

Question 1

The management of the business and affairs of a company is conducted through meetings. It is therefore imperative that a company should ensure that its meetings comply with the provisions of the Companies Act 71 of 2008 to be valid. Carefully read through the two questions below and see if you are able to provide the correct legal advice by using the following steps:

1. Identify the specific legal problem that appears from the given facts while keeping in mind what is asked.
2. Identify the applicable principles and provisions of the Companies Act 71 of 2008.
3. Consider whether any case is relevant, and if so discuss the relevant principles.
4. Apply the provisions and legal principles to the given facts.
5. Conclusion: Clearly answer the specific question asked.

Now try to answer the following questions. Remember in this discussion form you may also raise any other topic related to study unit 1 you wish to discuss.

Question 1(a)

Themba lives in Knysna. He is a shareholder of Electrotech Limited. He received notice of an annual general meeting of Electrotech Limited to be held in Pretoria. He cannot attend the meeting on that day, but feels strongly about certain of the proposed resolutions set out in the notice of the meeting, and wants to express his views on these matters to the board of directors. Themba also wishes to vote against certain of the resolutions which the company proposed to pass. Advise Themba of two methods under the Companies Act 71 of 2008 that he could use to exercise his right to vote and to express his views at the annual general meeting of Electrotech Limited.

Answer

Legal problem/question

It has to be determined whether a shareholder (Themba) can participate in a shareholder meeting without being physically present.

Identify the relevant provisions in the Companies Act 71 of 2008

- a. **Section 58** deals with the **appointment of a proxy**.
- b. A person may be appointed to represent the shareholder (Themba) at the meeting. *It is important to note that the person who is appointed as the proxy does not have to be a shareholder of the company. See section 58(1).*
- c. The proxy may participate in, speak and vote at a shareholders meeting.
- d. The appointment must be contained in a written form dated and signed by Themba. See section 58(2)(a).
- e. The appointment of a proxy is **valid for one year**. See section **58(2)(b)**.

Conclusion: ***Themba can participate in the proposed meeting by appointing a proxy.***

In your analysis of the given facts, you should have noted that you are dealing with a public (Ltd) company. This is important because this brings section 61(10) into play.

- a. Meetings of **public companies** registered in South Africa **must be accessible by electronic participation**. See **section 61(10)**.
- b. This can take the form of **telephone communication** or by **video conference**. See the exact wording of **section 63(2)**.

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Table of Contents Company Law Exam Paper And Answers

1. Understanding the eBook Company Law Exam Paper And Answers
 - The Rise of Digital Reading Company Law Exam Paper And Answers
 - Advantages of eBooks Over Traditional Books
2. Identifying Company Law Exam Paper And Answers
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Company Law Exam Paper And Answers
 - User-Friendly Interface
4. Exploring eBook Recommendations from Company Law Exam Paper And Answers
 - Personalized Recommendations
 - Company Law Exam Paper And Answers User Reviews and Ratings

- Company Law Exam Paper And Answers and Bestseller Lists
- 5. Accessing Company Law Exam Paper And Answers Free and Paid eBooks
 - Company Law Exam Paper And Answers Public Domain eBooks
 - Company Law Exam Paper And Answers eBook Subscription Services
 - Company Law Exam Paper And Answers Budget-Friendly Options
- 6. Navigating Company Law Exam Paper And Answers eBook Formats
 - ePub, PDF, MOBI, and More
 - Company Law Exam Paper And Answers Compatibility with Devices
 - Company Law Exam Paper And Answers Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Company Law Exam Paper And Answers
 - Highlighting and Note-Taking Company Law Exam Paper And Answers
 - Interactive Elements Company Law Exam Paper And Answers
- 8. Staying Engaged with Company Law Exam Paper And Answers
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Company Law Exam Paper And Answers
- 9. Balancing eBooks and Physical Books Company Law Exam Paper And Answers
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Company Law Exam Paper And Answers
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Company Law Exam Paper And Answers
 - Setting Reading Goals Company Law Exam Paper And Answers
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Company Law Exam Paper And Answers
 - Fact-Checking eBook Content of Company Law Exam Paper And Answers
 - Distinguishing Credible Sources

13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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