



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8C

HONG KONG

***This is the summative (formal) assessment for Module 8C of this course and must be submitted by all candidates who selected this module as one of their elective modules.***

***The mark awarded for this assessment will determine your final mark for Module 8C. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.***

## INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

- 1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.**
- 2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Arial or Avenir Next font. This document has been set up with these parameters - please do not change the document settings in any way. DO NOT submit your assessment in PDF format as it will be returned to you unmarked.**
- 3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).**
- 4. You must save this document using the following format: [studentID.assessment8C]. An example would be something along the following lines: 202223-336.assessment8C. Please also include the filename as a footer to each page of the assessment (this has been pre-populated for you, merely replace the words "studentID" with the student number allocated to you). Do not include your name or any other identifying words in your file name. Assessments that do not comply with this instruction will be returned to candidates unmarked.**
- 5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6. The final submission date for this assessment is 31 July 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.**
- 7. Prior to being populated with your answers, this assessment consists of 8 pages.**

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

**Questions 1.1. - 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only ONE answer. Candidates who select more than one answer will receive no mark for that specific question.**

**Question 1.1**

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

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

**Question 1.2**

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

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

**Question 1.3**

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

- (a) All of the below apply.**

**(b) At least one of the directors must be a Hong Kong resident.**

**(c) The petitioning creditor must be a Hong Kong company or a Hong Kong resident.**

**(d) There must be a reasonable possibility that the winding-up order would benefit those applying for it<sup>[RD(DWH3)]</sup>.**

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<sup>[RD(DWH4)]</sup>).**

**(d) will be kept entirely by the receiver for the benefit of the charge holder irrespective of what claims, preferential or otherwise, exist against the company.**

Question 1.5

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

**(a) the date on which a creditor serves a statutory demand.**

**(b) the date on which the petition is presented.**

**(c) the date of the winding-up order<sup>[RD(DWH5)]</sup>.**

**(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**<sup>[RD(DWH6)]</sup>.

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**<sup>[RD(DWH7)]</sup>.

**(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**<sup>[RD(DWH8)]</sup>.

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

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

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

Question 1.9

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

**(a) cease completely, with no exceptions.**

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

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

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

Question 1.10

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

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

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

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

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

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

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

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

*Even though the receiver is acting as an agent of the company, the receiver's primary duty is towards the charge holder who has appointed the receiver. However, while selling the charged assets, the receiver also has a residual duty to the company to act with reasonable skill and care in handling the assets.*

*However, it is also important to note that the role, duty and responsibilities of the Receiver are enshrined under the security document and the Receiver is obliged to perform as per the same if provided explicitly.*

**Question 2.2 [maximum 3 marks<sub>[RD(DWH12)]</sub>]**

***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.***

*The Liquidator in order to satisfy the court in establishing unfair preference as an impeachable transaction. Must demonstrate 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 or became unable to pay its debt as a result of the transaction concerned. The Liquidator must also prove that the company was influenced by a desire to improve the person's position in the event of a liquidation.*

*Once satisfied, the court shall pass an order under Section 226 of CWUMPO which may include the following:*

- *Vesting in the liquidator the property which is subject of unfair preference;*
- *Releasing or discharging security given by the company;*
- *Directing any person to pay to the liquidators any benefits received from the company;*
- *Reviving the obligation of any surety or guarantor which had been released or discharged; and*
- *Providing the security for the discharge of any obligation imposed by or arising under the order.*

**Question 2.3 [maximum 4 marks<sub>[RD(DWH13)]</sub>]**

***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.***

*As of my last update in September 2021<sub>[RD(DWH14)]</sub>, the key elements needed for a Hong Kong liquidator to make use of the mechanism for co-operation between Hong Kong and the Mainland (China) include the following:*

*Eligibility: The liquidator must be appointed as per the relevant laws and regulations in Hong Kong which is terms as Hong Insolvency Proceeding which includes proceedings like compulsory liquidations, voluntary liquidation and scheme of arrangement under CWUMPO or Companies Ordinance.*

