



ZCAS UNIVERISTY

SCHOOL OF LAW

MASTER OF LAWS IN COMMERCIAL LAW

MID-TERM EXAMINATION

L131 CORPORATE INSOLVENCY LAW

TIME ALLOWED: THREE (3) HOURS (plus FIVE (5) minutes reading time)

Instructions

1. Answer four (4) questions, THREE from part B. Question one is compulsory.
2. The examination paper carries a total of 100 marks.
3. Candidates are permitted to bring the Corporate Insolvency Act No. 9 of 2017 into the examination room
4. Candidates must not turn this page until the invigilator tells them to do so.

PART A: THIS QUESTION IS COMPULSORY, AND MUST BE ATTEMPTED.

Question One

Kagem Limited (the “Company”) is a private company incorporated in Zambia pursuant to the provisions of the Companies Act No. 10 of 2017. The principal business for the Company is emerald processing. The Company owes ZANACO Bank (“ZANACO”) a sum of USD 1,000,000 being the outstanding balance on the loan advanced to the Company. In January 2023, the parties informally restructured the loan whereby the Company was granted an extension to settle the same by way of monthly instalments commencing in April 2023. Although the Company is solvent, after settling only three (3) monthly instalments in the sum of USD 120,000, for the months of April, May and June 2023, the Company now believes it will not be able to settle the rest of the instalments. In fact, the Board of Directors is of the view that should the Company be forced to settle the rest of the instalments, it will end up being liquidated.

Given your knowledge of insolvency proceedings, advise the Company on any options available to it and the steps it must take to ensure it continues operating on a solvent basis.

(TOTAL 25 MARKS)

PART B: ANSWER THREE QUESTIONS FROM THIS PART

Question Two

GAM Oil Limited (“GAM Oil”), a private company incorporated in Zambia, is in the business of supplying gas to mining companies in Zambia. It has two directors, who are also shareholders, Vincent and Memory. In 2022, due to the Ukraine-Russia War, the company began to experience severe cashflow difficulties. Things did not improve, creditors began threatening to take action against the company, and Vincent and Memory decided that they should take advice as to what to do. At the Mid-year meeting of their local business breakfast club in July 2023, they asked some of their fellow attendees for suggestions. One of them suggested a Business Rescue Proceeding

under the Zambian Corporate Insolvency Act, 2017. Another mentioned a Scheme of Arrangement under the same Act. Vincent and Memory consult you about these options.

- a) Give detailed advice to Vincent and Memory as to the applicability of these two options;
- b) Discuss their relative advantages and disadvantages; and
- c) Which option do you consider most suitable and why?

(TOTAL 15 MARKS)

Please bear in mind the following;

- (i) The value of GAM Oil's debts is USD 200,000,000;
- (ii) The nature of GAM Oil's liabilities is USD 400,000,000;
- (iii) The main creditor is CARE Limited who is owed 80% of the total debt and has expressed intention to commence receivership or liquidation proceedings and is unwilling to negotiate a restructuring with GAM Oil.

Question Three

You work as legal advisor to a Zambian Company, Nova Tech Zambia Limited (the "Company"), which for the past 2 years has been experiencing financial difficulties. In August 2022, the company's overdraft with Investrust Bank reached its limit of ZMW 5,000,000. In return for increasing the overdraft limit to ZMW 7,500,000, Investrust demands security and takes a floating charge over the company's assets. The business continues to struggle, and, in January 2023, the Company borrows a sum of ZMW 2,000,000 from Indo-Zambia Bank which is secured by a floating charge. In March 2023, the Company gets another loan of ZMW 3,000,000 from ABSA Bank Zambia PLC which is secured by the Company's main Property in Kabulonga known as Plot No. 14a Reedbuck Road, Lusaka (valued at about ZMW 4,000,000). The Company's total assets (including the Kabulonga property, are worth ZMW 23,500,000). The Company has defaulted on all loans and overdrafts to the tune of about ZMW 13,500,000, and insolvency proceedings are threatened by Investrust Bank, Indo-Zambia Bank and ABSA Bank.

Required:

Assess the nature of insolvency proceedings likely to be commenced by the creditors and the likely outcome in terms of debt ranking.

(TOTAL 15 MARKS)

Question Four

Explain the following terms in Insolvency proceedings;

- | | |
|-------------------|-----------|
| a) Moratorium; | (3 marks) |
| b) Arrangement | (3 marks) |
| c) Reconstruction | (3 marks) |
| d) Amalgamation | (3 marks) |
| e) Compromise | (3 marks) |

(TOTAL 15 MARKS)

Question Five

Powerhouse Zambia Limited (the “Company”) is a construction company incorporated in Zambia pursuant to the provisions of the Companies Act, No. 10 of 2017. The Company uses heavy duty equipment that is supplied by a heavy machine supplier. Due to the large sums involved, the company borrows the money to purchase these items from Access Bank (Z) Limited, a private bank that specializes in such loans. As part of the agreement, Access hold a debenture. The Company is going through a bad period due to delayed supplies by 3rd parties and is now struggling financially.

Required;

- Explain why Access have the debenture.
- Outline the purpose of Receivers and Managers in insolvency proceedings
- List the powers of a Receiver and Manager and explain whether any of these apply to the situation Access find themselves in.

(TOTAL 15 MARKS)

END OF EXAMINATION