INSOL INTERNATIONAL

FOUNDATION CERTIFICATE IN INTERNATIONAL INSOLVENCY LAW

Module 7F Guidance Text

Uganda

2024 / 2025

CONTENTS

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IN INTERNATIONAL INSOLVENCY LAW

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1. INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW IN UGANDA

Welcome to **Module 7F**, dealing with the insolvency system of **Uganda**. This Module is one of the elective module choices for the Foundation Certificate. The purpose of this guidance text is to provide:

- a general overview, including the background and history, of Uganda's insolvency laws;
- a relatively detailed overview of Uganda's insolvency system, dealing with both corporate and consumer insolvency; and
- a relatively detailed overview of the rules relating to international insolvency and how they are dealt with in the context of Uganda.

This guidance text is all that is required to be consulted for the completion of the assessment for this module. You are not required to look beyond the guidance text for the answers to the assessment questions, although bonus marks will be awarded if you do refer to materials beyond this guidance text when submitting your assessment.

Please note that the formal assessment for this module must be submitted by **11 pm (23:00) BST (GMT +1) on 31 July 2024**. Please consult the web pages for the Foundation Certificate in International Insolvency Law for both the assessment and the instructions for submitting the assessment. Please note that no extensions for the submission of assessments beyond 31 July 2024 will be considered.

For general guidance on what is expected of you on the course generally, and more specifically in respect of each module, please consult the course handbook which you will find on the web pages for the Foundation Certificate in International Insolvency Law on the INSOL International website.

2. AIMS AND OUTCOMES OF THIS MODULE

After having completed this module you should have a good understanding of the following aspects of insolvency law in Uganda:

- the background and historical development of Ugandan insolvency law;
- the various pieces of primary and secondary legislation governing Ugandan insolvency law;
- the operation of the primary legislation in regard to liquidation and corporate rescue;
- the operation of the primary and other legislation in regard to corporate debtors;
- the rules of international insolvency law as they apply in Uganda;
- the rules relating to the recognition of foreign judgments in Uganda.

After having completed this module you should be able to:

- answer direct and multiple-choice type questions relating to the content of this module;
- be able to write an essay on any aspect of Ugandan insolvency law; and
- be able to answer questions based on a set of facts relating to Ugandan insolvency law.

Throughout the guidance text you will find a number of self-assessment questions. These are designed to assist you in ensuring that you understand the work being covered as you progress through the text. In order to assist you further, the suggested answers to the self-assessment questions are provided to you in **Appendix A**.

3. AN INTRODUCTION TO UGANDA[1]

Uganda is an East African country covering 241,038 km^2 with a population estimated at 47,729,952 people in 2023.[2] It is bordered by Kenya in the east, Sudan in the north, Democratic Republic of the Congo in the west, Rwanda in the southwest while Burundi and Tanzania are in the south.

Uganda, as is the case with the rest of Africa, was colonised by the British government around the 1860s. It gained its independence from British rule on 9 October 1962, with Dr Apollo Milton Obote as the first prime minister. In 1963, Uganda became a republic with Sir Edward Muteesa elected president. Uganda is a sitting member of, amongst others, the United Nations, the African Union, the East African Community, and the Commonwealth.

The Constitution is the supreme law of Uganda. The present and fourth Constitution since independence was adopted on 8 October 1995. The 1995 Constitution established Uganda as a democracy made up of three arms, namely the:

(a) Executive, comprising of the president, vice president, prime minister and cabinet. The power of the Executive Branch is vested in the president of Uganda, who also acts as head of state and Commander-in-Chief of the armed forces. The president is responsible for implementing and enforcing the laws written by Parliament and, also appoints the cabinet;

(b) Legislature, comprising of members elected by the citizens to represent constituencies. It also comprises one woman representative for every district; a specific number of representatives from the army, youth, workers, persons with disabilities and other groups as Parliament may determine; and the vice-president and ministers who, if not already elected members of Parliament are *ex-officio* members without the right to vote on any issue requiring a vote in Parliament. Parliament is presided over by the Speaker, and in the Speaker's absence, by the Deputy Speaker (both of whom are elected by members of Parliament); and

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1 *https://www.gou.go.ug/about-uganda* and *https://www.cia.gov/library/publications/the-world-factbook/*.
2 https://www.cia.gov/the-world-factbook/countries/uganda/summaries/#people-and-society.

(c) Judiciary, consisting of Magistrates' Courts, the High Court, Court of Appeals (Constitutional Court) and the Supreme Court (in that order of hierarchy from the lowest to the highest-ranking court).

Uganda is a developing country and the economy is made up of the following sectors: agriculture (24.2%), industry (25.5%) and services (50.3%).[3] The agricultural sector includes fisheries, animal husbandry, dairy, and crop sub-sectors; the industrial sector includes manufacturing, construction and electricity supply sub-sectors; and the services sector is made up of wholesale and retail trade, telecommunications, hotels and restaurants, transport and communications and tourism sub-sectors. Uganda's real gross domestic product (GDP) grew an estimated 6.3% in 2022 – more than the 5.6% in 2021.[4]

4. LEGAL SYSTEM AND INSTITUTIONAL FRAMEWORK

4.1 Legal system

Uganda's legal system is predominantly based on the English legal system as Uganda was governed by England for a long time. Along with Independence came the framework of a constitution to provide local governance of the country, although at the time it was a hybrid framework incorporating colonial system of governance which was continued in form and substance. Over time new systems were also devised to address the issues of development and independence.

Today, the law in Uganda can be found in the following sources which are highlighted in section 14 of the Judicature Act, Cap 13 as amended:

(1) the 1995 Constitution of the Republic of Uganda;

(2) Acts of Parliament;

(3) statutory instruments or subsidiary legislation made by Executive authorities;

(4) case law, some drawn from English common law, but now mostly as developed by local Ugandan courts;

(5) doctrines of equity;

(6) international treaties and conventions; and

(7) customary law (where applicable).

[3] https://www.gou.go.ug/about-uganda/uganda-glance/economy.
[4] https://www.afdb.org/en/countries/east-africa/uganda/uganda-economic-outlook.

4.2 Insolvency regime

Uganda's first insolvency-related legislation was the Bankruptcy Act of 1931 which was adopted from the English Bankruptcy Act of 1914. In fact, section 2 of the Bankruptcy Act of 1931 provided that where necessary, English insolvency law would apply to Uganda. Around the same time in 1931, the Deeds of Arrangement Act was enacted with provisions on personal bankruptcy. In 1961, Uganda enacted the Companies Act of 1961 which also contained provisions on company liquidation. The Companies Act of 1961 was a replica of the British Companies Act of 1948.

Uganda did not experience any major commercial legislative changes during the period after the Independence in 1962; perhaps due the political instability. In 1999, the Ugandan Government commissioned the Uganda Law Reform Commission (ULRC) to review, examine and make recommendations on reforming the insolvency law and framework at large. The ULRC was specifically tasked to the review the framework of receiverships, insolvency, liquidation and bankruptcy. During the process, a lot of reference was made to the United Kingdom's (UK) Insolvency Act of 1986, and the 1982 Cork Report that led to its passing. Uganda, like many other Commonwealth countries benchmarks and models UK laws.

The ULRC's final report was published in 2004, at a time when corporate failure in Uganda was relatively high. The ULRC found and recommended several adjustments including the following:

(1) The Bankruptcy Act of 1931 was over 70 years old, and it needed to be updated to align with existing socio-economic changes. For instance, the Act's focus was on liquidation as opposed to business rescue which had since taken centre stage. There were several other concepts including the definition of insolvency itself, preference trading, undervalue transactions which had since become prevalent and needed to be regulated.

(2) Uganda's law was scattered over different sources to wit, common law, judicial precedents, the Bankruptcy Act of 1931, Deeds of Arrangement Act and the Companies Act of 1961. The ULRC recommended that both statutory and common law rules should be brought together into a single insolvency act.

(3) Insolvency practice was neither professionalised nor regulated, and there were no minimum qualifications for practicing as an insolvency practitioner.

(4) The existing legislation had no provision for regulating cross-border insolvency. With the growth of multinationals in Uganda, there was need for an insolvency law that could be implemented in the event of cross-border insolvency.

In 2011, six years after the report of the ULRC, the Ugandan Parliament passed the Insolvency Act of 2011. The significant features introduced by the Act include:

(1) the creation of a single insolvency code and increased specialisation driven by a strict regulatory framework;

(2) improved corporate governance;

(3) the introduction of new aspects relating to regulation of insolvency practitioners, their qualifications and uniform training;

(4) clarification of the role of the official receiver and increased powers of the official receiver;

(5) provisions on receivership;

(6) cross-border insolvency and cross-border transactions;

(7) protection against bankruptcy in respect of individuals in the form of interim and arrangement orders and also for companies in the form of administration; and

(8) protection of the insolvent's estate, amongst others.

In 2015, the office of the official receiver carried out activities for the implementation of the Insolvency Act of 2011. Amongst the activities, was a review of the practicality of the implementation of the Act which led to a process for further reform of the Act. In 2022, the Uganda Insolvency Amendment Act was passed with the following key amendments:

(1) the introduction of post-commencement financing in administration and arrangement proceedings;

(2) the removal of reciprocity provisions in cross-border insolvency;

(3) establishing secured creditors as having priority over statutory preferential creditors;

(4) criminalisation of concealing, disposing or charging company assets within two years pre-insolvency; and

(5) reducing the period of disqualification of an adjudged bankrupt from occupying certain positions from five to two years.

4.3 Institutional framework

4.3.1 Court

Under section 91 of the Insolvency Act of 2011, the High Court has jurisdiction over all liquidation matters. Under section 254(1), the High Court has jurisdiction over all matters concerning companies under the Insolvency Act of 2011. The High Court of Uganda is divided into seven divisions, namely the:[5]

[5] https://www.judiciary.go.ug/data/smenu/9//High%20Court.html.

(a) Civil Division;[6]

(b) Commercial Court;[7]

(c) Criminal Division;

(d) Family Division;

(e) International Crimes Division;

(f) Land Division;[8] and

(g) Anti-Corruption Division.

Insolvency matters are currently handled in the Commercial and Civil Divisions of the High Court, because Uganda does not have a special insolvency court. All insolvency matters concerning individuals where the subject matter value does not exceed UGX (Uganda Shillings) 50,000,000 are presided over by the Chief Magistrate.

In cases of debtor insolvency, the common practice is for secured creditors to enforce their security outside the court system, while unsecured creditors seek court intervention. Through court, whether or not it is a matter of insolvency, creditors commonly seek and obtain orders for:[9]

(a) arrest and commitment of debtors to civil prison (in cases of individuals);[10]

(b) warrants of attachment and sale of property;

(c) warrants of sale without attachment of debtor property;

(d) attachment of debt; and

(e) the appointment of a receiver over assets of debtor.

More recently, creditor rights have been seen in more formal insolvency proceedings such as liquidation.[11]

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6 https://www.judiciary.go.ug/data/smenu/12/Civil%20Division.html.
7 https://www.judiciary.go.ug/data/smenu/17/Commercial%20Court%20Division.html.
8 http://www.judiciary.go.ug/data/smenu/9/High.
9 Civil Procedure Act, Cap 71, s 38.
10 Although courts are starting to shun this process. See *Geoffrey Opio v Felix Obote* Miscellaneous Civil Applications No 0081 and 0082 of 2018 (Consolidated) (Arising from Civil Suit No 015 of 1998).
11 *In the Matter of Roko Construction Ltd* (Company Cause No 6 of 2020).

4.3.2 Regulator

Part VIII of the Insolvency Act of 2011 provides for the office of the official receiver whose function is to:[12]

(a) investigate the directors, shareholders, contributories and all present and past officers of an insolvent company or of a company which being wound up or liquidated, for the purpose of establishing any fraud or impropriety;

(b) investigate the promotion, formation, failure and conduct of business of an insolvent company;

(c) prosecute any person for offences committed under this Act or discovered to have a case to answer as a result of investigations carried out;

(d) investigate the conduct of insolvency practitioners and to prosecute them for any offences committed;

(e) act during a vacancy in the office of an insolvency practitioner; and

(f) take all necessary steps and actions considered fit by the official receiver to fulfil the provisions of this Act.

The office of the official receiver sits under the Uganda Registration Services Bureau (URSB), a semi-autonomous Government Agency of the Ministry of Justice and Constitutional Affairs. The URSB was established under the Uganda Registration Services Bureau Act, Cap 210 with a key mandate of carrying out all registrations required under relevant laws. The sitting Registrar General of the URSB is also the official receiver. Following the passing of the Insolvency Act of 2011, a Directorate of Insolvency and Receivership was created under the URSB and it is headed by a director.

4.3.3 Other professional oversight institutions

Section 204 of the Insolvency Act of 2011 emphasises the regulatory and supervisory role of the professional bodies to which the practitioners belong by virtue of their qualifications. It provides that a person is not qualified to be appointed as an insolvency practitioner unless he or she is a lawyer, an accountant or a chartered secretary who is a registered member of the relevant professional body or is a registered member of any other professional body as the minister may prescribe. These professional bodies must work hand in hand with the official receiver in order to ensure utmost professionalism and service delivery by insolvency practitioners.

The primary professional body for lawyers is the Law Council which is established by section 2 of the Advocates Act, Cap 267 (as amended by Act 27 of 2002) as the overall Regulatory body

[12] Insolvency Act of 2011, s 199.

of the Legal Profession in Uganda.[13] As part of its mandate, it approves law chambers, enrols advocates, accreditation of legal training programmes and handling professional disciplinary matters for lawyers.

On the part of the accountants, the Institute of Certified Public Accountants Uganda (ICPAU) was established in 1992 by an Act of Parliament (now the Accountants Act of 2013) as the National Professional Accountancy body. Its mandate is similar to that of the Law Council, which is to regulate and maintain the standard of accountancy in Uganda and to prescribe and regulate the conduct of accountants and practising accountants in Uganda.[14]

Chartered secretaries are commonly lawyers and accountants who, after special training, are specially certified by ICSA Uganda – East Africa Region, which is a branch of Chartered Governance Institute UK & Ireland. ICSA Uganda does not have a statutory mandate as is the case with the Law Council and ICPAU. However, it amongst others provides certification of competence that is a minimum requirement for insolvency practitioners of this governance profession under the law.

Self-Assessment Exercise 1

Study the basic aspects dealt with in the previous section.

Explain the legal and regulatory framework of insolvency law and practice in Uganda.

For commentary and feedback on self-assessment exercise 1, please see APPENDIX A

5. SECURITY

5.1 Generally

In Uganda, there are assets that are commonly accepted as security countrywide such as land, vehicles and machinery of the kind. There are also assets acceptable as security varying from sector to sector in light of the pre-dominant micro, small and medium enterprises. Some of these assets are detailed below:

(a) The Uganda Mortgage Act of 2009[15] empowers any person (obviously subject to other relevant laws such as the law of contract) holding land under any form of land tenure to mortgage his interest in the land or a part of it to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition. This power includes the power to create third party mortgages, second, subsequent

[13] https://justice.go.ug/our-directorates-2/https-lawcouncil-go-ug/.
[14] https://www.icpau.co.ug.
[15] Mortgage Act, s 3.

mortgages and sub-mortgages.[16] The manner of creating any mortgage in Uganda depends on the nature of ownership of the land and it is governed by statutes and case law. The most common practice in the mainstream financial system is by the borrower depositing the certificate of ownership of land with the creditor and executing a mortgage deed by which the creditor registers their mortgage interest on the certificate of ownership.[17] The creditor retains the certificate and as soon as the debt is paid, it must be released to the owner and the mortgage must be cancelled. In terms of Ugandan land laws, any structure permanently fixed to the land (such as a building) automatically forms part of the land and by implication the mortgage. For matrimonial land, spousal consent must be provided prior to creating the mortgage.[18] Legal mortgages over land are the most common form of security acceptable by financial institutions in Uganda and are registered in the Lands Register which is under the Commissioner, Land Registration of the Ministry Lands, Housing and Urban Development.

