

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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