



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 or Avenir Next 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).
4. You must save this document using the following format: **[studentID.assessment8C]**. An example would be something along the following lines: 202223-336.assessment8C. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
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 2023**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2023**. 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.

Question 1.1

Which of the following is / are among the jurisdictional criteria required to be satisfied for the Hong Kong court to make a bankruptcy order against an **individual**?

- (a) The individual must hold a Hong Kong permanent identity card.
- (b) The individual must be ordinarily resident in Hong Kong at the date of the hearing of the petition.
- (c) The individual is domiciled in Hong Kong_[RD(DWH1)].
- (d) Any of the above.

Question 1.2

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

- (a) Agent of the company granting the charge (A, in this instance_[RD(DWH2)]).
- (b) Agent of the lender appointing him (B, in this instance).
- (c) Agent of the Official Receiver.
- (d) An officer of the court.

Question 1.3

Which of the following is a correct statement as to the **core requirements** which need to be satisfied before the Hong Kong court will wind-up a foreign company:

- (a) All of the below apply.
- (b) At least one of the directors must be a Hong Kong resident.
- (c) The petitioning creditor must be a Hong Kong company or a Hong Kong resident.
- (d) There must be a reasonable possibility that the winding-up order would benefit those applying for it_[RD(DWH3)].

Question 1.4

A receiver is appointed over the entirety of a company's assets and the company goes into liquidation. Assuming the charge under which the receiver is appointed (and the receiver's appointment) cannot be challenged, **realisations** made by the receiver –

- (a) must first be used to satisfy the costs and expenses of the liquidator.
- (b) must first be used to satisfy the whole of all claims by employees but no other claims.
- (c) must first be used to satisfy the claims of preferential creditors as described in the relevant section of Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) (CWUMPO_[RD(DWH4)]).
- (d) will be kept entirely by the receiver for the benefit of the charge holder irrespective of what claims, preferential or otherwise, exist against the company.

Question 1.5

The date of **commencement** of liquidation for a compulsory liquidation is –

- (a) the date on which a creditor serves a statutory demand.
- (b) the date on which the petition is presented.
- (c) the date of the winding-up order_[RD(DWH5)].
- (d) the date on which notice of the liquidator's appointment is advertised.

Question 1.6

In respect of a Hong Kong creditor's **scheme of arrangement** promoted by the company, the legislation provides:

- (a) For a stay of all proceedings against the company pending the sanctioning of the scheme.
- (b) For a stay of enforcement of any judgment against the company.
- (c) For a stay of all proceedings against the company if the statutory majorities are met at the creditors' meeting.
- (d) None of above, as the scheme legislation provides for no stay_[RD(DWH6)].

Question 1.7

Select the **correct** answer as to whether the following statement is true or untrue:

Hong Kong legislation provides a **comprehensive statutory regime** relating to corporate rescue.

- (a) This statement is true because of the combined effect of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) and the Companies Ordinance (Cap 622).
- (b) This statement is true because of recent legislation called the Companies (Corporate Rescue) Bill.

(c) This statement is untrue, as Hong Kong has no comprehensive statutory regime for corporate rescue^[RD(DWH7)].

(d) This statement is true because of the recently enabled Cooperation Mechanism for cooperation in relation to insolvency matters as between Hong Kong and the Mainland, People's Republic of China.

Question 1.8

Select the **correct** answer as to whether the following statement is true or untrue:

Since the **Handover** in 1997, no decisions of any United Kingdom (UK) court are binding in Hong Kong.

(a) This statement is untrue as decisions of the UK Privy Council on appeals from Hong Kong remain binding^[RD(DWH8)].

(b) This statement is true as all aspects of English law ceased on the Handover as otherwise this would be seen as conferring an advantage on the UK.

(c) This statement is true as after the Handover only decisions of the Hong Kong court are allowed to be cited and relied upon.

(d) This statement is true as although decisions from common law jurisdictions can be cited and may be persuasive, they are not binding.

Question 1.9

After a liquidator is appointed in a creditors' voluntary liquidation, the **powers** of the directors of the company –

(a) cease completely, with no exceptions.

(b) cease except so far as the committee of inspection or the creditors (if there is no committee) agree to any powers continuing^[RD(DWH9)].

(c) continue and can be exercised provided the directors do so with creditors' interests in mind.

(d) cease except so far as the liquidator agrees to any powers continuing.

Question 1.10

The law as to **cross-border insolvency** in Hong Kong can be found in:

(a) The common law and Part X of the Companies (Winding Up and Miscellaneous Provisions) Ordinance^[RD(DWH10)].

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

(c) Various bilateral protocols with other common law jurisdictions.