(b) The Companies Act of 2012 provides for the creation of security over movable or immovable property of a company by way of a charge. Section 2 defines a charge to mean a "form of security for the payment of a debt or performance of an obligation consisting of the right of a creditor to receive payment out of some specific fund or out of the proceeds of the realization of specific property; and includes a mortgage". Section 105 provides that a charge is void against a liquidator or other creditor unless it is registered with the registrar of companies under the Uganda Registration Services Bureau within 42 days after its creation. Company charges may be in the form of debentures, charge on book debts, floating charges on undertaking or property, charges on goodwill, patents or trademark or copyright, amongst others. The most common charge used by companies in Uganda and acceptable to financial institutions is a fixed and floating debenture covering all present and future assets and undertakings of the company. In some instances, especially when a lender is financing the acquisition of a specific asset, companies issue fixed charges over the financed assets.

(c) In 2019, Uganda passed the Security Interest in Movable Property Act (SIMPA) and the Security Interest in Movable Property Regulations which provide for the use of movable property as collateral for a creditor and perfection of security interests. The Act further establishes an electronic registry known as the Register of Security Interest in Movable Property Registry System.[19] The movable property applicable must be either a tangible asset located in Uganda; an intangible asset where the owner is located in Uganda; or an asset (tangible or intangible) which is ordinarily used outside Uganda but the owner is located in Uganda and movable property attached to immovable property. With the online

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[16] Under section 2 a sub-mortgage means a mortgage of a mortgage and a "third party mortgage" means a mortgage which is created or subsists to secure the payment of an existing or future or a contingent debt or other money or money's worth or the fulfilment of a condition by a person who is not the mortgagor, whether or not in common with the mortgagor.

[17] In some cases, borrowers make a simple deposit of the title without registration in order to save costs associated with registration of the mortgage such as stamp duty.

[18] Mortgage Act, ss 5 and 6.

[19] The SIMPRS was developed in fulfilment of the Government of Uganda's objective in the Second National Development Plan 2015/16 – 2019/20 of reducing interest rates, decreasing default rates and increasing the pool of new borrowers. See https://simpo.ursb.go.ug.

Registry held under the Uganda Registration Services Bureau secured creditors can register their security interests in movable assets such as livestock, crops, motor vehicles, electronics and furniture while providing the public with notice of the existence of such security interest. According to the Government,[20] micro, small and medium enterprises as well as individuals whose major constraint to economic growth is lack of affordable credit are now able to use their movable assets as collateral for loans. The SIMPA repealed of the Chattels Transfer Act of 1978 and Chattels Securities Act of 2014.

(d) There are several other forms of security commonly used alongside other securities such as mortgages and debentures. Personal and corporate guarantees now governed by part VIII of the Contracts Act of 2010 are one such form of security. Under section 68 of the Act, a contract of guarantee is defined as a contract to perform a promise or to discharge the liability of a third party in case of default of that third party. Lenders usually require company directors to issue personal guarantees for loans to their companies and corporate guarantees are common in scenarios of related entities. There is a lot of jurisprudence on guarantees.[21] The other form of security is assignment of proceeds which is commonly done in cases of contract financing under the law of contracts.

Self-Assessment Exercise 2

Study the basic aspects dealt with in the previous section.

Question 1

Explain the various forms of security for credit commonly used in Uganda.

Question 2

Analyse the implication of the SIMPA Act of Uganda on access to credit.

For commentary and feedback on self-assessment exercise 2, please see APPENDIX A

[20] https://simpo.ursb.go.ug.

[21] In *Uganda Finance Trust Ltd v Muhumuza* HCT-01-CV-CA-03 of 2015 the court noted that in light of section 71 of the Contracts Act of 2010, which provides that the liability of the guarantor shall be to the extent to which the principal debtor is liable, unless otherwise provided by contract, the liability of the guarantor takes effect upon default by the principal debtor.

6. INSOLVENCY SYSTEM

6.1 General

6.1.1 Applicable law

As it is indicated in its long title, the Ugandan Insolvency Act of 2011 was enacted to amend and consolidate the law on insolvency into a single piece of legislation. It provides for receivership, administration, liquidation (solvent and insolvent), arrangements, bankruptcy, the regulation of insolvency practitioners and cross-border insolvency. It regulates the insolvency of natural and incorporated persons both local and foreign having assets in Uganda. The implementation and testing of the Act have since been seen through various legal and policy activities including the:

- Insolvency Regulations Number 36 of 2013 (the Insolvency Regulations);
- Insolvency Practitioners Regulations Section I Number 55 of 2017, which provide for registration and regulation of insolvency practitioners with the official receiver;
- Insolvency (Investigations and Prosecutions) Regulations Section I Number 4 of 2018, which provide for the procedure for investigation and prosecution of insolvency practitioners, directors, shareholders and contributories, and all present and past members of the insolvent company or company under insolvency proceedings; and
- Insolvency Fees (Amendment) Regulations Section I Number 5 of 2018 which prescribe the fees payable in insolvency matters as provided for under the Insolvency Act of 2011.

In September 2022, Uganda passed the Insolvency Amendment Act Number 8 of 2022 to amend the Insolvency Act of 2011 specifically to provide for:

(a) empowering administrators and supervisors to avoid preference transactions, insider dealings and transactions at undervalue;

(b) post-arrangement and post-administration financing;

(c) the right of a creditor to apply to commence provisional administration;

(d) the minister to prescribe additional qualifications for an insolvency practitioner;

(e) the repealing of provisions requiring reciprocal arrangements in cross-border insolvency; and

(f) the power of the official receiver to act and exercise the powers of an insolvency practitioner in respect of an asset discovered after the completion of an insolvency process, and for related matters.

The larger part of insolvency proceedings is contained in the single Insolvency Act of 2011. Save that, the liquidation of a solvent company commences under the Companies Act of 2012 and is finalised in terms of the Insolvency Act of 2011. Upon passing the resolution of voluntary winding up of the company under the Companies Act of 2012, the provisions of the Insolvency Act of 2011 relating to liquidation take effect.

The High Court has jurisdiction over all matters concerning companies under the Insolvency Act of 2011 while the Chief Magistrate has jurisdiction over all insolvency matters against individuals, the subject matter of which does not exceed UGX 50,000,000 (approximately USD 13,000).

6.1.2 General application provisions

The Insolvency Act of 2011 as amended applies to natural persons, partnerships, companies (local and foreign) and other corporate bodies established by any written law. However, it does not apply to the insolvency of financial institutions which is governed by the Financial Institutions Act of 2004 (as amended). Once the insolvency process is commenced against an individual or entity, the assets of that individual or entity are immediately vested in an insolvency practitioner. The insolvency practitioner may be appointed either by the insolvent, court or creditors, depending on the procedure adopted. During this period, the debtor (or the directors in case of a company) is absolved of powers over the assets and business in insolvency. However, the law imposes certain duties on the debtor to provide information to support the insolvency practitioner during the exercise of his duties. The law also empowers the court to make orders including supervision of the activities of the insolvency practitioner and to give directions where required.

6.1.2.1 Definition of insolvency

The law does not specifically define the insolvency concept, and "inability to pay debt" is used to describe the situation of insolvency. Under section 3 of the Insolvency Act of 2011, a debtor is presumed to be unable to pay his debts if the debtor has failed to comply with a statutory demand;[22] the execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part; or all or substantially all the property of the debtor is in the possession or control of a receiver or some other person enforcing a charge over that property. In determining whether a debtor is unable to pay his debts, contingent or prospective debts may be taken into account.

6.1.2.2 Proof of debt by creditors[23]

Under Regulation 172 of the Insolvency Regulations, a person claiming to be a creditor of an insolvent and wishing to recover his debt in whole or in part shall submit a claim in writing to the office holder and shall state whether the creditor is claiming as a secured or an unsecured creditor. Where a person claims as an unsecured creditor, the office holder may require the claim to be verified by a statutory declaration. A creditor's proof must state amongst others, the

[22] *Roofings Limited v Roko Construction Limited company* cause No 6 of 2020.
[23] *ZTE v Uganda Telecom Limited in Administration* MA 866 of 2020.

creditor's name and address, the total amount of the claim, particulars of the how and when the debt was incurred, and particulars of any security held including the value the creditor attaches to it. Under Regulation 176, a creditor's proof may be withdrawn or varied at any time by agreement between the creditor and the office holder. In the case of claims by workers and others employed by the insolvent, it is sufficient if one proof for all those claims is made by a foreman or one person on behalf of all the workers. The proof of debt for workers is in the prescribed Form 32 in Schedule 1 of the Insolvency Regulations.

Any foreign currency claim must be converted into Uganda Shillings at the rate of exchange on the date of commencement of the proceedings. Where a claim is subject to a contingency or is not certain for some reason, the liquidator or trust must make an estimate of the amount of the claim or refer the matter to court for a decision on the amount of the claim. Unless the court orders otherwise, every creditor bears the cost of proving his own debt, including costs incurred in providing documents or evidence. An office holder has the right to set a time limit for proving claims by issuing a public notice fixing a date, not less than 14 working days from the date of the notice, on or before which the creditors are required to prove their debts. A copy of this notice must be sent to every person –

(a) who claims to be a creditor of the insolvent and whose claim has not been admitted; or

(b) referred to in the statement of affairs or any preliminary report as a creditor who has not proved his debt.

It is the duty of the offer holder to examine every proof of debt and in writing admit or reject it, in whole or in part or require further evidence. Under Regulation 182 of the Insolvency Regulations, where the debtor was entitled to discounts except discounts for immediate, early or cash settlement, but for their insolvency, these must be deducted from the claim. The costs incurred by the office holder in estimating the value of an insolvency debt fall on the insolvent estate, as an expense of the insolvency. If the claim is rejected in whole or in part, the office holder must send a notice to the creditor in the form prescribed as Form 31 of Schedule 1 to the Insolvency Regulations stating the reasons for the rejection. A creditor who is dissatisfied with the office holder's decision has 14 working days after receiving the rejection notice to apply to the court to review the decision. The option of seeking court review of a decision regarding a claim by an office holder is also available to the insolvent, any other creditor or contributory. Any court application filed in this regard must be served on the office holder who shall not be personally liable for costs of the application unless the court orders otherwise.

6.1.2.3 Interest claims

Section 2 of the Insolvency Act of 2011 defines a bankruptcy debt to mean *inter alia*, any interest that may be claimed in bankruptcy. Section 6 provides that the amount of a claim shall be ascertained as at the date of commencement of liquidation or bankruptcy. It goes on to state that where a claim bears interest, the interest payable in respect of any period after the commencement of the liquidation or bankruptcy shall be suspended.

This provision is supported by Regulation 185 of the Insolvency Regulations which provides that where the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from the date interest is agreed to be due to the date of insolvency. In cases where the debt is due otherwise than by virtue of a written instrument, interest may only be claimed if, before date of insolvency, a demand for payment is made in writing and notice is given that interest would be payable from the date of the demand to the date of payment. The law also provides that interest where charged shall be chargeable at a rate not exceeding 6% per year.

6.1.2.4 Netting off and mutual credits

Section 9 of the Insolvency Act of 2011 provides that where there have been mutual credits, mutual debts or other mutual dealings between a company or an individual and a person who, but for the operation of this section, would seek to have a claim admitted, an account shall be taken of what is due from the one party to the other in respect of those credits, debts or dealings; an amount due from one party shall be set off against any amount due from the other party; and only the balance of the account may be claimed in liquidation or bankruptcy or is payable to the company or the bankrupt's estate. A person shall not be entitled, under this section, to claim the benefit of any set-off against the property of a debtor in any case where the person is reasonably expected to have foreseen that the debtor would be likely to be unable to pay his or her debts at the time of giving credit to the debtor.

The provisions under Regulation 183 of the Insolvency Regulations provide that mutual credits, mutual debts and mutual dealings do not include any debt arising out of an obligation incurred at a time when the creditor has notice that insolvency proceedings have commenced; or in the case of a company, where the liquidation is immediately preceded by an administration, any debt arising out of an obligation incurred when the creditor has notice that the company is in administration.

6.1.2.5 Secured and unsecured creditors options[24]

Claims by secured creditors are generally provided for under section 11 of the Insolvency Act of 2011. A secured creditor may upon a debtor's insolvency realise any asset subject to a charge, where he is entitled to do so, claim as a secured creditor, or surrender the charge for the general benefit of creditors and claim as an unsecured creditor for his or her whole debt. Where a secured creditor realises an asset subject to a charge, they may claim as an unsecured creditor for any balance due, after deducting the net amount realised; and must account to the liquidator or trustee for any surplus remaining from the net amount realised after satisfaction of the whole debt, including any interest payable in respect of that debt up to the time of its satisfaction and after making proper payments to the holder of any other charge over the asset subject to the charge. A creditor who claims as a secured creditor may claim as an unsecured creditor for any balance due to him, after deducting any payment recovered from realizing the security. Where a secured creditor voluntarily surrenders his security for the general benefit of creditors, the secured creditor may prove the whole debt, as if it were unsecured.

[24] *Bank of India (U) Ltd v NC Beverages and Uganda Revenue Authority HCCS* No 9 of 2021.

6.1.2.6 Priority rankings[25]

First to be paid is remuneration and expenses properly incurred by the liquidator or trustee; any receiver's or provisional administrator's indemnity and any remuneration and expenses properly incurred by any receiver, liquidator, provisional liquidator administrator, proposed supervisor or supervisor; and the reasonable costs of any person who petitioned court for a liquidation or bankruptcy order, including the reasonable costs of any person appearing on the petition whose costs are allowed by the court.

Next are all wages or basic salary, wholly earned or earned in part by way of commission for four months; all amounts due in respect of any compensation or liability for compensation under the Worker's Compensation Act of 2000, accrued before the commencement of the liquidation or bankruptcy, not exceeding the prescribed amount; all amounts that are preferential debts under sections 33 or 105 of the Insolvency Act of 2011. The liquidator shall then pay the amount of any tax withheld and not paid over to the Uganda Revenue Authority for 12 months prior to the commencement of insolvency; and contributions payable under the National Social Security Fund Act, Cap 222. After paying preferential debts, the liquidator or trustee shall apply the assets in satisfaction of all other claims. The claims of other creditors shall rank equally among themselves and shall be paid in full unless the assets are insufficient to meet them, in which case they abate in equal proportions. Where there is a surplus after making the payments to all creditors in the case of a bankruptcy, the trustee in bankruptcy shall pay the surplus to the bankrupt; and in the case of a liquidation, the liquidator shall distribute the company's surplus assets in accordance with the memorandum and articles of association of the company and the Companies Act of 2012.

6.1.2.7 Void and voidable transactions

The law prescribes certain transaction which are voidable on the application of an insolvency practitioner. These include transactions considered preference transactions which occurred within the year preceding the insolvency involving the transfer of property on account of an antecedent debt, at a time when the debtor was unable to pay their debts or which transaction enabled the third party to receive more towards the satisfaction of the debt than the person would otherwise have received in the liquidation or bankruptcy. A transfer made within the six months preceding the commencement of the liquidation or bankruptcy is, unless the contrary is proved, presumed to have been made at a time when the company or individual was unable to pay the company's or individual's due debts; and on account of a debt not incurred in the ordinary course of business.

