

COMPANY LAW

PILOT ASSIGNMENT QUESTION AND MARKING
SCHEME

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Bunga Flowers Fa Sdn Bhd

Bunga Flowers Fa Sdn Bhd (“BFF”) was incorporated to carry on the business of selling flowers. The members of BFF are Rose and Mawar, each holding one share at RM1 per share. They are also the directors of the company. The company does not have a constitution.

The board of directors wants to set up a shop selling flowers in the Great Mall which requires a start-up capital of RM1,000,000. The board proposes that the company issues 1,000,000 new shares at RM1 each. However, Rose indicates that she will not subscribe for the new shares as she has to pay some medical bills. Nevertheless, she will continue to hold one share in BFF.

Rose and Mawar then approached Orkid to invest in BFF. Orkid told them that she is willing to invest RM700,000 in the company on the following conditions:

- (i) the company pays her dividend totaling RM70,000 per year.
- (ii) the company prioritises the repayment of capital to her in the event the company is liquidated.
- (iii) the company to buy back the shares after 10 years; and
- (iv) the company appoints her daughter, Lily, a director of the company as long as she holds shares in the company.

Rose and Mawar realized that if BFF were to issue shares to Orkid, Orkid would be holding a substantial number of shares in the company. Rose and Mawar do not want to lose control of the company. They also do not want Orkid to interfere in the management of the company.

Further, Rose and Mawar investigated Lily’s background and discovered that she is a year two dental student at a foreign university and has no experience on managing a business. They doubt Lily will play a meaningful role as a director of the company. Most likely, Lily will be taking instructions from Orkid. Rose and Mawar are concerned that Lily would compromise her duties as a director of the company.

Meanwhile, Rose is worried that she would lose her position as a director of BFF since she would be holding only one out of 1,000,002 shares in the company when the new shares are issued.

REQUIRED:

Rose and Mawar seek your advice on the following issues:

(a) the solution to the issue of accepting Orkid's offer without losing control on the management of BFF;

(17 marks)

(b) Lily's duties as a director to BFF; and

(8 marks)

(c) Rose's position as a director of BFF.

(5 marks)

[Total: 30 marks]

Marking scheme for Q(a)

Issue 1: Power to manage company

Explain who has the power to manage the company

(Section 211: general powers to manage the company is vested in the board of directors subject to limitation in the CA 2016. Note company has no constitution)

Explain that member may step in under certain circumstances

(Section 206: remove the directors

Section 195: management review

Section 32: adopt a constitution to restrict the board's powers

Section 71: right to speak at meeting which includes question the directors)

Issue 2: Power to issue and allot new shares

Explain the general power is with the members

(Section 75 with exceptions in sub section (2). None of the exceptions apply)

Explain the pre-emptive right to new shares

(Section 85)

Issue 3: Payment of dividend

Explain the two principles for the payment of dividend

(Section 131 of CA 2016: paid out of company's profit and company is solvent)

Explain the consequences if payment contrary to principles

(Section 132 on penalty

Section 133 on civil liability)

Issue 4: Share buy back

Explain prohibition in section 123

Explain exception in section 127 does not apply

Issue 5: Preference shares

Explain preference shares

(Section 2(1) on definition and Section 90(4) on the rights which must be stated in the company's constitution: with emphasis on voting, repayment of capital, redemption and dividend)

Explain solution to issue preference shares to Orkid

(No right to vote and attend members' meeting, Right on appointment of Orkid's rep as director, Right to priority in repayment of capital, Right to receive fixed rate cumulative dividend, Right to redemption)

(17 marks)

RUBRIC

Marks	Remarks
0	No rewardable material
1-5	Identified few issues and poor analysis
6-10	Identified most issues and poor analysis
11-15	Identified most issues and good analysis
16-17	Identified all issues and excellent analysis

Marking scheme for Q(b)

Issue 6: Duties of director

Explain the duties in section 213

Subsection (1): Exercise powers for a proper purpose, in good faith and in the best interest of the company

Subsection (2): Duty of reasonable care, skill and diligence

Explain the two standards ie (1) minimum standard referenced to other directors having similar functions and responsibilities; and (2) higher level of standard referenced to his own knowledge, skill and experience

Lily to upskill herself

Issue 7: Duties of nominee director

Identify Lily as nominee director

Explain duty in section 217

Lily's duty to the company

(8 marks)

Rubric

Marks	Remarks
0	No rewardable material
1-2	Identified one issue and poor analysis
3-4	Identified all issues and poor analysis
5-7	Identified all issues and good analysis
8	Identified all issues and excellent analysis

Marking scheme for Q(c)

Issue 8: Qualification of director

Section 196: must be natural person above 18 years old

No statutory requirement on share qualification

However, Rose may be removed from office by ordinary resolution (section 206)

(5 marks)

Rubric

Marks	Remarks
0	No rewardable material
1-2	Identified issue and poor analysis
3-4	Identified issue and good analysis
5	Identified issue and excellent analysis