

**City University of Hong Kong**

**Course Syllabus**

**offered by School of Law  
with effect from Semester A 2022/23**

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**Part I Course Overview**

<b>Course Title:</b>	<u>Cross-Border Restructuring and Insolvency</u>
<b>Course Code:</b>	<u>LW6105E</u>
<b>Course Duration:</b>	<u>One semester</u>
<b>Credit Units:</b>	<u>3</u>
<b>Level:</b>	<u>P6</u>
<b>Medium of Instruction:</b>	<u>English</u>
<b>Medium of Assessment:</b>	<u>English</u>
<b>Prerequisites:</b> <i>(Course Code and Title)</i>	<u>Nil</u>
<b>Precursors:</b> <i>(Course Code and Title)</i>	<u>Nil</u>
<b>Equivalent Courses:</b> <i>(Course Code and Title)</i>	<u>Nil</u>
<b>Exclusive Courses:</b> <i>(Course Code and Title)</i>	<u>Nil</u>

## Part II Course Details

### 1. Abstract

This course aims at introducing students to the concept, principles, mechanics, practice, doctrinal and statutory rules, as well the theories of, or relating to, corporate restructuring in a cross-border context. The content of the course include:

- The concept of corporate insolvency and restructuring, and cross-border insolvency
- The principal features of a winding-up
- The purposes and functions of corporate rescue
- The different approaches to corporate rescue in the US, UK and other Commonwealth jurisdictions
- Uses of schemes of arrangement as a restructuring tool
- The different approaches to cross-border insolvency
- Management and conduct of corporate rescue in a cross-border context
- Possible law reform and options (including both the proposed Provisional Supervision procedure and enactment of cross-border insolvency statute)

A comparative approach will be adopted in the teaching of the course.

### 2. Course Intended Learning Outcomes (CILOs)

*(CILOs state what the student is expected to be able to do at the end of the course according to a given standard of performance.)*

No.	CILOs	Weighting (if applicable)	Discovery-enriched curriculum related learning outcomes (please tick where appropriate)		
			A1	A2	A3
1.	Demonstrate an understanding of the concept of corporate insolvency and restructuring	20%	√	√	
2.	Demonstrate an overall knowledge on the legal frameworks governing corporate insolvency and restructuring	20%	√	√	
3.	Demonstrate a detailed knowledge on the legal frameworks governing cross-border insolvency	20%	√	√	
4.	Demonstrate an understanding of schemes of arrangement for the purposes of corporate restructuring	20%	√	√	
5.	Research, collate and evaluate primary and secondary materials on corporate restructuring and cross-border insolvency	20%		√	√
		100%			

*A1: Attitude*

*Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions*

or engaging in inquiry together with teachers.

A2: *Ability*

*Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to self-life problems.*

A3: *Accomplishments*

*Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative works/new artefacts, effective solutions to real-life problems or new processes.*

### 3. Teaching and Learning Activities (TLAs)

*(TLAs designed to facilitate students' achievement of the CILOs.)*

TLA	Brief Description	CILO No.					Hours/week (if applicable)
		1	2	3	4	5	
Lecture	The course leader will provide an overview and background of each topic	√	√	√	√	√	2.5
Class Discussion	Students will participate in group discussion on issues relating to each topic	√	√	√	√	√	0.5

### 4. Assessment Tasks/Activities (ATs)

*(ATs are designed to assess how well the students achieve the CILOs.)*

Assessment Tasks/Activities	CILO No.					Weighting	Remarks
	1	2	3	4	5		
Continuous Assessment: 100%							
Class participation	√	√	√	√	√	20%	Assessed in classes
Coursework	√	√	√	√	√	80%	Student presentation and essay
						100%	

Applicable to students admitted in Semester A 2022/23 and thereafter

Students must obtain a minimum mark of 50% in both class participation and coursework and an overall mark of 50% in order to pass the course.

Applicable to students admitted before Semester A 2022/23

Students must obtain a minimum mark of 40% in both class participation and coursework and an overall mark of 40% in order to pass the course.

## 5. Assessment Rubrics

*(Grading of student achievements is based on student performance in assessment tasks/activities with the following rubrics.)*

Applicable to students admitted in Semester A 2022/23 and thereafter

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B)	Marginal (B-, C+, C)	Failure (F)
Class participation	Demonstration of ability to identify corporate insolvency and cross-border issues	High	Significant	Moderate	Inadequate
Coursework	Demonstration of ability to research, collate and evaluate primary and secondary materials on corporate insolvency and cross-border issues	High	Significant	Moderate	Inadequate

Applicable to students admitted before Semester A 2022/23

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
Class participation	Demonstration of ability to identify corporate insolvency and cross-border issues	Strong evidence of original thinking; good organisation, capacity to analyse and synthesise;	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable	Student who is profiting from the university experience; understanding of the subject; ability to develop	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

		superior grasp of subject matter; evidence of extensive knowledge base.	understanding of issues; evidence of familiarity with literature.	solutions to simple problems in the material.		
Coursework	Demonstration of ability to research, collate and evaluate primary and secondary materials on corporate insolvency and cross-border issues	Strong evidence of original thinking; good organisation, capacity to analyse and synthesise; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

