



**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8C**

**HONG KONG**

This is the **summative (formal) assessment** for **Module 8C** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 8C.** In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

## **INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
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5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

## **ANSWER ALL THE QUESTIONS**

### **QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Any reference to “CWUMPO” in the questions below means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32).**

#### **Question 1.1**

Select the **correct answer** to the question below:

As a lawyer practising Hong Kong law, you are asked to advise a client on a tricky legal issue. There are no Hong Kong authorities dealing with the issue but there is a 1985 decision from the English House of Lords more or less directly on point. It has not been cited in the Hong Kong court. Can you rely on it in forming your advice?

- (a) Yes, because it is a House of Lords decision pre-dating the Handover in 1997 so is binding on the Hong Kong court.
- (b) No, because all decisions of the English court ceased to have any relevance in Hong Kong after the Handover in 1997.
- (c)** Yes, it is not binding as such but the decision will form part of the common law as at the date of the Handover in 1997 and would be persuasive as the common law at that date forms part of Hong Kong law.
- (d) No, because the decision is from the House of Lords and not a Privy Council decision on appeal from Hong Kong.

**Commented [RD(DW-H1)]:** Correct (1 mark). The decision would be persuasive

#### **Question 1.2**

Realisations from a floating charge will always be paid in full to the holder of that charge, even if the company granting the charge goes into liquidation. (You may assume that the floating charge is not open to challenge by the liquidator).

- (a) This statement is true because a creditor by way of a floating charge will always stand entirely outside of the liquidation.
- (b) This statement is untrue because all of the costs of the liquidation must always be paid first out of those realisations.
- (c)** This statement is untrue because creditors with a statutory preferential claim must first be paid out of those realisations (unless the same can be paid out of uncharged assets).
- (d) This statement is untrue because **both (b) and (c)** are correct (that is, the costs of the liquidation must always be paid first out of those realisations and thereafter creditors with a statutory preferential claim must first be paid out of the realisations).

**Commented [RD(DW-H2)]:** Correct (1 mark). Option (a) is not correct due to the rules on payment of preferential creditors; (b) is not correct because the charged assets are not available to the liquidators

### Question 1.3

Upon a bankruptcy order being made against an individual, that individual remains free to deal with his assets provided he reports to his trustee in bankruptcy after doing so.

- (a) This statement is true.
- (b) This statement is untrue because upon bankruptcy the bankrupt's assets are vested in the trustee.
- (c) This statement is untrue because although the assets remain the bankrupt's own he must obtain permission from the trustee before dealing with those assets.

**Commented [RD(DW-H3):** Correct (1 mark). Bankruptcy differs in this regard from corporate insolvency in Hong Kong. In the latter, the company remains the owner and there is no automatic vesting.

### Question 1.4

A petition to wind up a company on grounds of insolvency can be presented when a company is unable to pay its debts. Section 178 of CWUMPO provides three circumstances in which a company shall be deemed to be unable to pay its debts. **Which one of the following** is one of those circumstances?

- (a) A creditor has properly served a demand (statutory demand) in the prescribed form and the company has, for three weeks after service, neglected to pay the sum demanded.
- (b) Where the statutory definition of "insolvency" (appearing elsewhere in the same Ordinance) is satisfied.
- (c) Where the company is insolvent according to its balance sheet.
- (d) Where a judgment has been made against the company.

**Commented [RD(DW-H4):** Correct (1 mark). The key thing to remember is that there is no statutory definition of "insolvency" in the relevant Hong Kong legislation

### Question 1.5

When a company goes into liquidation, the role of the liquidator is to:

- (a) Realise the company's assets, adjudicate the proofs of debt submitted by those claiming to be creditors and distribute dividends to creditors.
- (b) Investigate transactions entered into by the company to determine whether there are any that can be impeached pursuant to the legislation (or otherwise).
- (c) Investigate the cause(s) of failure of the company and the conduct of the directors.
- (d) All of the above.

**Commented [RD(DW-H5):** Correct (1 mark). The role of the liquidator is a broad one.

### Question 1.6

A winding up Petition was presented on 1 April 2019 and the winding up order was made on 5 June 2019. After her appointment the liquidator discovers that a payment was made by the company to a third party on 5 April 2019. Which of the following provisions is **most likely** to be considered by the liquidator (and should be her **first** consideration)?

- (a) Void dispositions after the commencement of winding up - pursuant to section 182 of CWUMPO.
- (b) Unfair preferences - pursuant to sections 266, 266A and 266B of CWUMPO.

**Commented [RD(DW-H6):** Correct (1 mark). The other options are also possible but (a) should easily be the first option to look at because the legislation deems the transaction to be void (the commencement of the winding up being 'backdated' to the date of the petition). It would be for the recipient to persuade the court that the payment could be retained. For the others, the liquidator would have to prove certain elements.

(c) Transactions at an undervalue – pursuant to sections 266B, 266D, 266E of CWUMPO.

(d) Fraudulent trading – pursuant to section 275 of CWUMPO.

#### Question 1.7

Select the **correct** answer:

A receiver appointed pursuant to a charge created by a company (A) over its assets in favour of its bank (B), acts as:

(a) Agent of the company granting the charge – in this case A.

(b) Agent of the company appointing him – in this case B.

(c) An officer of the court.

(d) An employee or officer of the Official Receiver's Office.

#### Question 1.8

Between them, CWUMPO and the Companies Ordinance (Cap 622) (CO) provide a comprehensive statutory regime relating to corporate rescue.

(a) This statement is true – the provisions of these two statutes provide a comprehensive package of provisions relating to corporate rescue.

(b) This statement is untrue – CWUMPO alone provides a comprehensive regime for corporate rescue as well as for liquidations.

(c) This statement is untrue – CO alone provides for such a regime.

(d) This statement is untrue – Hong Kong has no comprehensive statutory regime for corporate rescue.

#### Question 1.9

Select the **correct** answer:

Part X of CWUMPO gives the Hong Kong court jurisdiction to wind up non-Hong Kong companies in certain circumstances. Aside from this section, other provisions relating to cross-border insolvencies are contained in:

(a) The UNCITRAL Model Law on Cross-Border Insolvency as adopted in Hong Kong.