The second category are transactions at an undervalue (i) entered into within one year preceding the commencement of the liquidation or bankruptcy, (ii) where the value of the consideration received by the debtor is significantly less than the value of the consideration provided by the debtor, (iii) when the transaction was entered into, the debtor was unable to pay their due debts, or was engaged or about to engage in transactions for which their financial resources were unreasonably small, or they incurred the obligation knowing that the company

[25] *Siraje Nduga v Kabiito Karamagi and Donald Nyakairu* (Miscellaneous Cause No 219 of 2020).

or individual would not be able to perform the obligation when required to do so, (iv) the company or individual became unable to pay its due debts as a result of the transaction, or (v) the transaction was entered into to aid the insolvent to put the asset beyond the reach of the creditors. In 2017, the receivers of Spencon Services Ltd (in Receivership) filed a total of 103 applications in court to set aside hundreds of sales of assets transactions that the company had entered into months prior to the receivership. Almost 90% of these transactions were set aside but the receivers were faced with a big task of recovering these assets, which ranged from earth moving equipment to simple vehicles.[26] The directors of Spencon Services Ltd (in Receivership) were already out of the country, and the purchasers and most of the assets could not be traced for various reasons. A very small fraction of the value of the assets in issue was recovered.

The third category are voidable charges where the debtor created a charge over their property within the year preceding the commencement of the liquidation or bankruptcy on account of the antecedent debt. Unless the contrary is proved, a company or individual giving a charge within the six months preceding the commencement of the liquidation or bankruptcy is presumed to have been unable to pay the company or individual's due debts immediately after giving the charge.

The final category is insider dealings involving transactions entered into within 12 months preceding the insolvency with spouses, siblings, children of the debtor or any person with a close social proximity to the debtor, employees, officers, professional or other service providers of the insolvent; business associates, partners, shareholders, directors or other similar person. Unless the contrary is proved, the above transactions are taken to be a preference or a transaction aimed at aiding the insolvent to put the assets of the insolvent's estate beyond the reach of creditors. This means that the burden of proof is on the debtor and those third parties to prove that the impugned transactions are outside the legal threshold.

The Insolvency Amendment Act of 2022 introduces a new offence of unlawful dealing with assets under section 19A. It provides that person who conceals, disposes of or creates a charge on the property or removes any part of it with the intention of depriving or delaying creditor's claims within two years before the commencement of insolvency proceedings, commits an offence and is liable, on conviction, to a fine not exceeding UGX 5,000,000 or to imprisonment not exceeding five years or both.

A person who executes a transaction specified in sections 15, 16, 17 and 18 of the Insolvency Amendment Act of 2022 with the intention to deprive or delay creditors' claims commits an offence and is liable, on conviction, to a fine not exceeding 250 currency points[27] or to imprisonment not exceeding five years or both.

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[26] *Kabiito Karamagi and Donald Nyakairu (The Receivers / Managers of Spencon Services Limited (In Receivership)) v Musisi* (Miscellaneous Cause No 80 OF 2017) [2020] UGHCCD 166 (11th June 2020).

[27] Under the First Schedule to the Insolvency Act of 2011, one currency point is equivalent to UGX 20,000.

6.1.2.8 Creditors' meetings

All creditors' meetings under the Insolvency Act of 2011 are to be conducted in accordance with the Third Schedule to the Act which briefly provides that:

(a) a meeting of creditors may be held by assembling together those creditors entitled to take part and who choose to attend at the place, date and time appointed for the meeting; by means of audio or audio and visual communication by which all creditors participating can simultaneously hear each other throughout the meeting; or by conducting a postal ballot of those creditors entitled to take part. The notice of a meeting shall state the name of the person authorised to receive and count postal votes at that meeting;

(b) at any meeting, each creditor is entitled to cast a number of votes proportionate to the value which the amount of the debt owing to that creditor bears to the aggregate of the debts owing to all creditors or, if there is more than one class of creditors, to the aggregate of the debts owing to all creditors of the class to which that creditor belongs; a resolution is adopted if it is approved by a majority of the votes cast, unless in the particular case a greater majority is required by the Act; and a creditor chairing the meeting does not have a casting;

(c) a creditor may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a marked voting paper to a person authorised to receive and count postal votes in respect of that meeting not later than 24 hours before the start of the meeting or, if the meeting is held under paragraph 1(c), not later than the date named for the return of the voting paper; and

(d) the person chairing a meeting of creditors, shall ensure that full and accurate minutes are kept of all proceedings. Minutes which have been signed correctly by the person chairing or convening the meeting are *prima facie* evidence of the proceedings.

Self-Assessment Exercise 3

Study the basic aspects dealt with in the previous section.

Explain the general provisions applicable to insolvency proceedings in Uganda.

For commentary and feedback on self-assessment exercise 3, please see APPENDIX A

6.2 Personal / consumer bankruptcy

6.2.1 Who is an insolvent or debtor?[28]

Under section 3 of the Insolvency Act of 2011, a debtor is presumed to be unable to pay his debts if the debtor has failed to comply with a statutory demand; the execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part; or all or substantially all the property of the debtor is in the possession or control of a receiver or some other person enforcing a charge over that property. In determining whether a debtor is unable to pay his debts, contingent or prospective debts may be considered.

Under section 4, a statutory demand is prescribed form demand by a creditor issued in accordance with the section, made in respect of a debt that is not less than the prescribed amount owed by a judgment debtor and requiring them to pay the debtor or compound with the creditor or give a charge over property to secure payment of the debt to the reasonable satisfaction of the creditor within 20 working days after the date of service or a longer period as the court may order. The law further provides for a mechanism for setting aside this statutory demand through court once an application is made in the prescribed manner within 10 working days of service of the demand. The Insolvency Regulations provide for the content and form of the statutory demand as well as the manner of the service thereof.

A court has powers to set aside a statutory demand under section 5 where it is satisfied that there is a substantial dispute whether the debt is owing or is due; the debtor appears to have a counterclaim, set-off or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off or cross-demand is less than the prescribed amount; that the creditor holds some property in respect of the debt claimed by the debtor and that the value of the security is equivalent to or exceeds the full amount of the debt; or the demand ought to be set aside on such grounds as it deems fit.

6.2.2 Petition for bankruptcy

A debtor may petition court for bankruptcy under section 20(1) of the Insolvency Act of 2011 alleging that he is unable to pay his debts and the court may, upon verification in accordance with the Act make a bankruptcy order in respect of the debtor. Where a debtor fails to satisfy a statutory demand issued by a creditor in accordance with section 20(2) of the Act, the Act empowers the creditor to petition for bankruptcy of the debtor and the court may upon verification make a bankruptcy order in respect of the debtor. Regulation 7 of the Insolvency Regulations provides a clearer position that a debtor may petition the court for his bankruptcy where he has been served with a statutory demand and is unable to comply with it.

A court verifies the bankruptcy petition by reviewing the statement of affairs which must be filed by the debtor in accordance with section 21 of the Insolvency Act of 2011. This statement of affairs must include the particulars of a debtor's creditors, assets and it must be verified by an affidavit. The form of the statement of affairs is provided for under Regulation 21 of the

[28] *In the matter of Hellen Kakyo (A debtor)* Bankruptcy Petition No 14 of 2011.

Insolvency Regulations which states that it must contain the personal details of the debtor, matters relating to the debtor's employment, business interests, whether the debtor has entered into an individual voluntary arrangement, prior bankruptcy orders, list of assets, charges created etceter.

The court further verifies the petition by conducting a public examination of the debtor regarding his affairs, dealings and property. The public examination which must be conducted under oath is provided for under section 22 of the Insolvency Act of 2011. A creditor who has tendered proof of his debt may under section 22(3) of the Act question the debtor concerning his affairs and cause of his failure. Further, the court has powers under section 23 to inquire into the debtor's dealings and property by requiring any person "known or believed to have any property comprised in the debtor's estate in his or her possession or to be indebted to the debtor or a person appearing before court to give information concerning the debtor or the debtor's dealings, affairs or property" to submit an affidavit to court containing an account of his or her dealings with the debtor or to produce any documents relating to the debtor. The court has power to dispense with the need for a public examination where the debtor suffers from any such mental or physical affliction or disability as in the opinion of the court make him or her unfit to attend his or her public examination.

The form, verification, manner of service and content of the debtor's petition is provided for under Regulation 8 of the Insolvency Regulation. Where two or more bankruptcy petitions are presented against the same debtor, the court may order the consolidation of the proceedings, on such terms as it thinks just.

6.2.3 Bankruptcy order

After the public examination of the debtor or where the court dispenses with the public examination and upon hearing the petition, the court may make a bankruptcy order if satisfied that the debtor is unable to pay his debts. A bankruptcy order declares debtor bankrupt, appoints the official receiver as interim office holder for the preservation of the estate of the bankrupt; requires the bankrupt to attend on the official receiver and give the official receiver such inventory of the bankrupt's estate and such other information as the official receiver may reasonably require, and stays all proceedings, execution or other legal process against the bankrupt. The official receiver is a government office created under section 198 of the Insolvency Act of 2011 with powers and functions to generally regulate insolvency and insolvency practice.

The effect of the bankruptcy order is that the bankrupt's estate vests first in the official receiver and then in the trustee, without any conveyance, assignment or transfer. Further, except with the trustee's written consent or with the leave of the court and in accordance with such terms as the court may impose, no proceedings, execution or other legal process may be commenced or continued and no distress may be levied against the bankrupt or the bankrupt's estate. However, a secured creditor who did not surrender its security to the insolvency process is allowed to exercise its power of enforcement of a charge over property in the bankrupt's estate.

An adjudged bankrupt is also disqualified from being appointed as, or acting as, a judge of any

court in Uganda; or being elected to or hold or exercise the office of the president, a member of Parliament, minister, a member of a local government, council, board, authority or any other government body. Where a person holding the office of justice of the peace or any other public office is adjudged bankrupt, the office shall immediately become vacant. The disqualifications to which a bankrupt is subject to do not apply where the adjudication of bankruptcy against the individual is annulled or the individual obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part.

6.2.4 Appointment of trustee / special manager

Under section 24 of the Insolvency Act of 2011, upon their appointment as interim office holder, the official receiver is required to give a public notice of the commencement of bankruptcy and call for the creditors' first meeting. The creditors' first meeting appoints a trustee and vest the bankrupt's estate in the trustee. The trustee is required to issue a public notice of his appointment.

The fundamental duty of a trustee is to collect, realise as advantageously as is reasonably possible and distribute, the bankrupt's estate in accordance with the Insolvency Act of 2011. The trustee's other duties include taking custody and control of the bankrupt's estate; registering in his name all land and other assets forming part of the bankrupt's estate at the making of the bankruptcy order notwithstanding any transactions that may have taken place and any other law; keeping the bankrupt's estate's money separate from other money held by or under the control of the trustee; keeping in accordance with generally accepted accounting procedures and standards, full account and other records of all receipts, expenditures and other transactions relating to the bankruptcy; and retain the accounts and records of the bankruptcy for not less than six years after the bankruptcy ends. The trustee has power under section 34 of the Insolvency Act of 2011 to appoint the bankrupt to oversee or assist in the management of his (the bankrupt's) estate or any part of it.

The trustee must provide to progress reports to creditors in the manner prescribed under the Insolvency Act of 2011.

A trustee may resign from office by giving at least 14 working days' notice in writing to the official receiver, the bankrupt and the creditors. The notice must be accompanied by an account of the trustee's administration of the estate of the bankrupt.

On a specific application to court, by the trustee or interim receiver, under section 28 of the Insolvency Act of 2011, the court has power to appoint a special manager of the bankrupt's estate and businesses. This application may be made where it appears that the nature of the estate, property or business or the interests of the creditors generally require the appointment of another person to manage the estate, property or business. The powers and duties of the special manager may be given by the court.

6.2.5 Bankrupt's estate

In terms of Ugandan insolvency law, a bankrupt's estate generally comprises all property belonging to or vested in the bankrupt at the commencement of the bankruptcy and a portion of the debtor's salary as shall be determined by court. Certain property is excluded from this estate of insolvency and this includes tools, books and other items of equipment which are necessary to the bankrupt for use personally by him in his employment, business or vocation; clothing, beddings and the provisions which are necessary for satisfying the basic domestic needs of the bankrupt and his family; property held by the bankrupt in trust for any other person; the matrimonial home of the bankrupt; and any other property of a value to be prescribed by court.

According to section 35 of the Insolvency Act of 2011 the trustee has the power to disclaim any onerous property, even if the trustee has taken possession of it, tried to sell it or otherwise exercised rights of ownership. The law provides a detailed procedure for disclaiming property including issuance of public notices and application to court to vest the disclaimed property in someone else. Onerous property is defined under the Act as any unprofitable contract or any other property of the bankrupt which is not capable of being sold or not readily capable of being sold or which may give rise to a liability to pay money or perform any other onerous act.

A disclaimer brings to an end the rights, interest and liabilities of the bankrupt, his estate and trustee in respect of the property disclaimed but does not, except so far as necessary release the bankrupt, his estate and trustee from any liability or affect the rights or liabilities of any other person.

6.2.6 Termination and discharge of bankrupt

Section 41 of the Insolvency Act of 2011 provides that bankruptcy terminates when a bankrupt is discharged from bankruptcy, when the bankruptcy order is annulled or upon withdrawal of a bankruptcy petition with leave of court. A bankrupt can only be discharged by an order of court. Accordingly, the bankrupt must file a court application for discharge from bankruptcy. In section 43 a discharge order releases a bankrupt from all bankruptcy debts. However, it does not release the bankrupt from any bankruptcy debt which he incurred or forbearance which was secured by means of any fraud or fraudulent breach of trust to which he was a party, any liability in respect of a fine imposed for an offence, or any other bankruptcy debts as court may in its absolute discretion prescribe at the making of an order of discharge.

The court may make a conditional discharge and require a bankrupt to consent to a decree being entered against him for the balance or part of a balance of the debts provable under the bankruptcy which is not satisfied at the date of discharge or the balance or part of any balance of the debts to be paid out of the future earnings of the bankrupt or property acquired after the bankruptcy in such manner and subject to such conditions as the court may direct.

A discharge order does not affect the functions of the trustee which remain to be carried out, the right of any creditor of the bankrupt to claim in the bankruptcy for any debt from which the bankrupt is released, or the right of any secured creditor of the bankrupt to enforce his security

for the payment of a debt from which the bankrupt is released. Upon making an order discharging the bankrupt, the court issues a certificate of discharge in the prescribed form. The discharged bankrupt must within 14 working days after receipt of the order issue a public notice of order of discharge and serve a copy of the order on the official receiver.

6.2.7 Declaration and distribution of dividends

According to sections 48 and 49, when the trustee has realised all of the bankrupt's estate or so much of it as, in the trustee's opinion, can be realised without needlessly protracting the trusteeship, the trustee must give written public notice and personal notice to all known creditors of his intention to declare a final dividend, or that immediately after the final date, the trustee shall defray any outstanding expenses of the bankruptcy out of the bankrupt's estate and if the trustee intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already admitted.

A trustee shall declare a dividend by sending to all known creditors a statement of the dividend and how it is proposed to distribute it. In the calculation and distribution of a dividend the trustee shall make provision for any bankruptcy debts which appear to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to submit and establish their claims, any bankruptcy debts which are the subject of claims which have not yet been determined, and any disputed claims. A creditor whose debt has not been admitted before the declaration of any dividend is entitled to be paid out of any money in the hands of the trustee, any dividend he may not have received, before that money is applied to the payment of any future dividend, such a creditor is not entitled to disturb the distribution of any dividend declared before his debt was admitted where that creditor has not participated in the distribution.

The trustee must thereafter make a report to the official receiver including all the final bankruptcy accounts.

6.2.8 Annulment or setting aside a bankruptcy order

The court may annul, revoke or set aside a bankruptcy order, whether or not the bankrupt has been discharged from the bankruptcy, or if at any time, it appears to the court that, based on any grounds existing at the time the order was made, the order ought not to have been made. Where the court annuls, revokes or sets aside a bankruptcy order the property of the bankrupt shall vest in a person appointed by the court or, in default of any appointment, it shall revert to the bankrupt on terms as the court may direct; and any sale or other disposition of property, payment made or other thing duly done by the trustee or other person acting under the trustee's authority or by the court is valid.

