



**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.**

#### **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-H1)]:** Incorrect (0 marks). As it pre-dates 1997, the decision would have formed part of the common law as at the date of the Handover

**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.

**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

**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.

**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.

**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).

**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

**Question 1.10**

Select the **correct** answer:

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.

Once a winding-up order is made to place a company in compulsory liquidation, no action or proceeding may be proceeded with or commenced against the company, except by leave of the court and subject to such terms as the court may impose (under CWUMP section 186).

The creditor would therefore need to apply to court for leave to proceed with the civil action (or could apply to stay the liquidation).

If the creditor is unable to proceed with the civil claim they would need to submit a proof of debt in the liquidation, to be adjudicated by the liquidator.

**Commented [RD(DW-H11)]:** ½ marks out of 3. S.186 also applies where provisional liquidator appointed. Should also refer to discretionary stay (s.181) and restrictions on retaining attachments etc. (s.183)

##### 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.

The methods of corporate liquidation are as follows:

1. Member's voluntary liquidation – used where the company will be able to settle all liabilities within 12 months of the commencement of liquidation
2. Creditors' voluntary liquidation – used where the company decides to put itself into liquidation but is not solvent
3. Section 228A liquidation – used where the directors consider that the company should be wound up with immediate effect (and no other liquidation procedure is suitable)
4. Compulsory liquidation – used where the company is wound up by the Court, most commonly where it cannot pay its debts or where it is just and equitable for the company to be wound up.

**Commented [RD(DW-H12)]:** 4 marks out of 4.

**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 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?

Official liquidators may only be appointed if a winding-up Order is made following the hearing of the petition. However, in certain circumstances a provisional liquidator may be appointed following presentation of the petition but before it is heard (s.193 CWUMPO). Such a provisional liquidator would be tasked with preserving the assets of the company during that interim period. An application to appoint such a provisional liquidator may be made at any time after the petition has been presented, or can in urgent cases be made at the same time as the petition is presented. However, the court would not appoint a provisional liquidator under section 193 if the application is made for the purpose of avoiding having the Official Receiver as provisional liquidator upon the winding-up order being made (and indeed such an application on that basis should not be made).

**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.

At present there is no corporate rescue legislation in Hong Kong. However, there are two forms of corporate rescue procedures in the form of (i) a provisional liquidation during which a compromise with creditors may be effected and (ii) a Scheme of Arrangement. Those two procedures are commonly combined. Broadly speaking the disadvantage of such system is a lack of certainty (which a jurisdiction such as the US has with the Chapter 11 procedure), whilst the advantage is that the Court retains discretion to facilitate corporate rescue and has shown itself to be flexible in doing so depending on the circumstances of the case.

In order to seek corporate rescue through a provisional liquidation, a winding-up petition would be presented followed by an application to appoint the provisional liquidator ("PL") before the winding-up order is made. However, following the Legend Resorts decision, the Court will not appoint a PL solely for the purpose of effecting a restructuring; but will consider doing so the company's assets are also in jeopardy.

If a PL is appointed under s 193 CWUMPO the company will benefit from a moratorium in order to have breathing space for negotiations with creditors (which can include a scheme of arrangement discussed below). It is important to consider whether the PL procedure may harm the company's chances of a restructuring by deterring investors. Where there are bank creditors, they would be expected to comply with the HKMA guidelines (although these are not formally binding, but likely to be given weight by the Court). However, other non-bank creditors will have more flexibility not to approach the company's financial difficulties in line with the HKMA guidelines.

**Commented [RD(DW-H13)]:** 2 marks out of 3. The additional mark would have been given for referencing the powers of a provisional liquidator and the fact that although a PL can have restructuring powers that cannot be the only reason for the appointment (per *Legend*)

**Commented [RD(DW-H14)]:** 4 ½ marks out of 7. Issuing a few elements. For example, reference should be made to informal workouts; the court's discretion to not make a winding up order; and more detail on schemes (the need to carefully select classes the majorities required; court's role on sanction; limitations due to the *Gibbs* principle)

The Scheme of Arrangement (governed by Part 13, division 2 of the Companies Ordinance) procedure is an important potential route for corporate rescue. This works as a court sanctioned compromise of arrangement which binds the creditors of the relevant class, and can allow for a 'cram down' of dissenting creditors in that class. A scheme of arrangement by itself does not benefit from a moratorium, which as above, is an important tool in order to provide breathing space for negotiations with creditors. Therefore the common practice is to make a PL appointment and then for the scheme of arrangement procedure to be used.

