

Company law fundamentals (2023)

Multiple choice questions

1. In order for a company to be deemed to be unable to pay its debts, it must satisfy both the cash flow test set out in Article 214(5)(a) of the Companies Act as well as the balance sheet test set out in Article 214(5)(b). True or False? **False.**
2. The following modes of winding up of limited liability companies exist in terms of Maltese law:
 - a. **Members' voluntary winding up; creditors' voluntary winding up and Court winding up**
 - b. Members' voluntary winding up; directors' voluntary winding up and Court winding up
 - c. Members' voluntary winding up and creditors' voluntary winding up. A Court driven winding up process is not permitted in terms of Maltese law.
3. In order for a members' voluntary winding up to proceed, a directors' declaration of solvency is required mandatorily. True or False? **True.**
4. When bringing an action for wrongful trading, the applicant must necessarily prove fraudulent intent on the part of the directors of the company. True or False? **False.**
5. An action for fraudulent trading may only be brought in the context of an insolvent dissolution and winding up. True or False? **False.**
6. Prior to the introduction of the Pre-Insolvency Act in December 2022, the Maltese legislative framework already catered for a number of corporate rescue mechanisms. True or False? **True.**
7. The directors may exercise all the powers of the company except those which are required by the Companies Act or by the M&As of the company to be exercised by the general meeting. True or False? **True.**
8. Who of the below are not considered to be officers of the company in terms of the Companies Act?
 - a. The managers of the company
 - b. **The auditors of the company**
 - c. The secretary of the company
9. Every company shall have a company secretary but no company shall have as company secretary a body corporate. True or False? **False.**
10. The directors owe their duties to the general body of creditors throughout the lifetime of the company, that is, from inception until dissolution. True or False? **False.**
11. The power to appoint alternate directors must be expressly catered for in the company's Articles of Association. True or False? **True.**
12. The board of directors of a public company may not be composed of:

- a. **one director**
 - b. one executive director and one non-executive director
 - c. one executive director and two non-executive directors
13. A director shall not be liable for the acts of his co-directors if he proves that he took all reasonable steps to prevent the breach of duty from occurring. True or False? **True.**
14. As a separate juridical person, a company (select the one incorrect answer):
- a. is the subject of rights and obligations
 - b. is capable of acquiring assets and undertaking liabilities, as its own assets and liabilities, and not of its members
 - c. may enter into contractual relations with third parties in its own name
 - d. **sues and is sued in the name of its directors.**
15. A company obtains legal personality upon:
- a. The entry into the memorandum of association by the shareholders
 - b. **The issue of a certificate of registration by the Registrar of Companies.**
16. Shareholders may be held personally liable for any amount left unpaid on the shares respectively held by each of them. **True / False.**
17. The directors of a company are considered the owners of the company. True/**False.**
18. The authorised share capital is:
- a. The total nominal value of the shares which are allotted to shareholders
 - b. **The total nominal value of the shares which a company may issue**
 - c. The amount of issued capital which is paid up by shareholders
19. In the case of a private company, shares may not be pledged unless the memorandum and articles of the company specifically allow it. True or False. **True.**
20. The memorandum of association is:
- a. an inward-looking document which sets out the internal regulations of the company as required by the Companies Act (Chapter 386 of the laws of Malta).
 - b. **an outward-looking document which provides key information on the company as required by the Companies Act (Chapter 386 of the laws of Malta).**