6.2.9 Alternative to bankruptcy

6.2.9.1 Arrangements

The Insolvency Act of 2011 allows a debtor to enter into an arrangement with his creditors as an alternative to bankruptcy. This is a rescue mechanism that basically allows a debtor to seek a moratorium from the court during which time they negotiate with creditors and, if successful, enter into an arrangement for payment of the debt.

The process starts with the debtor preparing a proposal for arrangement to creditors, identifying a supervisor for the arrangement and sharing this proposal with the proposed supervisor. The supervisor is the insolvency practitioner whose main function is to supervise the implementation of the arrangement. The law in Regulation 67 of the Insolvency Regulations specifies the items that must appear in the proposal, for instance the debtor's assets, the extent to which the assets are charged, asset values, proposed distributions to creditors with estimates of dates, details of any further credit facilities proposed to be arranged for the debtor etcetera. The debtor then proceeds under section 119 of the Insolvency Act of 2011 and applies to court for an interim protective order. The purpose of the order is to stay any form of creditor enforcement, bankruptcy petition, or other legal process during the period of negotiating with creditors. Under the Insolvency Amendment Act of 2022, the right to make this application was also extended to the creditors.

The interim protective order ceases to have effect after 14 working days of its passing, unless extended by another order of court. During this period, sections 122 and 123 of the Insolvency Act of 2011 mandate the debtor to share its proposal with the proposed supervisor who must review it and provide his opinion in a report to the court as to whether it is worth creditors' consideration. The court studies the proposed supervisor's report and has powers to order the supervisor to call for a creditors' meeting to consider the proposal or discharge the interim protective order if dissatisfied with the process. Where the court orders for a creditors' meeting, the law sets guidelines for how the proposed supervisor must call and the conduct of that meeting.

Section 125 provides that where the creditors' meeting declines to approve a proposed arrangement, the court may discharge, vary or extend the interim order or make any other appropriate order as it thinks fit, and the debtor shall be given only one more opportunity to present a second proposal for arrangement. However, where the proposal is approved by the creditors and the report of the same is provided to the court by the proposed supervisor, the court may make an arrangement order and any ancillary directions as it thinks fit. The effect of the arrangement is that it binds every individual in respect of whom the arrangement order is made and all creditors for claims arising on or before the day specified in the arrangement. Secured creditors who did not vote in favour of the arrangement are not bound and can proceed to realise their security.

The Insolvency Amendment Act of 2022 provides for post-arrangement financing by allowing the supervisor to, with the approval of the creditors and the court, obtain or borrow financing and grant security over the property of the debtor for purposes of implementing the

arrangement. The post-arrangement financing must not exceed the value of the debtor's unencumbered assets at the time of the arrangement order.

Self-Assessment Exercise 4

Study the basic aspects dealt with in the previous section.

Question 1

Explain the legal process and requirements for an individual to obtain a bankruptcy order in Uganda.

Question 2

What steps can be taken by an indebted individual to obtain a binding compromise with their creditors?

For commentary and feedback on self-assessment exercise 4, please see APPENDIX A

6.3 Corporate insolvency

The liquidation of companies in Uganda is governed by the Companies Act of 2012 and the Insolvency Act of 2011. Under Part IX of the Companies Act of 2012, a company may be wound up voluntarily; while according to section 57 of the Insolvency Act of 2011, there are three main modes of liquidation, namely:

(a) voluntary liquidation;

(b) liquidation subject to the supervision of the court; and

(c) liquidation by the court.

The two Acts by their language tend to create a distinction between winding up (as being commenced by a solvent company) and liquidation (as being commenced by an insolvent company).

6.3.1 Voluntary winding up of a company[29]

Under section 268 of the Companies Act of 2012, a company may by special resolution resolve to be wound up voluntarily and the process is taken to commence at the time of passing the resolution. However, before the resolution is passed, the law under section 271 requires that the

[29] *Bank Of India (U) Limited v NC Beverages Limited And Uganda Revenue Authority* (Civil Suit 0009 of 2021).

directors must make a full inquiry into the affairs of the company in order to form an opinion that the company is solvent to the extent that it will be able to pay its debts in full within a maximum of 12 months from the commencement of the winding up. The directors are required to reduce their opinion into a declaration of solvency which must be passed within 30 days before the date of passing the resolution for winding up. The declaration of solvency must include a statement of the company's assets and liabilities as at the latest practical date before the making of the declaration.

It is an offence for a director to make a declaration of solvency without reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration. Where the company is wound up in accordance with a resolution passed within the period of 30 days after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

After passing the resolution for winding up, section 269 of the Companies Act of 2012 provides that the company must within 14 days issue notice of the resolution to the public through the Gazette and a in a newspaper of wide national circulation in the English language. The resolution must also be registered with the registrar of companies as well as the official receiver within seven days of its passing. The law places a default fine for the company, and every officer (where the liquidator is taken to be an officer) for non-compliance with the notice requirement. From this point on, section 272 provides that the provisions of the Insolvency Act of 2011 relating to liquidation shall apply with the necessary modifications to the voluntary winding up of the company. However, where after the above public notice, the registrar is satisfied that the company has neither assets nor liabilities, the registrar must notify the official receiver who issues a certificate of dissolution in accordance with form 37 of the Companies Regulations of 2023.

According to the Insolvency Act of 2011, where winding up is commenced under any other law and the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in any declaration made under that other law, the liquidator shall immediately notify the registrar and the official receiver and call a meeting of the creditors and present a statement of the assets and liabilities of the company. This step is to enable the participation of the creditors to safeguard their interests in the process of winding up. Henceforth, the process translates into a creditors' voluntary liquidation and the relevant parts of the Insolvency Act of 2011 apply.

However, the Companies Amendment Act of 2022 added a provision that notwithstanding the above provision, where a company passes a resolution for voluntary winding up of the company and the registrar is satisfied in accordance with regulations made by the minister that the company has no assets or liabilities, the registrar may strike the company from the register without applying the provisions of the Insolvency Act of 2011. As of the date of these notes, the minister had not passed the regulations for implementing this provision.

6.3.2 Voluntary liquidation

The Insolvency Act of 2011 provides for two methods of voluntary liquidation, namely members' voluntary liquidation and creditors' voluntary liquidation. In terms of section 58 of the Insolvency Act of 2011, a company may be liquidated voluntarily if it resolves by special resolution that it cannot by reason of its liabilities continue its business and it is advisable to liquidate.

6.3.2.1 Members' voluntary liquidation[30]

The company shareholders, by special resolution or the directors or any other person authorised by the memorandum and articles of association, may appoint one or more liquidators for the purposes of liquidating the affairs and distributing the assets of the company and may fix the remuneration to be paid to the liquidator.

The Insolvency Act of 2011 requires that the company issues notices of the passing of the resolution within 14 days issue to the public through the Gazette and in a newspaper of wide national circulation in the English language. The resolution must also be registered with the registrar of companies as well as the official receiver within seven days of its passing. The law places a default fine for the company, and every officer (where the liquidator is taken to be an officer) for non-compliance with the notice requirement.

Voluntary liquidation is taken to commence at the time of passing the resolution for voluntary liquidation. As mentioned above, under the Insolvency Act of 2011 voluntary liquidation may either be a members' voluntary liquidation or a creditors' voluntary liquidation. Under section 66 of the Insolvency Act of 2011, where a liquidation continues for more than one year, the liquidator must summon a general meeting of the company at the end of the first year and of each succeeding years and must lay before the meeting an account of his acts and dealings and of the conduct of the liquidation during the preceding year. It is an offence for the liquidator to not call for the general meeting.

Under section 67, as soon as the company is fully liquidated, the liquidator must prepare an account of the liquidation process and call a general meeting of the company at which the account is to be presented. The general meeting is called by a 30-day notice published in the Gazette and a newspaper of wide circulation in Uganda. Within 14 days after the general meeting at which the account is presented, the liquidator must send to the official receiver a return of the meeting and a copy of the account. Where the liquidator does not comply with this requirement, they are liable to pay a fine. After three months from the date of registration of the return, the company shall be taken to be dissolved unless the court, on the application of the liquidator or any other person who appears to the court to have an interest in the company, makes an order deferring the date on which the dissolution of the company is to take effect, for such time as the court may considers fit.

[30] Ranchodhai Patel v Mukwano Enterprises Ltd & Sylvester H Wambuga (Liquidator African Textile Mills Ltd) SCCA No 06 of 2017.

6.3.2.2 Creditors' voluntary liquidation

Simultaneous meetings

For a creditors' voluntary liquidation, section 69 of the Insolvency Act of 2011 provides that the company must cause a separate meeting of its creditors to occur on the same day as the meeting for resolution for liquidation or on the day following the meeting for the resolution. To cause the meeting of the creditors, the company must issue a notice of the meeting once in the Gazette and a newspaper of wide circulation in Uganda. The directors of the company must appoint one of them to preside at the creditors' meeting and present a full statement of the company's affairs including its liabilities. Where any default occurs in complying with the above requirements, the company and the directors shall be liable to fine not exceeding UGX 1,000,000.

Appointment of liquidator

The company and the creditors at their respective meetings may nominate a liquidator and if each group nominates different people, the person nominated by the creditors becomes the liquidator. If the creditors do not nominate any person, the person nominated by the company becomes the liquidator. Where the company disagrees with the nominee of the creditors, the law allows them to within seven days apply to court for an order directing that the company nominee be the liquidator instead of, or jointly with, the creditors' nominee. The court also had power to appoint another person all together. Upon appointment of a liquidator, all the powers of the directors cease, except so far as the committee of inspection or where there is no committee, the creditors, sanction the continuation.

Committee of inspection

The creditors may at the first meeting or subsequent meetings, appoint a committee of inspection of not more than five people. Where a creditor committee of inspection is created, the company may also in a general meeting appoint representatives to the committee, subject to the approval of the creditors. At all times, majority of the members of the committee of inspection must be creditor appointees. Creditors have a right to apply to court to appoint any other person to act a member of a committee. The committee of inspection or where there is no committee, the creditors, may fix the remuneration to be paid to the liquidator.

The rules applicable to the committee of inspection are that:

(a) they meet at least once a month and the liquidator or any member of the committee may call a meeting of the committee as and when he or she considers necessary;

(b) they act by a majority of members present at a meeting;

(c) a member of the committee resigns by written notice to the liquidator;

(d) where a member of the committee appointed by the creditors or contributories becomes bankrupt, compounds, arranges with his creditors or is absent from five consecutive

meetings of the committee without the leave of the other members who also represent the creditors or contributories as the case may be, his office shall immediately become vacant;

(e) a member of the committee may be removed by an ordinary resolution at a meeting of creditors or contributories, for which 15 days' notice stating the object of the meeting is given;

(f) where there is a vacancy in the committee, the liquidator shall immediately call a meeting of creditors or of contributories, to fill the vacancy and the meeting may, by resolution, reappoint the same person or appoint another creditor or contributory to fill the vacancy unless the liquidator, having regard to the position in liquidation, is of the opinion that it is not necessary to fill the vacancy, in which case he may apply to the court for an order that the vacancy shall not be filled or shall be filled under the circumstances specified in the order; and

(g) where there is a vacancy, the remaining members of the committee, if not less than two, may continue to act as the committee of inspection.

Like members' voluntary liquidation, where the liquidation continues for more than one year, the liquidator must summon a meeting of the creditors and the company at the end of the first year and of each succeeding years and must lay before the meeting an account of his acts and dealings and of the conduct of the liquidation during the preceding year. Contravention of this requirement attracts a fine not exceeding UGX 300,000.

As soon as the company is fully liquidated, the liquidator must prepare an account of the liquidation process and call a meeting of the creditors and a general meeting of the company at which the account is to be presented. The meetings are called by a 30-day notice published in the Gazette and a newspaper of wide circulation in Uganda. Within 14 days after the meeting or if the meetings are not held on the same day, after the date of the later meeting, the liquidator must send to the official receiver returns of the meetings and a copy the account. Where the liquidator does not comply with this requirement, they are liable to pay a fine not exceeding UGX 100,000 for every day the default continues.

Completion of liquidation

After three months from the date of registration of the returns, the company shall be taken to be dissolved unless the court, on the application of the liquidator or any other person who appears to the court to have an interest in the company, makes an order deferring the date on which the dissolution of the company is to take effect, for such time as the court may considers fit.

Provisions applicable to both members' and creditors' voluntary liquidation

On the appointment of a liquidator, all the powers of the directors cease, except where the company in a general meeting or the liquidator sanctions the continuance of those powers.

Subject to the provisions on preferential payments, the assets of a company must, on its liquidation, be applied in satisfaction of its liabilities simultaneously and equally. Thereafter, unless the articles of association otherwise provide, be distributed among the members according to their rights and interests in the company.

The liquidator in a voluntary liquidation –

(a) may exercise any of the powers given to the liquidator in a liquidation by the court;

(b) may exercise the power of the court under the Insolvency Act of 2011 of settling a list of contributories;

(c) may exercise the power of the court of making calls on shares or any other matter;

(d) may summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose as he may think fit;

(e) shall pay the debts of the company and adjust the rights of the contributories among themselves; and

(f) shall with 14 days after his appointment issue public notice of the appointment by publishing in the Gazette and delivering to a copy of the public notice to the official receiver. Failure to comply with this requirement attracts a fine not exceeding UGX 100,000 for every day the default continues.

An arrangement entered into between a company which is about to be or is in the course of being liquidated and its creditors, shall be binding on the company if sanctioned by a special resolution and binding on the creditors if acceded to by three-fourths of the total number and value of the creditors. A creditor or contributory may within three weeks from completion of an arrangement appeal to court against the arrangement.

A liquidator or any contributory or creditor may apply to court to –

(a) determine any question arising from a liquidation;

(b) exercise the enforcing of calls on shares or any other matter; or

(c) exercise any of the powers which the court may exercise if the company was liquidated by court.

The court may, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, agree wholly or partially to the application on terms and conditions as it thinks fit or may make any other order on the application as it thinks.

All costs, charges and expenses properly incurred in the liquidation, including the remuneration of the liquidator, are payable out of the assets of the company in priority to all other claims. This

is amplified by section 12 of the Insolvency Act of 2011 which is the general provision for priority of payments in a liquidation.

The voluntary liquidation of a company shall not bar the right of any creditor or contributory to have it liquidated by court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary liquidation.

6.3.3 Liquidation subject to supervision by court

A contributory, creditor, or other interested person (such as the official receiver) may during or at the commencement of a voluntary liquidation make an application to court to order that the liquidation continues subject to the supervision of court. The court may issue the supervision order generally and, on such terms, and conditions as the court may think just.

Where the court makes a supervision order –

(a) it may appoint an additional liquidator. The liquidator so appointed has the same powers and is subject to the same obligations as if appointed under a voluntary liquidation;

(b) it may remove any liquidator appointed and fill any vacancy occasioned by the removal or by death or resignation; or

(c) the liquidator may subject to the restrictions imposed by court, exercise all his or her powers without the sanction and intervention of court as if it were a voluntary liquidation.

6.3.4 Liquidation by court

The jurisdiction in liquidation matters must be exercised by the High Court of Uganda.

6.3.4.1 Petition to court

The detailed procedure is provided for under the Insolvency Regulations.

A petition for the liquidation of a company may be presented by the company, a director, a shareholder, creditor, contributory or official receiver. Every petition for liquidation must be in accordance with the prescribed Form 19 in Schedule 1 of the Insolvency Regulations. The petition must state among others:

(a) the name and address of the company;

(b) the nature and type of company;

(c) the nature of business, and the business address of the company;

(d) the consideration for the debt, how the debt is owed by the company and when the debt was incurred or became due;

(e) whether the company has failed to comply with a statutory demand;

(f) whether, to the best of the petitioner's knowledge and belief the statutory demand has not been set aside and there is no application to extend the time to comply with the statutory demand or to set it aside;

(g) where the debt is arising under a judgment or order of court and execution has been returned unsatisfied, the court from which the execution or other order is issued and particulars relating to the judgment or order; and

(h) whether the company is unable to pay its debts.

