

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2020

LAW 460.001
Advanced Corporate Law

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EXAM PASSWORD: 8hD79b
RESUME CODE: ABB416

TOTAL MARKS: 100

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 2 HOURS AND 30 MINUTES**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams.** All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an open book examination, and, in addition to the materials provided herein, candidates may refer to their class notes and course materials, other than the course text book. Text books may NOT be brought to or utilized during the exam.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.

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Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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Your answer file should be named, and the coversheet of your answers should be titled with:

Your Exam Code, Course Number, Name of Course, and Instructor Name

i.e., **9999 LAW 460A.001 Advanced Corporate Law – Talaifar / Gill**

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END OF COVER PAGES

Law 460, Section 1**QUESTION 1 – Consists of two parts, being 1(a) and 1(b)****FACT PATTERN**

Please refer to the Glossary, which appears after this fact pattern, for definitions of certain defined terms used herein.

Players

- **"Omega"** is a public company, its shares are listed on the TSX and it is incorporated under the British Columbia *Business Corporations Act*. Omega's shares currently trade at \$11.00 per share and, in the past year, have traded between \$10 and \$20 per share.

Omega is in the business of producing widgets. It currently has two widget factories in Canada and one in the United States. Since 2010, Omega rapidly expanded its operations by making accretive acquisitions. However, as a result of such acquisitions and due to a current downturn in the price of widgets, Omega's financial operating results have suffered over the past year.

Omega currently has total assets of \$700 million and approximately \$400 million of debt on its balance sheet. Cash flows from Omega's operating activities are generally sufficient to service its principal and interest payment obligations in relation to such debt.

- Omega's board of directors consists of 7 individuals as follows:
 - Director A – Omega's CEO, who owns 3.5% of Omega's outstanding shares.
 - Director B – non-employee director, senior executive of FF Fund.
 - Director C – Independent Chairman of Omega and non-employee director, previously the head of investment banking at a major Canadian bank.
 - Director D – non-employee director, retired businesswoman, with past broad business experience, including in the widgets industry.
 - Director E – non-employee director, managing partner of a financial consulting company that provides services to FF Fund from time to time.
 - Director F – non-employee director, a retired accountant.
 - Director G – non-employee director, a retired businessman.
- **"RFP"** is a public company whose shares are listed on the TSX. It is one of the largest widget makers in the world and is one of Omega's main competitors in terms of sales. RFP's operations are almost three times the size of Omega's. It has significantly more cash and assets than Omega and has relatively less debt. RFP has widget factories throughout the United States, but does not currently have a manufacturing presence in Canada.

Question 1 (continued)

- **"MIC"** is a public company whose shares are listed on the TSX. It is also in the widgets industry. It is roughly 50% larger than Omega in terms of assets and revenues. It currently has \$1 billion of total assets and \$400 million of debt. MIC has a widget factory in Canada.
- **"International Widgets"** is a public company whose shares are listed on the TSX. It is also one of the largest widget manufacturers in the world. It does not currently have any manufacturing facilities in Canada, but has been considering expanding into Canada for some time due to the abundance of the raw materials needed in their manufacturing process. International Widgets has very little debt and a significant amount of available cash on its balance sheet.

GLOSSARY

"FF Fund" means a significant hedge fund that owns approximately 21% of the outstanding shares of Omega. It also has other investments in the widget business in its portfolio of investments, including owning 19% of the outstanding shares of RFP. FF Fund is the single largest shareholder of both Omega and RFP.

"I Bank" means a large Canadian investment bank. It has provided advisory services to Omega in the past in connection with past acquisitions.

"Omega Institutional Holders" means four large institutional shareholders of Omega who are all unrelated. None owns more than 9% of the outstanding Omega shares but they collectively own approximately 20% of the outstanding Omega shares.

"TSX" means the Toronto Stock Exchange.

EVENTS**Day One**

RFP's CEO approaches Omega's CEO and expresses interest in a potential business combination of the companies, whereby RFP would acquire Omega for a combination of cash and RFP shares. The two have discussions regarding a potential transaction. However, the discussions end abruptly after Omega's CEO determined that the range of consideration being offered was not adequate.

Question 1 (continued)**Day Eight**

A week after discussions have ceased between the CEOs, RFP makes a formal hostile "take-over bid" to Omega's shareholders for all of the outstanding shares of Omega. Consideration under the offer consists of one-third of an RFP share and \$2.00 cash per Omega share. Based on the most recent closing price of RFP's shares, the total consideration offered by RFP amounts to \$12.00 per Omega share. In its announcement, RFP discloses that it has entered into "hard" lock-up agreements with the FF Fund and the Omega Institutional Holders whereunder FF Fund and the Omega Institutional Holders each agree to tender their shares to the RFP "take-over bid".

