



ADMINISTRATION UNDER KENYAN LAW: A LIFELINE OR JUST DELAYED LIQUIDATION?

Corporate distress is increasingly common in Kenya's dynamic economic environment. Companies face financial strain from currency fluctuations, rising operational costs and market disruptions. When insolvency looms, companies must determine whether administration provides a genuine mechanism for rescue or simply serves as a temporary delay before inevitable liquidation.

The shift towards corporate rescue

In 2016, Kenya enacted the [Insolvency Act, Cap 53](#) ("the Insolvency Act"), introducing procedures aimed at rescuing distressed companies. The procedures included the administration and company voluntary arrangements. These procedures marked a shift from the liquidation-centric approach, offering businesses an alternative to outright winding-up.

Administration allows companies to either be rescued or restructured under the supervision of a licensed administrator. The primary objective is to preserve the company as a going concern, while the secondary objective is to maximize returns for creditors compared to what would be achieved through liquidation.

If it is not reasonably practicable to achieve either of these objectives, the administrator is required to realize the company's assets and distribute the proceeds in a manner that protects the interests of all creditors.

Administration in practice

The efficacy of the Insolvency Act is best illustrated by contrasting the outcomes of administration. Administration is not a guaranteed lifeline; its success depends on both timing and the nature of a company's assets.

a) ARM Cement Limited (formerly Athi River Mining Limited): Strategic asset realization

ARM Cement Limited was placed under administration in 2018. The company's value was tied to tangible assets, including cement plants and mineral licences. Administrators maintained operations to preserve going-concern value while pursuing creditor returns, culminating in the sale of ARM's Kenyan operations to National Cement Company (Devki Group) in 2019.



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While the company did not regain independent solvency, administration protected operational value and enabled secured creditors to recover a portion of their claims.

b) Nakumatt and Tuskys: The risks of late-stage intervention

In contrast, both Nakumatt and Tuskys illustrate how delayed intervention can render administration ineffective once the core value of the business has already eroded. [Nakumatt entered administration in 2018](#) when its financial distress was already advanced and its primary assets had significantly deteriorated. By the time creditors voted to liquidate, the process had failed to restore viability and instead resulted in minimal recovery for unsecured creditors.

Similarly, in [Tusker Mattresses Limited \[2023\] KEHC 18107 \(KLR\)](#), the High Court ended Tuskys' three-year restructuring effort. Justice Majanja found that the company's liabilities outweighed its assets and that it had no realistic prospects of revival. Having failed to demonstrate a viable turnaround plan or capital injection, continued court protection served no useful purpose and liquidation was ordered.

These cases underscore a central point: where administration is pursued at the terminal stage of distress, it may merely delay liquidation rather than achieve rescue.

Key lessons from the Kenyan experience

The cases above illustrate the following factors that determine the success of administration:

a) Timing is decisive: Administration is most effective when invoked at the preliminary signs of financial distress. In both Nakumatt and Tuskys, intervention came after operational decline had already eroded supplier confidence, disrupted supply chains and undermined stakeholder trust. At that stage, the statutory framework could not reverse the collapse.

b) Nature and residual value of assets matter: Companies with tangible, realizable assets are more likely to benefit from administration.

c) Funding is essential: The statutory moratorium provides protection, but it does not generate liquidity. As observed by Justice Majanja in the Tuskys decision, court protection cannot substitute for fresh capital or a credible turnaround plan. Without working capital, administration cannot meaningfully stabilize operations.

d) Credible restructuring plans are critical: Administration requires more than time; it requires a realistic and implementable strategy. Courts will not support prolonged protection where no viable path to solvency is demonstrated.

e) Stakeholder confidence drives outcomes: Administration depends on continued cooperation from suppliers, employees, landlords and financiers. Once confidence collapses, the rescue framework becomes significantly harder to sustain.

Conclusion

Administration offers a structured framework for companies facing financial distress. When applied early and strategically, administration can preserve value, maintain business continuity and enhance creditor recoveries, proving itself as a genuine lifeline.

Conversely, when invoked too late, without sufficient funding or operational viability, administration risks becoming a drawn-out form of delayed liquidation, offering limited benefit to creditors or shareholders.

How We Can Help You

Navigating financial distress while avoiding insolvency requires timely, strategic and legally compliant action. At our Corporate Restructuring and Special Situations Practice (CRSS Practice), we provide comprehensive support to companies facing such challenges, helping directors and management make informed decisions to protect the business and their personal interests.

Our services include:

1. Financial and Legal Assessment: Review of cash flow, debts and obligations to guide decision-making.
2. Debt Negotiation and Restructuring: Negotiating with creditors for extended terms, reduced interest, or partial settlements.
3. Pre-Insolvency Moratorium: Assisting with applications to secure temporary protection from enforcement actions.
4. Company Voluntary Arrangements (CVA): Preparing and supervising binding debt compromise proposals.
5. Administration and Schemes of Arrangement: Guiding complex restructurings to preserve business value and continuity.
6. Ongoing Advisory Support: Ensuring compliance, operational improvements and proactive risk management.

If you would like to consult on this article or any other related matter, you may contact the contributors on the emails below or the Corporate Restructuring and Special Situations Practice team via email at crsspractice@cmadvocates.com. Do also visit our website <https://cmadvocates.com/> for more information about us and our services.

CONTRIBUTOR



Mercy Chore
Associate Advocate
Email: mchore@cmadvocates.com
CM Advocates LLP

Head Office - Nairobi, Kenya

I&M Bank House, 7th Floor, 2nd Ngong Avenue
T: +254 20 2210978 / +254 716 209673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office - Kenya

Links Plaza, 3rd Floor, Links Road, Nyali
T: +254 041 447 0758 / +254 791 649913
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

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