Law of Associations

Supplementary Written Assessment (35%)

**Written Assessment (35%) – Legal Memo (Research and Advice)**

You are a junior counsel working at one of the prestigious law firms specialising in Australian corporate law. Your supervising lawyer, Nina Alan, asks you to prepare an internal legal memo addressing legal issues related to the following matters:

**Question 1 (15 marks)**

Jason Lin is a minority shareholder in Western Builders Ltd, an unlisted construction company located in NSW. Western Builders Pty Ltd specialises in executing building and infrastructure work for specialised commercial construction. Jason owns 8% of the ordinary shares of the company. Jason has his own business where he is one of the largest importers of construction materials in Australia. He has received a notice from the company informing him of a general meeting called to propose the following resolutions:

**'Resolution 1**

That clause 171 of the Constitution of the Company be amended by inserting the following subclause:

1. Regulation 171A comes into effect on 1 January 2022.
2. If a member of the Company actively engages in a business similar to the one that the Company is involved in or is the nominee of a person who is actively involved in a business similar to the one that the Company is engaged in, such member is regarded as having given a share transfer notice to the Company under regulation 11 in relation to the member's shares, thereby ceasing to be a member of the Company.

**Resolution 2**

That clause 130 of the Constitution of the Company be amended by inserting the following subclause:

1. Regulation 130A comes into effect immediately upon the approval of the members.
2. Each member of the Company must hold 10% or more of the issued share capital of the Company carrying.
3. All member who holds less than 10% of the issued share capital of the Company is regarded as having accepted to subscribe to such amount that will ensure that each member meets the 10% limit.'

There is no further information provided in the notice as to the proposed resolution. However, Jason has provided the following extract from Western Builders Ltd constitution.

**Western Builders Ltd Constitution (extract)**

**4 Constitution of Western Builders Ltd**

**4.1 Alteration of the Constitution**

1. No alteration, repeal or addition shall be made to the Constitution except at the Annual General Meeting or General Meeting, called for that purpose and notice of any resolution to alter, repeal or add to the Constitution shall be given to members twenty-one (21) days prior to such meeting
2. In addition to the requirements specified by the Corporations Act, any other applicable law, or this document, the Constitution of the company shall not be altered without the written consent of ninety per cent (90%) of the shareholders has been obtained in an Annual General Meeting or a General Meeting called to amend the Constitution.

Jason feels that he will cease to be a member because of Resolution 1, and these resolutions are unfair. He wants to know whether it is possible under the corporation's law to do what Western Builders Ltd has proposed.

Nina Alan has asked you to address the following issues in your memo:

1. What are the requirements under the *Corporations Act 2001* (Cth) to amend the Constitution of Western Builders Ltd? (5 marks)
2. How likely will the proposed resolution be passed given the legal principles related to the amendment of the Constitution under the*Corporations Act 2001* (Cth) and the provisions of the Western Builders Ltd constitution? (10 marks)

**Question 2 (20 marks)**

The NSW Chamber of Business has requested Nina Alan to advise the Board of Governors of the NSW Chamber of Business as to the recent remarks made by the Attorney General that:

'The concept of limited liability is a core stone in our corporation law regime. However, we must not forget the adverse consequences that may result from limited liability granted to companies. Therefore, it is time to introduce a common, unifying principle, which underlies the occasional decision of the courts to pierce the corporate veil.'

The Executive Officer of the NSW Chamber of Business, who has contracted Nina Alan on behalf of the organisation, has informed her that the main objective of the advice is to prepare a report outlining the essential aspects of the statement made by the Attorney General. This report is prepared to support members of the Executive Committee of the NSW Chamber of Business to understand the implications of the statement for the shareholders of companies.

Nina Alan has asked you to prepare a legal memo explaining the implications of the abovementioned statement by focusing on the following questions:

1. What are the reasons for using limited liability as a core principle in the corporation law regime in Australia? (5 marks)
2. What are the adverse consequences that may result from limited liability? (5 marks)
3. How is the proposed approach to piercing the corporate veil different from the existing law in Australia? (10 marks)

Please note that this is only a hypothetical scenario and that the Attorney General has not made any statements resembling the one given above.

Assessment Instructions

**Assessment criteria**

* The assessment is graded out of 35% marks in total. The first question is allocated 15 marks, and the second question is allocated 20 marks.
* The task is designed to allow students to develop their skills in research, balanced professional writing, and understanding of corporate legal principles and related statutory provisions.
* You must demonstrate your ability to work independently to prepare specific legal advice while engaging in independent research.

**Word length**

* A word limit of 2,000 words has been set, which excludes footnotes, titles, and headings. It is expected that your response does not exceed 700 words for the first question and 1300 words for the second question, respectively. The word limit will be strictly enforced. There will be a one-mark penalty for every 100 words above the word limit – or part thereof. Please remember that this assignment has been structured so that a well-considered and scholarly written assignment may be achieved within the prescribed word limit, forcing you to research to write well-informed advice.
* Students must indicate the word count (excluding footnotes and bibliography) on the assignment coversheet.
* A bibliography must be included in the assessment.

**Due date**

* The assessment must be submitted by 5.00 pm Friday 2 November 2021. Assignments must be submitted via vUWS by this time.

**Guides to legal research and writing**

* The following resources may help address the assessment requirements.
  + The refresher research skills videos embedded in the Assessment folder including research skills and referencing (*I know what you did in first year* Module).
  + Legal Research Skills Workshop on advanced research skills- for studying Law of Associations.
  + Legal Research Skills materials available for writing legal memos.

**Formatting instructions for the internal legal memo**

* There are strict formatting requirements with which students are required to comply. The unit coordinator reserves the right to refuse to mark assignments that are not submitted without following formatting requirements.
  + This is a research assessment requiring you to submit advice, and the use of required and recommended texts does not constitute research.
  + Please note, law firm websites, conference papers, student theses, and Wikipedia are NOT acceptable scholarly sources.
  + Your essay footnotes must be referenced in accordance with the Melbourne University Law Review Association, Australian Guide to Legal Citation (Melbourne University Law Review Association Inc, 4 Please also observe the following conventions:
    - Format your assignment in 12-point font, using 1.5 line spacing with 'Moderate' margins.