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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8B**

**CHINA (PRC)**

This is the **summative (formal) assessment** for **Module 8B** 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 8B**.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 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.assessment8B]**. An example would be something along the following lines: 202223-336.assessment8B. **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 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. 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 **9 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**

Select the correct answer:

The **China Enterprise Bankruptcy Law 2006** applies to:

1. Natual persons in financial difficulty.
2. Enterprises having an independent legal status.
3. Partnerships.
4. Sole traders.

**Question 1.2**

Select the correct answer:

The China Enterprise Bankruptcy Law 2006 provides three major **insolvency procedures**, namely:

1. Reorganisation, scheme of arrangement and liquidation.
2. Receivership, settlement and liquidation.
3. Liquidation, settlement and company voluntary arrangement.
4. Reorganisation, settlement and liquidation.

**Question 1.3**

Select the correct answer in relation to the **appointment of the bankruptcy administrator**:

1. The bankruptcy administrator can only be appointed by the debtor when the company files for bankruptcy in court.
2. Only the court can appoint a bankruptcy administrator. Creditors may request a replacement bankruptcy administrator to be appointed if the court-appointed administrator is proven to be incompetent or biased at a later stage of the proceedings.
3. Both the debtor and creditors can appoint provisional bankruptcy administrators when filing.
4. The court can only appoint a bankruptcy administrator after getting consent from both the debtor and the creditors.

**Question 1.4**

**Select the correct answer:**

Which party is **eligible to file** a company bankruptcy petition to the court?

1. Directors can file for company bankruptcy in a court.
2. Both the debtor and the creditors may file for bankruptcy.
3. Only the debtor is allowed to file.
4. Both creditors and shareholders of the company may file for bankruptcy.

**Question 1.5**

Regarding the “control” model in corporate reorganisation under the China Enterprise Bankruptcy Law of 2006, which of the following statements is **correct**?

1. The debtor-in-possession model is not available under the Chinese corporate reorganisation provisions.
2. Both debtor-in-possession and administrator-in-possession models are available under the Chinese corporate reorganisation provisions.
3. Once the administrator-in-possession model is chosen, it cannot be converted into the debtor-in-possession model.
4. The debtor-in-possession model is automatically selected once a reorganisation procedure is commenced.

**Question 1.6**

Regarding preferential creditors in China, which of the following statements **is correct**?

1. Both the tax authorities and employees are treated as preferential creditors in China.
2. The preference of tax authorities has been abolished by the China Enterprise Bankruptcy Law of 2006.
3. Tax authorities are ranked higher than employees in the priority hierarchy.
4. Tax authorities are treated as unsecured creditors in China and are not given preferential treatment.

**Question 1.7**

A corporate reorganisation plan that has been voted on must be approved by the court before it takes effect. Indicate which one of the following statements is **correct**:

1. If the reorganisation plan was voted down (rejected) by one or more class of creditors, the court may still approve the plan if certain statutory conditions are met; a cram-down is therefore available under Chinese law.
2. A cram-down approval is not available under the China Enterprise Bankrupty Law 2006.
3. If shareholders do not support / approve the reorganisation plan, the plan cannot be crammed-down by the courts.
4. Only a reorganisation plan that has been fully supported by all classes of stakeholders entitled to vote can be sent to the court for approval.

**Question 1.8**

As regards the recognition of foreign bankruptcy proceedings in China, select the **correct answer**:

1. A foreign bankruptcy proceeding can be recognised in China, provided there is a judicial assistance treaty with China or reciprocity with China has been established.
2. China strictly applies the principle of territorialism and consequently no foreign bankruptcy proceeding or ruling can be recognised in China.
3. China has adopted the UNCITRAL Model Law on Cross-Border Insolvency and all foreign bankruptcy proceedings can be automatically recognised in China.
4. China only recognises foreign bankruptcy orders from countries which have joined the Belt & Road Initiative.

**Question 1.9**

Select the correct answer:

In terms of the **stated universal effect** of a Chinese bankruptcy proceeding, the practical approach is that:

1. The Chinese bankruptcy administrator can use the court bankruptcy ruling to bar foreign creditors from taking legal action against the company’s assets in all foreign courts.
2. The Chinese bankruptcy administrator must seek recognition of the Chinese bankruptcy ruling abroad, otherwise the Chinese bankruptcy ruling will not be effective in other jurisdictions.
3. The Chinese bankruptcy ruling can only be recognised in countries that have adopted the UNCITRAL Model Law on Cross-Border Insolvency.
4. The Chinese bankruptcy ruling will never be recognised in other jurisdictions since China has not adopted the UNCITRAL Model Law on Cross-Border Insolvency.

