

**THIS EXAMINATION CONSISTS OF 6 PAGES
PLEASE ENSURE YOU HAVE A COMPLETE PAPER.**

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

FINAL EXAMINATION – DECEMBER 2021

LAW 460.001
Advanced Corporate Law -
Advising Public Companies

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TOTAL MARKS: 100

**WRITING (INCLUSIVE OF READING) TIME ALLOWED:
2 HOURS AND 30 MINUTES**

NOTES:

1. 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.
2. ANSWER ALL QUESTIONS
3. READ ALL PAGES FIRST TO BUDGET YOUR TIME.
4. 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.

**THIS EXAM CONSISTS OF 3 QUESTIONS
(Questions 1, 2(a) and 2(b))**

Law 460, Section 1

QUESTION 1

Glossary

ABC Co	A Canadian publicly traded company whose shares are listed on the Toronto Stock Exchange. It has 50,000,000 common shares outstanding.
Board	The Board of Directors of ABC Co, comprised of seven individuals, being the Chairman, CEO, CFO, the CEO's brother-in-law plus three other independent directors.
CEO	Chief Executive Officer of ABC Co who is also a director. He personally owns 4,850,000 common shares of ABC Co.
CFO	Chief Financial Officer of ABC Co who is also a director.
Chairman	Independent Chairman of ABC Co.
Family	The family of the CEO which includes his wife and two children ages 14 and 12.
Panama Papers	The recently leaked secret documents from the Panamanian law firm, Mossack Fonseca, regarding its setting up 240,000 shell companies in low or no tax jurisdictions on behalf of numerous parties around the world which have been leaked to the press, including the International Journalists' Association.
ShellCo	A company organized under the laws of the British Virgin Islands.

Background

You act as counsel for ABC Co from time to time. You receive a call from the Chairman who is very nervous and distressed. He says he has been advised that the Panama Papers will disclose that the CEO and/or his Family are the beneficial owners of ShellCo. He says this is very concerning, given the negative world-wide press regarding individuals named in the Panama Papers and their potential involvement with either evading tax, laundering monies or other things. He says he understands that owning a foreign company in and of itself is not illegal. He notes the president of Iceland has resigned and other politicians are being investigated after being named in the Panama Papers. He also advised that he has been told by the CFO that ABC Co has done business with ShellCo where ShellCo sources and sells raw materials to ABC Co that ABC Co uses in the manufacture of its products. The CFO has not yet provided information regarding the quantum and pricing of such transactions and he is not sure whether anything illicit has occurred. The Chairman also says the CEO is one of the best executives in the business and instrumental in driving above-market returns for ABC Co and its shareholders.

QUESTION 1:

MARKS

25

The Chairman says he needs your advice as to what the Board and ABC Co should be doing, what are the directors' duties, what actions should they be taking and what might happen to ABC Co, the CEO and the Board. In addition, are there any disclosure obligations on the part of ABC Co.

Question 2

GLOSSARY

AAA Co. A Canadian publicly traded mining company whose shares are listed on the Toronto Stock Exchange (the "TSX") and is incorporated under the British Columbia *Business Corporations Act*. AAA Co. has only one class of shares outstanding.

Board The Board of Directors of ABC Co., comprised of seven individuals:

- Director A – Chairman of the Board and a non-employee director who was the past executive of a large international mining company (also referred to as "**Chairman**").
- Director B – CEO of AAA Co.
- Director C – Non-Employee director, who was previously the head of mining finance at a large Canadian investment bank.
- Director D – Non-employee director with past broad business experience.
- Director E – Non-employee director, who is also an executive of the Fund.
- Director F – Non-employee director, who was previously an executive at a large manufacturing company.
- Director G – Non-employee director, who is also the chief executive officer of a mining consulting firm that has previously provided substantial services to Giant Mining.

CEO Chief Executive Officer of AAA Co.

Fund A large hedge fund, which is the largest shareholder of AAA Co., owning approximately 12% of the AAA Co. shares.

Giant Mining A publicly traded mining company listed on the TSX. Giant Mining is one of the largest mining companies globally and is 35% owned by a large Chinese commodities trading company.

LAM Mining Latin America Mining Corp., a mid-tier gold producer based in Peru.

