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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

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- 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.**
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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(DWH1): 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(DWH2): 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(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).

(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.

Commented [RD(DWH4): Incorrect (0 marks) - see text at 6.4.1 (sections 79, 265B(3) of CWUMPO). Note question states that the entirety of the company's assets are covered by the charge, so there can be no uncharged assets for the liquidator to meet preferential claims

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.

(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(DWH8)]: 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 receiver and manager is appointed with powers of sale with full discretion as to the exercise and mode of exercising those powers.

Despite the fact that the receiver is an agent of the company - their primary duty of the receiver is to the charge holder and not to the company in question.

The receiver owes a duty to act in good faith and in accordance with the powers give him to pursuant to the charge. In this regard, receivers are permitted to put the interest

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)]: (3 marks) All elements are there

of the charger holder first when making a decision in the course of the receivership. The receiver must also use reasonable skill and care - and will 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.

Liquidators of a company have the power to make an application to set aside an unfair preference whether the liquidation is voluntary or compulsory.

Transactions to which the power may apply are those entered into during the period of six months prior to the commencement of the winding up, or two years where the beneficiary under the transaction was a "person connected to the company".

In these circumstances, in order to make such an application, the liquidator must show, with respect to a transaction entered into within six months prior to the liquidation, that, at the time the asserted unfair preference was given, the company was unable to pay its debts - or - became unable to pay its debts as a result of the transaction occurred.

The liquidator must also prove the company was "influenced by a desire" to improve the recipient's position in the event of a liquidation. In this regard, the transaction will not be set aside unless the company "positively wish to improve the creditor's position in the event of its own insolvent liquidation" and a person does not "desire" the necessary consequences of the steps taken (Re MC Bacon [1990] BCLC 324).

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 order for the cooperation mechanism to be engaged, there are five elements that must be satisfied:

- 1. The mechanism may only be used in designates areas within the mainland, namely: Shanghai Municipality, Xiamen Municipality of Fujian Province or Shenzhen Municipality of Guangdong Province.*
- 2. The mechanism must only be engaged in relation to "Hong Kong insolvency Proceedings" (being any collective proceedings commenced under CWUMPO or the CO).*

Commented [RD(DWH12): (2.5 marks)
Need to mention that the person 'preferred' must be a creditor or guarantor

Commented [RD(DWH13): The question makes clear this does not apply

Commented [RD(DWH14): (3.5 marks) Good answer, but misses one small element

3. *The COMI of the debtor must be Hong Kong (this will generally mean the place of incorporation but there are other factors that might be considered in determining COMI such as the place of principal office, business or assets of the debtor).*
4. *In circumstances where the debtor's principal assets are within a pilot area in the Mainland, or where the debtor has a business representative office in a pilot area, the Hong Kong administrator may apply for recognition of and assistance to the Hong Kong Insolvency proceedings.*
5. *A letter of request in relation to the proceeding must be issued by the Hong Kong Court.*

Commented [RD(DWH15)]: For 6 months

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 CWUMPO is titled "Winding up of registered companies" and section 326 defines an "unregistered company" as a company not registered under the companies legislation (which includes a "registered non-Hong Kong company").

The circumstances in which the Hong Kong Court may wind up a non-Hong Kong company are set out in section 327 of the CWUMPO and are as follows:

1. *If the company is dissolved or has ceased to carry on business, or is carrying on business only for the purposes of the winding up of its affairs;*
2. *There must be a reasonable possibility that the winding up order would benefit the applicants;*
3. *The court must be able to exercise jurisdiction over one or more persons interested in the distribution of the company's assets.*

The petition must state how these requirements are satisfied. If sufficient connection is established by way of these requirements, the jurisdiction to wind up the company is enlivened and will remain even after matters giving rise to those requirements cease to exist later in time (Penta Investment Advisers v Allied Weli Development Ltd [2017] HKEC 1475).

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.

Commented [RD(DWH16)]: (1.5 marks)
Mixes the statutory requirements of s.327 and the common law core requirements.

Statutory: 3 circumstances stated (s.327):
(i) dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
(ii) unable to pay its debts;
(iii) just and equitable

Common law:
• Firstly, there must be a sufficient connection with Hong Kong. This could be the presence of assets here, but that is not a pre-requisite
• Secondly, there must be a reasonable possibility that the winding-up will benefit those applying for it
• Thirdly, the court must be able to exercise jurisdiction over one or more persons interested in the distribution of the company's assets

Commented [RD(DWH17)]: (2.5 marks)
Good pros and cons but the question asks for a description the answer should also refer to 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

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, including adjustment of debts owed to its creditors or a reduction of share capital. The regime for schemes of arrangement is contained in Part 13, Division 2 of the Companies Ordinance (Cap 622); in particular, sections 668 to 677. The court procedure for schemes of arrangements is set out in O.102 and r 5 of the Rules of the High Court.