(b) Parts of CWUMPO other than Part X.

(c) Guidance in common law judicial decisions.

(d) The Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319).

#### Question 1.10

Select the **correct** answer:

**Commented [RD(DW-H7)]:** Correct (1 mark). It should be remembered that the receiver also owes duties to the charge-holder (here, B), but acts as agent of the chargor

**Commented [RD(DW-H8)]:** Correct (1 mark). Although the CO contains provisions for schemes of arrangement, those provisions could not be said to be "a comprehensive statutory regime relating to corporate rescue". As one example, there is no moratorium.

**Commented [RD(DW-H9)]:** Correct (1 mark). Hong Kong has not enacted the Model Law; part X is the only part of CWUMPO dealing with the subject matter; and Cap 319 deals only with enforcement of foreign judgments

A liquidator appointed by the Cayman Islands court over a Cayman incorporated company believes that the company has a legal action it should pursue against defendants in Hong Kong. Leaving aside any potential jurisdictional challenges as regards the action itself (for example, the presence of an arbitration clause), the liquidator:

- (a) must first obtain an ancillary winding up order in Hong Kong.
- (b) can commence the litigation in the name of the company without further order in Hong Kong.
- (c) Must first seek a recognition order in Hong Kong and must obtain a letter of request from the Cayman court for such purpose.
- (d) Must first seek a recognition order in Hong Kong and can do so based solely on the Cayman winding up order and without a letter of request.

**Commented [RD(DW-H10)]:** Correct (1 mark). See for example the *Irish Shipping* case

## QUESTION 2 (direct questions) [10 marks]

### Question 2.1 [maximum 3 marks]

Describe the effects of the compulsory liquidation of a company upon a creditor who is pursuing the company by way of a civil action.

Pursuant to s.181 of the CWUMPO, the Court has a discretion after a winding up petition has been presented against a company and before a winding up order has been made to stay or to restrain proceedings against a company.

After a compulsory winding up order has been made against a company, a mandatory stay takes effect pursuant to s.186 of the CWUMPO in which no action or proceedings may be proceeded with or commenced against a company (save with leave of the court and subject to such terms imposed by the Court).

Any dispositions of property by the company after the presentation of the winding up petition (including, for example, the settlement of creditors' claims) will be void, unless the otherwise ordered by the Court (see Section 182 of the CWUMPO).

**Commented [RD(DW-H11)]:** 2 marks out of 3. Should refer to rules against retaining enforcement proceeds (s.183); additional ½ for linking s.182 to a possible settlement

**Commented [RD(DW-H12)]:** Or when PL is appointed.

### Question 2.2 [maximum 4 marks]

Identify each method by which a company can go into liquidation in Hong Kong and briefly describe the circumstances in which each method would usually be implemented.

Firstly, a company may enter compulsory liquidation pursuant to an order made by the High Court (which also has the power to appoint a liquidator to, *inter alia*, assume control over the affairs of the company and to realise the company's assets). There a variety of ways in which a company may enter compulsory liquidation. In particular:

- (a) A creditor may petition to wind up the company on the grounds that the company is unable to pay its debts. Whilst there is no formal definition of "insolvency", s. 178 of the CWUMPO defines "*inability to pay debts*".
- (b) A shareholder may petition to wind up the company on the ground that it is just and equitable to do so.

**Commented [RD(DW-H13)]:** 4 marks out of 4.

- (c) A company may petition for its own winding up pursuant to s.177(1)(a) of the CWUMPO upon a special resolution from its shareholders authorizing the presentation of a petition.

However, the court retains a discretion to refuse to wind up the company in the event that this appears to be in the best interests of the company's creditors.

Secondly, it is possible for a company to be placed into voluntary liquidation (whether a members' voluntary liquidation ("MVL") pursuant to ss. 228 to 239 of the CWUMPO or a creditors' voluntary liquidation ("CVL") pursuant to ss. 228 to 233 and 240 to 248 of the CWUMPO). In summary:

#### MVL

- (a) A MVL applies in circumstances where the company is solvent and the company's directors sign a "certificate of insolvency". The company's shareholders are also required to pass a special resolution to wind up the company (unless otherwise passed by an ordinary resolutions pursuant to the company's Articles). The procedure for the MVL may be utilized in circumstances where the company is in a position to settle all of its liabilities within 12 months of the commencement of the liquidation pursuant to s. 233(1) of the CWUMPO.

#### CVL

- (b) The company may also voluntarily put itself into a CVL in circumstances where the company is not solvent. A meeting of shareholders will need to be convened in order for a special resolution (i.e. at least 75% of the members) to be passed winding up the company. At the meeting of creditors (which is required to be convened no later than 14 days after the shareholders' meeting), a liquidator will be appointed pursuant to s.242 of the CWUMPO. A liquidator appointed at a shareholders' meeting prior to that date will possess only limited powers in respect of the company's affairs (s.243A of the CWUMPO). In comparison to the procedure for compulsory liquidation, a CVL can generally be put into effect much more quickly and at a lesser expense.

#### Section 228A of the CWUMPO

- (c) Finally, the directors have the power to resolve to voluntarily wind up the company at a meeting of the directors in cases of urgency pursuant to the provisions of s.228A of the CWUMPO. In order to utilize this provision, the directors will need to be satisfied that the company cannot by reason of its liabilities continue its business, it is necessary that the company be wound up and it is not reasonably practicable for the MVL or CVL procedure to be adopted. The directors will be required to certify these matters in a statement to the Registrar, together with confirmation that meetings of the company's shareholders and its creditors will be held within 28 days. In the event that the directors pursue this emergency procedure in circumstances where it is not appropriate to do so, there may be serious penalties (see *Re Pedagogic Innovations Ltd* [2014] 2 HKC 388; *Char On Man Peking Fur Factory (Hong Kong) Ltd* [2019] HKCFI 2141).

