



**STRATHMORE LAW SCHOOL
MASTERS OF LAW (LL.M)
END OF MODULE MAIN EXAMINATION
LLM 8304: INSOLVENCY AND REORGANIZATION**

Date: **Wednesday, 17th January 2024**

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.
4. You should spend a fair amount of time organizing your thoughts before starting to write.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

Question One

Mr. Kimani holds the first meeting of his team as Interim liquidator of Mrembo Cosmetics Limited (“Mrembo”). The following information is part of what the first meeting produced:

- Mrembo deals in cosmetics for reconstructive surgery or as an alternative for surgical intervention and thus, holds several licenses for live animal research and the blending of volatile chemical compounds and given the sensitivity of the products it is heavily licensed.
- Mrembo has several assets ranging from land, buildings and intellectual property all valued at Kshs 600,000,000
- A petition was made by Akiba Bank who are owed Kshs. 20,000,000 after a failure to make repayments on the principal debt for six months. Besides, there are indications that Mrembo had also defaulted on its repayment to Maendeleo Bank for three months towards the end of last year. The total value of loan owed to Maendeleo bank though disputed is stated as kshs. 35,000,000.
- The employees of Mrembo have gone without salary for the better part of the year and in some instances the staff were put on half pay.
- A tour in one of the warehouses indicates that a lot of stock have been lying in there for more than a year which is strange considering that Mrembo’s products are very popular in the market.
- Having completed an early “walk round” of the main site and talking to Mrembo’s main Security Officer, he gets an indication that the current status of the licenses needs to be ascertained.

With reference to the above-mentioned facts, answer the following questions:

Requirements

- a) Mr. Njuguna one of the directors is not satisfied on the courts' decision and has come to inquire on the grounds the courts used to issue a winding order. Advise him **(10 Marks)**
- b) Who shall be held responsible for the loss suffered by Mrembo after the significant volume of its products was condemned leading to huge losses, on account of non-compliance with the law due to a license for cosmetic products from animal testing not being renewed on time? **(10 Marks)**
- c) As an interim liquidator who is very experienced and appreciates the impact of liquidation, what other options could be more viable for Mrembo as a way of dealing with its current problems. A well thought out option. **(10 Marks)**

Question Two

You are an Insolvency Practitioner and have been contacted by Matthew, a 10% shareholder of Wenzetu Limited (“the Company”), a classic car dealership. The Company had been placed into Members’ Voluntary Liquidation on 3 May 2022 and Mary was appointed as Liquidator. Mary had been recommended to the Company’s Board of Directors by the Chairman of the Company. Matthew has brought the following matters to your attention:

- Per the statement of assets and liabilities attached to the declaration of solvency, there was to be a members’ surplus of £200,000. An early cash distribution of £150,000 had been paid to members on 31 July 2017 and the final distribution was to have been paid on 31 October 2017.

- Matthew received an email from Mary stating that she had recently received a valid claim from Karbeca Limited for £300,000 in relation to a lease guarantee the Company had provided in 2017. There were now insufficient funds for the final distribution to be made.
- Mary blamed her failure to identify this claim on the Company’s Directors who had not included it in the statement of assets and liabilities. However, when challenged, the Directors explained that Mary had prepared the statement and declaration of solvency for them, and they had “just signed it”.
- In July 2019, Mary had sold one of the Company’s classic cars for £75,000. Last month, Matthew saw this car offered for sale for £150,000 in a classic car magazine. Mary had used a friend (who owns a few classic cars) to arrange the deal.
- Matthew recently attended the Company Chairman’s birthday party, and it transpired that Mary is the Chairman’s sister-in-law.

Requirements

- (a) Set out the legal and practical steps Mary needs to take to move the Company into Creditors’ Voluntary Liquidation. **(6 marks)**
- (b) Assuming the Company is placed into Creditors’ Voluntary Liquidation, identify the consequences this will have for the Directors and the Shareholders of the Company. **(6 marks)**
- (c) Assuming you are appointed Liquidator in the Creditors’ Voluntary Liquidation, state the ethical issues that you are likely to identify when conducting your investigation into Mary’s involvement with the Company. **(4 marks)**

d) Identify the actions you could take as Liquidator to recover assets for the creditors. (4 Marks)

