



**Style Definition:** INSOL style heading 4: Justified

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.**
- 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.**
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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.**

Despite being appointed by the charger, a receiver's primary duties are owed to the charge holder. Accordingly, when selling assets, a receiver must first consider the interest of the charge holder. However, a receiver owes residual duty to the borrower who act with reasonable skill and care when selling charged property.

Question 2.2 [maximum 3 marks]

**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 marks)  
See note below

**Commented [RD(DWH12)]:** No; the receiver is agent of the chargor but is appointed by the chargee

**Commented [RD(DWH13)]:** (1.5 marks)  
See below. Should mention that the effect of the transaction is to actually put the creditor/guarantor in a better position  
Also, need to mention that the person 'preferred' must be a creditor or guarantor

**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 liquidator must show that at the time the unfair preference was given the company was unable to pay its debts **as a result**. The liquidator must also show that the company was influenced by a desire to improve the person's position in the event of liquidation. The liquidator must also satisfy the court that the relevant transaction was entered into six months prior to the commencement of winding up, or within two years in circumstances where the beneficiary was a person connected to the company.

**Commented [RD(DWH14)]:** OR is unable to pay as a result

**Commented [RD(DWH15)]:** Question specifically says not associated

**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.**

There are five key element necessary for the co-operation mechanism to be engaged.

First, it may only be used in designated areas in the mainland being, the Shanghai Municipality, Xiamen Municipality of Fujian Province or Shenzhen Municipality of Guangdong Province.

Cooperative mechanisms are only engaged in relation to "Hong Kong Insolvency Proceedings"

The debtors COMI must be in Hong Kong, generally meaning the place of incorporation (however, there are additional factors which may be taken into account in determining the COMI).

If the debtors principle assets in the Mainland are in a pilot area, or it 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.

A letter of request from the Hong Kong Court is also required.

**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.**

The statutory basis that enables the Hong Kong Court to wind up a non-Hong Kong company is found under Part X of the CWUMPO. In order to wind up a company under Part X, it is necessary for the petitioner to demonstrate that:

- there is sufficient connection with Hong Kong (not necessarily meaning presence of assets in within the jurisdiction - Assets may be of any nature. For example, a listing

**Commented [RD(DWH16)]:** (2.5 marks)  
Need to show that the Hong Kong proceeding is a collective insolvency process. COMI must have been in HK for 6 months. Hong Kong does not have Administrators

**Commented [RD(DWH17)]:** (3 marks)  
Also should identify the Statutory requirements: the 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

on the Hong Kong Stock exchange was determined by the court as an asset. In circumstances where there are no assets, the Court has held that a link of genuine substance between the company and the jurisdiction is required, such as business activities being carried out in the jurisdiction.

- there is a reasonable possibility that the winding up order would benefit those applying for it - Cases in relation to this requirement have developed such that the threshold is low. However, the potential benefit must be real, rather than theoretical.
- the Court can exercise its jurisdiction over one or more persons interested in the distribution of the company's assets - It must be demonstrated that there is a creditor other than the petitioner subject to the jurisdiction of the court. However, the court of appeal has held that a winding up order may be made without demonstrating the above requirement if the connection with Hong Kong is sufficiently strong and the benefits to creditors are sufficiently substantial.

**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.***

The scheme of arrangement is a tool often used by Hong Kong practitioners as a statutory tool to achieve a corporate rescue in the absence of other statutory alternatives. The regime governing the scheme of arrangement in Hong Kong is set out by sections 668 to 677 found in Part 13, Division 2 of the Companies Ordinance (Cap 622).

The scheme of arrangement allows companies to enter into binding compromises or arrangements with members and creditors including adjustment of debts owed to creditors of the company or by capital reduction.

A company may apply to the court for the sanctioning of scheme of arrangement by way of ex-parte summons supported by an affirmation to explain the scheme and exhibit the draft explanatory statement, draft scheme document, notices of meetings, proxy forms and a draft advertisement.

The pros of schemes of arrangements are that they allow a company to effectively enter into compromises or adjust debts in circumstances where it would otherwise be impossible to obtain consent from 100% of creditors. In particular, through the use of a scheme of arrangement, companies may restructure debt in circumstances where certain creditors are seeking to obtain an unfair advantage against similarly ranked creditors.

A key weakness of a scheme of arrangement is that, on its own, it provides for no moratorium. Accordingly, proceedings may continue against the company which may stifle the ability for it to rearrange its debts. Further, the court will not consider whether the classes of creditors are properly constituted at the convening hearing of any application (unlike England for example), but rather will only do so at the sanction hearing after the scheme has been voted upon. As a result, there is a risk that the scheme may not be sanctioned by the court at the final stage, which will likely result in significant waste of time and cost.