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

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 3 marks]^[RD(DWH11)]

To whom does a receiver (appointed pursuant to a charge) owe duties when selling the asset charged? Please provide an outline only.

A receiver appointed pursuant to a charge is the agent of the charger. However, the receiver's main duties will remain to the charge *holder* – who will receive the benefit of the receiver's appointment. As a result, when the receiver sells the property that the charge sits upon, there will be a residual duty to the borrower to act with reasonable skill and care, as well as a duty to act in good faith and in accordance with the powers granted to him under the charge. In terms of the actual acts themselves, the receiver is effectively appointed with the powers of sale and management based on the sale of the charge itself.

Question 2.2 [maximum 3 marks]^[RD(DWH12)]

In a compulsory liquidation, what elements must a liquidator satisfy in order to successfully demonstrate a transaction (with a non-associate) amounted to an unfair preference? Please provide an outline only.

In a compulsory liquidation, a liquidator seeking to set aside transactions deemed to be “unfair preferences” must show that: (i) the transactions were entered into during the six month prior to the commencement of winding up, **OR two years prior to the winding up if the person was a beneficiary or associate/connected person to the company**^[RD(DWH13)]; (ii) at the time the asserted unfair preference was granted, the company was either already unable to pay its debts or became unable to pay its debts as a result of the transaction; and (iii) the company was “influenced by a desire” to improve the position of the person with whom the transaction occurred to improve their position in a liquidation scenario. This final requirement includes a showing that the company must have positively wished to prove that creditor's position. See *Stanley Hau*.

Question 2.3 [maximum 4 marks]^[RD(DWH14)]

What are the key elements needed for a Hong Kong liquidator to make use of the mechanism for co-operation between Hong Kong and the Mainland? Please provide an outline only.

The Hong Kong-Mainland Co-operation Mechanism enables both areas to mutually recognize each others' **judgments**^[RD(DWH15)], as well further assistance and cooperation pertaining to bankruptcy proceedings. For a liquidator to utilize the Mechanism (in, for example, compulsory liquidations, creditors' voluntary liquidations, or schemes of arrangement promoted by a liquidator), the liquidator must show the following: (i) the debtor's centre of main interests (presumptively, its incorporation location or principal place of business) must be in Hong Kong for a continuous period of 6 months; (ii) a letter of request from the Hong Kong court; and (iii) the **debtor's assets** ^[RD(DWH16)] in the Mainland (within Shanghai, Xiamen, or Shenzhen — the “pilot” areas). When all three elements are met, a Hong Kong liquidator may apply for recognition in the Mainland.

QUESTION 3 (essay-type question) [15 marks]

Question 3.1 [maximum 4 marks]^[RD(DWH17)]

Discuss the statutory basis enabling the Hong Kong court's jurisdiction to wind-up a non-Hong Kong company, and the common law principles that the Hong Kong court will consider when deciding whether to exercise that jurisdiction.

The recognition of foreign insolvency or windup petition of a non-Hong Kong company follow two main routes: the first is by statute, and the second, by common law action. Some types of foreign judgments from specific jurisdictions will be statutorily recognized, while in other cases, a judgment creditor will need to pursue the common law principles to have a wind-up petition recognized.

(1) Statutory Basis. Three statutes are implicated in determining whether foreign judgments may be recognized and enforced in Hong Kong on the basis of reciprocity: (1) the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319), known as the FJREO; (2) the Foreign Judgments (Restriction on Enforcement and Enforcement Ordinance (Cap 46); and the Judgments (Facilities for Enforcement) Ordinance (Cap 9), which was in force prior to the handover. The FJREO is jurisdiction specific, and includes many nations such as Australia, Singapore, France, Germany, India, and New Zealand, among others (note that most nations are current or prior Commonwealth nations). A separate basis exists for recognition of judgments from Mainland China. In general, the purpose of these statutes is to build some basis under which foreign judgments are enforceable by legislation under principles of reciprocity, especially given the fact that Hong Kong has neither enacted the UNCITRAL Model Law on Cross-Border Insolvency, or become party to international treaties regarding the enforcement of foreign judgments or winding up orders. Specific rules for each statute, of course, apply. For instance, once a judgment has been registered under FJREO, a judgment creditor may not also enforce the judgment at common law, and the judgment will receive the same force and effect as if it had been decreed in Hong Kong. Moreover, if such a judgment were a "full and conclusive" verdict of a superior court to which FJREO extends and a payable sum of money persists, the foreign judgment could be recognized by Hong Kong courts.

