

LW6105E: CROSS-BORDER RESTRUCTURING AND INSOLVENCY

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Cross-Border Restructuring and Insolvency

Subject Code

LW - Law

Course Number

6105E

Academic Unit

School of Law (FL)

College/School

School of Law (FL)

Course Duration

One Semester

Credit Units

3

Level

P5, P6 - Postgraduate Degree

Medium of Instruction

English

Medium of Assessment

English

Prerequisites

Nil

Precursors

Nil

Equivalent Courses

Nil

Exclusive Courses

Nil

Part II Course Details

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.

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Demonstrate an understanding of the concept of corporate insolvency and restructuring	20	x	x	
2	Demonstrate an overall knowledge on the legal frameworks governing corporate insolvency and restructuring	20	x	x	
3	Demonstrate a detailed knowledge on the legal frameworks governing cross-border insolvency	20	x	x	
4	Demonstrate an understanding of schemes of arrangement for the purposes of corporate restructuring	20	x	x	
5	Research, collate and evaluate primary and secondary materials on corporate restructuring and cross-border insolvency	20		x	x

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 real-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.

Learning and Teaching Activities (LTAs)

LTAs	Brief Description	CILO No.	Hours/week (if applicable)
1	Lecture	The course leader will provide an overview and background of each topic	1, 2, 3, 4, 5 2.5

2	Class Discussion	Students will participate in group discussion on issues relating to each topic	1, 2, 3, 4, 5	0.5
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Assessment Tasks / Activities (ATs)

	ATs	CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Class participation	1, 2, 3, 4, 5	20	Assessed in classes
2	Coursework	1, 2, 3, 4, 5	80	Student presentation and essay. The use of Generative AI tools is not allowed.

Continuous Assessment (%)

100

Additional Information for ATs

Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

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 and in Semester A 2024/25 & thereafter

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.

Assessment Rubrics (AR)**Assessment Task**

Class participation (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

Demonstration of ability to identify corporate insolvency and cross-border issues

Excellent

(A+, A, A-) Strong evidence of original thinking; good organisation, capacity to analyse and synthesise; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Coursework (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

Demonstration of ability to research, collate and evaluate primary and secondary materials on corporate insolvency and cross-border issues

Excellent

(A+, A, A-) Strong evidence of original thinking; good organisation, capacity to analyse and synthesise; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Class participation (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Demonstration of ability to identify corporate insolvency and cross-border issues

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

Coursework (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Demonstration of ability to research, collate and evaluate primary and secondary materials on corporate insolvency and cross-border issues

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

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

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

Reading List**Additional Readings**

	Title
1	The course leader may also recommend readings to the students from time to time.
2	Recommended course books
3	Stefan Lo & Dr. Qu Law of Companies in Hong Kong (3rd ed. Sweet & Maxwell Asia, 2018)
4	Goode, Principles of Corporate Insolvency Law (5th ed. Sweet & Maxwell, 2018)
5	Company Law in Hong Kong – Insolvency (2018 Update) (Sweet & Maxwell Asia, 2017)
6	Company Law in Hong Kong – Practice and Procedure (2018 Update) (Sweet & Maxwell Asia, 2017)
7	Ho, Cross-Border Insolvency: Principles and Practice (Sweet & Maxwell, 2016)
8	Fletcher, Insolvency in Private International Law (2nd ed. OUP, 2005)
9	Sheldon (ed), Cross-Border Insolvency, 4th edn. (Bloomsbury, 2015)

10	Jennifer Payne, <i>Schemes of Arrangement, Theory, Structure and Operation</i> (CUP, Cambridge 2014)
11	Bork, <i>Principles of Cross-Border Insolvency Law</i> (Intersentia, 2017)
12	Finch and Milman, <i>Corporate Insolvency Law: Perspectives and Principles</i> (3rd edn, CUP 2017)
13	For reference (a) Generally
14	Stott, <i>Hong Kong Company Law</i> (14th ed. Pearson Education Asia, 2015)
15	Butterworths <i>Hong Kong Company Law Handbook</i> (18th ed. LexisNexis, 2016)
16	Fletcher, <i>The Law of Insolvency</i> (5th ed., Sweet & Maxwell, 2017)
17	Key, <i>McPherson's Law of Company Liquidation</i> (2nd ed., Sweet & Maxwell, 2009)
18	Davies and Worthington, <i>Gower Principles of Modern Company Law</i> (10th ed., Sweet & Maxwell, 2016) Chapter 33
19	Totty and Moss on <i>Insolvency</i> (Segal, Totty & Moss, eds., Sweet and Maxwell, looseleaf)
20	Key and Walton, <i>Insolvency Law: Corporate and Personal</i> (3rd ed., Jordans 2012)
21	Mokal, <i>Corporate Insolvency Law: Theory and Application</i> (OUP, 2005)
22	Baird, <i>The Elements of Bankruptcy</i> , 5th ed. (Foundation Press, 2010)
23	For reference (b) Particular topics
24	Ho (ed), <i>Cross-Border Insolvency: A Commentary on the UNCITRAL Model Law</i> (4th ed, Globe Law and Business 2017)
25	Moss, Fletcher and Isaacs, <i>Moss, Fletcher and Isaacs on the EU Regulation on Insolvency Proceedings</i> , 3rd ed. (OUP 2016)
26	Virgós and Garcimartín, <i>The European Insolvency Regulation: Law and Practice</i> (Kluwer, The Hague 2004)
27	Armour and Bennett (eds.), <i>Vulnerable Transactions in Corporate Insolvency</i> (Hart Publishing, 2003)
28	Lightman & Moss: <i>Law of Administrators and Receivers of Companies</i> (6th ed. Sweet and Maxwell, 2017)
29	Rebecca Parry, James Ayliffe QC, and Sharif Shivji, <i>Transaction Avoidance in Insolvencies</i> (2nd edn, OUP, 2010)
30	Online Resources: Students will also be asked to read relevant cases from time to time. These can be downloaded from Westlaw or Lexis Nexis.