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SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8C

HONG KONG

**Commented [INS 11]:** UPDATED MARK: 26/50 = 52%

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Course Leader

***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.***

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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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- 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.**

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.*

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.**

**Commented [RD(DWH2):** Incorrect (0 marks) - 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

**Commented [RD(DWH3):** Correct (1 mark)

**(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(DWH4):** 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.**

**Commented [RD(DWH5):** Incorrect (0 marks) – see text at 6.4.1 and the "Leyland Daf" case cited there

**(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).**

**(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.**

**Commented [RD(DWH6):** Correct (1 mark) – section 184 CWUMPO

**(c) the date of the winding-up order.**

**(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.**

Commented [RD(DWH7): 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(DWH8): 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.**

**(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.**

Commented [RD(DWH9): Incorrect (0 marks) - 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)]

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.**

*The primary duty of the receiver and manager is to the debenture or charge holder, not to the company, even though the receiver is an agent of the company.*

*When selling the secured property, a receiver owes the same duty on sale as a selling mortgagee, to act in good faith and in accordance with the powers given to him under the debenture or charge. Receivers are free to put the interests of debenture or charge holders first in making any decision as to the*

Commented [RD(DWH10)]: Correct (1 mark) – see section 244 of CWUMPO

Commented [RD(DWH11)]: 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(DWH12)]: Updated: 0 marks  
Course Leader

(3 marks) All elements are present hence full marks, but this is just a copy and paste from the text

*course which the receivership will take. This is the case even though this may be disadvantageous to the borrowing company, subject to the overriding requirement that in implementing their decisions in relation both to management and disposal of charged assets, receivers should use reasonable skill and care and be answerable to the company if they do not.*

**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.***

**A debtor gives an unfair preference to a person if**

- (i) that person is one of the debtor's creditors or a surety or guarantor for any of his debts or other liabilities, and
- (ii) the debtor does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the debtor's bankruptcy, will be better than the position he would have been in if that thing had not been done.
- (iii) It is also a condition that the debtor must have been influenced by a desire to prefer. If the person said to be preferred is an "associate" of the debtor then the "desire to prefer" is presumed to exist (although such presumption is rebuttable).

**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.***

*In the Opinion of the Supreme Court, it provides that:*

**(a) the pilot areas in the Mainland are designated as:**

- (i) Shanghai Municipality;
- (ii) Xiamen Municipality of Fujian Province; and
- (iii) Shenzhen Municipality of Guangdong Province;

**(b) that "Hong Kong Insolvency Proceedings" means any collective insolvency proceedings commenced under CWUMPO or the CO and includes compulsory liquidations, creditors' voluntary liquidations and schemes of arrangement which are promoted by a liquidator or provisional liquidator;**

**(c) the debtor's COMI must be in Hong Kong, with the Supreme Court Opinion stating that**

***"Centre of main interests" for these purposes generally means the place of incorporation of the debtor but adding "at the same time, the people's court shall take into account other factors including the place of principal office, the principal place of business, the place of principal assets etc. of the debtor. When a Hong Kong***

**Commented [RD(DWH13):** (1.5 marks) Answer also needs to mention that company was insolvent at the time of the transaction, or became insolvent as a result of it; and that the transaction (for non-associate) must have been within 6 months of commencement of liquidation.

This is the danger of just copying and pasting from the text without looking at what the question needs

**Commented [RD(DWH14):** Updated: 1 mark  
Course Leader

(3.5 marks) This is a copy and paste from the text. In addition, the answer does not refer to the fact that the office holder seeking assistance must be appointed under a "Hong Kong Insolvency Proceeding" - it just defines what that is

*Administrator applies for recognition and assistance, the centre of main interests of the debtor shall have been in the Hong Kong Special Administrative Region continuously for at least 6 months"*

*(d) "[i]f the debtor's principal assets in the Mainland are in a pilot area, or it has a place of business or a representative office in a pilot area, the Hong Kong Administrator may apply for recognition of and assistance to the Hong Kong Insolvency Proceedings in accordance with this Opinion"; and*