Commented [RD(DW-H14)]: Strictly, 228A is a type of CVL

#### **Question 2.3 [maximum 3 marks]**

Where a creditor presents a petition for the compulsory winding up of a company, a court hearing date is fixed approximately two (2) months after the date of presentation. Does Hong

Commented [RD(DW-H15)]: 2 ½ marks out of 3. Should have made clear that for a restructuring this cannot be the sole reason for appointment.

Kong law permit an officeholder to be appointed in the meantime (that is, during this interim period of two months before the petition is heard)? If "yes", in what circumstances? If "no", what is the policy reason for not permitting such appointment?

Pursuant to s.193(1) of the CWUMPO, the court "may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order in respect of a company". It is possible for private officeholders to be appointed as provisional liquidators in situations of urgency to preserve the company's assets during the period between the presentation of the petition and the winding up order being made (also see *Re Weihong Petroleum Co Ltd* [2002] HKCU 1425; *Re Legend International Resorts Ltd* [2006] 3 HKC 565).

Provisional liquidators are not appointed as a matter of course and there must be sufficient reasons to justify such an appointment (such as, for example, a risk that the company's assets may be dissipated before a winding up order is made). The provisional liquidator cannot realise the assets of the company (unless specifically authorised by the court for the purposes of preserving the company's value) and his powers may be limited by the court pursuant to s.193(3) of the CWUMPO.

If a provisional liquidator has been appointed pursuant to s.193 of the CWUMPO, then this person will continue in office without any further application being made to the court (see *Re Peregrine Investment Holdings Ltd (No 3)* [1999] 3 HKC 183). However, applications should not be made to appoint provisional liquidators in an attempt to merely circumvent the Official Receiver being appointed upon a winding up order being made (*Re Kong Wah Holdings & Anor* [2001] HKCU 423).

### QUESTION 3 (essay-type questions) [15 marks in total]

#### Question 3.1 [maximum 9 marks]

##### Question 3.1.1 [maximum 7 marks]

Describe Hong Kong law as it applies to corporate rescue, discussing any advantages / disadvantages to the current system.

There is no specific legislation in Hong Kong dealing with corporate rescues (such as the UK administration procedure or the US Chapter 11 procedure). Some formal guidance was provided in the "*Hong Kong Approach to Corporate Difficulties*" (the "**Guidelines**"), which were issued in November 1999. These Guidelines were issued over 20 years ago by the Hong Kong Association of Banks ("**HKAB**") and subsequently published jointly with Hong Kong Monetary Authority. They promoted bank creditors offering support to borrowers in financial difficulty (such as re-scheduling debts and/or providing additional capital), and the Guidelines also had some influence over the decisions made by the Hong Kong Courts (for example, see *Credit Lyonnais v SK Global* [2003] HKEC 937).

However, the Guidelines were subject to a number of important limitations. Firstly, they did not constitute statutory guidance and compliance by HKAB members was only strongly recommended. Secondly, the Guidelines only applied to bank creditors. Whilst this may reflect the historic position in the late 1990s in which it was common for principal creditors to be banks, the Guidelines do not take into account the growth of other creditors in line with the growth in alternative finance providers and alternative methods for companies to raise capital.

**Commented [RD(DW-H16):** 6 ½ marks out of 7. An excellent answer that could have got full marks if referred to the *Gibbs* principle.



Thirdly, the Guidelines acknowledge that such a work-out requires the agreement of all parties and there is no sanction or relief in respect of dissenting minorities.

Despite the lack of any formal statutory process for dealing with corporate rescues, the courts in Hong Kong have adopted a flexible approach in developing and applying common law principles to enable informal work-outs to take place. In particular, practitioners in Hong Kong have utilised schemes of arrangement as a creative means in which to effect restructurings.

Schemes of arrangement form part of a statutory regime in ss. 668 to 677 of the Companies Ordinance in which a company may make a binding arrangement with their creditors (such as the adjustment of debts) if the stipulated majorities of the relevant creditors approve and the arrangement is sanctioned by the court. One of the main advantages of schemes of arrangement is that it avoids the company being required to obtain the unanimous consent of all of its creditors to approve the arrangement (which may prove particularly useful to avoid certain creditors refusing to agree to an arrangement unless they receive an unfair advantage over other creditors in their class).

In *UDL Argos Engineering & Heavy Industries Co Ltd v Li Oi Lin* (2001) 4 HKCFAR 358 ("**UDL**"), the Court confirmed that the correct approach to schemes of arrangement is a three stage process, which is addressed in further detail below.

(1) The Convening Hearing

Firstly, an originating summons is filed seeking leave to convene meetings of the relevant creditors to consider and vote whether to approve the scheme (see O.102, r.2(1) of the Rules of the High Court ("**RHC**") and HKCP, O.102, 102/2/2, p.1529). The originating summons is filed on an *ex parte* basis (*Re Hawk Insurance* [2001] EWCA Civ 241 at p242; *UDL*, p.365, [12]-[14]), and an application may be filed by the debtor company (or its liquidator), a member or creditor.

The originating summons must identify the classes of creditors whose rights are sought to be released or varied under the scheme. Persons whose rights are "*sufficiently similar*" so that they can consult together as to their common interest should be summoned to a single meeting. Those persons with rights that are so dissimilar that they cannot sensibly consult together must be given separate meetings (see *UDL*, paragraph 27(2)). In *UDL*, the CFA held at paragraph 27(3) that:

*"The test is based on similarity or dissimilarity of legal rights against the company, not on similarity or dissimilarity of interests not derived from such legal rights. The fact that individuals may hold divergent views based on their private interests not derived from their legal rights against the company is not a ground for calling separate meetings."*

An application must be supported by an affirmation setting out the background to the scheme and must exhibit a number of documents, such as the draft explanatory statement, the draft scheme documents, notices of scheme meetings, proxy forms and the draft advertisement (see HKCP, H5B/2, p 378; O.38, r.2, O.41 RHC). The explanatory statement should provide sufficient detail to enable the affected creditors to be properly informed for the purposes of reaching a decision on the proposed scheme (see s.671 of the Companies Ordinance; *Re Heron International NV* [1994] 1 BCLC 66&).

