



STRATHMORE LAW SCHOOL
MASTERS OF LAW (LL.M)
END OF MODULE MAIN EXAMINATION
LLM 8314: LEGAL ASPECTS OF INTERNATIONAL FINANCE

Date: Thursday, 24th March 2022

Time: 3 Hours

Instructions

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions
3. This is a closed-book examination. The exam mode for this exam is **CLOSED**.
4. All questions carry equal marks. The mark earned in the final examination will be added to the coursework mark to make your final mark in the course.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

Part A.

Question 1 is compulsory.

1. Latto Ltd is a successful company operating in Nairobi. It mandated its relationship bank, ABC bank Ltd, to arrange a syndicated loan to facilitate the expansion of its business. The expansion plans were disclosed to ABC bank, and they included a prospective purchase of a local Fintech, called Wave, which invests in cryptocurrencies. Before committing to the loan, the prospective syndicate lenders enquired if Latto Ltd had any contingent liabilities such as guarantees. ABC bank responded that there were no contingent liabilities, which assuring statement was repeated in the loan agreement that Latto Ltd had no contingent liabilities. Eventually the loan was agreed and documented on the Loan Markets Association template.

One year after the loan had been disbursed, Latto experienced serious financial problems. It turned out that it had guaranteed a loan for its subsidiary company that had defaulted on the loan, and Latto was required to pay off the subsidiary's loan. Further, the investment in Wave had gone sour since its cryptocurrencies had substantially lost value. Since Latto had failed to make two consecutive instalment payments, one of the syndicate banks, XYZ bank declined to contribute further to the syndicated loan and called for its termination. The syndicate lenders are canvassing their possible causes of action against ABC bank and Latto Ltd, including breach of fiduciary duty for not disclosing the contingent liabilities. Latto, on its part, maintains that regardless of the situation, XYZ must provide funds for its commitment. Latto also claims that ABC bank owed it a fiduciary duty and should have advised it against investing in cryptocurrencies in Wave since both the company and the products were not fully established according to ABC's internal documents.

Advise the parties on the issues that arise from the above facts. [20 Marks]

Part B.

Answer TWO questions from this part.

2. What are the boilerplate provisions in loan financing? Do you think the LMA template adequately provides for them? [20 Marks]
3. It has been claimed that the choice of law and forum provisions involving African countries were deliberately one-sided in favour of the creditors and some countries have endeavoured to extricate themselves legally or practically from such provisions. Analyse the possible choice of law and forum alternatives, the factors considered in making a selection, and the possibility of avoiding an oppressive selection at the litigation stage. [20 marks]
4. What is non-recourse financing; and what are its implications for project financing? [20 Marks]
5. How does the LMA loan template deal with the legal techniques for transferring loan interests? Does the law in your country accommodate the transfer of loan interests? [20 Marks]