A judgment creditor must make an ex parte petition to the Master of the Court of First Instance with an application that includes an exhibit of the foreign judgment, along with an affidavit specifying requisite details, such as an attestation that the judgment is still not satisfied. In turn, a judgment debtor could respond by applying to set aside the registration on several bases set side in statute and notice (such as, for example, an incorrect assessment on the part of the creditor that the FJREO's provisions apply), after which a court may grant a trial between the two parties on the winding-up matter.

(2) Common Law Action. Winding up orders that don't fall within the ambit of any aforementioned statutes (for instance, because they were not originally decreed by a FJREO jurisdiction) could still be recognized in Hong Kong under common law. Generally, this means common law recognition and assistance are practiced almost in lieu of an equivalent restructuring or rescue measure that could include a vast moratorium. In general, common law principles include: (i) the foreign judgment should not have a statutory basis for recognition, such as a potential to be register under the FJREO; or (ii) the common law action should have been brought within 12 years of the foreign judgment's enforceability. From an actual "principles" viewpoint, a foreign liquidator should be permitted to reach out to a Hong Kong court to receive assistance for the foreign liquidation, and more recently, the central principle that carries weight in helping liquidators is that of a "COMI" analysis, with the ultimately goal of helping the company without their need for any substantive assistance as provisional liquidators.

Question 3.2 [maximum 5 marks][RD(DWH18)]

The scheme of arrangement is, in essence, Hong Kong's only statutory tool for corporate rescue. Describe it, listing the pros and cons.

Hong Kong's scheme of arrangement system is a **more informal** [RD(DWH19)] means of coming up with a restructuring plan by effectively permitting companies to enter into binding agreements with their creditors or members in an out-of-court restructuring fashion (i.e., adjusting the debt). Procedurally speaking, this requires the debtor, its liquidator, or its creditors from seeking a court order for leave to collate creditors to form a class. Once a debtor's creditors have gathered, a creditor meeting will be held, in particular to discuss and evaluate and vote on a scheme of arrangement proposal. A majority of 75% in value of creditors and a majority in number of creditors who are present and voting is required to accept a scheme. Once the scheme of arrangement is voted for by creditors, the court must give the plan its own green light.

The big risk with this system is that in Hong Kong, there exists no moratorium mechanism in a scheme of arrangement context that would hinder creditors from still pursuing liquidation or winding up proceedings in concurrence to the scheme, which would understandably create great disruption. Moreover, the obligations of third parties are not necessarily released automatically, and schemes **do not typically account for the release of third party guarantors.** [RD(DWH20)] Notably, however, the Hong Kong court has permitted third party releases where the circumstances are appropriate, such as where the releases are personal and not proprietary rights, or if they are closely linked to the scheme creditors' own rights. **A further con of the scheme process is that it applies only where the plan which seeks to compromise or change an existing debt also discharges the debt under the law that governs** [RD(DWH21)] it. **Lastly, creditor rights are protected: if no majority is attained, then the court will have no jurisdiction to approve a scheme, and will not do so without requisite consent.** [RD(DWH22)]

Several positives exist for this tool. For one, it provides a solid **stop-gap** [RD(DWH23)] measure for Hong Kong, which does not have its own corporate rescue culture. Moreover, the court takes a close look at creditor approval of a scheme of arrangement, to ensure creditors receive fair and equitable recoveries, where possible. The court's approval of a scheme applies and is binding upon all the scheme creditors in the relevant classes, regardless of whether they voted for the scheme or attended the creditors' meeting. This means that non-consenting creditors, too, can be bound by the scheme if they are within that class with a requisite majority (so that in essence, cramdown rules apply). Even a creditor majority is attained for a plan, a court has discretion to focus on issues as to whether the scheme is for a permissible purpose, whether the creditor classes and grounds were proper, whether creditors had enough information and whether the process of the scheme was one in accordance to statutes. These measures create effective safeguards for creditors. The timeline too, need not unnecessarily drag on, as most schemes are approved within a few months (or up to six months). Since no "receiver" or trustee is necessarily appointed, the debtor continues to operate with its management in place, likely minimizing potential disruptions. Ultimately, the scheme of arrangement process is a very solid workaround to Hong Kong's lack of corporate rescue procedures, particularly because the plan ultimately receives court approval, and provides debtors with some protection if they wish to continue the business through its distress on a going concern basis.

Question 3.3 [maximum 6 marks] [RD(DWH24)]

With no legislation to deal with cross-border insolvencies, how has the common law developed to assist foreign liquidations where steps need to be taken in Hong Kong? What are the pros and cons of developing the law in this way?