At the convening hearing, the court will consider matters of jurisdiction (if relevant) and whether the explanatory statement, notices and scheme documents are appropriate (for example, whether the explanatory statement is sufficiently detailed) for the purpose

of deciding whether or not to make an order allowing a meeting of creditors to be convened.

Unlike the position in England, the courts in Hong Kong do not consider whether the classes are properly constituted at the convening hearing. This approach may be criticised as wasting significant time and costs in the event that the court later finds at the sanction hearing that the scheme meetings were not been properly convened. On the other hand, the CFA defended this approach in *UDL* on the basis that it avoids the requirement to serve notice of the initial application (and the consequent risks of incurring the costs of a contested convening hearing) and ensures that those "*advising the company take their responsibility seriously*" (see paragraph 14).

(2) The Scheme Meeting

The scheme meeting takes place and the results of the meeting are reported to the court by the chairman (who would have been appointed at the convening hearing).

Pursuant to s.674(1)(a)-(b) of the Companies Ordinance, the scheme is approved in the event that it is supported by a majority in number representing at least 75% by value of the creditors present and voting (whether in person or by proxy). Where there are different classes of scheme creditors, this test will apply to each class.

In the event that there are non-consenting creditors, those creditors may nevertheless be bound by the scheme if they are within a class where the requisite majorities of creditors have voted to approve the scheme.

(3) The Sanction Hearing

If the scheme is approved at the scheme meeting, the applicant is required to file a petition (supported by an affirmation) seeking an order that the court sanction the scheme (see O.102, r.5 RHC and HKCP, Part H Extract, H5B/2, p 379 and p 1553).

Even if the statutory majorities are attained and the court has jurisdiction to sanction a scheme, the court is not bound to do so (*UDL*, paragraph 27(5)). The court will "*decline to sanction a Scheme unless it is satisfied, not only that the meetings were properly constituted and that the proposals were approved by the requisite majorities, but that the result of each meeting fairly reflected the views of the creditors concerned*" (*UDL*, paragraph 27(6)).

In *Re Wheelock Properties Ltd* [2010] 4 HKLRD 587, Harris J summarised the matters which the court will have regard to at a sanction hearing as follows:

- (a) "*whether a scheme is for a permissible purpose...*;
- (b) "*whether members who are called on to vote as a single class have sufficiently similar legal rights that they can consult together with a view to their common interest at a single meeting*;
- (c) "*whether the meeting was duly convened in accordance with the court's directions*;
- (d) "*whether members have been given sufficient information about a scheme so as to enable them to make an informed decision whether or not to support it*;
- (e) "*whether a majority in number representing 75% in value of the members [or creditors] present and voting agree to the arrangement*; and
- (f) "*the discretionary element of the sanctioning process and in particular whether the court is satisfied that a scheme is one than an intelligent and honest man*

*acting in respect of his interests as a member of the class within which he votes, might reasonably approve."*

If the scheme is approved by the court, a certified copy of the court's order will be registered by the Registrar of Companies for Hong Kong (Companies Ordinance, s.674(6)). Third party releases are also permitted in appropriate circumstances (as is the case under English law) (see *Re Winsway Enterprises Holdings Ltd* [2017] 1 HKLRD 1; *Re Kaisa Group Holdings Ltd* [2017] 1 HKLRD 18).

However, one of the major disadvantages for utilising schemes of arrangements for dealing with corporate rescues is that there is no moratorium. Practitioners have attempted to address this issue by presenting a petition to wind up the company, together with an application seeking the appointment of provisional liquidators. In that way, a moratorium is achieved pursuant to s.182 of the CWUMPO, and the provisional liquidators are granted specific powers to investigate the possibility of restructuring the company's debts.

Such an approach became common following its approval in *Re Keview Technology (BVI) Limited* [2002] 2 HKLRD 290. The decision in *Re Legend International Resorts Limited* [2006] 2 HKLRD 192 gave rise to some concerns that provisional liquidator led restructurings had come to an end in Hong Kong. In that case, the Court of Appeal refused to appoint provisional liquidators solely for the purpose of carrying out a restructuring (which held to be opposite of the court's jurisdiction under ss. 192 to 194 of CWUMPO to appoint provisional liquidators "for the purpose of winding up" the company).

However, the position has since been clarified in *China Solar Energy Holdings Ltd* [2018] HKCFI 555 in which the court refused an application to discharge the provisional liquidators on the basis that their only remaining duty was to carry out a restructuring. In that case, the provisional liquidators had been appointed on the grounds of jeopardy to assets (but that asset had since been secured). Accordingly, if provisional liquidators are properly appointed in situations of urgency to preserve the company's assets, then they can also be granted a power to restructure the assets.

Finally, it is possible that the lack of a moratorium could be addressed in the future in the event that the Hong Kong courts permitted a stay under their case management powers (much like the position in England – see *BlueCrest Mercantile BV v Vietnam Shipbuilding Industry Group* [2013] 1146). Amendments have recently been made to the Rules of the High Court (RHC, Order 1B, r.1(2)(e)) so as to specifically empower the courts to grant a stay as part of their case management powers and the court may be willing to exercise such powers to assist in this respect.

### **Question 3.1.2 [maximum 2 marks]**

Discuss the possible reforms that have been (or are) under consideration with regard to corporate rescue.

The issue of whether legislation should be brought into effect to make provision for debt restructuring or rehabilitation have been mooted for around two decades. As recently stated by the Judge in *Re China Oil Gangran energy Group Holdings Ltd* [2020] HKCFI 825 ("*China Oil*"), this brings about a rather "*unsatisfactory state of affairs*".

The Corporate Rescue Bill was introduced into the Legislative Council ("*Legco*") in 2001, which proposed the appointment of a provisional supervisor to explore restructuring or

**Commented [RD(DW-H17):** s.186 (although s182 – void dispositions – also helpful)

**Commented [RD(DW-H18):** 2 marks out of 2. Good answer

rehabilitation procedures. This Bill was proposed following recommendations by the Law Reform Commission in 1996. Whilst the Bill provided the benefit of a moratorium, it also attracted a great deal of criticism from business groups, who were concerned that some of the insolvent trading provisions would discourage individuals from wishing to take up appointments as directors. Ultimately, the Bill lapsed from Legco's schedule in July 2004. Despite the Bill being revised over the past few years (by the Secretary for Financial Services and the Treasury Bureau in 2017 and the Legco Panel on Financial Affairs in 2018), the Bill has not yet been introduced into Legco's session.