Background

- AAA Co. has been a successful mining growth story. Since its creation 10 years ago, it has developed several producing mines and several advanced-stage non-producing projects. One of its non-producing projects, the AAA Mine, located in Chile and Peru is generally regarded by AAA Co. and the mining industry to have the potential to be one of the largest and most cost efficient mines in the world. AAA Co.'s producing assets include several mines located in Peru and Chile, including the Santana Mine, located in Peru, which currently represents about 35% of AAA Co. gold production, revenues and net income.
- In order to put the AAA Mine into production as envisioned, AAA Co. will need to invest an additional \$1.5 billion. It is currently estimated by AAA Co. that, with funding in place, AAA Co. could advance the mine into production within four years. Many analysts believe that if the AAA Mine is successfully developed, AAA Co. would become one of the top-three gold producers in the world, with a lower cost of production than any of its competitors.
- AAA Co. previously planned to fund the development of the AAA Mine with the profits from its producing mines. However, due to the recent downturn in gold prices, the profitability of these mines is currently negligible.
- AAA Co. currently has \$50 million in cash, which, at current gold prices, is sufficient to maintain its existing producing mines and cover its expenses for the next four years.
- The AAA Co. shares are currently trading at \$20 per share. Over the past three years the AAA Co. shares traded as high as \$60 per share until they sharply decreased over the last year as a result of a significant decrease in the price of gold and other metals.
- The Fund makes most of its investments in mining companies, providing debt and equity financing to companies like AAA Co. with promising project portfolios.
- Giant Mining was established over 50 years ago and has grown into one of the most successful mining companies in the world, with over twenty-five mines in production, all of which are located in North America and Africa. Giant Mining has several gold mines but its focus to date has been predominantly on copper projects. Giant Mining's largest shareholder is a private Chinese metals trading company, which owns approximately 40% of Giant Mining's shares. Several months ago, Giant Mining announced that it would be seeking to expand its gold mine portfolio and diversify its geographic focus outside of North America and Africa.
- Yesterday, Giant Mining's Chief Executive Officer and several of its other executives met with the CEO and Chairman. During this meeting, they suggested a transaction, whereby Giant Mining would acquire AAA Co. for a combination of cash and Giant Mining shares equivalent to \$25 per share. At the meeting, they stated that they would prefer a friendly deal, but would be more than willing to make a hostile bid for AAA Co. Based on the Giant Mining proposal, the shareholders of AAA Co. would own about 14% of Giant Mining if the proposed transaction is completed.
- Director E mentioned to Chairman that Giant Mining had approached the Fund seeking to buy its AAA Co. shares at current market prices. However, the Fund does not wish to sell its shares to Giant Mining at this stage because it believes AAA Co. is undervalued and thinks that the shares will appreciate significantly once the AAA Mine is developed.

QUESTION 2(A):

MARKS

40

- A.** You are a lawyer working in Vancouver and you receive a call from the Chairman, who asks you for advice regarding what AAA Co. and the Board should do in response to Giant Mining's overtures. He also wants you to address the duties and obligations of the Board. He states that he has canvassed the other Board members and a majority of them believe that the Giant Mining offer significantly undervalues the shares of AAA Co.

QUESTION 2(B):

MARKS

35

- B.** Two weeks has passed since the meeting between the CEO, the Chairman and the representatives of Giant Mining. Today, Giant Mining commenced a take-over bid for all of the AAA Co. shares for a combination of cash and shares at a price of \$30.00 per share. If this bid is successful, AAA Co.'s existing shareholders would collectively own approximately 18% of Giant Mining on a post-transaction basis. In its take-over bid circular, Giant Mining states that it does not currently own any AAA Co. shares, but that it has entered into "hard" lock-up agreements with shareholders of AAA Co. representing 9% of the outstanding AAA Co. shares, whereby such shareholders have agreed to tender their shares to Giant Mining's bid.

The Chairman contacts you again informing you of the situation. He also provides that:

- Over the past week, he has been in touch with representatives of the Fund, who have stated that the Fund would be willing to tender to the current Giant Mining offer at \$30.00 per share. The Fund was approached by Giant Mining to enter into a lock-up agreement, but it was unwilling to commit to the "hard" lock-up required by Giant Mining.
- He has been in touch with AAA Co.'s lawyers in South America who have advised that the Giant Mining offer will likely trigger a 5-month regulatory approval process based on local foreign investment laws that require government review and approval due to the large ownership position in Giant Mining held by the Chinese metal trading company. This is also disclosed in Giant Mining's take-over bid circular.

Question 2(B) (continued)

- Earlier today, the Board also received a non-binding term sheet from LAM Mining indicating an interest to acquire AAA Co.'s Santana Mine for cash consideration of \$350 million. LAM Mining is a mid-tier gold producer, with sufficient cash on its balance sheet to complete this proposed transaction. It has completed extensive due diligence in the past on the Santana Mine. Some of the Board members have expressed an interest in pursuing this deal as it would position the Company well to develop the AAA Mine, covering development costs for the next 12 months. Director E has stated that the Fund would be opposed to this deal because, from their investment perspective, the Fund wants exposure to the combined project portfolio of AAA Co. and Giant Mining.

The Chairman calls you and asks you to advise as to how they should proceed and expressed that some of the directors are concerned about going against the will of the largest shareholder. He also asks you what measures they could put in place to add certainty to a transaction with LAM Mining (if approved by the Board).

END OF EXAMINATION