*Application: The liquidator needs to apply to the Hong Kong court seeking recognition and assistance for cross-border insolvency proceedings and the Hong Kong court shall issue a letter of request.*

**Mainland Entity:** *The insolvent company or entity must have assets or operations in the pilot areas of the Mainland China.*

**COMI:** *The debtor company's centre of main interest must be Hong Kong.*

**Compliance:** *The liquidator must adhere to the laws and procedures of both Hong Kong and Mainland China throughout the process.*

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

Question 3.1 [maximum 4 marks<sub>RD(DWH15)</sub>]

**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 deals with winding up of unregistered companies. An Unregistered company is defined under Section 326 of the CWUMPO as a company not registered under the companies legislation. A foreign company is required to be registered under Pt. 16 of the Companies Ordinance (Cap 662) if it has a place of business in Hong Kong. However, Section 326 (2) makes it clear that both foreign companies whether registered or not can be wound up by Hong Kong Court under the provisions enshrined under Part X of CWUMPO.*

*The circumstances in which the foreign company may be wound up are as follows:*

- If the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;*
- If the company is unable to pay its debts; and*
- If the court is of the opinion that it is just and equitable that the company should be wound up.*

*Firstly, the petition for winding up must satisfy the "three core requirements" set out in the matter of Re Yung Kee which are the following:*

- The Company must have sufficient connection with Hong Kong:  
The Hong Kong court looks into whether assets of the Company situated in Hong Kong and if the company is listed in Hong Kong stock exchange, this requirement is satisfied. The Court also looks into the COMI aspect developed from the UNCITRAL Model Law on Cross-Border Insolvency.*
- There must be a reasonable possibility that the winding up order would benefit those applying for it:  
In the matter of *Shandong Chenming Paper Holdings Ltd. v. Arjowiggins HKK2 Ltd.* ([2022] HKCFA 11), the CFA interpreted the second requirement to say that the benefit shouldn't always be arising out of the winding up event. In the said case, the CFA held that even though the foreign company does not have any assets in Hong Kong, the fact that it*



*is listed in Hong Kong stock Exchange is enough to satisfy the second requirement. This decision forced the company to pay to the creditor.*

- *The Court must be able to exercise jurisdiction over one or more persons interested in the distribution of the company's assets:*

*The Petitioner would have to show that there are persons with sufficient connection with Hong Kong who would have sufficient economic interest in the winding up of the company. A mere filing of the petition would not be sufficient. The Petitioner must show that the creditors of the company are within the jurisdiction of Hong Kong other than the Petitioner.*

**Question 3.2 [maximum 5 marks<sub>[RD(DWH16)]</sub>]**

***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 in Hong Kong is a legal mechanism designed to facilitate corporate rescue and restructuring<sub>[RD(DWH17)]</sub>. It is governed by the Companies Ordinance (Part 13, Division 2) and serves as a statutory tool to enable companies facing financial distress or insolvency to reach a compromise with their creditors and shareholders. Even though earlier there were instances where the provisional liquidator was appointed for restructuring, post the decision of Court of Appeal in the matter of *Re Legend International Resorts Limited* ([2006] 2 HKLRD 192) and the decision in the matter of *China Solar Energy Holdings Ltd.* ([2018] HKCFI 555), such practices have not been encouraged by Hong Kong Courts<sub>[RD(DWH18)]</sub>. Thus, Scheme of Arrangement is the only provision wherein corporate rescue can be done in Hong Kong. The Scheme of Arrangement acts as a court sanctioned compromise and arrangement which binds all creditors of relevant class. The following are some of the pros and cons of the scheme of arrangement:*

Pros:

***Flexibility: The scheme allows for flexibility in formulating restructuring proposals, enabling companies to tailor solutions that suit their specific circumstances.***

