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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).**
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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 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.***
- (d) *Any of the above.*

**Commented [RD(DWH1)]:** Correct (1 mark) – choices (a) and (b) do not appear in section 4 of the Bankruptcy Ordinance (Cap 6). Note that (b) would have been correct if it referred to the debtor being present in Hong Kong on the date of the petition

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).***
- (b) *Agent of the lender appointing him (B, in this instance).*
- (c) *Agent of the Official Receiver.*
- (d) *An officer of the court.*

**Commented [RD(DWH2)]:** Correct (1 mark)

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.**

**Commented [RD(DWH3):** Correct (1 mark) – there is no requirement for a director or the petitioner to be Hong Kong based

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).**

**Commented [RD(DWH4):** Correct (1 mark) – see text at 6.4.1 (sections 79, 265B(3) of CWUMPO)

**(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.**

**(d) the date on which notice of the liquidator's appointment is advertised.**

**Commented [RD(DWH5):** Correct (1 mark) – section 184 CWUMPO

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.**

Commented [RD(DWH6): Correct (1 mark)

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.**

Commented [RD(DWH7): Correct (1 mark)

**(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.**

Commented [RD(DWH8): Correct (1 mark) – The China Field decision confirmed that pre-1997 decisions of the Privy Council on appeals from Hong Kong were and remain binding (section 4.1 of text)

**(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.**

**(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.**

**(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]

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

[  
*When a receiver is appointed pursuant to a charge (also known as a secured creditor), the receiver is considered to be an agent of the charger (i.e., the company or individual who granted the charge). The receivers' primary duties is however to the charge holder. This duty involves realising the charged assets to repay the debt owed to this secured creditor.*

Commented [RD(DWH9)]: Correct (1 mark) – see section 244 of CWUMPO

Commented [RD(DWH10)]: Correct (1 mark) – Hong Kong has not adopted UNCITRAL, there are no relevant bilateral treaties with other common law jurisdictions, and Cap 319 deals with enforcement of judgments, not cross-border insolvency

Commented [RD(DWH11)]: (2.5 marks) See note below (shows role of receiver in this context slightly misunderstood)

Even though the receiver's primary duty is to the secured creditor, they also owe certain duties to the company that granted the charge. This includes the duty to take care of the charged assets and not to sell at an undervalue. i.e. the receiver has to act in good faith.

While the receiver's principal duty is not to the general body of unsecured creditors, they must not disregard the interests of the unsecured creditors entirely.

]

Question 2.2 [maximum 3 marks]

**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.**

[

To demonstrate that a transaction amounted to an unfair preference, the liquidator generally needs to satisfy the following elements:

1. The transaction must have occurred within a "relevant time" of 6 months before the commencement of winding up.
2. The transaction must have resulted in the creditor being in a better position in the event of the company's insolvency than it would have been in if the transaction had not occurred.
3. It must be established that the company did the transaction in question with the desire to prefer.

]

Question 2.3 [maximum 4 marks]

**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 key elements that a Hong Kong liquidator would need to consider making use of this mechanism include:

1. Designated pilot areas in the Mainland (PRC), include Shanghai Municipality, Xiamen Municipality in Fujian Province, and Shenzhen Municipality in Guangdong Province.

**Commented [RD(DWH12):** Not relevant - duty is to charge holder with residual duty to debtor, not other creditors, although such interests may be of indirect relevance (hence only 0.5 mark deducted)

**Commented [RD(DWH13):** (2 marks). Would have been better to specifically mention that one criterion is that the person 'preferred' must be a creditor or guarantor but as you refer at (2) to 'the creditor' (highlighted), so no mark deducted for that.