Given that many other jurisdictions have introduced legislation regarding corporate rescue following the economic problems caused by the COVID-19 pandemic, it is particularly desirable that steps are taken to improve Hong Kong's legislative position. This was recently advocated by a Judge in *China Oil*, who recommended that: "*Immediate...amendment to section 193 of [CWUMPO] to provide expressly for provisional liquidators to be given restructuring powers is desirable.*"

### Question 3.2 [maximum 6 marks]

Although Hong Kong has little specific legislation dealing with cross-border insolvency, the Hong Kong courts have supported foreign insolvencies through the common law. Discuss.

Whilst the Hong Kong courts have jurisdiction to wind up companies that are not incorporated in Hong Kong and unregistered companies (as defined in s.326 of the CWUPMO), there is no specific legislation addressing cross-border insolvency (see *The Joint Official Liquidators of A Company v B and Another* [2014] 4 HKLRD 374 ("*A Co v B*"), paragraph 11). This is particularly surprising given that only 10.1% of companies listed on the Hong Kong Stock Exchange at the end of 2019 were incorporated in Hong Kong (see *HKEX Fact Book 2019*).

In addition, unlike many other jurisdictions, Hong Kong has not adopted the UNCITRAL Model Law on Cross-Border Insolvency (with or without modification) and is not a signatory to any international treaties in respect of cross-border insolvency (see Department of Justice website, Multilateral Agreements at <https://www.doj.gov.hk/en/external/treaties.html>; also note that Hong Kong is not listed as one of the States in the overview of the status of UNCITRAL Conventions and Model Laws at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/overview-status-table.pdf>).

Given that Hong Kong has very little specific legislation dealing with cross-border insolvency, the Hong Kong courts have applied common law principles in order to assist foreign officeholders of insolvency proceedings (which continued after Hong Kong became a Special Administrative Region of the People's Republic of China ("*PRC*") in 1997 as confirmed in *Chen Li Hung and Another v Ting Lei Miao and Others* (2000) 3 HKCFAR 9). Whilst the nature of such common law developments may lack the advantages of predictability afforded by legislation in some circumstances, the Hong Kong courts have overall remained flexible and willing to provide assistance to foreign office holders in a wide variety of cross-border insolvency matters.

Firstly, a foreign liquidator is not required to seek a formal order recognising his appointment for the purpose of commencing an action in Hong Kong in the name of the insolvent company (see *Re Irish Shipping* [1985] HKLR 437).

Secondly, a foreign officeholder in insolvency proceedings may seek recognition in Hong Kong and seek assistance from the Courts. Accordingly, it is not necessary for foreign officeholders to commence separate ancillary liquidation proceedings to take steps in Hong Kong (unless

**Commented [RD(DW-H19):** 4 ½ marks out of 6. When referring to the Part X jurisdiction, the core requirements should be examined.

the full range of powers exercisable by a Hong Kong liquidator are required). The general practice of the Hong Kong court is that the foreign officeholder presents a letter of request issued by the foreign court requesting assistance from the Hong Kong courts (although, arguably, such a formal request is not strictly necessary).

In *A Co v B*, the Hong Kong court recognised the appointment of liquidators appointed in the Cayman Islands and assisted those officeholders by making orders relating to the production of documents from the respondents. During the course of that judgment, the Court approved the approach adopted in paragraph 60 of Kawaley J's judgment in *Re Founding Partners Global Fund Ltd* [2011] Bda LR 22 states at paragraph 18 that:

*"The Companies court may pursuant to a letter of request from a common law jurisdiction with a similar substantive insolvency law make an order of a type which is available to a provisional liquidator or liquidator under Hong Kong's insolvency regime".*

Since *A Co v B*, the Hong Kong court has also recognised foreign officeholders who are not based in "a common law jurisdiction". For example, in *Re CEFC Shanghai International Group Ltd (Mainland Liquidation)* [2020] HKCFI 167, the Hong Kong court recognised the appointment of foreign officeholders in the PRC on the basis that the court held that PRC insolvency law proceedings provided for a collective process. The court also commented on the requirement for reciprocity at paragraph 33 as follows:

*"...while the principles that govern common law recognition and assistance did not require reciprocity to be demonstrated, the extent to which greater assistance should be provided to Mainland Chinese administrators in future would be decided on a case-by-case basis and the development of recognition was likely to be influenced by the extent to which the court was satisfied that the Mainland promoted a unitary approach to transnational insolvencies."*

In *Singularis Holdings v PricewaterhouseCoopers* [2014] UKPC 36, the Privy Council (Bermuda) provided further clarification in respect of the exercise of common law powers to assist foreign officeholders. In that case, the Privy Council held that such powers exist where the power sought to be exercised by the foreign liquidator exists both in the jurisdiction of the principal insolvency and the assisting jurisdiction (the "**Singularis Principle**"). By way of example, section 103 of the Cayman Islands Companies Act (2021 Revision) is much more restrictive than the Hong Kong equivalent in s.286B of the CWUMPO in respect of the examination of individuals. In accordance with the Singularis Principle, Cayman Islands liquidators seeking recognition in Hong Kong for the purpose of exercising such powers would be subject to the restrictions imposed by their home jurisdiction.

Another example of the application of the Singularis Principle is the case of *The Joint Administrators of African minerals Limited (in administration) v Madison Pacific Trust Limited & Shandong Steel Hong Kong Zengli Limited* [2015] 4 HKC 215. In that case, the Hong Kong court refused an application for recognition by English administrators and an extension of the English moratorium. The reason for this was that there was no equivalent administration process in Hong Kong and a moratorium was not available in Hong Kong. On the facts of that case, the effect of granting the recognition order sought by the English administrators also would have been to restrain a security agent from enforcing its security.