**Question 1.10**

Select the correct answer:

The introduction of the corporate rescue procedure under the China Enterprise Bankruptcy Law 2006 was most **influenced** by the jurisdiction of:

1. The United States of America.
2. Japan.
3. Singapore.
4. The United Kingdom.

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 [2 marks]**

If a creditor wants to bring a defaulting debtor company into a bankruptcy liquidation procedure in China, which bankruptcy test should be fulfilled before the court can accept the filing?

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

Name the two professions in China that dominate Chinese regional bankruptcy administrator lists **and** briefly explain how they are appointed in practice.

[Type your answer here]

**Question 2.3 [maximum 4 marks]**

Please briefly describe the major features of fixed charges and pledges as the major forms of security in China.

[Type your answer here]

**QUESTION 3 (essay-type questions) [15 marks in total]**

**Question 3.1 [maximum 8 marks]**

“The China Enterprise Bankruptcy Law of 2006 is a rescue-oriented piece of insolvency legislation, emphasising rescue over liquidation.”

Discuss why, at least in theory, this statement is true.

[Type your answer here]

**Question 3.2 [maximum 7 marks]**

Briefly explain the process for the proof of claims in a corporate liquidation procedure and the procedure that is followed should the value or existence of a creditor’s claim be disputed.

[Type your answer here]

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

**Question 4.1 [maximum 8 marks]**

The bankruptcy liquidator of an Australian company finds that some of the company’s assets are located in Beijing, China. A Chinese creditor has taken legal action in the Beijing Second Intermediate People’s Court, which has issued an injunction freezing the assets of the Australian company in China. The liquidator has approached you for advice on how the Australian bankruptcy proceeding can be recognised in China. Advise the liquidator.

[Type your answer here]

**Question 4.2 [maximum 7 marks]**

Huaxing Microchip Limited is a large high-tech manufacturing company based in Shanghai. In 2019, the company was unable to repay a RMB 23 million loan to the Construction Bank of China (Shanghai Branch) and was petitioned for bankruptcy liquidation by the Bank at the Shanghai First Intermediate People’s Court. Three days after submitting the petition, the Court accepted the liquidation filing and appointed Granter Partners, a local law firm included in the local bankruptcy administrator list, as the liquidation administrator.

Shortly after the commencement of the bankruptcy of Huaxing Microchip Limited, the CEO of Naking Limited, a controlling shareholder holding 32% of the equity of Huaxing Microchip Limited, approaches you for advice.

**Using the facts above, answer the questions that follow.**

**Question 4.2.1 [maximum 4 marks]**

The CEO of Naking Limited tells you that the various businesses of Huaxing Microchip Limited are still viable and that a piecemeal liquidation of the company will not be in the interests of any of the stakeholders. Since Huaxing Microchip Limited appears to have a bright future if the current debt crisis can be resolved, you are asked to explain whether (and if so, how) the current liquidation procedure can be converted to a reorganisation procedure.

[Type your answer here]

**Question 4.2.2 [maximum 3 marks]**

Assuming that the bankruptcy liquidation of Huaxing Microchip Limited is successfully converted to a reorganisation procedure, a reorganisation plan for Huaxing Microchip Limited is eventually voted on by the various stakeholders. Due to the fact that Huaxing Microchip Limited is insolvent, the reorganisation plan *inter alia* proposes that the shares of all previous shareholders be entirely cancelled. Unhappy that its equity in Huaxing Microchip Limited will be wiped out by the reorganisation plan, Naking Limited understandably votes against the plan. However, since the plan has only been voted down by the shareholders and approved by all the classes of creditors, the reorganisation administrator submits the reorganisation plan to the Shanghai First Intermediate Court for approval.

Advise the CEO of Naking Limited as to whether a cram-down approval by the court is possible, and if applicable, what conditions should be met before the court could hand down a cram-down approval.

[Type your answer here]

**\* End of Assessment \***