Every petition must be supported by an affidavit sworn by a duly authorised person and must be served on the company (where it is not the petitioner), every known creditor, contributory where applicable and the official receiver. To serve a petition on the company or the official receiver, the petitioner must deliver a copy sealed by the court at the registered office of the company or the address of the official receiver respectively.

To serve the petition on creditors or contributories, the petitioner must deliver a copy sealed by the court by leaving it at the registered office or place of business of the creditor; by sending it to the address of the creditor by registered mail; by serving the legal representative of the creditor; or in any other manner authorised by the court. Any creditor, contributory or the company (where it is not the petitioner) has a right to reply to the petition by way of an affidavit which must also be served in the same manner on the petitioner. The reply must be filed within 15 working days after service of the petition.

The petitioner must within seven working days after filing the petition give public notice of the petition in a form prescribed in Form 4 of Schedule 1 to the Insolvency Regulations. Within five days after the publication of the notice, every creditor who wishes to be heard on the petition must give to the court and to the petition a notice of intention to appear and be heard. The notice is in a prescribed form, Form 5 in Schedule 1 of the Insolvency Regulations.

6.3.4.2 Hearing the petition

The court sets down the petition for hearing at any time after the expiry the 15 working days allowed to reply to a petition. The petitioner must take out a hearing notice and serve it on every creditor who gave notice of intention to appear and hear and on the official receiver. The law allows court to consolidate two or more petitions presented against the same company.

Where the petitioner does not appear at the hearing, the court may either dismiss the petition for want of prosecution or order that the petitioner be substituted with any other creditor, shareholder or contributory who –

(a) gave notice of intention to appear;

(b) is present in court on the hearing date;

(c) is in the same position in relation to the company as would have enabled them on that date to present a petition; and

(d) is desirous of prosecuting the petition.

6.3.4.3 Appointment of provisional liquidator

If after the hearing, the court is satisfied that a company is unable to pay its debts within the meaning of the Insolvency Act of 2011, the court may make an order to appoint a liquidator under section 92. The order made by the court under section 92 appoints the official receiver or any insolvency practitioner court chooses as provisional liquidator for the preservation of value of assets of the company. The petitioner must then within seven working days of the order deliver a copy to the official receiver and the company (where it is not the petitioner). The provisional liquidator must also within 14 working days of his appointment give public notice of his or her appointment and call a shareholders' meeting. The public notice must be in accordance with Form 12 prescribed in Schedule 1 of the Insolvency Regulations.

The provisional liquidator must also call a meeting of all creditors of the company by issuing a public notice in the form prescribed in Form 10 in Schedule 1 of the Insolvency Regulations.

6.3.4.4 Appointment of liquidator

The creditors' meeting called by the provisional liquidators must be conducted in accordance with the Third Schedule to the Insolvency Act of 2011. At this meeting, the creditors appoint a liquidator or liquidators. After the creditors' meeting the provisional liquidator or chairperson of the meeting must within 14 working days file a report and minutes of the meeting in court and a copy to the official receiver. The court may on the application of the liquidator confirm the appointment and make any other orders it considers necessary to give effect to the appointment. The liquidator must within 14 days of his appointment issue a public notice in the prescribed Form 12 of his appointment in the Gazette and a newspaper of wide circulation. A copy of this notice must be delivered to the official receiver.

The liquidator must also give notice of the liquidation on every invoice, order for goods or business letter issued by or on behalf of the company on which the company's name appears stating after the company's name the words "in liquidation"; and otherwise, when entering into any transaction or issuing any document by or on behalf of the company. Failure to comply with this requirement does not invalidate a document issued, but the liquidator commits an offence and is liable on conviction to a fine not exceeding UGX 200,000.

6.3.4.5 Commencement of liquidation

Under section 93 of the Insolvency Act of 2011, liquidation of a company by court is taken to commence at the time of presentation of the petition. However, where, before the presentation of a petition for the liquidation of a company by the court, a resolution was passed by the company for voluntary liquidation, the liquidation of the company shall be deemed to commence when the resolution was passed.

6.3.4.6 General effects of liquidation

(1) According to section 97 of the Insolvency Act of 2011,

(a) the officers of the company remain in office but cease to have any powers, functions or duties other than those required or permitted to be exercised by law;

(b) proceedings, execution or other legal process cannot be commenced or continued and distress cannot be levied against the company or its property;

(c) shares of the company shall not be transferred or other alteration made in the rights or liabilities of any shareholder and a shareholder shall not exercise any power under the company's memorandum and articles of association or the Companies Act of 2012; and

(d) the memorandum and articles of association of the company shall not be altered, except that the liquidator may change the company's registered office or registered postal.

However, the law does not restrain the exercise of power of enforcement of a charge over property pursuant to section 11 on secured creditors.

(2) Upon commencement of liquidation, every present and former director, secretary and employee of the company must disclose fully and truthfully to the liquidator all the property of the company and details of the disposal of any property by the company including property disposed of in the ordinary course of business; and deliver to the liquidator or in accordance with the liquidator's directions, all property of the company in or under his or her custody or control.

(3) Under section 112, the court has the power to issue compliance order, search and seizure order regarding any information, property and records.

(4) It is illegal for any person to leave or attempt to leave Uganda with the intention of avoiding–

(a) paying monies due to the company;

(b) an examination of affairs of the company; or

(c) complying with an order of the court or some other obligation under the Insolvency Act of 2011.

(5) It is also illegal for any person to conceal or remove property of the company with the intention of delaying or preventing the assumption of custody or control by the liquidator.

6.3.4.7 General powers, duties and rights of a liquidator[31]

The fundamental duties of the liquidator are stipulated under section 99 of the Insolvency Act of 2011 as having to take, in a reasonable and expeditious manner all steps necessary to collect, realise as advantageously as possible and distribute the assets or proceeds of the assets of the company in accordance with the law. These duties encompass the following, namely that the liquidator:

(a) shall take custody and control of the company's property;

(b) may in any case where it appears to him that the nature of the business or the interest of the creditors generally require the appointment of another person to manage the company, appoint a suitable person be a special manager of a company. There are detailed provisions regarding the appointment of the special manager under section 98 of the Act and Regulations 104 and 105 of the Insolvency Regulations;

(c) is required under section 102 of the Act to prepare a preliminary report before the expiry of 40 working days after commencement. The preliminary report must show the state of affairs of the company, proposals for conducting the liquidation and the estimated date of completion. Notice of availability of this report must be published in the official language in a newspaper of wide circulation in Uganda. The report must be made available at the liquidator's address for inspection by every known creditor, shareholder and contributory. The statement of affairs must be in accordance with Form 20 in Schedule 1 of the Regulations;

(d) has powers to demand for information / documents from any current or former director, secretary, shareholder, employee as well as a receiver, administrator or provisional administrator, advocate, accountant, auditor, bank officer or any other person with knowledge of the financial affairs of the company;

(e) must within 20 working days after the end of every six months during the liquidation, make an interim report available stakeholders;

(f) has power under section 107 to disclaim onerous property, even if they have taken possession of the property, tried to sell it or otherwise exercised rights of ownership. The disclaimer brings to an end the rights, interest and liabilities of the company in respect of the property disclaimed; and shall not, except so far as necessary to release the company from any liability, affect the rights or liabilities of any other person. Onerous property means any unprofitable contract; or any other property of the company which is not capable of being sold or not readily capable of being sold or which may give rise to a liability to pay money or perform any other onerous act; and

(g) when disclaiming onerous property must give public notice in the prescribed Form 13. The

[31] *Ranchodhai Patel v Mukwano Enterprises Ltd & Sylvester H. Wambuga* (Liquidator African Textile Mills Ltd) S.C.C.A No 06 of 2017.

notice must within 14 working days of publishing be filed with court and copy to the official receiver. Within seven working days after the notice the liquidator must copies to all interested persons.

6.3.4.8 Other general provisions on liquidation

The provisions of liquidation are applicable to both local and foreign companies.

All creditor meetings under the Insolvency Act of 2011 are to be held in accordance with the provisions of the Third Schedule to the Act.

On application of the liquidator or any creditor or shareholder, the court may, if satisfied that it is just and equitable to do so, lift the veil of any associated company on terms and conditions as it may consider fit to facilitate and ensure due completion of the liquidation process in a just and equitable manner. The court has power to order that –

(a) a company that is or has been an associated company of the company in liquidation pays to the liquidator the whole or part of any or all of the claims made in the liquidation; or

(b) where two or more associated companies are in liquidation, the liquidation of each of the companies extends as far as the court orders and is subject to the terms and conditions imposed by the court.

The office of the liquidator becomes vacant where the person holding the office is removed, resigns, dies or vacates under an administration deed. Except where an administrator is appointed, the official receiver shall act as liquidator until a successor is appointed. A liquidator vacating office shall give the information and assistance in the conduct of the liquidation as that liquidator's successor may reasonably require.

The liquidation of a company shall be complete when the liquidator delivers to the official receiver a final report and final accounts of the liquidation and a statement indicating that –

(a) all known assets have been disclaimed, realised or distributed;

(b) all proceeds of realisation have been distributed; and

(c) in the opinion of the liquidator, the company should be removed from the register.

On the application of the liquidator, any committee of inspection, the official receiver, or, with the leave of the court, any creditor, shareholder or director of a company in liquidation, the court may *inter alia* –

(a) give directions on any matter arising during the course of the liquidation;

(b) confirm, reverse or modify any act or decision of the liquidator;

(c) order an audit of the accounts of the liquidation;

(d) order the liquidator to produce the accounts and records of the liquidation for audit;

(e) in respect of any period, review or fix the remuneration of the liquidator at a level which is reasonable in the circumstances and where an amount retained by the liquidator is found by the court to be unreasonable in the circumstances, order the liquidator to refund the amount; and

(f) make an order concerning the retention or the disposal of the accounts and records of the liquidation or of the company.

A liquidator who has acted in accordance with a direction of the court in the exercise of his powers or functions, is entitled to rely on having so acted as a defence to any claim for anything done or not done in accordance with the direction. However, a court may order that, by reason of the circumstances in which a direction is obtained, the liquidator shall not have the protection accorded by the law.

Generally, there is no obligation to file for liquidation under Ugandan law. There are also no special rules for the treatment of specific types of contracts upon insolvency.

Self-Assessment Exercise 5

Study the basic aspects dealt with in the previous section.

Question 1

Outline the different liquidation processes in Uganda and enumerate the elements shared among them.

Question 2

Highlight the key functions, duties and responsibilities of a liquidator.

For commentary and feedback on self-assessment exercise 5, please see APPENDIX A

6.4 Receivership

The Insolvency Act of 2011 defines a receiver as a receiver or manager and "includes a receiver and manager of administrative receiver in respect of any property and any person appointed as receiver by or under any document or by the court in the exercise of a power to make such an appointment given by any Act or rule of court where or not the appointed person is empowered

to sell any of the property in receivership". There are two ways and laws under which to commence a receivership in Uganda, namely the Mortgage Act of 2009 and the Insolvency Act of 2011 as amended. The Insolvency Act of 2011 provides the general law on receiverships in respect of corporates and individuals while the Mortgage Act of 2009 provides for receivership as a specific remedy under land mortgages. What is unique about the receivership under the Mortgage Act of 2009, is that the statutory procedure requires prior notice to the mortgagor before appointment of the receiver and the restriction on the powers of the receiver. A receiver under the Mortgage Act of 2009 only receives income of the mortgage property, and they do not have the power to sell the mortgaged property.

Generally, in Uganda receivership is a creditor enforcement action which is exercised pursuant to a special contractual arrangement. It is a procedure commonly provided for in fixed and floating debentures which are created by companies as security for repayment of their loan obligations. The debentures provide that in the event of default by the borrower, the lender has a right to appoint a receiver to take over the charged assets and exercise various powers including sale of the charged assets.

6.4.1 Commencement of receivership

Under the Insolvency Act of 2011, generally, receivership commences, and appointment takes effect when the receiver accepts the appointment in writing. In a case where the appointment is made by court, the receivership commences according to the directions of the court.

Upon commencement, the receiver must issue a notice of his appointment in the following manner:

(a) to the grantor, by means of written notice immediately. The grantor is defined under the Act to mean the person in respect of whose property a receiver is or may be appointed;

(b) to the public, notice in print media of wide circulation within 14 working days after the commencement of the receivership. The public notice must indicate the date of commencement, the receiver's full name and address, and a brief description of the property under receivership which has come into his or possession;

(c) where the grantor is a body corporate, the receiver must in no more than 14 working days after commencement, deliver a copy of the public notice to the official receiver and registrar; or

(d) where it is an administrative receivership, the administrative receiver must give notice on every invoice, order for goods or business letter issued by or on behalf of the grantor on which the company's name appears, by stating after the grantor's name "receiver appointed". Whereas failure to comply with this requirement does not invalidate the document, the receiver commits an offence is liable to a fine not exceeding UGX 480,000 or imprisonment not exceeding one year or both.

6.4.2 Duties and powers of the receiver

Under section 179 of the Insolvency Act of 2011, the fundamental duty of a receiver is to exercise his powers in a manner which he believes on reasonable grounds to be in the best interests of all persons in whose interests he is appointed.

The receiver has power over the property in receivership with reasonable regard to –

(a) the grantor;

(b) any person claiming through the grantor, an interest in the subject property;

(c) any unsecured creditor of the grantor; and

(d) any surety or guarantor who may be called upon to fulfil any obligation of the grantor to a person in whose interest the receiver was appointed, if that obligation is not satisfied by recourse to the property in receivership.

The powers of the receiver under the Insolvency Act of 2011 include:

(i) demand or recover, by action or any other means, all income of the property in receivership;[32]

(ii) issue receipts for income recovered;

(iii) manage any of the property under receivership;

(iv) inspect at any reasonable time any documents of the grantor or other records relating to the property under receivership, in the custody of the grantor or of any other person; and

(v) execute in the name and on behalf of the grantor all documents necessary or incidental to the exercise of the receiver's powers.

In addition to the above, an administrative receiver has powers to:

(a) carry on any business of the grantor; and

(b) in case of a company,

  (i) manage its property and affairs;

  (ii) perform any functions and exercise any power that company or its directors or secretary would ordinarily exercise; and

[32] *Spencon Services Limited (In Receivership) v Attorney General* (Miscellaneous Cause No 185 of 2017).

(iii) change its registered office or postal address.

In exercising his or her powers, a receiver is taken to act as the grantor's agent. Further, during administrative receivership, neither the shareholders nor the directors may exercise any of their functions or powers without the administrative receiver's approval.

Under section 184 of the Insolvency Act of 2011, a person who without sufficient cause publishes or causes to be published any notice, advert or publication which prevents or is likely to prevent the realisation, possession, recovery or control by the receiver, secured creditor or their agents or servants of any assets forming part of the estate under receivership is liable to pay compensation to the estate in receivership of any loss or injury suffered by the estate as a result of the notice, advert or publication.

In addition to the above, a receiver is required by the Insolvency Act of 2011 to:

(a) take custody and control of all the property which is under receivership;

(b) register in his name all land and other assets under receivership;

(c) investigate the state of affairs of the property under receivership;

(d) give a general notice of his interest in all property that has not yet come under his control;

(e) keep all money relating to the property in receivership separate from other money received in the course of, but not relating to, the receivership and separate from other money held by or under the control of the receiver;

(f) keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions of the company; and

(g) retain the accounts and records of the company for not less than six years after the receivership ends.