However, the answer should also mention that at the time of the relevant transaction, the company was insolvent or became insolvent as a result of the transaction

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**Commented [RD(DWH14):** (3 marks) A good answer but should make clear that the office holder seeking assistance must be appointed in a Hong Kong collective insolvency process (the answer just defines same). Also, should refer to the need for a letter of request

2. *"Hong Kong Insolvency Proceedings" refers to collective insolvency proceedings initiated under CWUMPO (Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap 32)) or the CO, including compulsory and creditors' voluntary liquidations and schemes of arrangement led by a liquidator.*
3. *For these proceedings, the debtor's COMI must primarily be in Hong Kong, indicated by the place of incorporation. Other factors such as the principal office location, "Centre of main interests", and main asset locations are also considered. The main interests should have been in Hong Kong for at least six months.*
4. *Whether the debtor's main assets in the Mainland are located in a pilot area or they have a business or representative office there. A request letter from the Hong Kong court is also a requirement.*

]

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

Question 3.1 [maximum 4 marks]

***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.***

[

*Part X of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) ("CWUMPO") contains the section on the Winding up of unregistered companies. An unregistered company is defined in CWUMPO as a company not registered under the company's legislation, which would be a non-Hong Kong company.*

*The statutory basis for the Hong Kong court's jurisdiction to wind up a non-Hong Kong company is primarily derived from Section 327 of CWUMPO if certain conditions are met, which are:*

1. *If the company is dissolved or ceased business operations to wind up its affairs,*
2. *If the company can no longer pay its debts; and*
3. *If the court agrees that it is fair, equitable and just that the company be wind up.*

*It also needs to be proved to the courts that the 3 core requirements are met which are:*

1. *The courts need to see that the company has a sufficient connection with Hong Kong. This might be through assets located in Hong Kong, business activities carried out in Hong Kong, or debts owed to Hong Kong creditors.*

Commented [RD(DWH15)]: (4 marks)  
All elements are present



2. The court must be satisfied that there is a reasonable possibility that the winding-up order would benefit those applying for it.
3. the court must be binding to at least one person impacted by the distribution of the company's assets.

).

]

**Question 3.2 [maximum 5 marks]**

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

[  
*A scheme of arrangement allows a company in financial difficulties to agree to an arrangement with its shareholders and/or creditors. This tool is often used as a method of debt restructuring, allowing a company to avoid formal insolvency proceedings. This arrangement binds all creditors of the relevant class even those who have voted against it. The statutory regime for schemes of arrangement in Hong Kong is found in Part 13, Division 2 of the Companies Ordinance (Cap 622).*

Herewith a list of pros and cons of a scheme of arrangement:

**Pros:**

1. Schemes of arrangement are flexible, allowing companies to restructure in many ways, including financial restructuring or reorganisations.
2. The scheme can help the company avoid insolvency proceeds and liquidation and achieve a positive outcome for all parties involved. (Shareholders, creditors, debtor etc.)
3. Once approved by the required majority and sanctioned by the court, the arrangement binds all creditors of the relevant class even those who have voted against it. This simplifies the impact of the arrangement.
4. While there is no automatic stay of proceedings while the arrangement is being implemented, a moratorium for a stay can be made to the court by reason of section 186 of CWUMPO. If granted, this can provide the company with time to organise its affairs.

**Cons:**

1. There is no automatic moratorium on legal proceedings by creditors against the company.
2. The arrangement must be approved by a majority creditors representing 75% in value of the creditors voting in person (or proxy). This can prove to be complicated.

]

**Commented [RD(DWH16):** (2.5 marks)

Intro and pros/cons good, but the answer should also refer to HK procedure: the role of the explanatory statement; how classes are constituted; leave to convene meetings; the statutory majorities needed; the court's role on sanction

**Commented [RD(DWH17):** Only if can justify appointment of a provisional liquidator

**Commented [RD(DWH18):** International effectiveness and Gibbs?

**Question 3.3 [maximum 6 marks]**

***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 lack of legislation to deal with cross-border insolvencies in Hong Kong has necessitated the use of common law to assist with foreign liquidations where actions are required in Hong Kong as Hong Kong has not adopted the UNCITRAL Model Law on Cross-Border insolvency and Hong Kong is not a party to any international treaties that deal with these proceedings.*

*An agreement also exists between Hong Kong and specific areas of Mainland China, recognized as trial zones for a collaborative process between the two jurisdictions. This agreement enables insolvency officials from Hong Kong to receive recognition and support in these Mainland areas, and similarly, Mainland officials to obtain acknowledgment and aid in Hong Kong. Designated pilot areas in the Mainland (PRC), include Shanghai Municipality, Xiamen Municipality in Fujian Province, and Shenzhen Municipality in Guangdong Province.*