***Creditor Involvement: It requires the approval of a majority in number and 75% in value of creditors present and voting, which ensures creditors have a say in the process. Without a scheme of arrangement, a company would need to obtain the approval of 100% of the relevant creditors to contractually vary the debt.***

***Court Supervision: The scheme is subject to court oversight, providing a structured and transparent process for all parties involved.***

***Cross-Class Cramdown: Under certain conditions, the court can approve the scheme even if all creditor classes do not agree, which facilitates reaching a consensus.***

***International Recognition: The scheme is often recognized and enforced in other jurisdictions, enhancing its effectiveness for multinational companies.***

Cons:

***Lack of moratorium: Unlike liquidation winding up process, scheme of arrangement does not have a moratorium or a breathing space which in most tome helps the distressed entity in its revival.***

***Time-Consuming: The scheme involves court procedures, which can be time-consuming and may delay the implementation of the restructuring plan.***

***Costly: Legal fees and court expenses [RD(DWH19)] can add to the financial burden of the distressed company.***

***Creditor Dissent: While cross-class cramdown is possible, objections from dissenting creditors can still hinder the success of the scheme.***

***Limited Scope: The scheme may not be suitable for all types of distressed companies, and certain situations may require alternative rescue mechanisms.***

***Overall, the scheme of arrangement provides an essential tool for corporate rescue in Hong Kong, but its success depends on the specific circumstances of the company and the willingness of stakeholders to cooperate and reach a compromise.***

**Question 3.3 [maximum 6 marks [RD(DWH20)]]**

***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?***

***In the absence of specific legislation to deal with cross-border insolvencies in Hong Kong, the common law has evolved to provide assistance to foreign liquidations when steps need to be taken in the jurisdiction. This development has primarily occurred through judicial decisions and case law, and it involves the recognition of foreign insolvency proceedings and the coordination of actions between courts in different jurisdictions.***

***The courts in Hong Kong have applied modified universalism principle in Hong Kong for recognising foreign insolvency proceeding and providing assistance. Post the decision in the matter of *A Co v. B* (2014) and the decision of privy council in *Singularis Holdings v. PricewaterhouseCoopers* ([2014] UKPC 36), in order to obtain a recognition and assistance order in Hong Kong, a foreign representative must represent a "letter of request" issued by the foreign court to Hong Kong Court requesting assistance is required. Ancillary Liquidation process may also be initiated under Section 326 of the CWUMPO in the sense that the functions of such liquidator***

would be to collect assets in Hong Kong, to settle a list of Hong Kong creditors and to transmit the assets and list to the principal liquidators to enable a dividend to be declared and paid.

The following are the pros and cons of developing the law through common law way:

Pros:

**Flexibility:** Common law development allows for a flexible and adaptable approach to addressing cross-border insolvency cases. Courts can tailor their decisions based on the specific circumstances of each case.

**Case-by-Case Approach:** Each cross-border insolvency case is treated individually, enabling courts to consider the unique aspects and intricacies of each situation.

**International Cooperation:** Common law development fosters international cooperation among courts in different jurisdictions, promoting comity and coordination in resolving complex cross-border insolvency issues.

**Judicial Precedents:** Case law creates a body of precedents that can serve as guidance for future cross-border insolvency cases, providing a level of predictability and consistency in decision-making.

Cons:

**Uncertainty:** The absence of specific legislation may lead to uncertainty and unpredictability in cross-border insolvency cases, as courts may apply different approaches in different situations.

**Lack of Clarity:** The common law approach might not provide clear and comprehensive guidelines for handling all aspects of cross-border insolvencies, leaving some issues unresolved.

**Legal Gaps:** Without dedicated legislation, certain critical aspects of cross-border insolvency may not be adequately addressed, potentially causing gaps in the legal framework.

**Potential Conflicts:** Different courts in different jurisdictions may interpret common law principles differently, leading to potential conflicts and inconsistencies in the treatment of cross-border insolvency cases.