6.4.3 Reporting

(a) Section 189 of the Insolvency Act of 2011 provides that within 40 working days after his appointment, the receiver must prepare and send to prescribed persons a preliminary report of affairs of the property in receivership. The preliminary report must contain matters including the particulars of the property under receivership; the particulars of the debts to be satisfied from the property; the names and addresses of all known creditors with an interest in the property under receivership; the names and addresses of all known creditors of any associated company or other business organisation or person; the particulars of any charge over the property under receivership held by any creditor, including the date on

which it was created; and particulars of any default by the grantor in making available any relevant information. It must also include:

(i) the events within the receiver's knowledge leading up to the appointment of the receiver;

(ii) the disposal or proposed disposal of the property under receivership;

(iii) any associated company or business carried on or proposed to be carried on;

(iv) any amounts owing, at the date of appointment, to any person in whose interests the receiver was appointed;

(v) any amounts owing, at the date of appointment, to the creditors of the grantor with preferential claims;

(vi) any amounts likely to be available for payment to creditors other than those prescribed; and

(vii) where the grantor is a company, any circumstances which the receiver is aware of and which reveal that the company, a past or present director, secretary or shareholder may have committed an offence; or a person who has taken part in the formation, promotion, administration, management or liquidation of the company may have misapplied or retained or may have become liable or accountable for money or property of the company; or may have been negligent or committed a default, breach of duty or breach of trust in relation to the company.

(b) If a receivership last longer than six months, a receiver must within 20 working days after every six months prepare a further report with particular reference where relevant to matters required in the preliminary report. The report must also summarise the status of the property under receivership and the conduct of the receivership, including financial reports.

(c) At the end of the receivership, the receiver must within 20 working days prepare a report with particular reference where relevant to matters required in the preliminary report among others.

(d) Under section 191 of the Insolvency Act of 2011, a receiver may omit from any report any matter which, if included, would materially prejudice the exercise of his functions. However, the fact of the omission shall be stated in the report.

(e) The receiver's reports must within five working days after preparation be sent to the grantor, all persons in whose interest the receiver is appointed, the court (where the receiver was appointed by court) and the official receiver. However, where a specific written request is made by a creditor, director, surety of the grantor or any other person with interest in the

property, and the prescribed fee is paid, the receiver must send the copy of the report to that person within 10 working days.

For purposes of the liability of a receiver, a contract of employment automatically lapses on commencement of receivership. It is upon the receiver to adopt the existing contracts or enter into new contracts with the existing employees.

6.4.4 Liabilities of a receiver

Section 186 of the Insolvency Act of 2011 provides that notwithstanding any agreement to the contrary, a receiver shall be personally liable –

(a) for any contract entered into by the receiver in the exercise of any of the receiver's powers, but shall not be liable for the grantor's debts;

(b) for wages, salary and allowances including sickness and holiday allowances but shall not be liable for payments *in lieu* of notice that are incurred during the receivership; under a contract of employment adopted by the receiver; and in respect of services rendered after the adoption of the contract; and

(c) in the event that the grantor occupies rented premises, and the receiver continues to occupy them, for rent or other related payments which accrue within seven days after the commencement of the receivership. This liability ends on termination of the receivership or at vacation of the rented premises whichever is earlier.

According to section 188, court may relieve a receiver from personal liability if satisfied that the liability was incurred solely by reason of a defect in the appointment of the receiver; or the receiver acted honestly and reasonably and ought, in the circumstances, fairly to be excused.

The grantor's obligations and duties are to:

(a) make available to the receiver all documents and information relating to the grantor and to all the property under receivership and give all assistance reasonably required by the receiver;

(b) if required by the receiver, verify by statutory declaration that material and information provided to the receiver is complete and accurate; and

(c) where the grantor is a body corporate, make the seal available for use by the receiver. A person who fails to comply with this requirement commits an office and on conviction is liable to find of UGX 3,360,000 or imprisonment not exceeding seven years.

Under section 183, where the receiver is not provided with the aforementioned information, the receiver has a right to apply to the court for a compliance order directing the person in breach to comply.

The grantor's rights are to bring an action –

(i) against the receiver, secured creditor or appointees or any other person for wrongful appointment of the receiver, trespass and other unlawful acts which prejudice the rights and interests of the grantor;

(ii) to preserve or protect the estate or interest in receivership where the receiver does not take action; and

(iii) with the consent and approval of the receiver, in any other case.

6.4.5 Application of receivership proceeds

Where the grantor is not a company in liquidation or an undischarged bankrupt and the property under receivership includes property which is subject to a security interest; and became subject to that security interest by reason of its application to certain existing property of the grantor and those of its future assets which were property acquired after the receivership or proceeds, the receiver shall apply the property subject to the security interest at the date of the appointment of the receiver –

(a) firstly, in respect of the receiver's indemnity in full, to the extent that full payment cannot be made out of other property forming part of the property in receivership; and

(b) secondly –

(i) receiver's remuneration and expenses;

(ii) reasonable costs of the petitioner (if the court was involved);

(iii) all wages or basic salary, wholly earned or earned in part by way of commission for four months;

(iv) all amounts due in respect of any compensation or liability for compensation under the Worker's Compensation Act of 2000, accrued before the commencement of receivership, not exceeding the prescribed amount;

(v) the amount of any tax withheld and not paid over to the Uganda Revenue Authority for 12 months prior to the commencement of insolvency;

(vi) contributions payable under the National Social Security Fund Act, Cap 222; and

(vii) any claim of the secured creditor.

6.4.6 Vacation of office and termination of receivership

A receiver may resign by giving not less than five working days' notice to the appointer; or where the receiver was appointed in the interests of any person other than the appointer, to that person. Where the office of receiver becomes vacant, another person shall be appointed as receiver in the same manner as the original receiver and the official receiver shall act as a provisional receiver until a receiver is appointed. A former receiver is required to give information and assistance in the conduct of the receivership as the successor reasonably requires. Any person who unreasonably refuses to give information and assistance required for the conduct of the receivership commits an offence and is liable on conviction to a fine not exceeding UGX 408,000 or imprisonment not exceeding one year or both.

A receivership may be terminated by the appointing authority.

Self-Assessment Exercise 6

Study the basic aspects dealt with in the previous section.

Question 1

Describe the duties and rights of the receiver on one hand and the company on the other hand.

Question 2

Explain the manner in which the receiver is required to distribute the proceeds of a receivership.

For commentary and feedback on self-assessment exercise 6, please see APPENDIX A

6.5 Corporate rescue

6.5.1 General

Corporate rescue in Uganda can be initiated under the Companies Act of 2023 and under the Insolvency Act of 2011 separately or jointly depending on the desired outcome. The Companies Act of 2012 provides for compromise and arrangement with *inter alia* creditors or any class of them, while the Insolvency Act of 2011 provides for administration. Both procedures are available to be initiated by the company but also by creditors. The Insolvency Act of 2011 which is described in its long title as "[A]n Act to provide for receivership, administration, liquidation, arrangements, bankruptcy, the regulation of insolvency practitioners and cross border insolvency; to amend and consolidate the law relating to receiverships, administration, liquidation, arrangements, and bankruptcy; and to provide for other related matters" is the statutory framework currently available for corporate rescue. It provides for arrangements in respect of the individuals while administration, and to some extent receiverships, provide for

the arrangements in respect of companies. The cross-border insolvency part under the Insolvency Act of 2011 also provides a framework for corporate rescue within the cross-border context. It should be noted that the above laws generally envisage individuals and companies, and other entities like trusts and co-operatives which are not typical corporate structures, may not directly benefit from them.

6.5.2 Compromise and arrangement

The Companies Act of 2012 provides in section 234 that where a compromise or arrangement is proposed between a company and its creditors, the court may, on the application of the company or of any creditor or member of the company or a liquidator, order a meeting of the creditors or class of creditors or of members of the company or class of members as the case may be to be summoned in such manner as the court directs.

Under section 235:

(a) the notice summoning the meeting must be sent to every creditor or member;

(b) the notice must be accompanied by a statement explaining the effect of the compromise or arrangement, particularly stating any material effect of the compromise of their interests;

(c) where the proposed compromise or arrangement affects rights of debenture holders, the statement explaining the effect must give a similar explanation regarding the trustees of any deed for securing the issue of the debentures as it is required to give respects the company's directors;

(d) where the notice summoning the meeting is given by public advertisement, it must contain the statement explaining the effect or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of the statement; and

(e) a director of the company and any trustee for the debenture holders must give notice to the company of such matters relating to himself or herself as may be necessary.

It follows that where the majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors or on the members or class of members as the case may be and also on the company or in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

Where the compromise or arrangement is proposed for the purpose of or in connection with a scheme for the reconstruction of any company or the amalgamation of any two or more companies and that under the scheme, the whole or part of the undertaking or property of any company concerned in the scheme is to be transferred to another company, the court may by

the order sanctioning the compromise or arrangement make provision for all or any of the following matters –

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting by the transferee company of any shares, debentures, policies or other similar interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution without winding up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

Where the court makes the order regarding the transfer of property and liabilities, that property and liabilities shall by virtue of the order be transferred to the transferee company. Every company in relation to which the order is made shall ensure that a certified copy of the order is registered with the registrar of companies within seven days of its making. Default in registration shall attract a liability on the company and every officer in default, the default file is UGX 500,000.

The order of the court sanctioning the compromise or arrangement shall be of no effect until a certified copy thereof has been delivered to the registrar of companies while another copy is annexed to every copy of the memorandum / constitution of the company issued after the order.

6.5.3 Administration

The Insolvency Act of 2011 does not expressly define what administration is, but from the provisions relating to the process, it can be inferred that it is a rescue procedure involving the company entering into a formal agreement with its creditors with a view to secure a moratorium, continue operations under the control of an insolvency practitioner, pay off creditors and ultimately rescue the business.

6.5.3.1 Provisional administration and appointment of provisional administrator

A company which intends to commence administration proceedings must go through provisional administration first, in other words, provisional administration is a precursor for administration. Provisional administration is a process that involves the appointment of a

provisional administrator who, having reviewed the company's records, presents proposals to creditors and upon creditor approval, the company commences formal administration.

In order to appoint a provisional administrator –

(a) section 139 (3) provides that the company must first of all pass a special resolution that it needs to make a settlement with its creditors;

(b) the company must obtain the written consent of its secured creditor holding a charge over the whole or substantially the whole of the property of the company to appoint a provisional administrator; and

(c) the company must then pass a special resolution appointing the provisional administrator. The provisional administrator must accept the appointment in writing.

After appointing the provisional administrator, Regulation 135 of the Insolvency Regulations provides that the company must within 14 working days petition court for an interim protective order. In fact, under section 142 of the Insolvency Act of 2011, the commencement of provisional administration and the appointment of the provisional administrator only takes effects when the court makes an interim protective order, which is made after hearing the petition. According to section 174A of the Insolvency Amendment Act of 2022, a creditor of a company may also petition court to appoint a provisional administrator in respect of a debtor.

The Insolvency Regulations provide a detailed procedure for preparation, filing and hearing of the petition for the interim protective order. Briefly:

(a) the petition must be in accordance with the prescribed Form 17 in Schedule 1 and it must contain *inter alia*, a statement by the petitioner on inability to pay debts, a statement on assets and liabilities, names of shareholders and contributories;

(b) the petition must be accompanied with a special resolution filed with the registrar of companies authorising the company to make a settlement with its creditors and appointing a provisional administrator; proof that the proposed provisional administrator is willing to act; the proposed settlement and a report of the proposed provisional administrator on the proposed settlement; and audited accounts of the company for the year preceding the petition;

(c) the petition must be verified by an affidavit sworn by a director, secretary or other principal officer of the company containing statements verifying the facts in the petition;

(d) the petition must be served on, where a receiver of the property of the company has been appointed, on the receiver; where there is a petition pending for the winding up of the company, on the petitioner and on the provisional liquidator; on the person appointed as provisional administrator; on any enforcement officer or other officer who to the knowledge of the petitioner is charged with an execution or other legal process against the company

or its property; and any person who to the knowledge of the petitioner has distrained against the company or its property;

(e) at least two working days before the hearing date, every person who intends to appear at the hearing must give at least notice to the petitioner;

(f) a person intending to file an affidavit in opposition to the petition must do so within 7 working days after filing of the petition and must serve the affidavit in opposition on the petitioner on the same day it is filed in court; and

(g) if the court makes an interim protective order, the petitioner must serve a copy of the same on the provisional administrator, official receiver and registrar of companies.

The effects of the interim protective order and commencement of provisional administration are that, *inter alia* –

(1) an application for the liquidation of the company by the court shall not be commenced;

(2) the functions and powers of any liquidator shall be suspended;

(3) a resolution for the liquidation of the company shall not be made, except in accordance with the Insolvency Act of 2011;

(4) a receiver of any property of the company shall not be appointed;

(5) except with the provisional administrator's written consent or with the leave of the court –

(a) steps shall not be taken to enforce any charge over any of the company's property;

(b) proceedings, execution or other legal process shall not be commenced or continued, and distress shall not be levied against the company or its property; and

(c) no other transaction shall be carried out in respect of any registered or unregistered property of the company; and

(6) under section 155 of the Insolvency Act of 2011, during provisional administration, a company must not exercise any of its functions or powers and a company's directors and secretary must not exercise any powers, functions or duties as such, except with the administrator's approval which may be general or specific.

However, the Insolvency Act of 2011 provides that nothing therein prevents the continued exercise of a power of enforcement of a charge over property where the power was exercised before the commencement of provisional administration. It also adds that an administrative receiver may remain in office during the provisional administration, but his functions, powers and duties shall be suspended. In the Matter of *Great Lakes Coffee Company (in Provisional Administration) Insolvency Petition Number 1 of 2023,* the company commenced provisional

administration a few days after a secured creditor had appointed an administrative receiver. The administrative receiver's powers were automatically suspended, however, provisional administration eventually failed and the administrative receivership continued.

6.5.3.2 Duties of the provisional administrator

According to section 140 of the Insolvency Act of 2011, the fundamental duties of a provisional administrator are to –

(1) investigate the company's business, property, affairs and financial circumstances; and

(2) exercise his powers in a manner which he believes on reasonable grounds to be likely to achieve one or more of the following outcomes –

(a) the survival of the company and the whole or any part of its undertaking as a going concern;

(b) the approval of an administration deed under section 150; and / or

(c) a more advantageous realisation of the company's assets than would be effected in a liquidation.

The general duties of the provisional administrator are to –

(1) take custody and control of all the property to which the company is or appears to be entitled;

(2) keep company money separate from other money held by or under the control of the provisional administrator;

(3) keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the company for not less than six years after the administration ends;

(4) give notice of provisional administration on every invoice, order for goods or business letter issue by or on behalf of the company on which the company's name appears by stating after the company's name "in provisional administration";

(5) under Regulation 145 of the Insolvency Regulations, set out the scheme for achieving the purpose of the provisional administration. In so doing they must review the records of the company and prepare a proposal for creditors; and

(6) in terms of section 161 of the Insolvency Act of 2011, make a report to the official receiver if it appears to him that a director, secretary or shareholder may have committed an offence in relation to the company. The requirement also applies where a person who took part in the formation, promotion, administration, management or liquidation of the company may

have misapplied, retained, become liable or accountable for, money or property of the company or may have been of negligent committed a default, breach of duty or breach of trust in relation to the company.

Section 140(2) of the Insolvency Act of 2011 creates a limitation to the extent that a provisional administrator shall not act as the company's agent in defending any proceedings relating to any breach of duty under the section; or receive any compensation or indemnity from the company's property in respect of any liability incurred by him or her through any breach of duty under the section.

6.5.3.3 Key procedures during provisional administration

(a) Under Regulation 144 of the Insolvency Regulations, the provisional administrator must within seven working days from the date of the interim protective order give notice in the prescribed Form 12, of his appointment to the same people or category of people on whom the petition was or ought to have been served by law. The notice must be in accordance with Form 12 in Schedule 1 of the Insolvency Regulations.