*Hong Kong courts play a central role of the court in the jurisdiction where a debtor is based and will typically assist in actions necessary for the fair administration of a foreign insolvency proceeding. A foreign action has long been recognised in Hong Kong court, brought on by the foreign liquidators. Hong Kong courts would recognise that the law of the place of incorporation as the law that should govern who is entitled to represent/direct the actions of a company.*

*Herewith a list of pros and cons of developing the law in this way:*

***Pros***

- 1. There is a principle of universalism that promotes the fairness of cross-border insolvency proceedings, aiming to maximise the value of the debtor's assets.*
- 2. Courts can recognise foreign liquidators and grant them powers to handle assets located in Hong Kong*
- 3. There flexibility in adapting as each case are looked at by the courts on a case-by-case basis as there is no legislation to follow.*

***Cons***

- 1. The lack of a legislative basis means that certain complex issues might not be addressed appropriately and can lead to inconsistent finds on a case by case basis.*

]

**Commented [RD(DWH19):** (2 marks)

Need to give some explanation of the developments, based largely on the Privy Council's decision in *Singularis*, but noting that court had developed an almost 'standard order' that was then whittled away, in part due to the use (misuse?) of the provisions to assist 'debtor-led' processes in certain offshore jurisdictions.

Common law (private international law concepts) will recognise that law of country of incorporation (or COMI? – Global Brands) governs who can direct the actions of a corporation

Up Energy shows that court recently taking a more 'strict' legal approach to what the HK court can or cannot do.

**Commented [RD(DWH20):** Correct but not a common law development

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

Question 4.1 [maximum 4 marks]

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.

[  
A floating charge (a tool recognised by English and Hong Kong Law) is a type of security that applies to a pool of assets, and only becomes specific or "crystallises" under certain circumstances, like insolvency. (Known as the triggering event) Sea Breeze Incorporated, which is the creditor, appointed a receiver to liquidate assets covered by the floating charge to repay what Palm Beach Limited owes them. Usually, the receiver's main obligation or duty is towards the creditor (the charge holder).

The issue of whether the funds gathered by the receiver can cover the liquidation costs or pay unsecured creditors is dictated by both the laws around insolvency and the details of the floating charge agreement.

According to the local insolvency law, CWUMPO, there are certain debts that are given more priority over the claims from holders of the floating charge. These debts include some amounts owed to employees etc. These are paid from the assets covered by the floating charge before the debt to the charge holder is paid.

However, the liquidation costs are not generally included in these first priority debts. So, the costs of liquidation wouldn't typically be paid from the assets that the receiver is dealing with unless there's an agreement or court order saying otherwise.

With regards to the unsecured creditors, if there's any money left after paying Sea Breeze and any priority debts from the assets' liquidation, this surplus could be used to settle these unsecured creditors claims.

]

Question 4.2 [maximum 6 marks]

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

Commented [RD(DWH21)]: (1.5 marks)

Not a very complete advice.

Liquidator will need to check if the floating charge is valid against the liquidator. Question says was only granted a few months before, so s.267 may apply: void if company insolvent at time, save to extent of new money.

Did the charge need to be registered? If so, was it?

Commented [RD(DWH22)]: If insufficient uncharged assets

Commented [RD(DWH23)]: Not a case of the costs not "generally" being included - they are not included

Commented [RD(DWH24)]: (1 mark)

Correct that court will recognise that the law of the place of incorporation should determine who has the authority to carry out certain acts in the name of the company, but the rest of the answer is muddled and incomplete. A more complete advice would include the following elements:

Things will not be as straightforward as L believes

Should not need an order to get documents from the bank (the wording suggests it is SKL's own account) – Bay Capital; Seahawk; (Global Brands explanation of "recognition" proper being acknowledgment of the liquidator's authority to represent the company)

Examinations may go beyond what SKL (as a company) is entitled to. It is, however, information in respect of which a Hong Kong liquidator could seek an examination order (section 286B of CWUMPO) – note CECP Costin v RSM case as to the nature of an examination order by way of assistance

BUT: can L get "recognition and assistance"? On the facts given, likely to be difficult in light of recent cases. Up Energy holds that cannot "give" powers, so even if would assist, would not be the "full suite" hoped for by L. Further and in any event Global Brands says must look at COMI, being examples: Location of directors, officers, board meetings; Location of operations, assets, bank accounts (here – the listing?).