Question Three

MM is a gym located at leased premises in Westview, Nairobi. Because of competition and other issues, MM is facing financial difficulties and it is not meeting its liabilities. All the efforts to revive the business, cut the costs or even sell the business were unsuccessful. Payment to equipment suppliers and maintenance agencies are due for supplies/services provided in the previous 3 months amounting to around Kshs 5,600,000. The rent for its premises remains unpaid for 3 months amounting to Kshs 450,000. Mr. Ndonge (the landlord had received advance rent for three months, lease deed provided for one-month rent as security and one-month rent as advance). MM has a loan account with XYZ Bank –valued at Kshs 8,000,000, which remains unpaid for last two months. The monthly repayment for the loan is Kshs. 360,000. MM was managed by Mr. M, as director but has also employed 7 persons, including 3 trainers, 1 accountant and 3 housekeeping staff. The salaries due to these employees were paid in half since the past four months. Mr. M in its effort to stay afloat made an application under the Insolvency Act for initiation of insolvency resolution of MM. This subsequently led to your appointment as Insolvency practitioner.

Requirement

While alluding to the pari-passu principle, provide a detailed plan on how the creditors will be paid (20 marks)

Question Four

You have been approached by all three Directors and Shareholders of Mkenya Daima Ltd (“the Company”) to provide them with independent legal advice regarding the Company's

situation. The Company manufactures and supplies Laundry Washing equipment to the commercial market. Approximately 25% by value of its customers purchase the equipment on 2-year leases (which is also the product's warranty period) and the remaining 75% receive trade credit of up to 60 days.

The Company has one particularly significant customer that accounts for 40% of the total turnover. There are 2 years remaining of a 3-year supply contract with this customer, who has agreed to purchase 20 units per month. This customer contracted with the Company due to its exceptionally high-quality products, produced by its longstanding workforce.

As it has experienced difficulties in the past, to reduce supply chain risk the Company holds relatively high levels of stock. This includes finished units, part completed units (work in progress) and components sourced from many different suppliers. Current stock is made up of 50 completed units, 30 units at various stages of completion and, with the exception of battery units, components sufficient to produce another 40 units. The Company has recently discovered a fraud perpetrated by an employee in the finance team, which has placed extreme pressure on its cash position. The fraud relates to the misuse of an invoice discounting facility, and it appears that a large proportion of the Company's debts are not collectable, exposing the invoice finance provider ("the Funder") to potentially significant losses. Much as the funder has a security that equates to more than half the value of the company, if they learn of this, the Funder may introduce a firm of insolvency practitioners who are reaching the end of their initial review of the situation.

From their initial discussions with the insolvency practitioners, the Directors are concerned that the Funder will seek to place the Company into Administration. As the Company's business is long established and, under normal circumstances, profitable, and with its employees being part of the Directors' family, the Directors are keen to keep control.

The Directors are confident that the business is viable and have prepared trading and cash flow forecasts showing that, although cash flow will be pressured, with the support of the Funder and other creditors the business can continue to trade and improve the position of creditors. As the Company operates in a highly competitive market the Directors are also concerned about any adverse publicity and they keen to avoid this.

Requirements

(a) Having regard to the circumstances described, set out the advantages and disadvantages for an Administrator of the Company of selling the business and assets immediately after their appointment rather than continuing the Company's business with a view to a sale at a later date. **(7 marks)**

(b) Prepare a briefing note for the Directors explaining the actions that could be taken by the Funder in the event that debtor collections are insufficient to repay their indebtedness. **(5 marks)**

(c) Identify and explain any alternatives to Administration that the Directors could consider to deal with the situation and allow the business to continue to trade. Provide a justification why it may be better than administration **(8 marks)**

Question Five

Roland Products Limited ("the Company") has recently experienced a number of financial issues that has resulted in creditor pressure. The Company has approached you for legal advice given that creditors are now threatening legal action. The Directors have undertaken a full review of the Company's financial performance and are certain that it can afford to repay these debts should it have the breathing space to do so. The Directors believe that the Company's secured lender Levy Funding plc ("the Bank") will be supportive of such an approach. Given the level of creditor pressure, the Directors think

that to rescue the Company it needs a moratorium on legal action and time to restructure its debts.

Requirements

- a) Describe what a Moratorium is **(2marks)**

- b) Explain the principal differences between an Administration moratorium and a moratorium under the provisions introduced by the Corporate Insolvency and Governance Act 2020 (UK). **(8 marks)**

- (c) Outline the implications of obtaining a moratorium **(10Marks)**