*(e) a letter of request from the Hong Kong court is necessary.*

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.**

*Provided certain requirements are met, the Hong Kong court can exercise its jurisdiction to wind-up companies that are not incorporated or registered<sup>328</sup> in Hong Kong. This is important in Hong Kong because the majority of companies that are listed on the Hong Kong Stock Exchange are foreign companies.*

*In this regard, Part X of CWUMPO is titled "Winding up of unregistered companies". An*

*"unregistered company" is defined in section 326 of the WUMPO as a company not registered under the companies legislation. Although a little confusing given the title of Part X, section 326(2) of CWUMPO makes clear that this includes a "registered non-Hong Kong company".*

*In order to wind-up an unregistered company in Hong Kong, the petitioner must satisfy the court that the company in question is sufficiently connected to Hong Kong by satisfying the "three core requirements" set out in the CFA's decision in *Re Yung Kee (Kam Leung Sui Kwan v Kam Kwan Lai and Others (2015) 18 HKCFAR 501*). The three core requirements are:*

- (a) there must be sufficient connection with Hong Kong, (not necessarily meaning the presence of assets within the jurisdiction);*
- (b) there must be a reasonable possibility that the winding-up order would benefit those applying for it; and*
- (c) the court must be able to exercise jurisdiction over one or more persons interested in the distribution of the company's assets.*

Question 3.2 [maximum 5 marks]

Commented [RD(DWH15)]: Updated: 2 marks  
Course Leader

(4 marks)  
All elements but again seems to be a copy and paste

Commented [RD(DWH16)]: ??

Commented [RD(DWH17)]: (2.5 marks)  
The question calls for a description, but the answer does not include, for example, : the role of the explanatory statement; how classes are constituted; leave to convene meetings; the statutory majorities needed; the court's role on sanction



**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 is a statutory mechanism under Hong Kong law which allows companies to make binding compromises or arrangements with their members and / or creditors (or any class of them), including adjustment of debts owed to its creditors or reduction of share capital. The statutory regime for schemes of arrangement in Hong Kong is contained in Part 13, Division 2 of the Companies Ordinance (Cap 622) (namely sections 668 to 677). The court procedure relating to the applications necessary to effect a scheme of arrangement is governed by O.102 r 2 and r 5 of the Rules of the High court (RHC).*

*The Hong Kong court will often take guidance from English law cases in respect of schemes as the wording of the legislation there is very similar. This is notwithstanding the fact that there are some (important) procedural differences. In the context of schemes, the leading Hong Kong case is the CFA judgment of *UDL Argos Engineering & Heavy Industries Co Ltd v Li Oi Lin* (UDL).*

*For debt restructuring purposes, a scheme of arrangement enables companies and their creditors to compromise or adjust debts if stipulated majorities of the relevant creditors approve such compromise or adjustment and the court sanctions such arrangement. Without a scheme of arrangement, a company would need to obtain the approval of 100% of the relevant creditors to contractually vary the debt. Schemes are therefore necessary where a company seeks to adjust debts with many creditors at the same time in circumstances where it would be difficult or impossible to seek unanimous consent of all creditors. Schemes are also useful where there may be hold-out creditors who seek an unfair advantage (for example, additional payment) as against a substantial majority of similarly ranked creditors.*

*Note, however, that at common law a scheme of arrangement seeking to compromise or vary an existing debt will only have real and substantive effect if the debt is discharged under the law governing the debt. A scheme will also be effective as against any creditor participating in it or where the creditor seeks to enforce the debt in Hong Kong (for example, even if it obtains judgment in the jurisdiction of the governing law). This would include creditors voting on the scheme or, for example, accepting payment from or new instruments created by the scheme.<sup>309</sup> The Gibbs principle has been applied by the Hong Kong courts<sup>310</sup> (and in modern decisions of the English courts).*

*One further issue that is worth mentioning in the context of schemes (as it has become increasingly common) is the issue of dealing with the obligations of third parties, such as guarantors. Conceptually it is not immediately obvious that releases in favour of such parties should be available through the scheme mechanism (given it is a statutory arrangement between the parties to it). However, the practice has developed whereby a company through a scheme may cause the release of its creditors' claims under guarantees provided by third parties where the guarantees are in respect of the debt*

Commented [RD(DWH18)]: ??