Court may give "managerial assistance" for practicalities (for example, if the bank does not co-operate) but beyond that is perhaps unlikely

If an application is to be made: Need letter of request from Cayman; there are still the Singularis principles – with narrower examination powers in Cayman this could be problematic; granting of a stay not "automatic" (FDG Electric Vehicles; Nuoxi v Peking University); may be that enforcement would be stayed (for example, Ambow Education) – recent cases have not dealt with this

However, and in any event, note the reference to presence in Shenzhen. Shenzhen is a pilot area under the Hong Kong / Mainland cooperation mechanism. That mechanism is only open to Hong Kong appointed office-holders. If core requirements can be met may therefore be better to get winding-up order in Hong Kong. Identify the core requirements

**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.

[  
Hong Kong courts play a central role of the court in the jurisdiction where a debtor is based and will typically assist in actions necessary for the fair administration of the Cayman insolvency proceeding. A **Cayman court action will be recognised** in Hong Kong court, brought on by the foreign liquidator (L). Hong Kong courts would recognise that the law of the place of incorporation as the law that should govern who is entitled to represent/direct the actions of a company.

Hong Kong and specific areas of Mainland China, recognized as trial zones for a collaborative process between the two jurisdictions. This agreement enables insolvency officials from Hong Kong to receive recognition and support in these Mainland areas, and similarly, Mainland officials to obtain acknowledgment and aid in Hong Kong. One of the designated pilot areas in the Mainland (PRC), include **Shenzhen**.

L can apply for a common law recognition order from the Hong Kong court, which will recognise L's status as a foreign liquidator. Upon recognition, L can use the Hong Kong legal procedures to obtain information and documents from SKL's Hong Kong **bank**.

L can seek court orders to force the auditors to cooperate with his investigations under the appropriate sections of Hong Kong's Companies Ordinance.

L would need to separately apply for a stay of moratorium, providing reasons why it is necessary in this case. It would be at the discretion of the Hong Kong court whether to grant a stay.

In Hong Kong, while a liquidator (L in this case) appointed in the Cayman can be acknowledged to carry out actions on the company's behalf, the court could grant aid if the company's primary location of operation and economic activity, the 'Centre of Main Interests' (COMI), is in Hong Kong. As SKL is listed in Hong Kong COMI can be established in Hong Kong. This shows sufficient connection to Hong Kong.

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**Question 4.3 [maximum 5 marks]**

**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**

**Commented [RD(DWH25):** It is not the court action that is recognised

**Commented [RD(DWH26):** Correct, but what is the application here?

**Commented [RD(DWH27):** Should not need an order to get documents from the bank (the wording suggests it is SKL's own account) – Bay Capital; Seahawk;

**Commented [RD(DWH28):** (2.5 marks)

Good questions but also need to advise the client about the winding up process. For example:

Is Lapwing a Hong Kong company? If not, will also need to advise as to the core requirements.

Statutory demand procedure – prescribed form needed for example.

Re ability to wind up if 'otherwise satisfied' company insolvent: statement "cannot pay" is offset by the statement "will fight it" – evidence (hence Stat Demand advisable)

Any arbitration or ECJ clause?

**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?**

[  
Here are some key questions and comments to consider:

1. Has Harrier Limited ("Harrier") formally demanded from Lapwing Limited ("Lapwing") the overdue payments?
2. When was payment due and is this stipulated on the invoice or in the contract, because if this is in breach, it would constitute breach of contract which is grounds for a court petition?
3. What is the total debt of Lapwing to Harrier? If it's more than the legal threshold, Harrier could potentially file a winding-up petition.
4. Did Harrier investigate other options, like negotiating a new payment agreement or a scheme of arrangement? These alternatives may be cheaper and more effective than a winding-up process and it would be a lot less contentious.
5. Harrier should understand that winding up is an extreme step, usually taken as a last resort. It can be time-consuming and expensive.
6. If Lapwing is insolvent and has other creditors, Harrier might not recover a large portion, or anything, from the winding-up as the proceeds from liquidation are shared among all creditors in order of priority and there is a chance that there are other secured creditors that would be above Harrier in the list.

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\* End of Assessment \*

**TOTAL MARKS: 31 OUT OF 50**

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