## **Part III Other Information** (more details can be provided separately in the teaching plan)

### **1. Syllabus**

#### **1.1 Keyword Syllabus**

*(An indication of the key topics of the course.)*

Framework and objectives of corporate insolvency law, the treatment of assets in a winding-up, the avoidance of antecedent transactions in winding-up, corporate rescue in different jurisdictions, provisional liquidation, schemes of arrangement, corporate restructuring in a cross-border context, reform issues

#### **1.2 Detailed Syllabus**

##### **Topic One**

Introduction to the module: corporate entity, framework and objectives of corporate insolvency law, and the problems of cross-border insolvency

##### **Topic Two**

Corporate finance (with a focus on loan finance)

##### **Topic Three**

Receivership and Liquidation I

##### **Topic Four**

Liquidation II

##### **Topic Five**

Provisional liquidation and schemes of arrangement as a restructuring tool

##### **Topic Six**

Insolvency regimes, recognition (of proceedings) and assistance

##### **Topic Seven**

“Foreign proceedings” under the UNCITRAL Modal Law

##### **Topic Eight**

Corporate rescue - the different approaches to corporate rescue in common law jurisdictions; reform issues (provisional supervision, insolvent trading, etc)

##### **Topic Nine**

Corporate restructuring in a cross-border context

## 2. Reading List

### 2.1 Recommended Readings

The course leader may also recommend readings to the students from time to time.

#### Recommended course books

- (1) Stefan Lo & Dr. Qu *Law of Companies in Hong Kong* (3<sup>rd</sup> ed. Sweet & Maxwell Asia, 2018)
- (2) Goode, *Principles of Corporate Insolvency Law* (5th ed. Sweet & Maxwell, 2018)
- (3) *Company Law in Hong Kong – Insolvency (2018 Update)* (Sweet & Maxwell Asia, 2017)
- (4) *Company Law in Hong Kong – Practice and Procedure (2018 Update)* (Sweet & Maxwell Asia, 2017)
- (5) Ho, *Cross-Border Insolvency: Principles and Practice* (Sweet & Maxwell, 2016)
- (6) Fletcher, *Insolvency in Private International Law* (2<sup>nd</sup> ed. OUP, 2005)
- (7) Sheldon (ed), *Cross-Border Insolvency*, 4<sup>th</sup> edn. (Bloomsbury, 2015)
- (8) Jennifer Payne, *Schemes of Arrangement, Theory, Structure and Operation* (CUP, Cambridge 2014)
- (9) Bork, *Principles of Cross-Border Insolvency Law* (Intersentia, 2017)
- (10) Finch and Milman, *Corporate Insolvency Law: Perspectives and Principles* (3<sup>rd</sup> edn, CUP 2017)

#### For reference

##### (a) Generally

- (1) Stott, *Hong Kong Company Law* (14th ed. Pearson Education Asia, 2015)
- (2) *Butterworths Hong Kong Company Law Handbook* (18th ed. LexisNexis, 2016)
- (3) Fletcher, *The Law of Insolvency* (5th ed., Sweet & Maxwell, 2017)
- (4) Key, *McPherson's Law of Company Liquidation* (2<sup>nd</sup> ed., Sweet & Maxwell, 2009)
- (5) Davies and Worthington, *Gower Principles of Modern Company Law* (10<sup>th</sup> ed., Sweet & Maxwell, 2016) Chapter 33
- (6) *Totty and Moss on Insolvency* (Segal, Totty & Moss, eds., Sweet and Maxwell, looseleaf)
- (7) Key and Walton, *Insolvency Law: Corporate and Personal* (3<sup>rd</sup> ed., Jordans 2012)
- (8) Mokal, *Corporate Insolvency Law: Theory and Application* (OUP, 2005)
- (9) Baird, *The Elements of Bankruptcy*, 5<sup>th</sup> ed. (Foundation Press, 2010)

**(b) Particular topics**

- (1) Ho (ed), *Cross-Border Insolvency: A Commentary on the UNCITRAL Model Law* (4th ed, Globe Law and Business 2017)
- (2) Moss, Fletcher and Isaacs, *Moss, Fletcher and Isaacs on the EU Regulation on Insolvency Proceedings*, 3<sup>rd</sup> ed. (OUP 2016)
- (3) Virgós and Garcimartín, *The European Insolvency Regulation: Law and Practice* (Kluwer, The Hague 2004)
- (4) Armour and Bennett (eds.), *Vulnerable Transactions in Corporate Insolvency* (Hart Publishing, 2003)
- (5) *Lightman & Moss: Law of Administrators and Receivers of Companies* (6<sup>th</sup> ed. Sweet and Maxwell, 2017)
- (6) Rebecca Parry, James Ayliffe QC, and Sharif Shivji, *Transaction Avoidance in Insolvencies* (2<sup>nd</sup> edn, OUP, 2010)

**2.2 Online Resources**

Students will also be asked to read relevant cases from time to time. These can be downloaded from Westlaw or Lexis Nexis.