Day Nine

Omega's CEO meets with the rest of Omega's board of directors. In the meeting, Omega's CEO states that he believes the offer significantly undervalues Omega and characterizes it as an opportunistic attempt to acquire Omega at a time when its share price does not fully reflect its asset value and potential. Omega's CEO thinks there may be other potential acquirors who could provide either better value or more consideration. The directors briefly discuss the RFP take-over bid and determine to seek legal advice on how to proceed.

MARKS**35**

- A. THE CHAIRMAN OF OMEGA PHONES YOU AND ASKS YOU TO ACT ON OMEGA'S BEHALF IN RESPECT OF THE FOREGOING.**

HE ASKS YOU TO PREPARE A MEMORANDUM AS TO WHAT OMEGA SHOULD DO IN THE CONTEXT OF THE TAKE-OVER BID, WHAT THE POTENTIAL ISSUES ARE, WHAT THE DUTIES OF OMEGA'S DIRECTORS ARE, WHAT MEASURES OMEGA CAN TAKE IF IT DETERMINES TO REJECT THE RFP OFFER AND HOW BEST TO PROCEED. HE TELLS YOU THAT DIRECTORS B AND E SEEM TO SUPPORT THE TRANSACTION BASED ON THEIR DISCUSSIONS TO DATE. HOWEVER, THE REST OF THE BOARD IS APPREHENSIVE REGARDING THE AMOUNT OF CONSIDERATION BEING OFFERED BY RFP.

Question 1 (continued)**MARKS****25**

- B. AFTER RECEIVING YOUR ADVICE, THE OMEGA BOARD ENGAGED I BANK TO ACT AS OMEGA'S FINANCIAL ADVISOR IN CONNECTION WITH THE RFP TAKE-OVER BID AND DETERMINED TO RECOMMEND THAT OMEGA SHAREHOLDERS REJECT THE RFP TAKE-OVER BID. AS A RESULT, I BANK INFORMED THE OMEGA BOARD THAT MIC WAS INTERESTED IN MAKING A COMPETING OFFER FOR OMEGA. HOWEVER, THE LOCK-UP AGREEMENTS BETWEEN RFP AND THE FF FUND AND THE OMEGA INSTITUTIONAL HOLDERS REPRESENTED A SIGNIFICANT HURDLE TO THE SUCCESS OF ANY SUCH OFFER.**

AFTER SEVERAL DAYS OF DISCUSSIONS BETWEEN MANAGEMENT OF OMEGA AND MIC, MIC SENDS AN OFFER LETTER TO OMEGA, IN WHICH IT PROPOSES TO ACQUIRE ALL OF THE OUTSTANDING SHARES OF OMEGA BY WAY OF A FORMAL TAKE-OVER BID FOR CONSIDERATION CONSISTING OF \$2.00 CASH AND 1/2 OF AN MIC SHARE FOR EACH OMEGA SHARE. BASED ON THE MOST RECENT CLOSING PRICE OF MIC'S SHARES, THE CONSIDERATION UNDER THE PROPOSAL AMOUNTS TO \$14.00 PER OMEGA SHARE.

IN ORDER TO "LEVEL THE PLAYING FIELD", AS A CONDITION OF ITS OFFER, MIC PROPOSES A PRIVATE PLACEMENT WHERE IT WOULD ACQUIRE SPECIAL WARRANTS OF OMEGA THAT CAN BE CONVERTED INTO OMEGA SHARES REPRESENTING 19.9% OF THE OUTSTANDING OMEGA SHARES. IN THE EVENT THAT MIC TAKES UP ANY OMEGA SHARES UNDER ITS TAKE-OVER BID, IT WOULD HAVE THE OPTION OF EITHER CONVERTING THE SPECIAL WARRANTS OR BEING PAID BACK ITS SUBSCRIPTION PRICE, WHICH WAS \$14.00 PER WARRANT. MIC HAS ALSO ASKED FOR A BREAK FEE EQUAL TO APPROXIMATELY 5.5% OF THE TRANSACTION VALUE. THE MIC OFFER REQUIRES OMEGA TO ENTER INTO A SUPPORT AGREEMENT WITH MIC IN WHICH OMEGA WOULD AGREE TO SUPPORT THE OFFER AND AGREE NOT TO SOLICIT OR DISCUSS ANY OFFERS FROM PARTIES OTHER THAN MIC.