In recent years and following *Singularis*, there have been numerous authorities in the Hong Kong courts addressing cross-border insolvency issues (particularly in relation to the production of documents or the examination of individuals) and primarily following applications by office holders in the Cayman Islands and the British Virgin Islands (e.g. *Re Centaur Litigation SPC* (unreported, HCMP 3389/2015, 10 March 2016; *Re China Solar Energy Holdings Ltd* [2018] 2 HKLRD 338; *Re Moody Technology Holdings Ltd* [2020] HKCFI 416).

Furthermore, a "standard order" has been developed by the Hong Kong courts in respect of such orders (see, for example, the *Centaur* case).

It remains to be seen how the Hong Kong courts will approach situations in which the foreign insolvency regime is not identical to the jurisdiction in Hong Kong. However, it appears likely that the Hong Kong courts would follow English authorities in this respect (such as *Re HIH* [2008] 1 WLR 852 and *Re BCCI (No.10)* [1993] BCLC 1490) and this that such differences will not necessarily prevent the Hong Kong court from providing assistance. Whilst there is not yet any direct authority on this point in Hong Kong, in *Re GITIC* (unreported, HCMP 2638/2017, 10 October 2018) the Hong Kong court permitted a Hong Kong liquidator to deal with assets in the PRC in a manner in which the *pari passu* principle was not given full effect.

Thirdly, the Hong Kong courts have been willing to adopt the use of protocols in respect of parallel insolvency proceedings so as to provide guidelines to officeholders (see, for example, *Jinro (HK) International Ltd* [2003] 3 HKLRD 459).

Finally, the Hong Kong courts have afforded assistance to foreign rehabilitation proceedings by refusing to permit a judgment to be enforced against a company's assets situated in Hong Kong if it is considered that it should provide such assistance on the basis of principles of comity. One example of the Hong Kong court providing such assistance is the case of *CCIC Finance v GITIC* [2005] 2 HKC 589 in garnishee proceedings brought against a company subject to existing insolvency proceedings in the PRC were stayed by the Hong Kong court (also see *Aoki* [2004] 2 HKLRD 760; *Skillsoft Asia Pacific Pty Ltd v Ambow Education Holding Ltd* [2014] 1 HKLRD 520; and *Re Z-Obee Holdings Ltd* [2018] 1 HKLRD 165).

#### QUESTION 4 (fact-based application-type question) [15 marks in total]

##### Question 4.1 [maximum 4 marks]

A receiver is appointed pursuant to a floating charge over all the assets and undertaking of Pacific Tin Mines Limited (PTM), a Hong Kong company. Shortly after the receiver's appointment, PTM is put into liquidation. The liquidator writes to the receiver and asks her to hand over all assets (or realisations from assets) of PTM under her control so that the liquidator can pay the costs and expenses of the liquidation and make a distribution to PTM's unsecured creditors. You are asked to advise the liquidator. What (if any) assets or realisations should be handed over by the receiver?

Following the crystallisation of the floating charge, the security of the charge holder becomes fixed over the assets in existence at that time. The receiver's powers are determined by the terms of the charge under which he is appointed (which will generally include a power to sell the charged assets). The receiver will be entitled to be paid out of the assets over which he is appointed. In addition, the receiver will be able to exercise a lien over such assets until his fees have been paid.

The receiver's primary duty will be to the charge holder (rather than to PTM), and the appointment of the liquidator of PTM will not affect the receiver's powers to hold or sell the charged property under which he is appointed. Pursuant to s.348(1) of the Companies Ordinance, any realisations made by the receiver out of the charged assets of PTM will not be available to the liquidator for paying liquidation expenses.

Whilst a floating charge holder will generally obtain priority over PTM's unsecured creditors, there are certain exceptions to this in the legislation with regards to preferential claims (such as payments to employees). Section 265(3B) of the CWUMPO provides that in the event of a company being placed into liquidation, the receiver is required to pay the company's preferential

Commented [RD(DW-H20)]: 3 ½ marks out of 4. A good answer but with one misunderstanding, noted below

Commented [RD(DW-H21)]: s.348 CO deals with registration of the charge, not the interplay between floating charge realisations and liquidation expenses.

creditors out of the realisations from the floating charge (unless there are sufficient "uncharged assets" available to the liquidator). It is also noted that Section 79 of the CWUMPO provides that preferential claims must be paid out of floating charge realisations even if the company is not in liquidation. Accordingly, the liquidator will be entitled to request that any assets or realisations to meet preferential claims are handed over by the receiver to the extent that any "uncharged assets" are insufficient to meet those claims.

Finally, it is worth the liquidator checking that there are no grounds to challenge the validity of the floating charge under ss.267 and 267A of the CWUMPO. There may be some scope to do so if the charge was entered into within 12 months prior to the commencement of the liquidation (in respect of persons who are not connected with the company) and PTM was unable to pay its debts at the time of the creation of the charge.

#### Question 4.2 [maximum 4 marks]

A liquidator is appointed over luxury car dealer Billion Happy Limited (BH) and learns that BH has recently been granted a facility by Hammerhead Finance Co Limited (HF). HF has shown the liquidator a document entitled "Receivables Purchase Agreement", claiming that all accounts receivables due from BH's customers therefore belong to HF. The document also asserts that as an alternative to ownership of the receivables, HF has a fixed charge over the receivables. Advances from HF to BH were sporadic and could not necessarily be matched to invoices. Further, some customers of BH had paid certain invoices to an account with HF, but which account BH then operated for working capital purposes.

Telford Co Limited (TC) contacts the liquidator of BH to say that TC had been helping BH sell its cars to wealthy businessmen on the Mainland. TC shows the liquidator an agreement asserting that if BH goes into liquidation then it is deemed that immediately before the liquidation, all cars held at BH's showrooms belong to TC.

The liquidator asks for your thoughts on what issues she should consider when dealing with HF and TC.

In respect of HF, the liquidator ought to carefully review the terms of the Receivables Purchase Agreement and gather information as to the effect of the arrangement in order to assess whether the agreement is likely to constitute a form of a loan arrangement with an assignment mechanism operating as security or an absolute sale of the accounts receivables.

