



**STRATHMORE LAW SCHOOL
MASTERS OF LAW (LL.M)
END OF MODULE MAIN EXAMINATION
LLM 8312: COMPANY LAW**

Date: **Thursday, 31st March 2022**

Time: 3 Hours

Instructions

1. Answer **ALL QUESTIONS**. Each question carries 12 marks
2. This is a closed book examination. However, you are permitted to consult **ONLY** the Kenyan Companies Act 2015.
3. You should spend a fair amount of time organizing your thoughts before starting to write.
4. Careful organization and clarity will be highly valued.
5. Please start each question on a new page.

Scenario

Ahenda plc (“Ahenda” or “the Company”) is a major, graphic design company in Nairobi, Kenya. Julie, a major shareholder, is concerned that several of Ahenda’s directors may have breached their statutory duties and seeks your advice.

The board of Ahenda discovers that Emily Strip Ltd is considering a takeover bid of Ahenda. Emily Strip plans to break up the various parts of Ahenda and sell them off individually and to remove the Company’s directors. Ahenda is making a considerable profit and the directors genuinely believe that it would not be in the interests of the Company or its shareholders for Ahenda to be taken over by Emily Strip. Accordingly, the directors caused the Company to issue new shares, which were issued to Cindy - an existing shareholder who is known to oppose the takeover.

Janet, a director of Ahenda who has worked for the Company for over 20 years, decides to retire. In recognition of Janet’s service, the directors of Ahenda unanimously agreed that the Company will pay Janet 1 million Kenyan shillings. Ahenda’s Articles of Association state that ‘Ahenda plc may engage in any activity directly related, or incidental to, the carrying on of a graphic design business.’ The directors of Ahenda caused the Company to lend 5 million Kenyan shillings to Joanne, who will then pay off the loan over a two-year period. Joanne is a major client of Ahenda, but aside from this, she has no other links with the Company or its directors. A number of Ahenda’s shareholders hear of the loan and argue that Joanne must give the money back immediately.

Around twenty of Ahenda’s employees are engaged in web design at its Mombasa division. However, the Mombasa division of Ahenda has not been profitable for some time due to reasons associated with the global pandemic, and the directors have considered closing the division down. Accordingly, the directors closed down the Mombasa division and this made the twenty employees that worked there redundant.

One of Ahenda’s directors, Denis, is in extreme financial difficulty and is close to having to declare himself bankrupt (which would make him ineligible to act as a director of Ahenda). Accordingly, to prevent this, the other directors of Ahenda caused the Company to lend Denis 15 million Kenyan shillings. The transaction is disclosed at a meeting of the directors and the directors unanimously agreed to authorize the loan. Denis was present at this meeting, but could not vote on whether the loan should be made.

Your legal advice to Julie (not exceeding 2500 words in total) should specifically address the following excerpts (questions) from the scenario.

- (1) What is your advice regarding this excerpt: “The board of Ahenda discover that Emily Strip Ltd is considering a takeover bid of Ahenda. Emily Strip plans to break up the various parts of Ahenda and sell them off individually and to remove the Company’s directors. Ahenda is making a considerable profit and the directors genuinely believe that it would not be in the interests of the Company or its shareholders for Ahenda to be taken over by Emily

Strip. Accordingly, the directors caused the Company to issue new shares, which were issued to Cindy – an existing shareholder who is known to oppose the takeover.” (12 marks)

- (2) What is your advice regarding this excerpt: “Janet, a director of Ahenda who has worked for the Company for over 20 years, decides to retire. In recognition of Janet’s service, the directors of Ahenda unanimously agreed that the Company will pay Janet 1 million Kenyan shillings.” (12 marks)
- (3) What is your advice regarding this excerpt: “Ahenda’s Articles of Association state that ‘Ahenda plc may engage in any activity directly related, or incidental to, the carrying on of a graphic design business.’ The directors of Ahenda caused the Company to lend 5 million Kenyan shillings to Joanne, who will then pay off the loan over a two-year period. Joanne is a major client of Ahenda, but aside from this, she has no other links with the Company or its directors. A number of Ahendas’ shareholders hear of the loan and argue that Joanne must give the money back immediately.” (12 marks)
- (4) What is your advice regarding this excerpt: “Around twenty of Ahenda’s employees are engaged in web design at its Mombasa division. However, the Mombasa division of Ahenda has not been profitable for some time due to reasons associated with the global pandemic, and the directors have considered closing the division down. Accordingly, the directors closed down the Mombasa division and this made the twenty employees that worked there redundant.” (12 marks)
- (5) What is your advice regarding this excerpt: “One of Ahenda’s directors, Denis, is in extreme financial difficulty and is close to having to declare himself bankrupt (which would make him ineligible to act as a director of Ahenda). Accordingly, to prevent this, the other directors of Ahenda caused the Company to lend Denis 15 million Kenyan shillings. The transaction is disclosed at a meeting of the directors and the directors unanimously agreed to authorize the loan. Denis was present at this meeting, but could not vote on whether the loan should be made.” (12 marks)

Good luck!!!