The English common law principal has persisted as part of how Hong Kong creates laws and precedents, with each court setting and following precedents in concurrence with what ordinances and statutes provide and require. After the British Handover in 1997, the common law system has developed in the cross-border framework to allow authorities to take into

consideration the decisions of other courts when deciding whether and how to recognize foreign insolvency judgments.

With the common law system, judges can effectively be flexible in developing the types of principles and factors that are important to recognition, without necessarily following the exact bounds of what the law provides. For example, it enables judges to effectively adopt the best of cross-border insolvency law into Hong Kong by setting precedents, while allowing legislatures to fairly evaluate what *would* work and what *does* work for cross-border insolvency reform. That means, then, that common law creates almost a “trial run” of what legislation regarding corporate rescue could or should look like — even without an actual framework in place. It results in a system where practitioners may move courts to apply common law principals to reach results, through the use of legal tools, that would have been reached if a framework existed. One such example could be seen in the 2022 case, *Re Seahawk China Dynamic Fund*, where the court found that recognition and assistance in cross-border insolvency matter that should be determined by principles of modified universalism — a theory that the UNCITRAL Model Law is strongly based on. The court also chose not to extend common law principles to solvent liquidations, which helps create a continued “database” of law for practitioners to build upon and use when making strategic decisions in insolvency proceedings that involve multiple jurisdictions. Ultimately, the court has discretion to design the type of cross-border insolvency system it wishes Hong Kong to have, in recognizing and assisting (based on principles of comity, for example) the types of proceedings or decisions that the court believes are most just under Hong Kong law.

The flip side to flexibility as a strength is lack of clarity as a weakness. For one, there is less certainty to a practitioner that a foreign judgment would be recognized, than it would be in a jurisdiction that has enacted the UNCITRAL Model Law. Officeholders must stay alert and abreast of developments where the common law power of assistance was exercised, and the bases on which such judgments have been issued to fully understand the scope of what is permissible or not. Moreover, courts do not necessarily have unfettered discretion to follow any principles they choose: for example, in the 2015 case of the “Joint Administrators of African Minerals Limited v Madison Pacific Trust Limited & Shandong Steel Hong Kong,” the court found that the recognition of foreign insolvency proceedings would still be limited by what reliefs would be available in Hong Kong and even though there was a particular common practice to seek recognition in Hong Kong to obtain a *de facto* moratorium, the court in that matter chose not to do so automatically, and instead consider the nature of the recognition and the overall proceedings in question. So while the tenets of the common law principles might be to create a uniform and unitary system of cross-border insolvency, doing so is not always predictable or guaranteed. *See generally, Lamtex Holdings.*

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

Question 4.1 [maximum 4 marks]_[RD(DWH25)]

You are instructed by the liquidator of Palm Beach Limited, a Hong Kong company in compulsory liquidation. Your client tells you that the company granted a floating charge to a creditor, Sea Breeze Incorporated, a few months before the liquidation. Sea Breeze has appointed a receiver. The liquidator wants to know if any of the receiver’s realisations can be used to meet the liquidation costs or pay any unsecured creditors. Outline the discussion you would have with the liquidator.

As a general rule, floating charges (as per *Spectrum Plus*) operates as an immediate security interest where upon a “crystallisation event” occurring (such as insolvency), the interest will attach. Realisations from a floating charge must first be used to meet statutory preferential claims, such as certain employee payments_[RD(DWH26)]. Under Section 265(3B), where there is

a liquidation, preferential claims are to be paid out of floating charge realisations to the extent that there are insufficient “uncharged” assets available to the liquidator. If the liquidator of Palm Beach finds that there are insufficient UNCHARGED assets to pay off preferential costs, then realisations from the floating charge must be used to pay those costs, instead as liquidator is wondering, to pay unsecured creditors. Where the liquidation costs are preferential ones [RD(DWH27)] and there are insufficient uncharged assets, the liquidator could use receiver’s realisations.

However, given the timing of the floating charge to Palm Beach, I would also encourage the liquidator to check whether the charge might be voidable. A floating charge created within a certain period prior to the commencement of the liquidation could be voidable if it was entered into 12 months [RD(DWH28)] prior to the commencement of liquidation, and the company was unable at the time to pay its debts or became unable to pay its debts as a result of the floating charge (unless [RD(DWH29)] “new money” was provided to the company in exchange). If a showing could be made that Palm was already insolvent or rendered insolvent as a result of the floating charge, the entire charge itself could be voidable.