**Question 3.1.2 [maximum 2 marks]**

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

At present there are two potential reforms which could be put into place.

Firstly, the Hong Kong Companies Judge has suggested that section 193 of CWUMO could be amended in order to allow for provisional liquidators to be appointed solely for restructuring purposes and given appropriate powers.

Secondly the Corporate Rescue Bill has been under consideration since 2001. This would provide for a 'provisional supervisor' to be appointed, with a view to exploring restructuring or other rehabilitation procedures. However, there are a number of perceived problems with the Bill and, after much delay in any implementation, it is unclear whether it will ultimately be passed.

**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.

Hong Kong does not have any statutory provisions dealing with cross-border insolvency; it has not adopted the UNCITRAL Model Law on Cross-Border insolvency; and it is not a party to any relevant treaties or bilateral agreements.

However, the courts of Hong Kong have shown themselves to be supportive of cross-border insolvencies in the application of common law. It is notable that a foreign liquidator's right to bring an action in Hong Kong in the name of the company has long been recognised, without there being any formal order regarding recognition of the foreign liquidator being required for that purpose.

The Hong Kong Court also assists foreign corporate rescue procedures by refusing to allow enforcement of a judgement against the Hong Kong assets of the relevant company. In doing so the Court adopts a two-stage approach under which it deals with the issues of liability and enforcement separately. In this way even if liability is established, the court may refuse enforcement against Hong Kong based assets of the company on the basis of the principle of comity by which it will assist foreign court sanctioned corporate rescue proceedings. With regard to international corporate rescue, the Court has also sanctioned schemes of arrangement promoted by foreign companies.

The Court also has jurisdiction to assist foreign insolvency procedures by commencing an ancillary liquidation in Hong Kong. In doing so the Court applies an approach of 'modified

**Commented [RD(DW-H15)]:** 1 mark out of 2. The answer should refer to and examine briefly the elements of and reasons for failure of the Corporate Rescue Bill– how a possible reform failed can be a good indicator as to the direction a jurisdiction is likely to take.

**Commented [RD(DW-H16)]:** 3 marks out of 6. Should refer to the Part X jurisdiction and core requirements needed therefor. Also recognition via letter of request and the *Singularis* limitation



universalism', in that the liquidation in Hong Kong will be treated as ancillary in the sense that the functions of the liquidator would be to collect assets in Hong Kong, to settle a list of Hong Kong creditors and to transmit the assets and the list to the principal liquidator to enable a dividend to be declared or paid. It should be noted that it is now more common for practitioners to seek recognition of their foreign appointment and assistance by such recognition rather than pursuing ancillary liquidations.

In circumstances where there are parallel foreign and Hong Kong insolvency procedures ongoing, the Court will also be willing to adopt the use of protocols to help co-ordinate the activities of such parallel proceedings

Such flexibility and approach to assist foreign insolvency proceedings reflects Hong Kong long established position as an international financial centre, whereby companies operating in Hong Kong may be incorporated elsewhere (notably the Cayman Islands in respect of listed companies), and on the other hand Hong Kong incorporated companies will commonly have operations abroad.

#### **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?

The receiver's duty is to collect in the assets for the charge holder but owes a residual duty to the PTM as charger.

The liquidation of PTM does not affect the receiver's right to hold and / or sell the assets secured by the floating charge under which he is appointed.

Those assets and any realisation from the same are not available to the liquidator for payment of liquidation expenses. However, following PTM's liquidation, the receiver must pay PTM's preferential creditors out of the realisations if there are insufficient assets to meet those claims from the uncharged assets available to the liquidator.