(b) Section 146 of the Insolvency Act of 2011 requires that in not less than five working days after commencement of provisional administration, the provisional administrator must call a creditors' meeting by giving not less than two working days' public notice and individual notice of the meeting to each known creditor of the company.

(c) At the meeting of the creditors, the creditors decide on maintaining or replacing the provisional administrator appointed by the company. Where a new administrator is appointed, they must give notice of their appointment to the court, the registrar of companies and the official receiver.

(d) The provisional administrator prepares a proposal for creditors which must include, the full name and registered address of the company; details relating to his appointment as provisional administrator; an account of the circumstances giving rise to the appointment of the administrator; a summary of the statement of the company's affairs, and details of the financial position of the company, with the provisional administrator's comments, if any; a statement of how it is envisaged the purpose of the administration will be achieved and how it is proposed that the provisional administration shall end; such other information as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposal and a proposal for an administration deed to be executed between the company and an administrator. Where an administration deed is proposed, the proposal must indicate the details of the proposed administration deed.

(e) Under section 147 of the Insolvency Act of 2011, the provisional administrator must call a creditor's meeting to consider his or her proposals by issuing not less than five working days public notice and written notice of the meeting to each known creditor.

(f) The notice must be accompanied by a report by the provisional administrator about the company's business, property, affairs and financial circumstances; a statement showing the details of the proposed deed, where an administration deed is proposed; and a statement of the provisional administrator's opinion and the reasons for the opinion on the –

(i) interests of the company's creditors in the event of the company's execution of an administration deed;

(ii) creditor's interests on the termination of the provisional administration; and

(iii) creditor's interests in the event of the company's liquidation.

(g) Section 149 of the Insolvency Act of 2011 provides that the administration deed must specify the proposed administrator of the deed, the property available to pay creditors, the nature and duration of the moratorium under the deed; the extent to which the company is to be released from its debts, the pre-conditions of the deed, the termination events, the order of distribution of proceeds and the important dates or timelines of the process.

(h) Under section 148(3) of the Insolvency Act of 2011 the creditors may at their meeting resolve to execute an administration deed, end provisional administration or liquidate the company:

(i) section 150 provides that, here the creditors resolve to that the company executes the administration deed, it must be signed by the company and the proposed administrator within 21 days after the meeting of the creditors; and

(ii) under section 152 of the Act, where creditors resolve to liquidate the company, shareholders are deemed to have passed a special resolution for the liquidation of the company.

6.5.3.4 Position of shareholders, directors and secretary

Section 155 of the Insolvency Act of 2011 provides in subsection (2) that every director and secretary of a company in administration must make available to the administrator, the company seal, all documents and information relating to the company and give all assistance reasonably required by the provisional administrator. Further in subsection (3), that where required by the provisional administrator, the directors and secretary shall verify by statutory declaration that the material and information made available to the provisional administrator is complete and correct.

Any director who contravenes this requirement commits an offence.

6.5.3.5 Powers of provisional administrator

Under section 153 of the Insolvency Act of 2011, the provisional administrator has powers to –

(1) carry on the company's business and manage the company's property and affairs;

(2) perform any function and exercise any power that the company or any of its directors or secretary would perform or exercise if the company was not in provisional administration;

(3) change the company's registered office or registered postal address;

(4) remove from office a director of the company;

(5) appoint a person as director, whether to fill a vacancy or not; and

(6) call any meeting of the shareholders or creditors of the company.

(7) In exercising his powers the provisional administrator shall be deemed to act as the company's agent.

However, under section 157 of the Insolvency Act of 2011, the provisional administrator is not authorised to dispose of property subject to a charge unless in the ordinary course of business, with written consent of the secured creditor or under court order.

It follows that under section 158 of the Insolvency Act of 2011, a provisional administrator is personally liable for –

(a) any contract entered into by him in the exercise of any of the provisional administrator's powers, but is not liable for the company's debts; and

(b) wages, salary and allowances including sickness and holiday pay but not payments *in lieu* of notice, incurred –

(i) during the provisional administration;

(ii) under a contract of employment adopted by the provisional administrator (a provisional administrator shall not be deemed to have adopted a contract of employment by reason of anything done or omitted to be done within ten working days of his or her appointment); and

(iii) in respect of services rendered after the adoption of the contract.

6.5.3.6 Duration and termination of provisional administration

Under section 145 of the Insolvency Act of 2011, provisional administration terminates when –

(a) the period specified in the interim order lapses and in any case the period must not be more than 30 days, unless the court issues another order extending it;[33]

(b) an administration deed is executed;

(c) the provisional liquidator gives the notice to end provisional administration in accordance with section 151 when the:

(i) administration deed is not executed with in the 21 days after the creditors meeting resolving that it should be executed;

(ii) creditors resolve that the provisional administration should end; and

(iii) creditors do not pass a resolution at their meeting; or

(d) under section 152 of the Insolvency Act of 2011, provisional administration can transition to liquidation and the shareholders are deemed to have passed a special resolution for the liquidation of the company where the creditors resolve that the company be liquidated or where an administration deed is not executed within 21 days after the meeting of the creditors approving its execution.

6.5.3.7 Commencement of administration

According to section 162 of the Insolvency Act of 2011, administration commences with the execution of an administration deed by the company in a general meeting. The appointment of the administrator also takes effect on the execution of the administration deed.

The administration deed may be varied by a resolution passed at a creditor's meeting and any variation made must be filed with registrar and official receiver with seven days.

6.5.3.8 Procedures upon commencement of administration

Immediately upon commencement of administration, the administrator is required to issue a notice of his appointment and commencement of administration in terms of section 163 of the Insolvency Act of 2011. The written notice must be issued to each known creditor of the company, the public, the official receiver, and the registrar of companies. The form of the public notice is prescribed under Regulation 149 as Form 18 in Schedule 1 of the Insolvency Regulations.

[33] *In the Matter of Great Lakes Coffee Company Uganda Limited (In Provisional Administration)* Miscellaneous Application No 0175 of 2023, court granted an extension for another 30 days for the benefit of all stakeholders.

Meanwhile, under the Insolvency Amendment Act of 2022, the administrator must also file the administration deed in court within five working days from its execution. Upon the filing of the deed, the court then issues an administration deed.

6.5.3.9 Effect of administration – section 164

The administration deed binds the company, its directors and secretary, shareholders, the administrator and all creditors in relation to claims arising on or before the day specified in the deed.

Any person bound by the deed shall not commence or continue with liquidation proceedings and except with the leave of court, they shall not take any steps to enforce a charge over the company property or commence or continue any other legal process or levy distress. However, the law makes a *proviso* that a secured creditor is not prevented from exercising a power of enforcement of a charge over company property except where the deed provides for it in relation to the secured creditor who voted in favour of the resolution for the execution of the deed.

6.5.3.10 Post-commencement financing

Section 164A of the Insolvency Amendment Act of 2022 provides that the administrator may with the consent of the creditors borrow finances and grant security over the property of the company for purpose of implementing the administration deed. The value of the financing must not exceed the value of the unencumbered assets at the time of executing the administration deed.

6.5.3.11 Functions and duties of the administrator

Section 165 of the Insolvency Act of 2011 provides that the function of the administrator is to supervise the implementation of the administration deed.

The administrator may call for creditors' meetings any time during administration. However, where requested in writing by creditors holding more than 10% of the debt, the administrator must call for a creditors' meeting. All meetings must be called by giving five working days' notice.

Under Regulation 151 of the Insolvency Regulations, the administrator must submit progress reports to the creditors every six months. Copies of the reports must be issued to the official receiver, court and the registrar. The progress report must include the full details of the administrator; the details of the progress during the period of the report, details of any assets yet to be realised, a statemen of the creditors' right to request information to challenge the administrator's expenses and other relevant information. Any default by the administrator attracts a liability of UGX 100,000 for each calendar day that the administrator remains in default.

6.5.3.12 Application of proceeds

Subject to section 12[34] of the Insolvency Act of 2011 on general application of proceeds, Regulation 152 provides that the expenses of administration shall be paid in the following order of priority:

(a) expenses properly incurred by the administrator in performing his functions in the administration of the company;

(b) costs of any application made to court by the administrator;

(c) any necessary disbursements by the administrator in the course of the administration;

(d) the remuneration of any person who has been employed by the administrator to perform any services for the company;

(e) the administrator's remuneration; and

(f) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company.

The court may, where the assets of a company are insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the administration in the order of priority determined by the court.

The regulations require the administrator to give notice to the creditors of his intention to pay creditors' claims. The notice which is to be sent to all known creditors must be in accordance with Form 28 of Schedule 1 to the Insolvency Regulations.

6.5.3.13 Existing contracts

Save for employment contracts, the Insolvency Act of 2011 does not provide for treatment of contracts. Section 158 thereof allows a provisional administrator a window of 10 working days from the date of appointment to adopt or terminate employment contracts.

6.5.3.14 Remuneration

Section 171 of the Insolvency Act of 2011 provides that the remuneration of the provisional administrator or administrator is either agreed upon or fixed by the court on application for taxation and assessment of costs and fees of the administrator or provisional administrator. It

[34] *In the Matter of Uganda Telecom Ltd (In Administration)* Miscellaneous application No 220 of 2022, the court ruled that the contributions to a Staff Pension Scheme and Pension claims by former employees can equally be interpreted to fall within the same rank and class as Contributions to National Social Security Fund as provided under section 12(6)(b) of the Insolvency Act of 2011.

can also be determined or reviewed by the court upon the application of a creditor of the company or a liquidator or provisional liquidator of the company in respect of any period.

6.5.3.15 Vacation of office

The office of provisional administrator or administrator shall become vacant where the person holding office is removed from office by an order of court under section 174(3) of the Insolvency Act of 2011; or where they are automatically disqualified from acting by section 206; or where they resign, die or becomes unqualified to act as an insolvency practitioner under section 204(2). Where a vacancy arises other than by resignation, the official receiver is mandated to temporarily act as provisional administrator or administrator, and shall then appoint an insolvency practitioner as provisional administrator or administrator, with the approval of the creditors, the company and court.

Under section 172, a person vacating the office must give information and assistance necessary for the conduct of the provisional administration or administration, as that person's successor may reasonably require. Any person who contravenes this provision commits an offence and is liable on conviction to a fine not exceeding 24 currency points or imprisonment not exceeding one year or both.

6.5.3.16 Court supervision under section 173

The provisional administrator or administrator may apply to court for directions on any matter concerning their functions.[35] A provisional administrator or administrator who acted in accordance with the direction of the court is entitled to rely on this as a defence for any claim in respect of the exercise of his powers or functions.

In addition to the provisional administrator and the administrator, a creditor or a liquidator or provisional liquidator of the company may apply to court for orders relieving the provisional administrator or administrator of the duty to comply, in whole or in part; directing the provisional administrator or administrator to comply to the extent specified in the order. A copy of an application made under this section, if made by a person other than a provisional administrator or administrator, shall be served on the provisional administrator or administrator not less than five working days before the hearing of the application and he or she may appear and be heard at the hearing unless otherwise ordered by the court. All proceedings relating to any application for an order under this section must be served on the official receiver who must keep a copy of the proceedings on a public file indexed by reference to the name of the provisional administrator or administrator concerned.

[35] *In the Matter of Uganda Telecom Limited (In Administration)* Miscellaneous Application No 1164 of 2020, An Application By Ruth Sebatindira SC, As Administrator of Uganda Telecom Limited for Court's Directions on the application of subordination to the claims by shareholders in the implementation of the administration deed. Miscellaneous Application No 1162 of 2020, In the matter of Uganda Telecom Limited (In Administration) An Application By Ruth Sebatindira SC, For Court's directions in respect of the verification certain shareholder / creditor claims.

Self-Assessment Exercise 7

Study the basic aspects dealt with in the previous section.

Question 1

Highlighting key timelines, provide a detailed outline of the steps leading to the commencement of administration in Uganda.

Question 2

Identify and assess the roles and responsibilities of key stakeholders in the provisional administration and administration process.

For commentary and feedback on self-assessment exercise 7, please see APPENDIX A

7. CROSS-BORDER INSOLVENCY LAW

Uganda adopted the UNCITRAL Model Law on Cross-Border Insolvency and incorporated it in the Insolvency Act of 2011 in without any substantial changes to the specific provisions adopted. However, Uganda added reciprocity clauses to the provisions on cross-border insolvency law under the Act. Later on, in the Insolvency Amendment Act of 2022, all the sections (being sections 212 up to 224) providing for reciprocity were repealed while the provisions of the UNCITRAL Model Law on Cross-Border Insolvency remained as the framework on cross-border insolvency.

From a statutory perspective, Uganda does not have any public policy exceptions. From a judicial perspective, Uganda has also not had formal cross-border insolvency proceedings to test the general position of the courts. The most prominent and probably only case is High Court Company Cause Number 041 of 2016 by Muniu Thoithi and Kuria Muchiru of PWC Kenya in their capacity as administrators of Spencon Services Limited appointed in Kenya. The administrators sought orders allowing for the recognition of the Kenyan proceedings in Uganda where Ugandan creditors had already appointed receivers in respect of assets in Uganda. Incidentally, the application culminated in a consent order recognising the Kenyan proceedings subject to several conditions. The conditions were generally segregating the functions of the administrator and the functions of the receivers while giving priority over Ugandan assets to Ugandan creditors, a form of hybrid universalism (so to speak) and consistent with section 248 of the Insolvency Act of 2011. However, under section 228 of the Act, where any provision of the part on cross-border insolvency conflicts with an obligation of Uganda arising out of any treaty or other form of agreement to which it is a party with one or more States, the treaty or agreement shall prevail.

8. RECOGNITION OF FOREIGN JUDGMENTS

The enforcement of foreign judgments in Uganda is governed by several laws which are both local and regional. The key laws are the Constitution of the Republic of Uganda of 1995; the Judgment Extension Act, Cap 46; the Reciprocal Enforcement of Judgments Act, Cap 21; and Foreign Judgments (Reciprocal Enforcement) Act, Cap 9. The general principal of law in the statutes is that there must be a reciprocity arrangement between the foreign country issuing the judgment and Uganda. Over time, the courts have set various precedents supporting the statutes while in some cases there has been judicial flexibility.[36]

8.1 The Foreign Judgments (Reciprocal Enforcement) Act, Cap 9

The Foreign Judgments (Reciprocal Enforcement) Act, Cap 9 regulates the enforcement of judgments given in foreign countries which accord reciprocal treatment to judgments given in Uganda.

Registration of foreign judgments is specifically provided for under Part 2 of the Act. Under this part, section 2 stipulates that the minister has power subject to certain conditions specified therein to make a statutory order directing that the Part applies to a certain foreign country. The main condition specified is that substantial reciprocity of treatment will be assured as respects the enforcement in that country of judgments given in the superior courts of Uganda.[37] The Part applies to any judgment[38] of a superior court of a foreign country if it is a final[39] and conclusive between the parties and there is payable under that judgment a sum of money not being taxes, fines, or other penalty.

Under section 3(1), a foreign judgment creditor may apply to the High Court at any time within six years after the date of the judgment or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court of Uganda. The High Court of Uganda must, subject to proof of compliance with the Act, order the judgment to be registered. It goes to provide that a judgment shall not be registered if at the date of the application it has been wholly satisfied; or it could not be enforced by execution in the foreign country.

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[36] In the case of *Christopher & Carol Sales v Attorney General* (HCCS No 91 of 2011), Justice Eldad Mwangusya decided on facts where Uganda had no reciprocal arrangement with the United States of America (USA) that, even without a reciprocal arrangement, the foreign judgment can be enforced in Uganda. He based his decision on the principle of international comity / comity of nations. He recognised that the judicial system of the USA under which the case had been tried was beyond reproach and a judgment creditor armed with such a judgment should be allowed to realise the fruits of his judgment which should be afforded recognition by Ugandan courts, even in the absence of a reciprocal arrangement.