Commented [RD(DWH19)]: ??

being compromised under the scheme. This position is now well established under English law.

**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?**

*A strength of the common law is its flexibility to adapt and develop. However, a difficulty with this is that it can be more difficult to predict how new situations will be dealt with. This can be illustrated by the above development in connection with the Hong Kong court's decisions relating to recognition of "light touch" provisional liquidators and the issue of whether it could recognise foreign insolvency proceedings where the foreign jurisdiction concerned is not the country of incorporation of the company.*

*Hong Kong has, as stated earlier, always applied common law principles to recognise and assist foreign insolvency procedures where appropriate. Traditionally foreign officeholders had commenced ancillary liquidation proceedings if steps needed to be taken here. However, in *A Co v B* (a 2014 decision), the court dealt with an application by liquidators appointed in the Cayman Islands who sought, inter alia, a Hong Kong order to recognise their appointment and an order for the production of documents from certain (unnamed) respondents. Following the decision in *A v B* it had become fairly routine practice for a liquidator appointed elsewhere to obtain a letter of request and make a 'recognition application' in Hong Kong, with an expectation of obtaining a 'standard order' that stated such liquidator had powers to take steps in Hong Kong provided the relevant power was available to a liquidator in both the originating jurisdiction and in Hong Kong. One of the first cases to reassess the basis of this practice was *Joint Provisional Liquidators of CECEP Costin New Materials Group Ltd v RSM Nelson Wheeler*. Further consideration to the basis on which the Hong Kong court can, or should, assist foreign liquidators was given in *Re Up Energy Development Group Ltd*. The court added that insofar as any request for such assistance affected any third parties then the application should be made inter partes with notice to those parties. Previously, the common practice would be to obtain a "blanket" recognition and assistance order on an *ex parte* basis and only when the liquidator sought to "use" such "powers" would a third party affected thereby be given notice and have the opportunity to object. The focus was then usually on the subject matter of the application itself rather than whether the office-holder should be permitted to bring the application in the first place. Very shortly after the *Up Energy* case the court handed down another decision in relation to cross-border insolvency that furthered a point raised in *Lamtex* (and referred to above), namely recognition of liquidation being linked to the jurisdiction of a company's COM rather than giving primacy only to a liquidation in the place of the company's incorporation. (*Re Global Brands*).*

Commented [RD(DWH20)]: Updated: 3 marks  
Course Leader

(4 marks)

A good answer, but should, for example, reference *Singularis* and the principles that apply (cannot do something in HK that would not have power to do in home jurisdiction) - *Up Energy* does preserve this. (a lot of copy and paste again)

Commented [RD(DWH21)]: COMI

*In summary, therefore, the Judges have developed Hong Kong law in the context of how foreign liquidations should be assisted, from previously giving primacy to a company's place of incorporation to now considering a company's COMI to be the key factor.*

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.**

*This depends on if the floating charge can be voided under the circumstance.*

*A floating charge given by a company is void (except as to "new money" provided) if it is created within two years of the commencement of the winding-up (in favour of a person connected to the company) or one year (for any other person). For "unconnected" floating charges, it is also necessary to show that the company was unable to pay its debts at the time of the charge, or became unable to pay its debts as a result of the transaction by which the charge was created. As the floating charge in favour of Sea Breeze Incorporated is created a few months before the liquidation, it is very likely that it is void if at the time Palm Beach Limited was unable to or became unable to pay its debt.*

*If the floating charge is not voided, in any case, realisations from a floating charge must first be used to meet statutory preferential claims, such as certain (but not all) employee payments). Section 265(3B) of CWUMPO clarifies that where there is a liquidation, the preferential claims are paid out of floating charge realisations to the extent that there insufficient "uncharged" assets available to the liquidator. It cannot be used to meet the liquidation costs or pay any unsecured creditors.*

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 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**

Commented [RD(DWH22)]: (3 marks)

A good answer but misses one point: Need to check if required registration and if so, whether was in fact properly registered. Otherwise the charge would not bind the liquidator.