Whilst HF appears to contend that the Receivables Purchase Agreement operates as an absolute sale of the accounts receivables, the language of that agreement will not necessarily be conclusive and the court will consider the legal substance of the arrangement (see *Hallmark Cards Inc v Yun Choy Ltd* HCMP 1330 of 2009, 16 June 2009, unreported; also see the decision of the English courts in *Orion Finance Ltd v Crown Financial Management* [1996] BCC 621). As such, there may be an argument that the Receivables Purchase Agreement should properly be construed as a form of secured financing (which would require registration) given that there appears to be some difficulties with matching payments by HF to invoices. In respect of this issue, the liquidator is advised to analyse the operation of the account with HF and check whether BH sent any notifications to their customers instructing them to pay certain invoices into an account with HF. The fact that BH appeared to be operating this account for working capital purposes may provide grounds that this arrangement was far more akin to a secured lending facility.

In the event that the Receivables Purchase Agreement is found to constitute a form of secured financing, then that agreement would be void against the liquidator in the event that it has not

**Commented [RD(DW-H22)]:** 3 ½ marks out of 4. A good answer that could also have explored whether the charge should in fact be treated as floating (using *Spectrum* control principles)

been registered. Notably, s.334 of the Companies Ordinance requires that various charges are registered (including, *inter alia*, charges over book debts). Such registration must occur within one month of the date of the execution of the charge (see s.335(5)(a) of the Companies Ordinance; although note that s.346 enables the court to extend this time). The liquidator is advised to conduct a search of the Companies Registry via the online search site (ICRIS) to check whether any charges created by the Receivables Purchase Agreement have been registered. In the event that the charge has not been registered (or has not been registered within the stipulated time period), this charge will be void as against the liquidator.

In respect of TC, the liquidator ought to assess whether the relevant clause in the agreement between BH and TC breaches the anti-deprivation principle. *Ipsa facto* clauses which provide that a contract is terminated upon the insolvency of one of the parties are generally upheld as a matter of Hong Kong law. However, the clause in this case appears to go much further than merely terminating the agreement.

In assessing whether the relevant clause is likely to be struck out as a "*fraud on the insolvency laws*", it is important to consider whether (i) the clause is part of a genuine commercial arrangement; (ii) the clause intends to evade insolvency laws; (iii) the clause operates in circumstances other than insolvency, and (iv) whether the asset concerned is "flawed" (see ***Belmont Park Investments PTY Limited v BNY Corporate Trustee Services Limited and Lehman Brothers Special Financing Inc*** [2011] UKSC 38).

Whilst the liquidator will need to assess the precise language of the relevant clause of TC's agreement with BH, it appears from the current information above that the relevant clause is likely to be found to be in breach of the anti-deprivation principle. In particular, the clause does not simply appear to terminate the agreement upon the insolvency of BH (as with an *ipsa facto* clause), but also seeks to transfer ownership of BH's assets (i.e. the cars in BH's showrooms) to TC in the event of insolvency. In the absence of this clause, it appears that BH's cars would otherwise have been available to satisfy BH's debts. As such, the liquidator may be able to apply for this clause to be struck down by the courts in Hong Kong on the basis that it would give TC "*an advantage at the expense of creditors where there was an insolvency*" (see ***Peregrine Investments Holdings Ltd v Asian Infrastructure Fund Management Co Ltd*** [2004] 1 HKLRD 598). However, in the event that TC can satisfy the Court that the agreement was part of a genuine commercial transaction and was not entered into with the intention of creating an advantage in the event of BH's insolvency, then the clause is unlikely to be in breach of the anti-deprivation principle (see ***Belmont Park Investments PTY Limited v BNY Corporate Trustee Services Limited and Lehman Brothers Special Financing Inc*** [2011] UKSC 38).

#### Question 4.3 [maximum 7 marks]

Cyberbay MedTech Limited (Cyberbay) is a Cayman Islands company listed on the Stock Exchange of Hong Kong. This company appeared in the self-assessment questions in your guidance text, where you were asked to consider the steps that the Cayman-appointed officeholder might take in an effort to restructure the company's indebtedness due to holders of certain Notes. The joint provisional liquidators (JPLs) have now uncovered concerns about accounting irregularities in its Mainland operations and there are also press reports that the founder and Chairman has disappeared in the Mainland and cannot be contacted.

Upon further investigation, it appears that the Chairman's disappearance certainly looks as if it is linked to the "accounting irregularities" with large sums of money (raised from the issue of the Notes and the bank borrowing) being paid to entities with no apparent real business with Cyberbay. There is an individual in Hong Kong, Mr Pottinger, who is a friend and business

**Commented [RD(DW-H23)]:** 6 ½ marks out of 7. A very good, comprehensive answer. Additional ½ if had mentioned perhaps taking control of the HK subsidiary; action against recipients; also, having referred to fiduciary duty claims, not really necessary to discuss fraudulent trading (very rare for that to succeed and if Chairman in Mainland, unlikely to be much utility anyway)



associate of the Chairman. It is believed that Pottinger has information that will help shed light on the payments. The JPLs ask you if there is anything they can do in Hong Kong in this regard. Advise them.

Firstly, the JPLs may seek recognition of their appointment in Hong Kong by presenting a letter of request issued by the Grand Court in the Cayman Islands requesting assistance from the Hong Kong courts (see *The Joint Official Liquidators of A Company v B and Another* [2014] 4 HKLRD 374, paragraph 60). Assistance may also be obtained from Hong Kong banks, who are likely to provide the JPLs as foreign representatives with documents relating to Cyberbay's bank accounts without the necessity of a court order (for example, see *Bay Capital Asia Fund LP (In Official Liquidation) v DBS Bank (Hong Kong)*, unreported, HCMP 3104/2015, 2 November 2016).