**Question 3.3 [maximum 6 marks]**

**Commented [RD(DWH18)]:** (3 marks)  
Also question calls for a description, but the answer does not include, for example, how classes are constituted; the statutory majorities needed; the court's role on sanction

**Commented [RD(DWH19)]:** (5 marks)  
A pretty good answer although a little bit muddled in parts.



***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?***

Common law principles were developed and continue to be applied in Hong Kong to allow for the recognition of foreign office holders in order to assist with foreign insolvency procedures. The traditional approach followed by foreign office holders is to commence ancillary liquidation proceedings in Hong Kong. The traditional approach requires the applicant to satisfy the Court that the three core requirements for a liquidation have been met. Upon making an ancillary liquidation order, a foreign representative will have the ability to exercise powers under the CWUMPO and CWUR.

However, an alternative approach has been developed under the common law whereby a foreign practitioner may obtain recognition and assistance from the Court without pursuing an ancillary liquidation. While the alternative approach is beneficial in the sense that the core requirements need not be satisfied, full powers enjoyed by a Hong Kong liquidator will not be available to the foreign practitioner. In order to obtain a recognition and assistance order, a foreign representative must present a letter of request issued by the foreign court, as set out by the Court in *A Co v B*.

The common law principles have developed with a focus on ensuring that there is a unitary system for the collection and distribution of assets. As a result, the court has determined that the proceedings being assisted are a collective insolvency proceeding, meaning that assistance will not be given to a liquidator of a solvent company in Hong Kong. Orders which are not available in Hong Kong may not be made pursuant to the recognition order despite being made in the foreign jurisdiction.

A key benefit to the alternative approach is that the Court has developed for commonly encountered foreign jurisdictions is that a standard order has been developed. At the same time, the common law approach permits flexibility in appropriate circumstances allowing for the ability to depart from the standard order (subject to the requirement that the order sought must be available in the "home" jurisdiction).

However, while flexibility allows the Court to adapt, the common law approach also comes with uncertainty. In particular, there have been a number of decisions issued in Hong Kong in relation to the appointment of light touch provisional liquidators which may or may not be recognised depending on the circumstances. The Court formed the view the light touch liquidators were being used to bypass the winding up mechanisms and so the common law developed to prevent what it viewed the importation of a debtor in possession model which was inconsistent with the Hong Kong approach. While yet to be considered, there is uncertainty as to whether a US Chapter 11 process would be recognised in Hong Kong given it is also a debtor in possession process.

The question of whether the Hong Kong Court can recognise a foreign insolvency proceedings where the foreign jurisdiction is not the country of incorporation further demonstrates the risk of uncertainty but also demonstrates the ability for the Court to be flexible. Whereas the Court previously gave primacy to a company's place of incorporation when determining whether assistance would be granted, the common law has developed such that the COMI will be viewed as a core consideration. The adoption of the COMI criteria viewed by the Court as bringing Hong Kong in line with the Mainland which is has likely been a key driver for this common law development.

A further issue that arises under the common law recognition system is the fact that the absence of statutory authority may limit the powers which the court can give to foreign

**Commented [RD(DWH20):** But see text p.74 how this has dwindled/will not now be given

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. Accordingly, the Court held that the powers do not extend to entities that are not Hong Kong Companies or to individuals that are not Hong Kong appointed office holders in accordance with the statutory framework which creates confusion as to whether common law assistance can be given at **all**.

**Commented [RD(DWH21)]:** This recognises some of the common issues discussed following Up Energy and Global Brands but is a bit confused and misunderstands the issues - court will still give assistance, but not actually 'grant' powers

#### 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.**

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

See note below.

Also, could advise checking whether the charge could be an unfair preference

I would discuss the timing of the granting of the charge with the liquidator. If the charge was issued within 12 months at a time that the Palm Beach Limited was unable to pay its debts, the charge may be void pursuant to s 267 of **CWUMPO**.

**Commented [RD(DWH23)]:** But if Sea Breeze is connected then the need to show insolvency at the time of the charge falls away

I would also discuss with the liquidator whether the floating charge had been properly registered, within the one month timeframe to determine whether the charge may be void in accordance with s 334 and 335(a) of CWUMPO.

If the charge was properly issued and has therefore crystallised by way of the receivers appointment, I would advise the liquidator that the realisation of the charged asset may not be used to meet the liquidation costs. However, if there are insufficient uncharged assets to meet the claims of preferential creditors, the realisations from the charged asset must be used to meet those claims: s 265(3B) of CWUPMO. For example, certain employee payments are given statutory preference and may have priority over Sea Breeze Incorporated's claim.

##### 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 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.**

**Commented [RD(DWH24)]:** (4 marks)

A good answer but should also address:

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. Based on recognising that law of incorporation will govern who can properly act in the name of the company.

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

The liquidator, as representative of the Company, is entitled to directly request and obtain documents from SKL's bank. The liquidator does not need to obtain an order from the Court to obtain the documents.

However, in order for the liquidator to examine the auditors, he will require an order from the court. The liquidator will need to either commence an ancillary liquidation pursuant to the statutory mechanisms or alternatively, he will need to obtain a recognition and assistance order under common law.

In relation to obtaining a "standard order" I would advise the liquidator that it is not straightforward to obtain and will require a letter of request from the Grand Court of the Cayman Islands.