OMEGA'S CHAIRMAN ASKS YOU TO PROVIDE ADVICE REGARDING THE PROPOSED OFFER FROM MIC, IN THE CONTEXT OF THE OMEGA BOARD'S DUTIES, POTENTIAL ISSUES AND HOW BEST TO PROCEED.

QUESTION 2 – Consists of two parts, being 2(a) and 2(b)**FACT PATTERN**

Big Bonanza Gold ("**BBG**") is a mineral exploration and development company that is listed on the Toronto Stock Exchange (the "**TSX**"). Its shares currently trade at \$20 per share on the TSX and it has a market capitalization of approximately \$800 million. BBG's only mineral project is its Tall Lake Gold Project in China.

Under the guidance and vision of its CEO, BBG has developed the project from a "patch of dirt" to a potentially feasible mining operation. BBG has spent over \$75 million to date on exploration and development activities on the project. It has completed independent evaluation reports from geological consultants that have estimated that the property contains a 10,000,000 ounce gold deposit based on the results of BBG's exploration. These estimates are largely based on assay results from drill holes conducted on the property by BBG. Such assay results were provided by independent assay laboratories. BBG would send samples of material obtained from a drill hole to the independent assay laboratories, who would then analyze each sample and issue a report on the amount of gold contained therein.

BBG is currently in the process of completing a feasibility study. If such study is successful, BBG would obtain financing and commence mine construction shortly.

The share price of BBG largely reflects its exploration success to date and its potential future revenues if the feasibility study is successful and the Tall Lake Project becomes a producing mine.

BBG's CEO, a geologist, is well regarded in the mining industry and is respected by all of BBG's employees. He has directly overseen the development of the Tall Lake Project and was directly involved in all aspects of the project. He was the only person who received assay results directly from the independent assay laboratories.

The geological consultants completing the feasibility study have been requesting direct access to BBG's original samples in order to independently verify the gold assay results with their own laboratories, as such results are integral to their study and the estimated resources of the project. BBG's CEO initially arranged for these samples to be sent to the geological consultants. However, they were mysteriously destroyed when the truck carrying them veered off the road leading out of the project area and struck a tree bank. BBG is in the process of obtaining new samples from the original drill core. The process is estimated to take one month.

Yesterday, BBG's CEO abruptly tendered his resignation to the board of directors of BBG.

Question 2 (continued)**MARKS****25**

- A. THE CHAIRMAN OF BBG CALLS YOU AND GOES OVER THE EVENTS OUTLINED ABOVE. HE STATES THAT THE BOARD IS VERY CONCERNED THAT THE CEO MAY HAVE TAMPERED WITH THE ASSAY RESULTS FOR THE TALL LAKE PROJECT.

HE ASKS YOU TO ADVISE THE BOARD ON ITS DUTIES IN THE CIRCUMSTANCES AND WHAT STEPS IT SHOULD TAKE IN CONNECTION WITH THESE CONCERNS REGARDING POTENTIAL FRAUD. ADDITIONALLY, HE ASKS YOU TO ADVISE AS TO WHETHER BBG NEEDS TO PUBLICLY DISCLOSE THESE EVENTS OR THE BOARD'S CONCERNS REGARDING THE ASSAY RESULTS.

QUESTION 2(B):**MARKS****15**

- B. ONE MONTH HAS PASSED SINCE THE RESIGNATION OF BBG'S CEO. DURING SUCH TIME BBG OBTAINED NEW SAMPLES FROM THE DRILL HOLES AND SENT THEM TO BE INDEPENDENTLY ANALYZED. THE RESULTS SHOW ONLY NOMINAL GOLD VALUES, MEANING THAT THE PREVIOUSLY REPORTED ASSAY RESULTS OVERSTATED GOLD VALUES SIGNIFICANTLY. ACCORDINGLY, THE PREVIOUS RESOURCE ESTIMATES GROSSLY OVERSTATED BBG'S GOLD RESOURCES AT THE TALL LAKE PROJECT.

BBG'S CHAIRMAN CONTACTS YOU AND ASKS YOU TO ADVISE THE BOARD WITH RESPECT TO WHETHER PUBLIC DISCLOSURE IS REQUIRED, WHAT YOU SUGGEST SUCH DISCLOSURE, IF ANY, SHOULD CONSIST OF (GENERALLY) AND WHAT ELSE THE BOARD SHOULD DO.

END OF EXAMINATION