Pros:

- *For debt restructuring purposes, a scheme of arrangement enables companies and their creditors to compromise or adjust debts if stipulated majorities of the creditors approve the compromise or adjustment, and the court sanctions the arrangement.*
- *Without a scheme, a company would need to obtain 100% creditor approval to contractually vary the debt. Schemes are therefore needed where a company wishes to adjust debts with various creditors simultaneously. This is beneficial in circumstances where a company is unlikely to obtain unanimous creditor consent.*
- *Schemes are also useful where there may be hold-out creditors who seek an unfair advantage as against a substantial majority of similarly ranked creditors.*

Cons:

- *Lack of any moratorium meaning legal action may be taken against the company after the petition has been filed - which is a critical benefit of filing a petition in other jurisdictions. Given this weakness, a practice has developed in Hong Kong whereby a winding up petition would be presented, and an application made for the appointment of provisional liquidators with specific powers to investigate the possibility of a restructuring.*
- *When compared with the English regime for schemes of arrangement, there is also the fact that the Hong Kong Court will not consider the constitution of the classes of creditors at the convening hearing - but will do so at the sanction hearing - at such time as the scheme has already been voted upon. This means that while the commercial steps have been taken to push the scheme forward, the Court may not sanction the scheme - giving rise to wasted time and costs.*
- *A scheme seeking to compromise a debt will only have real and substantive effect if the debt is discharged under the law governing the debt.*

Commented [RD(DWH18): Need to refer to how this practice was curtailed by Re Legend

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?

While Hong Kong lacks a statutory framework to deal with cross-border insolvency, the Hong Kong Court has followed common law principles and deployed much

Commented [RD(DWH19): (5.5 marks)
A very good answer. Full marks if included reference to the Singularis principles applying (cannot do something in HK that would not have power to do in home jurisdiction).

flexibility in order to deal with the lack of statutory framework and/or assist foreign insolvency processes, which has enabled a number of corporate rescues over the years.

The main strength of the common law approach is its ability to flexibly adapt and develop. By way of example:

- *While there is no legislative source for the recognition of a foreign representative, a foreign liquidator's right to bring an action in the name of the company in Hong Kong has long been recognised (Re Irish Shipping [1985] HKLR 437) and no formal order recognising the liquidator is necessary to do so, which reduces procedural complexity.*
- *The Court has assisted foreign rehabilitation proceedings by refusing to allow enforcement of a judgment against Hong Kong assets of the relevant company. The Court has adopted a two-stage approach whereby it deals with liability and enforcement separately. Even if liability is established, the court will refuse enforcement against assets located in Hong Kong if it considers that, with comity in mind, it should assist the foreign rehabilitation proceedings.*
- *With respect to recognition of foreign insolvency proceedings where the foreign jurisdiction is not the COMI - the Hong Kong Court has held that there is nothing in principle preventing recognition of liquidators appointed in a COMI or a jurisdiction with which it had a sufficiently strong connection to justify recognition (Lamtex Holdings Limited [2021] HKCFI 622).*
- *The decision in Re Global Brands concerned the recognition of liquidation being linked to the jurisdiction of a company's COMI rather than giving primacy only to a liquidation in the place of the company's incorporation. The Court held that it was open to the Court to develop the common law principles in a manner that better suited to the circumstances in which transnational insolvencies currently arose in Hong Kong and that - in the future, the criteria for recognition should primarily be determined by reference to COMI on the basis that treating the place of incorporation as the natural home for the purpose of determining the best jurisdiction for the liquidation was "highly artificial".*

However, the other side of the coin is this removes certainty and predictability as to how insolvency situations will be dealt with by the Court and certain ambiguities have arisen a result. For example:

- *While no formal court order is needed for recognition of a liquidator to bring an action in Hong Kong in the name of the company, one *is* required for the foreign representative to obtain information by dealing with Hong Kong assets (such as bank accounts).*
- *Certain offshore jurisdictions developed the "light touch" approach to the appointment of provisional liquidators to address any issue the practitioners in those jurisdictions may face in being recognised and permits PLs to be appointed solely for the purpose of attempting a restructuring. However, the tool was commonly deployed by debtor companies as a defensive mechanism*

to avoid a winding up in Hong Kong. As a result, the Court soon made it clear that it will consider the foreign proceeding very carefully before allowing such an approach to be progressed.

Some other issues that arise from the lack of clear legislation:

- No equivalent exists in Hong Kong to the (i) Chapter 11 procedure that exists in the US (ii) the administration procedure which exists in the UK (iii) nor the voluntary administration procedure in Australia.
- While the flexibility of the common law has created some solutions such as the scheme of arrangement mechanism - a weakness of that mechanism is the lack of any moratorium - which is a significant advantage of filing a petition in other jurisdictions.
- The absence of statutory authority may limit the powers which can be given to foreign liquidators. The Court has held that powers issued to a foreign liquidator are the same as those that can be given to a Hong Kong liquidator and the powers do not extend to entities that are non-Hong Kong Companies nor to individuals that are not Hong Kong-appointed office holders which causes confusion as to whether common law assistance is actually available at all.

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.

Worth first noting to the liquidator that the appointment of a receiver would have had the effect of crystallising the floating charge.

It would be necessary to ask the liquidator to confirm the timing of the granting of the floating charge to Sea Breeze. If this occurred within 12 months of the commencement of the liquidation, and at such time Palm Beach was unable to pay its debts, the charge may be void (section 267 of CWUMPO). The floating charge will still be valid to the extent that any "new money" provided to the company at the time of, or after, the creation of the charge (in consideration for it).