[37] Judgments given in the superior courts of Uganda have been defined as judgments given in the High Court and includes judgments given in the courts of appeals.

[38] Foreign Judgments (Reciprocal Enforcement) Act, Cap 9, s 1(1)(c) provides that a judgment is defined as a "judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party".

[39] *Idem*, s 2(3) provides that a judgment is deemed final notwithstanding that an appeal may be pending in the courts of that foreign country.

Subsection 2 provides that in respect of a registered judgment for the purposes of execution:

(a) it shall be of the same force and effect;

(b) proceedings may be taken on a registered judgment;

(c) the sum for which a judgment is registered shall carry interest; and

(d) the Ugandan court shall have the same control over the execution process as if the judgment had been originally given in Uganda.

Where the judgment debt is in a currency other than the currency of Uganda, it shall be converted to the currency of Uganda on the basis of the rate of exchange prevailing at the date of the judgment of the original court.[40]

Under section 5 of the Foreign Judgments (Reciprocal Enforcement) Act, Cap 9, the registration of a foreign judgment may be set aside and denied (so to speak) if the High Court of Uganda is satisfied that, amongst others, the judgment is in contravention of the Act; the courts of the foreign country had no jurisdiction in the circumstances of the case; the judgment debtor being the defendant in the proceedings in the foreign court, did not[41] receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; the judgment was obtained by fraud; the enforcement of the foreign judgment would be contrary to public policy in Uganda; or the rights under the judgment are not vested in the person by whom the application was made.

The question of jurisdiction of the foreign court is paramount in these proceedings. The Act provides under section 5(3) that the courts of the foreign country are deemed to have had jurisdiction –

(a) in the case of a judgment given in an action *in personam*,[42] if the judgment debtor –

(i) submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court;

(ii) was plaintiff in, or counterclaimed in, the proceedings in the foreign court;

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40 The Act goes on to detail other scenarios such as where foreign judgments may be partially registered.

41 Notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court.

42 Foreign Judgments (Reciprocal Enforcement) Act, Cap 9, s 1(2) provides that "*in personam*" shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, guardianship of infants or the care of, or the administration of the estates of, persons of unsound mind.

(iii) had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court;

(iv) was at the time when the proceedings were instituted resident in, or being a body corporate that had its principal place of business in, the country of that court; or

(v) being a defendant in the foreign court, had an office or place of business in the country of that court, and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of judgment where the subject matter was immovable property or in an action *in rem* of which the subject matter was movable property, if the property in question was at the time of the proceedings in the foreign court situate in that foreign country of that court; and

(c) in any other case if the jurisdiction of the foreign court is recognised by the laws of Uganda.

8.2 The Reciprocal Enforcement of Judgments Act, Cap 21

The Reciprocal Enforcement of Judgments Act, Cap 21 regulates the enforcement of judgments delivered in the United Kingdom, other Commonwealth countries and the Republic of Ireland. Section 2 of this Act provides that where a judgment has been obtained in a superior court in the United Kingdom or the Republic of Ireland, the judgment creditor may apply to the High Court of Uganda at any time within 12 months after the date of the judgment, or such other longer period as may be allowed by the court to have the judgment registered in the court and executed. A judgment creditor who obtains judgment against a person resident in the United Kingdom in like manner shall obtain a certified copy of said judgment and apply in a court in the United Kingdom to execute the same. The remainder of the provisions are by and large like those of the Foreign Judgments (Reciprocal Enforcement) Act, Cap 9.

8.3 The Judgment Extension Act, Cap 12

This law governs Ugandan courts in executing decrees and warrants granted by the courts of Kenya, Malawi and Tanzania. Under section 1 of the Act, where a decree is obtained or entered for any debt, damages or costs in the supreme court of Kenya or in the High Court of Malawi or Tanzania or in any court subordinate to any of those courts, the same may be transferred to the High Court of Uganda or other courts subordinate thereto for purposes of execution of the same.

At a regional level, Uganda is a member of the East African Community and as such bound by the East Africa Treaty which mandates the national courts of the partner states to enforce judgments of the community courts.[43]

[43] East Africa Treaty, art 44 provides that "the execution of a judgment of the East African Court of Justice which imposes a pecuniary obligation on a person shall be governed by the rules of civil procedure in force in the Partner State in which the execution is to take place".

Self-Assessment Exercise 8

Study the basic aspects dealt with in the previous section.

Describe Uganda's legal framework concerning cross-border insolvency and recognition of foreign judgments.

For commentary and feedback on self-assessment exercise 8, please see APPENDIX A

9. INSOLVENCY LAW REFORM

There is no current insolvency law reform in Uganda at present.

10. USEFUL INFORMATION

(a) https://ursb.go.ug/liquidation

(b) https://ulii.org/akn/ug/act/ord/1961/4/eng@2000-12-31#defn-term-country_of_the_original_court

APPENDIX A: COMMENTARY AND FEEDBACK ON SELF-ASSESSMENT EXERCISES

Self-Assessment Exercise 1

Explain the legal and regulatory framework of insolvency law and practice in Uganda.

Commentary and Feedback on Self-assessment Exercise 1

The question requires the student to mention the key legislation on insolvency (starting with the Constitution, the Insolvency Act of 2011 and the Insolvency Regulations on the core insolvency related matters), inability to pay debt, bankruptcy, arrangements, administration, receiverships, liquidation, regulation of insolvency practice, official receiver's officer and cross-border insolvency. Mention should also be made of the Insolvency (Investigations and Prosecutions) Regulations Section I Number 4 of 2018 and the Insolvency Regulations Number 36 of 2013 (the Insolvency Regulations).

Self-Assessment Exercise 2

Question 1

Explain the various forms of security for credit commonly used in Uganda.

Question 2

Analyse the implication of the SIMPA Act of Uganda on access to credit.

Commentary and Feedback on Self-assessment Exercise 2

Question 1

Explanation of the following: (i) land mortgages (legal and equitable); (ii) fixed and floating debentures; (iii) charges over movable assets under SIMPA; and (iv) corporate and personal guarantees.

Question 2

SIMPA enables creditors of small debtors to do better due diligence prior to lending. It allows people who may not have access to real estate to obtain credit using movable assets, enables more injection of capital into the micro, small and medium enterprises sector which dominates Uganda's economy and it facilitates formalisation of small businesses which have been operating informally which will enable proper taxation and planning. It will also reduce the credit risk which is higher on unsecured lending. However, it is important that the system is efficient to prevent manipulation of securities, and it is also important that the cost of registration of security is kept manageable to minimise lending costs and borrowing costs.

Self-Assessment Exercise 3

Explain the general provisions applicable to insolvency proceedings in Uganda.

Commentary and Feedback on Self-assessment Exercise 3

Generally in all cases,

- a qualified insolvency practitioner is appointed;
- practitioner takes control of the business / assets;
- public notices must be issued within certain timelines;
- the office of the official receiver must be notified;
- there are regular reporting requirements;
- submission and consideration of creditor claims is required; and
- where court is involved sworn statements must be made.

Self-Assessment Exercise 4

Question 1

Explain the legal process and requirements for an individual to obtain a bankruptcy order in Uganda.

Question 2

What steps can be taken by an indebted individual to obtain a binding compromise with their creditors?

Commentary and feedback on Self-assessment Exercise 4

Question 1

Part III of the Insolvency Act of 2011 (assuming that it is the debtor moving for bankruptcy):

(a) Present a petition to court, petition must be supported by affidavit and statement of affairs of the debtor.
(b) Petition must be served on every known creditor of the debtor.
(c) Give public notice of the petition within seven working days of filing it.
(d) Every creditor intending to be heard on the petition gives notice to do so to the debtor within five working days of public notice of the petition.
(e) Petitioner provides list of intended appearances to the court before the hearing of the petition.
(f) Any reply to the petition must be within 15 working days after date of service of the petition.
(g) The court may make an order for a public examination of the debtor where deemed necessary
(h) Where public examination is ordered, it is conducted in court on the date fixed by the court.
(i) Court may make further inquiry into debtor's dealings and property.
(j) Bankruptcy order is issued if the court is satisfied that the debtor is insolvent.

Question 2

Part V of the Insolvency Act of 2011:

(a) Debtor must file an application for an interim protective order from the court.
(b) At the same time of filing the application, the debtor must submit to the proposed supervisor a proposal for an arrangement with the debtor's creditors.
(c) A copy of the application must be served on the proposed supervisor of the compromise within seven working days.
(d) The applicant extracts a hearing notice for the application and serves it on the proposed supervisor of the compromise.
(e) Court hears the application and grants the interim protective order
(f) The proposed supervisor must thereafter within 14 working days call a creditors' meeting.
(g) Notice of the meeting of creditors must be not less than two working days.
(h) At the meeting, the creditors must consider the terms of the proposed arrangement and vote on whether they approve the arrangement.
(i) Where the creditors approve the arrangement, the proposed supervisor reports back to the court which then issues an arrangement order.
(j) An arrangement order binds the debtor, supervisor and every creditor at that time.

Self-Assessment Exercise 5

Study the basic aspects dealt with in the previous section.

Question 1

Outline the different liquidation processes in Uganda and enumerate the elements shared among them.

Question 2

Highlight the key functions, duties and responsibilities of a liquidator.

Commentary and Feedback on Self-assessment Exercise 5

Question 1

- They all require a formal appointment of a liquidator.
- Public notices must be issued within certain timelines.
- The office of the official receiver must be notified.
- There are regular reporting requirements.
- There are regular meeting requirements.
- Submission and consideration of creditor claims.
- Liquidator liquidates assets and winds up the business.
- Liquidator distributes the proceeds.
- Final meeting of the liquidation.
- Liquidator must submit a final account.
- Company is liquidated three months after final account.

Question 2

In accordance with sections 95 to 101 of the Insolvency Act of 2011, a liquidator must:

- collect and realise as advantageously as reasonably possible and distribute the assets or the proceeds of the assets of the company in accordance with the Act;
- take custody and control of all the company's assets;
- register his interest in all land and other assets belonging to the company notwithstanding any interest other;
- keep company money separate from other money held by or under the control of the liquidator;
- keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the liquidation, and retain the accounts and records of the liquidation and of the company for not less than six years after the liquidation ends;

- permit those accounts and records and the accounts and records of the company, to be inspected by (i) any committee of inspection unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; or (ii)where the court so orders, any creditor or shareholder;
- issue public notices of appointment;
- call members' and / or creditor' meeting; and
- issue periodic reports.

Self-Assessment Exercise 6

Question 1

Describe the duties and rights of the receiver on one hand and the company on the other hand.

Question 2

Explain the manner in which the receiver is required to distribute the proceeds of a receivership.

Commentary and feedback on Self-assessment Exercise 6

Question 1

Sections 179 to 180 of the Insolvency Act of 2011 highlights the duties and rights of the receiver.

Duties:

- To issue notices of appointment as prescribed.
- To exercise his powers in a manner which he believes on reasonable grounds to be in the best interests of all persons in whose interests the receiver is appointed.
- The power over the property in receivership with reasonable regard to the interests of the grantor; any person claiming, through the grantor, an interest in the property in receivership; any unsecured creditor of the grantor; and any surety or guarantor who may be called upon to fulfil any obligation of the grantor to a person in whose interest the receiver was appointed.
- Take custody and control of all the property which is under receivership.
- Register in his names all land and other assets under receivership.
- To investigate the state of affairs of the property under receivership.
- Give a general notice of his interest in all property that has not yet come under his control.
- Keep all money relating to the property in receivership separate from other money received in the course of, but not relating to, the receivership and separate from other money held by or under the control of the receiver.

- Keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions of the company.

- Retain the accounts and records of the company for not less than six years after the receivership ends.

Rights:

- To demand or recover, by action or any other means, all income of the property in receivership.
- Issue receipts for income recovered.
- Manage any of the property under receivership.
- Inspect at any reasonable time any documents of the grantor or other records relating to the property under receivership, in the custody of the grantor or of any other person.
- Execute in the name and on behalf of the grantor all documents necessary or incidental to the exercise of the receiver's powers.
- Carry on the company's business and manage the company's property and affairs.
- Perform any function and exercise any power that the company or any of its directors or secretary would perform or exercise if the company was not in receivership; and
- change the company's registered office or registered postal address.

Sections 183 and 184 summarise the duties and role of the company:

- In administrative receivership, the company shall not exercise any of the functions of its functions except with the administrative receiver's approval.
- Make available to the receiver all documents and information relating to the grantor and to all the property under receivership and give all assistance reasonably required by the receiver.
- Make the seal available for use by the receiver on any document required to be executed under the seal.
- File a suit against the receiver, secured creditor or appointees or any other person for wrongful appointment of the receiver, trespass and other unlawful acts which prejudice the rights and interests of the grantor; to preserve or protect the estate or interest in receivership where the receiver does not take action.

Question 2

Section 192 and section 12 of the Insolvency Act of 2011:

- In respect of the receiver's indemnity in full.
- Remuneration and expenses of the receiver.
- Cost of any person who commenced the proceedings.

- All wages or basic salary, wholly earned or earned in part by way of commission for four months.
- All amounts due in respect of any compensation or liability for compensation under the Worker's Compensation Act of 2000, accrued before the commencement of the proceedings.
- All amounts that are preferential debts under sections 33 or 105.
- The amount of any tax withheld and not paid over to the Uganda Revenue Authority for 12 months prior to the commencement of insolvency.
- Contributions payable under the National Social Security Fund Act, Cap 222.
- Payments to secured creditor.
- Payments to unsecured creditors.

Self-Assessment Exercise 7

Question 1

Highlighting key timelines, provide a detailed outline of the steps leading to the commencement of administration in Uganda.

Question 2

Identify and assess the roles and responsibilities of key stakeholders in the provisional administration and administration process.

Commentary and Feedback on Self-Assessment Exercise 7

Question 1

- Company passes a special resolution that it needs to enter into a settlement with creditors.
- Company passes a special resolution to appoint a provisional administrator.
- Company petitions court for interim protective order.
- Upon the appointment of a provisional administrator, a copy of the notice appointing the provisional administrator; a copy of the provisional administrator's consent to act as provisional administrator; and the written consent to the appointment of the provisional administrator by any secured creditor holding a charge over the whole or substantially the whole of the property and undertaking of the company, shall be registered with the official receiver and registrar of companies.
- The provisional administrator shall call a creditors' meeting, not later than five working days after the commencement of the provisional administration.
- The provisional administrator shall give public notice of not less than two working days' public notice and individual written notice of the meeting to each known creditor of the company.

- The meeting shall consider the proposals of the provisional administrator and the company.
- Administration commences when the creditors approve the proposals and the execution of an administration deed.

Question 2

- The key stakeholders are, the company, the shareholders, the directors, creditors (consider the classes), court, insolvency practitioner.
- The directors must provide the insolvency practitioner will all necessary information.
- The insolvency practitioner must study all records provided and provide good counsel.
- The creditors ensure to attend the necessary meetings.
- Creditors must provide detailed accurate information about their debts.
- Court must appreciate the facts and act expeditiously.
- All must aim to preserve the value of the business and its assets.
- Directors and insolvency practitioners must ensure effective stakeholder management to facilitate gainful proceedings.
- Directors and creditors must act in good faith.

Self-Assessment Exercise 8

Describe Uganda's legal framework concerning cross-border insolvency and recognition of foreign judgments.

Commentary and Feedback on Self-Assessment Exercise 8

The description must entail a discussion on Part IX of the Insolvency Act as amended, as it is, in principle, the adoption of the UNCITRAL Model Law on Cross-Border Insolvency.

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