Whilst the powers to examine individuals under oath pursuant to s.286B of the CWUMPO are wide in scope, the JPLs would be prevented pursuant to the principle in *Singularis Holdings v PricewaterhouseCoopers* [2014] UKPC 36 from being granted powers which are much more wide ranging than those available to the JPLs in the Cayman Islands (as detailed in the response to Question 3.2 above). Advice from attorneys in the Cayman Islands is required in relation to the scope of the examination powers available in the Cayman Islands and whether such powers would be sufficient for the purposes of examining Mr Pottinger. Subject to such advice and given the importance of seeking information from Mr Pottinger, it may be preferable for the JPLs to pursue an ancillary liquidation in Hong Kong (as outlined below).

Secondly, the JPLs may pursue an ancillary liquidation in Hong Kong in order to benefit from the full range of powers available to Hong Kong liquidators (see s.199 and Schedule 25 of the CWUMPO). In particular, Hong Kong appointed liquidator may apply for an order that Mr Pottinger attend court for examination under oath in relation to the affairs or property of the company or the delivery up of documents pursuant to s.286B of the CWUMPO.

Any dispositions of Cyberbay's property (such as payments to entities) made after the commencement of the winding up will be void (unless otherwise ordered) pursuant to s.182 of the CWUMPO. In practice, Cyberbay's bank accounts in Hong Kong are likely to be frozen following the presentation of the petition to avoid the risk of any voidable dispositions being made (which may be particularly beneficial pending the JPLs' investigations).

Part X of the CWUMPO applies to the winding of "unregistered companies", (which also includes a "registered non-Hong Kong company" pursuant to section 326(2) of the CWUMPO). Pursuant to section 327(3) of the CWUMPO, an unregistered company may be wound up in a number of circumstances, including (*inter alia*) where the company is carrying on business for the purpose of winding up its affairs, if the company is unable to pay its debts and if the court is of the opinion that it is just and equitable that the company should be wound up.

The JPLs must also be able to demonstrate that Cyberbay is sufficiently connected to Hong Kong by satisfying the "three core requirements" in *Kam Leung Sui Kwan v Kam Kwan Lai and Others* (2015) 18 HKCFAR 501. The courts will not adopt a less stringent approach in assessing these requirements in respect of ancillary liquidations (*Re Pioneer Iron and Steel Group Company Limited, Unreported*, HCCW 322/2010. 6 March 2013). As to this:

- (1) Firstly, there must be a sufficient connection with Hong Kong. This may be due to the presence of assets within the jurisdiction of any nature (see *Re Irish Shipping Ltd* [1985] HKLR 437) or genuine link of substance between the company and Hong Kong (see *Re China Medical* [2014] 2 HKLRD 997).
- (2) Secondly, there must be a reasonably possibility that the winding up order would benefit those applying for it. In *Re Solar Touch Ltd* [2004] 3 HKLRD 15 the petitioner

was unable to satisfy this requirement in circumstances where the purpose was to appoint liquidators to carry out investigations in the PRC and that the PRC court would not recognise the appointment.

- (3) Thirdly, the Court must be able to exercise jurisdiction over one or more persons interested in the distribution of Cyberbay's assets. Unless the connection with Hong Kong is sufficiently strong and the benefits to creditors are sufficiently substantial, this requirement must be met (see *Re China Medical* [2018] HKCA 111).

Whilst further information should be obtained in support of the above requirements (such as Cyberbay's assets), it appears that these requirements are likely to be satisfied given that there are at least some assets in Hong Kong (Cyberbay leased offices in Hong Kong and has a Hong Kong subsidiary), there is a need for investigations to be carried out in Hong Kong and Cyberbay was running a business in Hong Kong and employed several employees for this purpose.

Thirdly, following the presentation of a petition to wind up Cyberbay, it is possible for an application to be made for the appointment of provisional liquidators pursuant to s.193 of the CWUMPO. This may be useful if urgent action is required to be taken to preserve the Cyberbay's assets following the disappearance of the founder and Chairman and the discovery that substantial sums have already apparently been dissipated. Such action may include wide powers to examine persons on oath pursuant to s.286B of the CWUMPO (as outlined above). In the event that the application for the appointment of provisional liquidators is successful, there will also be a mandatory stay of any action or proceedings against Cyberbay in accordance with s.186 of the CWUMPO.

Finally, subject to the outcome of the JPLs' investigations, there may be a number of claims available to the JPLs in the future in respect of the substantial payments made to entities with no apparent real business with Cyberbay. The most likely potential claims for the JPLs to consider on the basis of the existing information are claims for breach of fiduciary duty by the Chairman.

The JPLs may also be able to challenge the substantial payments as transactions at an undervalue pursuant to ss.266B, 266E and 266F of the CWUMPO in the event that: (i) such payments were made for no consideration (or significantly less than any consideration provided by those entities); (ii) the transactions took place within the relevant time (namely, within five years before the commencement of the winding up of Cyberbay); and (iii) at the time of each of those transactions, Cyberbay was unable to pay its debts or became unable to pay its debts as a result of such transactions. On the present facts, there does not appear to be any defence to such claims on the basis that the transactions were entered into by Cyberbay in good faith, for the purposes of carrying out its business or that there were reasonable grounds for believing that the transactions would benefit Cyberbay. In the event that the JPLs are successful in respect of such claims, the court has a wide discretion to make any order it thinks fit.

Whilst the JPLs ought to keep in mind any potential challenges of the payments to the entities as unfair preferences pursuant to c.266, 266A and 266B of the CWUMPO, it does not appear from the existing information that these entities were creditors of Cyberbay given that they had no real business with Cyberbay.

In addition, the JPLs could consider whether there is sufficient evidence to warrant actions for fraudulent trading against the Chairman on the basis that the business had been carried out with the intent to defraud creditors (s.275 of the CWUMPO). If successful, the Chairman could be held personally liable for some or all of Cyberbay's debts. A finding in respect of fraudulent trading may also form one of the grounds upon which Hong Kong appointed liquidators may

recommend in their report to the Official Receiver that a disqualification order should be made (see ss.168D and 168L of the CWUMPO). However, there is a high threshold to overcome in respect of such actions for fraudulent trading given that the court to make a subjective determination in respect of whether the Chairman acted dishonestly.

**TOTAL: 45 MARKS OUT OF 50**

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**\* End of Assessment \***