Further, I would also advise the liquidator that if recognition is granted pursuant to a common law recognition application, he would not be granted the full suite of liquidator's powers in Hong Kong. Rather, the powers would be more restrictive compared to if the ancillary liquidation option under statute was pursued. This is because the Hong Kong court may only grant powers of investigation to the liquidator which are equivalent to those available to him under Cayman law, whereas a successful ancillary liquidation application would grant the liquidator the full suite of powers available to a Hong Kong liquidator. The scope of powers provided in relation to examination orders in particular are much less restrictive in Hong Kong than in the Cayman Islands.

Insofar as a stay of actions brought by creditors is concerned, I would advise the liquidator that the Hong Kong courts have recently demonstrated an **aversion to granting recognition**, particularly in circumstances where the purpose of the application is viewed as a means to circumvent Hong Kong's debtor in possession stance to insolvency proceedings, which recognition for the sole purpose of obtaining a stay might be viewed as (without more).

Commented [RD(DWH25)]: Not quite sure it is that strong!

Ultimately, a traditional recognition application is likely more advisable in the circumstances. Accordingly, I would advise the liquidator that he will need to satisfy the court of the three core requirements being that:

1. there must be a sufficient connection with Hong Kong;
2. there must be a reasonable possibility that the winding up order would benefit those applying for it; and
3. the court must be able to exercise its jurisdiction over one or more person interested in the distribution of the company's assets.

With respect to each of the three core requirements, I would discuss the following matters with the liquidator:

1. The fact that the Company is listed on the Hong Kong Stock exchange may well be considered an asset when considering whether a sufficient connection exists (regardless of whether any actual assets are present in Hong Kong);
2. The need to examine the auditors who are located in Hong Kong would likely be considered as being of material benefit to the liquidators if granted. This is of course subject to the reason for the examination. Generally speaking, the threshold required is low - all that is needed is a real possibility of a benefit. However, the Court has previously taken particular focus on companies registered in offshore jurisdictions, that are listed in Hong Kong, but have operations in the Mainland - as is the case here. However, following the decision in *Shangdon Chenming*, the Court is likely to be more receptive to the application's ancillary purpose to examine the auditors; and

3. It is unclear from the factual background whether any individuals in Hong Kong have an economic interest in SKL. However, in the case of an ancillary liquidation, as is the case here, the Court has applied a modified universalism approach such that the functions of the liquidator will be viewed in light of its ancillary function.

**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?**

I would ask to review the supply contract between Harrier Limited and Lapwing. I would first seek to identify how long Lapwing Limited has to pay invoices following the supply of software. It will be important to identify whether the outstanding invoices are in fact due and payable.

Further, I would also review the supply contract to identify whether any arbitration clause existed. If an arbitration clause exists, I would determine whether it applies and if so, I would advise Harrier Limited that there may be grounds for Lapwing Limited to oppose a petition to wind the company up solely on the grounds that an arbitration clause exists. However, I would emphasise that the law in this regard is unsettled and that there are recent and conflicting authorities concerning this issue in Hong Kong.

The fact that a director Lapwing Limited has said that the company can't afford to pay the outstanding invoices is indicative that the company is unable to pay its debts as they fall due such that it may be appropriate to apply to wind the company up under s 178 (1)(c) of CWUMPO.

However, I would note that Hong Kong Courts will not only consider the cash flow test, but that they will also consider the balance sheet test if a petition to wind up the company is presented by Harrier Limited. Accordingly, I would ask Harrier whether it has any knowledge or understanding of Lapwing's asset position. I would note that a Court may refuse a petition to wind up the company even if it is unable to pay its invoices, if it can show that it satisfies the balance sheet solvency test.

I would also note that Harrier Limited may be able to issue a statutory demand for any sums outstanding. I would advise Harrier that the debt must exceed HKD10,000, and would note that the demand must be in the prescribed form and properly served on Lapwing by leaving an original at the registered office. If Lapwing does not pay within the statutory timeframe of three weeks, it will be deemed unable to pay its debts, such that Harrier may petition the Court to wind the company up pursuant to s 178 (1)(a) of CWUMPO.

I would also give an overview of what a winding up petition entails in order to have a liquidator appointed. I would advise that a petition would need to be prepared, served and advertised. The petition would then need to be heard by the Court and if the order is granted, that a creditors meeting would follow up to three months later.

**Commented [RD(DWH26)]:** (3.5 marks)

A good answer on the points dealt with, but should also advise:

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

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

Importantly (first question really): Is Lapwing a Hong Kong company? If not, will also need to advise as to the core requirements.

**Commented [RD(DWH27)]:** Or Exclusive Jurisdiction Clause (per Guy Lam)

**Commented [RD(DWH28)]:** The solution is your next paragraph - no need to spend time investigating finances of Lapwing (if a HK company will not be publicly available anyway unless listed)

\* End of Assessment \*

TOTAL MARKS: 34.5 OUT OF 50