Question 4.2 [maximum 6 marks [RD(DWH30)]]

Soaring Kite Limited (SKL) is a Cayman incorporated company that is listed on the Hong Kong Stock Exchange, and has assets and a representative office in Shenzhen. It is in insolvent liquidation in Cayman. The liquidator appointed in Cayman (L) tells you he wants to obtain documents from SKL’s bank in Hong Kong and he also wants obtain orders to examine the auditors who are in Hong Kong and who will not cooperate with his investigations. L says he has heard that it is straightforward to get a “standard order” from the Hong Kong court recognising his appointment and giving him a full suite of powers in Hong Kong including a stay of any actions that any creditor of SKL may bring in Hong Kong. Outline the advice you would give to L.

L’s reference to a “standard order” to obtain a Hong Kong court recognising his appointment and giving him unfettered discretion, including a stay of any action an SKL creditor could bring, is not necessarily accurate [RD(DWH31)]. In Hong Kong, a “standard order” permits a foreign representative to bring an action that permits a foreign officeholder to seek the production of documents, examine individuals, or take possession and control of the company’s assets — essentially, a liquidator could act in Hong Kong where the relevant power was available in BOTH, the liquidator’s home jurisdiction as well as in Hong Kong. However, the court will not freely grant a standard order: limitations include that the foreign representative may not act with powers that they would not have in their home jurisdiction. In Cayman, permitting examination is far more restrictive than in Hong Kong, and so a Hong Kong court would likely not grant a standard order, particularly given the request for an examination of auditors based out of Hong Kong, because doing so in Cayman itself could be restricted. Given this limitation, I would suggest L attempt first to seek an order from the Cayman court on whether they could examine documents or auditors based out of Hong Kong, and only then seek to ask the court to exercise its common law power of assistance to issue a standard order, as L hopes to get.

Another concern, outside of the “standard order,” common law power of assistance context might be whether L is permitted to obtain documents under section 286 [RD(DWH32)] of the CWUMPO, because while the ordinance permits a liquidator to order the production or examination, doing so would not be available for SKL because it is not a “company” within the ordinance’s definition — it is a foreign company, which does not fall into the definition of the ordinance. Once again, while the common law approach would be the best option for L, the court does not have wide latitude to grant any standard order, though a court could enable L to exercise a stay of creditor actions, so long as doing so is permissible in the Cayman too.

Question 4.3 [maximum 5 marks] [RD(DWH33)]

Harrier Limited supplies software products to Lapwing Limited pursuant to an ongoing contract signed between the two. Lapwing has stopped paying Harrier's invoices. It has not made any complaint about the supplies but in a conversation a Lapwing director told a Harrier director "sorry, we just can't afford it right now". The Harrier director said he may therefore have no option but to wind-up Lapwing, to which the Lapwing director replied "try that and I'll fight it" but he does not say on what grounds. Harrier come to you and ask you to talk them through the issues. What key questions do you need to ask and what comments can you give?

The threshold question for Harrier is whether Lapwing could be wound-up, or whether Harrier could present a petition to wind-up Harrier. The requirement at the outset is to inquire whether Lapwing is actually unable to pay its debts. Section 178 of the CWUMPO defines a company's "inability to pay debts" as a failure to pay an amount or secure funds to pay that amount to a creditor after the creditor to whom a debt is owed serves a written demand (also by leaving it at the company's registered office) requiring the company to make such a payment or if the creditor has adequately satisfied the court that the company is unable to pay its debts (wherein the court will also consider the company's contingent and prospective liabilities). As a result, the early issues for consideration would be whether Lapwing is actually unable to pay its debts, or whether Harrier is considering sending a demand notice to Lapwing prior to filing a winding up petition. Both would be necessary for Harrier to succeed in presenting the court with a winding up petition [RD(DWH34)].

Moreover, Harrier should also double check the contract signed with Lapwing, to see if an arbitration clause might apply first. Where an arbitration clause exists in a contract, and a creditor files a winding up petition based on that contractual provision, Hong Kong courts might favour the arbitration first, unless the debtor were to admit the existence of the debt — known as the Lasmos approach [RD(DWH35)].

In general, Harrier's best course of action would be to begin collecting evidence for a winding-up petition. This might be to follow the course of making a statutory demand (as discussed above), and put Lapwing on notice of its dispute over the unpaid supplies contract, and begin obtaining evidence also of Lapwing's overall insolvency. Harrier would need to either rely on Lapwing failing to pay a demand notice, or begin obtaining evidence to prove Lapwing is otherwise insolvent. However, if Lapwing *is* able to pay its debts and the matter is simply an issue of a *bona fide* dispute, a winding-up petition at this stage might not be the best course of action. I would also check how much the contract breach was for, as the threshold amount under the CWUMPO is over HKD 10,000 [RD(DWH36)].

*** End of Assessment ***

TOTAL MARKS: 26 OUT OF 50