The liquidator may also consider whether the floating charge may be voidable if it was created 6 months (or 2 years if the charge is "connected") prior to the liquidation (except in respect of new money lent). If the charge can be voided then all of the assets / realisations in question would be available to the liquidator,

##### **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

**Commented [RD(DW-H17)]:** 3 marks out of 4. Good answer but see comment below

**Commented [RD(DW-H18)]:** These periods are for unfair preference. If explore that then need to go into 'desire to prefer' requirements. Should also consider s.267 (then 1 and 2 years)

**Commented [RD(DW-H19)]:** 3 marks out of 4. See note below, and should also deal with purported charge is in fact floating (*Spectrum* principles as to control etc.). Brings in the unique floating charge provisions.

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.

#### Hammerhead Finance Co Limited (HF)

The liquidator will need to establish whether the arrangement amounted to a sale of the receivables or the granting of security over such receivables. The instrument itself should be considered carefully. To the extent it does purport to have granted a fixed charge over the receivables, then the instrument would need to have been registered. If it was not registered the arrangement would be void as against the liquidator. Should a dispute arise between the liquidator and HF as to the nature and effect of the instrument, the Court would look at the actual effect of the agreement (over and above the language used). Here customers had paid monies to an account with HF, but which BH operated for working capital purposes. This may suggest that the arrangement was intended to be a form of security rather than an outright sale of the receivables. However, if the arrangement was by way of a sale, no registration would have been required.

The liquidator may consider whether the arrangement could be voided, including as an extortionate credit transaction

#### Telford Co Limited (TC)

The agreement between TC and BH appears to include a clause that provides for the modification of the contract upon the insolvency of BH. Generally, such contract terms would be upheld by the Hong Kong courts. However, pursuant to the anti-deprivation principle the courts would not uphold the contract terms if it would result in general creditors being deprived of an asset that would in the absence of the clause be used to satisfy their debts. Moreover, the anti-deprivation principle provides that the contractual term would not be upheld if it was intended as a 'fraud on insolvency laws'. That may well be the case here. However, we need more information, most notably as to the law and jurisdiction clauses of the contract in question. As TC is based in Mainland China, there will also be issues of cross-border enforcement to consider. If the contract is governed by Chinese law, the liquidator will need to take Chinese law advice.

#### **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

**Commented [RD(DW-H20)]:** There is no reference to TC being in Mainland China

**Commented [RD(DW-H21)]:** 2 ½ marks out of 7. Doesn't examine what need to do for recognition, e.g. letter of request needed. Should also mention ability to get documents that belong to the company (*Bay Capital*), or sue if enough evidence, without any order. Consider whether could take control of the Hong Kong subsidiary (either by winding up or using powers as shareholders to change board). Also, ancillary liquidation so should discuss core requirements.

Cyberbay. There is an individual in Hong Kong, Mr Pottinger, who is a friend and business 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.

The JPLs may apply to the court for an order that Mr Pottinger should attend court and be examined on oath pursuant to s. 268B of CWUMPO. Under that section the Court could also order the delivery up of any relevant documents related to the affairs or property of Cyberbay. The JPLs are under a duty to make due investigation in the interests of the Company's creditors and must do so in order to seek to preserve the assets of the Company.

In addition to such investigations, the liquidators should consider seeking to fix the Chairman (or anyone else involved with the fraud) with personal liability under the fraudulent trading provisions of s 275 of CWUMPO. These provide that any person who knowingly participated in any business of the company carried out with the intent to defraud creditors or for any fraudulent purpose is liable (both civilly and criminally) if so determined by the Court. Accordingly, the chairman as well as any associates involved with the fraud may be personally liable for the company's losses. Of course this is only useful to the extent that action could be taken against the chairman of those persons (if he / they can be found, perhaps with the assistance of the investigatory actions referred to above).

The liquidators should also consider avoiding the transactions with the third parties to whom the sums were paid, as transactions at an undervalue (s266D, 266E and 266B CWUMPO); or as unfair preferences (s 266, 266A and 266B of CWUMPO). In these regards we need more information about the transfers including, importantly, the dates on which they were made to determine whether they were in the relevant 'look-back' periods.

If the monies cannot be recovered, it is likely that the JPLs should apply to the Court to place the company into provisional liquidation, given that a restructuring is unlikely to be possible.

**TOTAL: 32.5 MARKS OUT OF 50**

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