biogas plant. These supply contracts stipulate the daily tonnage of organic matter that must be delivered to BioEnergy Power at a fixed monthly service fee. The directors are of the opinion that these contracts will hedge BioEnergy Power against unfavourable movements in the fuel price, as each contract is fixed for a period of five years.

BioEnergy Power issued an invitation to tender for the four available contracts, which were awarded by the

tender committee. The committee consists of Kobus Vermeulen, the financial director of BioEnergy Power, and Devi Pillay, the chief executive officer of BioEnergy Power. One of the contracts was awarded to Gelden Transport (Pty) Ltd ('Gelden Transport'), an owner-managed company that is wholly owned by Pieter Gelden, the son-in-law of Kobus.

Pieter is a young entrepreneur who saw a gap in the logistics market in the northern Limpopo area. Gelden Transport was incorporated in 2018. Pieter, in his capacity as a director, sourced initial capital for the acquisition of Gelden Transport's fleet of trucks by means of an interest-free loan from BioEnergy Power. The loan to Pieter was solely authorised by Kobus, who felt that the loan was not material in terms of the net value of BioEnergy Power. Pieter used the loan to purchase five second-hand trucks. However, Gelden Transport has not been profitable as the trucks are defective and unreliable. The contract with BioEnergy Power is Gelden Transport's only contract.

PAPER 3 QUESTION 2 – REQUIRED		Marks	
		Sub-total	Total
(c)	Discuss, in terms of the Companies Act, the following with respect to the loan to Pieter: <ul style="list-style-type: none"> <li>The validity of the loan;</li> <li>The possible implications for the financial director of BioEnergy Power; and</li> <li>Matters that should have been considered.</li> </ul>	9	
	<i>X1: Communication skills</i>	1	10
<b>Total for the question</b>			<b>10</b>

## SOLUTION

Part (c) Discuss, in terms of the Companies Act, the following with respect to the loan to Pieter: <ul style="list-style-type: none"> <li><b>The validity of the loan;</b></li> <li><b>The possible implications for the financial director of BioEnergy Power; and</b></li> <li><b>Recommend matters that should have been considered.</b></li> </ul>	Marks
The financial director (Kobus) is related to Pieter within the second degree of affinity, as it is his son-in-law (ref. section 2).	1
The loan to Pieter therefore qualifies as financial assistance to a director in terms of section 45 of the Companies Act.	1
The scheme to provide financial assistance should be provided in terms of the company's Memorandum of Incorporation. If the Memorandum sets any specific requirements or limitation, BioEnergy Power should have met these.	1
In accordance with S45 the board must approve the financial assistance and Kobus authorised this loan without consulting other directors/board.	1
Despite any provisions of BioEnergy Power's Memorandum of Incorporation, the loan should have been granted only if –	
<ul style="list-style-type: none"> <li>a special resolution within the preceding two years approved this loan to Pieter or a particular category of recipients to which Pieter belongs; AND</li> </ul>	1
<ul style="list-style-type: none"> <li>the board was satisfied that immediately after providing the loan the liquidity and solvency tests were met; AND</li> </ul>	1
<ul style="list-style-type: none"> <li>the provisions under which the loan was granted were fair and reasonable.</li> </ul>	1

The board should have also provided written notice of the abovementioned resolution to all shareholders of BioEnergy Power and any trade union representing the employees of BioEnergy Power within 30 business days after the end of the financial year if the materiality of the loan indeed does not exceed one-tenth of 1% of the company's net asset value.	1
Since it is an interest-free loan, it cannot be argued that the provisions of the loan were fair and reasonable as the company will lose money / interest and it is thus not fair to the company. (The company could have invested the money for a return.)	1
Since all of the requirements of section 45 were not met, the decision by Kobus is void in terms of section 45 of the Companies Act (hence not valid).	1
In terms of section 77 of the Companies Act, Kobus is deemed to be liable for any damages or costs sustained by BioEnergy Power (such as the impairment loss, if any) since he seems to be the only director involved in the granting of the loan.	1
Kobus may be liable for breaching of his fiduciary duty towards BioEnergy Power in terms of section 76.	1
The company could also be considered to be trading recklessly in terms of s22 as the loans financed trucks which were defective and unreliable and, ultimately, led to an unprofitable venture which will adversely impact stakeholders.	1
<b>Available</b>	<b>13</b>
<b>Maximum</b>	<b>9</b>
<i>X1: Communication skills</i>	<i>1</i>
<b>Total for part (c)</b>	<b>10</b>

Communication skills marks are awarded for logical structure, clear reasoning and well-supported conclusions. Candidates should present their answers in a professional manner, using appropriate headings and concise sentences that demonstrate sound judgement.



### EXAM TECHNIQUES IN ANSWERING THIS QUESTION

#### Part d: 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 must formulate substantive audit procedures in relation to the companies act, the most substantive procedures will always begin with **Inspect**.

After completing this learning unit, you should be able to identify and apply relevant Companies Act provisions, assess the legality of transactions, evaluate director liability, and design appropriate audit and governance responses in an examination context. These skills are essential for success in integrated SAICA IAC assessments.

### 5.6 Announcements

Please refer to the **Additional Resources** folder for Learning Unit 5 for some additional resources on the content of this Learning Unit.

## 5.7 Lectures

Lectures will be held during the year. Additional learning material and questions will also be loaded under the **Additional Resources** folder. Refer to the **Announcements** for additional information on lectures.