**Limited Scope:** Common law development might not cover all scenarios and complexities that can arise in cross-border insolvency cases, leaving some parties with inadequate protection or remedies.

*In summary, while the common law development has provided some assistance in dealing with cross-border insolvencies in Hong Kong, it also comes with certain drawbacks. Enacting specific legislation to address cross-border insolvency issues could offer more comprehensive and standardized guidelines, enhancing legal certainty and promoting more effective international cooperation in insolvency matters.*

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

**Question 4.1 [maximum 4 marks<sub>[RD(DWH21)]</sub>]**

***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.***

*The floating charge was granted by Palm Beach Limited to Sea Breeze Incorporated before the company went into compulsory liquidation. This floating charge allowed Sea Breeze to appoint a receiver to recover the debt secured by the charge.*

*Receiver's powers and responsibilities are usually outlined in the security document that created the floating charge. However, power of the receiver to sell the secured assets are implied even though expressly not mentioned in the security document<sub>[RD(DWH22)]</sub>. The receiver's main duty is to recover the debt for the secured creditor (Sea Breeze) by realising the charged assets.*

*Liquidation of Palm Beach Limited does not affect the receiver's rights to hold and / or sell the secured assets. Generally, the receiver will first use the proceeds to satisfy the secured debt owed to Sea Breeze. The realisations made by the receiver out of the secured assets are not available for payment of the liquidation expenses. After settling the secured debt, any surplus funds may be available to meet the claims of the preferential creditors if there are insufficient assets to meet those claims from the uncharged assets available to the liquidator<sub>[RD(DWH23)]</sub>.*

*The receiver is also entitled to be paid out of the realised value of the secured assets and has the right to exercise lien over those assets if his/her payment is not made.*

*Further, it is important to look into and review the security documents carefully to understand the exact terms and conditions of the floating charge and the receiver's powers. It's essential to ensure compliance with all legal requirements during the distribution process.*

**Question 4.2 [maximum 6 marks<sub>[RD(DWH24)]</sub>]**

**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.**

*It is understood that the liquidator (L) of Soaring Kite Limited (SKL) in Cayman needs the Hong Kong Courts to recognise the liquidation proceeding of Cayman Islands and thus is seeking a standard order for recognition and powers in Hong Kong.*

*The courts in Hong Kong follows common law principle in recognising foreign insolvency proceeding and there are no statutes dedicated to the same in Hong Kong, nor have they adopted the UNCITRAL Model Law on Cross-Border Insolvency. Courts in Hong Long have from time to time applied the principle of 'modified universalism' for recognising foreign insolvency proceeding and providing assistance. Once recognised the Hong Kong allows the Cayman liquidation to be recognized as valid and enforceable in Hong Kong* [RD(DWH25)].

*A formal application is required for seeking the recognition order in Hong Kong. This application should be supported by appropriate evidence of L's appointment as the liquidator in Cayman, as well as evidence of SKL's insolvency status. Usually, a letter from Cayman court seeking recognition is the process.*

*The recognition order should provide L with the necessary powers to act on behalf of SKL in Hong Kong. This includes the authority to access SKL's bank documents in Hong Kong* [RD(DWH26)] *and examine the auditors who are located there.*

*Once the recognition order is granted, he can seek a stay of any actions or proceedings that any creditor of SKL may have initiated or may wish to initiate in Hong Kong. The stay will prevent any further individual actions against SKL's assets in Hong Kong and allow for an orderly and coordinated liquidation process* [RD(DWH27)].