It is also necessary to determine whether the floating charge was registered. If it was not, the security will be void as against the officeholder.

Commented [RD(DWH20)]: (2.5 marks)

A reasonably good answer but does not directly address the point about liquidation costs (Leyland Daf case). Also, see other points below and could add that a charge may also be an unfair preference

Commented [RD(DWH21)]: Question says 'a few' months.

Commented [RD(DWH22)]: Do not need to show this element if SB is connected to PB

While preferential creditors must be paid out of assets that are subject to a floating charge before those assets can be used to satisfy the holder of the floating charge (unless the company is in liquidation (as Palm Beach is) and there are sufficient assets to make the payments out of the general estate) - the security holder, Sea Breeze, will take priority over the unsecured creditors.

Commented [RD(DWH23)]: Should clarify that liquidation costs (focus of question) are not preferential claims

Question 4.2 [maximum 6 marks]

Commented [RD(DWH24)]: (5 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 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.

A very good answer but just misses one main point, namely the potential to use the HK/Mainland Cooperation Mechanism (see below)

Obtaining recognition

Firstly, and as a general comment, it would be useful for the liquidator to understand that the Hong Kong Court is not going to simply make an order unless it is satisfied of the utility of its purpose with respect to the foreign liquidation.

To obtain recognition and assistance at common law, the liquidator must first present a letter of request from the Cayman Court to the Hong Kong requesting assistance.

*The Hong Kong Court has held that the criteria for recognition and assistance should primarily be determined by reference to COMI on the basis that treating the place of incorporation as the natural home for the purpose of determining the best jurisdiction for the liquidation was "highly artificial" (*Re Global Brands*). In addition to the place of incorporation, the Court will consider (a) location of directors, officers and board meetings; (b) location of operations, assets, bank accounts, records etc.; and (c) where any restructuring activities took place. In this situation, while Soaring Kite is Cayman incorporated, it is listed on the HK Stock Exchange and has assets and an office in Shenzhen - suggesting that COMI might in fact be HK or the Mainland.*

If the liquidator, however, wished to commence a parallel liquidation in Hong Kong, he would need to file a petition and satisfy the Court of the following:

- 1. Sufficient connection with HK (listed on stock exchange, bank located in HK, auditors in HK);*
- 2. Reasonable possibility that the winding up would benefit those applying for it;*
- 3. The Court must be able to exercise its jurisdiction over one or more person interested in the distribution of the company's assets.*

Powers

If the liquidator obtains recognition pursuant to a common law recognition application, he will not be granted the full suite of liquidator powers available in Hong Kong. The powers given would be more restrictive than if an ancillary liquidation was pursued under statute because the Court will only grant powers of investigation to the liquidator which are equivalent to those available in the jurisdiction in which he was appointed (i.e. Cayman). The powers available to liquidators are more restrictive in Cayman than in Hong Kong - so it might be worth considering the ancillary proceedings route.

With respect to a stay of actions, it is worth noting that the Court has made clear that it will not give recognition or assistance in circumstances where it appears that its true purpose is to obtain a stay or some other outcome without a more substantive purpose being shown.

Documents

Obtaining the documents from the Bank in Hong Should will not be an issue. Banks in Hong Kong are expected to readily assist foreign representatives by providing documents in relation to the company's own accounts even without them first obtaining a court order for recognition.

However, obtaining documents from the auditor will require an order from the court. The liquidator will need to commence an ancillary proceeding or obtain a recognition and assistance order pursuant to the common law.

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?

- **Firstly, it is necessary to consider the agreement between the parties. In particular:**
 - **what is the timeframe stipulated under the contract for the payment of invoices? To establish insolvency, it will need to be shown that the invoices were due and payable and Lapwing is unable to pay those invoices (i.e. debts) as and when they fall due.**

Commented [RD(DWH25)]: (2 marks)

Reasonable points but misses the focus of the question, re client's question as to winding up.

Advice should include following elements:

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

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 EJC clause? (you have reference to arbitration which is good)

Discretion not to wind up if, for example, Lapwing is undergoing a genuine restructuring

- *is there a mechanism for disputes to be resolved?*
- *is there an arbitration clause? If so, this might give Harrier a ground to oppose the petition (although the law in this area is grey).*

- *With respect to the solvency or otherwise of Lapwing, the director's indication that the company cannot pay the outstanding invoices is suggestive of insolvency - but it is important to note that the Hong Kong Court will not solely the cash flow test and will also consider the balance sheet test if a petition to wind up the company is presented. Thus, it will be useful to understand Lapwing's asset position more generally.*

- *I would advise Harrier that the best way forward would be to determine the due date for the outstanding invoices, and subsequently issue a letter of demand seeking that the Lapwing pay the debt by a specified date - the failure of which will result in Harrier filing a petition to wind up Lapwing.*

Commented [RD(DWH26)]: Statutory demand - if made and not met, insolvency would be deemed

* End of Assessment *

TOTAL MARKS: 35 OUT OF 50