Commented [RD(DWH23)]: (3.5 marks)

A clearly written answer that is good, but misses a couple of points:

Singularis principle (see note below)

Need for a letter of request if any recognition and assistance to be given at all

Does not deal with the client's request re stay

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

**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.**

*It would be very difficult to obtain from Hong Kong court recognition and assistance to give L full powers as a liquidator in Hong Kong, and it is far from a straightforward case.*

*In Provisional Liquidator of Global Brands Group Holding Ltd v Computershare Hong Kong Trustees Ltd [2022] HKCFI 1789, Mr Justice Harris indicated that the correct approach for assessing whether or not a foreign liquidation should be recognized in Hong Kong is first to determine if, at the time of the application for recognition, the foreign liquidation is taking place in the jurisdiction of the company's COMI.*

*It is held in Global Brand that if the foreign liquidation is not taking place in the jurisdiction of the company's COMI, then recognition and assistance ought to be declined unless the application falls in one of the following two categories:*

- 1. If the liquidator is appointed in the place of incorporation, the application is limited to recognising a liquidator's authority to represent a company and seeking orders that are an incident of that authority, which Mr Justice Harris described as "managerial assistance". On the facts of this case, the Court granted an order of recognition of the provisional liquidator of the Company in order for the Provisional Liquidator to receive and transfer out the relevant assets located in Hong Kong.*
- 2. If the liquidator is appointed in the place of incorporation and the circumstances do not fall within the first exception above, then recognition and only limited and carefully prescribed assistance may be given as a matter of practicality.*

*As SKL's COMI is in Shenzhen, the Cayman proceedings may not be recognized under this approach. However, if L just want to obtain documents from SKL's bank in Hong Kong and obtain orders to examine the auditors located in Hong Kong, it may be possible for the Court to grant managerial assistance under category 1 of the exceptions as noted in Global Brand.*

**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 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?**

**Commented [RD(DWH24)]:** I am not sure it is as clear cut as that (COMI could be HK, Shenzhen or Cayman - note listing in HK...)

**Commented [RD(DWH25)]:** For bank account, should not need an order (Bay Capital v DBS case). For auditors, should explain the Singularis principle

**Commented [RD(DWH26)]:** (2.5 marks)

Good questions but should also address:

Harrier needs to know that if winds up then is treated same as other creditors

If Lapwing is not a Hong Kong company, 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?

*To protect Harrier Limited's interest, potential options including first doing more investigation on the financial status of Lapwing, trying to negotiate with Lapwing to see if it can provide security over the unpaid amount; deciding if it wants to serve a statutory demand against Lapwing Limited, and if Lapwing failed to make payments within 21 days, to petition to wind up the company.*

**Questions for the client:**

- *Place of incorporation of Lipwing Limited*
- *If Lipwing Limited is a listed company*
- *Any subsidiaries of Lipwing Limited and the location of each of them*
- *Where is Lipwing's main assets and business operation located*
- *Names of known shareholders and directors of Lipwing Limited*
- *The contract between Harrier and Lapwing Limited, if it provides rights for Harrier to demand immediate payment under the current circumstance.*
- *Any grounds to suspect that the directors are mismanaging the company or breaching their duties.*
- *Any other known potential unsecured creditors of Lapwing Limited and if they have served any statutory demand or taken any legal proceedings against Lapwing Limited.*
- *Any encumbered assets of Lipwing Limited over which security has been given to any secured creditors.*
- *The aim of the client: would winding up be a preferable outcome for Harrier?*

**Commented [RD(DWH27)]:** How does this affect ability to wind-up?

\* End of Assessment \*

**TOTAL MARKS: 34.5 OUT OF 50**

**Commented [INS 128]:** UPDATED MARK OF 52%.  
Course Leader.