*While the recognition order grants him certain powers, he must also comply with all relevant Hong Kong laws and regulations while conducting his investigations and taking actions in the jurisdiction.*

*Overall, obtaining a recognition order in Hong Kong should provide the liquidator with the necessary tools to conduct a comprehensive investigation and effectively manage SKL's assets and affairs in Hong Kong, while ensuring compliance with the local legal requirements.*

*If needed L can also initiate ancillary liquidation process in Hong Kong under Part X of CWUMPO. This will enable him to receive a consolidated claims from the creditors and assets of SKL, in Hong Kong.*

**Question 4.3 [maximum 5 marks<sub>[RD(DWH28)]</sub>]**

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

*The Hong Kong law does not have a formal definition of "Insolvency". The court considered both the cash flow test and balance sheet test as appropriate. Basically, if Harrier Limited can satisfy the court that Lapwing Limited is unable to pay its debts, a winding up petition can be very well filed against Lapwing Limited. The Inability to pay debts has been defined under Section 178 of CWUMPO which states that a creditor once Harrier Limited serves a written demand notice to Lapwing Limited and if Lapwing Limited for 3 weeks neglected to pay the sum due, it means that the Lapwing Limited is unable to pay its debts.*

*To address the situation between Harrier Limited and Lapwing Limited, as the advisor, we would need to ask some key questions to gain a comprehensive understanding of the situation. Here are the key questions you should ask and comments we can provide:*

*Payment History: Lapwing Limited 's payment history and whether there have been any previous instances of delayed or non-payment. This will help determine if the current situation is an isolated incident or part of a recurring **issue**<sub>[RD(DWH29)]</sub>.*

*Outstanding Invoices: Details about the specific invoices that Lapwing Limited has stopped paying and the total amount owed. Understanding the magnitude of the outstanding debt is crucial in assessing the financial impact on Harrier Limited. This is also important to understand whether the debt due surpasses the threshold.*

*Contractual Obligations: Ongoing contract between Harrier Limited and Lapwing Limited need to be reviewed to determine the agreed-upon payment terms and any provisions related to default or non-payment. Assess whether there are any provisions regarding dispute resolution or termination due to non-payment.*

*Arbitration Clause: An arbitration clause in the contract and dispute raised by the Lapwing Limited could result in the stay of winding up petition. Hence, it is important*

*to know whether the arbitration clause is there in the contract and whether they have raised any dispute under the arbitration clause.*

*Communication History: Obtaining records of communication between Harrier and Lapwing, especially those related to the non-payment issue. This includes emails, letters, and notes from the conversation between the directors. Any notice of a dispute is important in this aspect as the same would be a defence taken by Lapwing Limited. Moreover, any admission of the debt due amount would help Harrier Limited and strengthen the winding up petition.*

*Lapwing's Financial Situation: information about Lapwing's current financial position, recent financial statements, and any indications of financial distress. Understanding Lapwing's financial health is crucial in evaluating their ability to pay.*

*Restructuring: Whether any restructuring plan is underway or under consideration for the revival of Lapwing Limited. If so, the Court will be reluctant to order winding up and may adjourn the matter until the restructuring plan is implemented properly.*

*Attempted Resolution: Whether Harrier Limited has attempted to resolve the non-payment issue through discussions or negotiations with Lapwing. Understanding the efforts made by Harrier to address the situation can provide valuable context. This is important because, court sees winding up as a last resort and if alternative remedies are available, it is unlikely that a winding up order is made against a solvent company.*

*Legal Basis for Winding-up: Assess as to whether Harrier Limited has sufficient grounds to initiate a winding-up petition against Lapwing Limited. Determine if there are any statutory grounds for winding-up, such as insolvency or inability to pay debts.*

**Comments:**

*Based on the information provided, it appears that Lapwing Limited has acknowledged the non-payment issue, but the exact reasons behind the non-payment remain unclear. The Lapwing Limited director's response of "fighting" a winding-up petition without specifying grounds may indicate potential resistance. It is crucial for Harrier Limited to gather more evidence and seek legal advice to determine the most appropriate and effective course of action moving forward.*

**\* End of Assessment \***

**TOTAL MARKS: 31 OUT OF 50**