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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: **[studentnumber.assessment8B]**. An example would be something along the following lines: 202021IFU-314.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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. 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] (10 points rewarded)

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 (correct)

Select the correct answer:

Which of the following are eligible to use the China Enterprise Bankruptcy Law of 2006 to enter into a court-involved bankruptcy procedure in China?

- (a) Individuals, when in financial difficulty.
- (b) Enterprises having an independent legal status.**
- (c) Enterprises or partnerships.
- (d) State-owned enterprises only.

Question 1.2 (correct)

Select the correct answer:

Which three bankruptcy options are provided by the China Enterprise Bankruptcy Law of 2006?

- (a) Reorganisation, scheme of arrangement and liquidation.
- (b) Receivership, settlement and liquidation.
- (c) Liquidation, settlement and company voluntary arrangement.
- (d) Reorganisation, settlement and liquidation.**

Question 1.3 (correct)

Select the correct answer:

How is a bankruptcy administrator appointed under the China Enterprise Bankruptcy Law of 2006?

- (a) The bankruptcy administrator is appointed by the debtor when the company files for bankruptcy in court.
- (b) 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.**

- (c) Both the debtor and creditors may appoint provisional bankruptcy administrators.
- (d) The court can only appoint a bankruptcy administrator after consulting with both the shareholders and the creditors.

Question 1.4 (correct)

Select the correct answer:

Which parties may file for bankruptcy in court under the China Enterprise Bankruptcy Law of 2006?

- (a) Only the debtor may file for bankruptcy.
- (b) Both the debtor and the creditors may file for bankruptcy.
- (c) Only the shareholders of the debtor company may file for bankruptcy.
- (d) Both creditors and shareholders of the company may file for bankruptcy.

Question 1.5 (correct)

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

- (a) The debtor-in-possession model is categorically not available under the Chinese corporate reorganisation provisions.
- (b) Both debtor-in-possession and administrator-in-possession models are available under the Chinese corporate reorganisation provisions.
- (c) Once the administrator-in-possession model is chosen, it cannot be converted into the debtor-in-possession model.
- (d) The debtor-in-possession model automatically applies once a reorganisation procedure is commenced.

Question 1.6 (correct)

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

- (a) Both the tax authorities and employees are treated as preferential creditors in China.
- (b) The preference of tax authorities has been abolished by the China Enterprise Bankruptcy Law of 2006.
- (c) Tax authorities are ranked higher than employees in the priority hierarchy.
- (d) Tax authorities are paid before fixed charge holders.

Question 1.7 (correct)

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**:

- (a) 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.
- (b) A cram-down cannot be exercised by Chinese courts.
- (c) If the shareholders do not support / approve the reorganisation plan, the plan cannot be crammed-down by the court.
- (d) 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 (correct)

Select the correct answer:

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

- (a) 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.
- (b) China strictly applies the principle of territorialism and consequently no foreign bankruptcy proceeding or ruling can be recognised in China.
- (c) China has adopted the UNCITRAL Model Law on Cross-Border Insolvency and all foreign bankruptcy proceedings can be automatically recognised in China.
- (d) China only recognises foreign bankruptcy orders of its largest trading partners, such as the USA and the EU.

Question 1.9 (correct)

Select the correct answer:

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

- (a) 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.
- (b) 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.
- (c) The Chinese bankruptcy ruling can only be recognised in countries that have adopted the UNCITRAL Model Law on Cross-Border Insolvency.
- (d) 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 (correct)

Select the correct answer:

When drafting the China Enterprise Bankruptcy Law of 2006, which country's corporate rescue laws influenced Chinese lawmakers the most?

(a) The United States of America.

(b) Singapore.

(c) Australia.

(d) The United Kingdom.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [2 marks] (2 points rewarded)

What bankruptcy test(s) should be met if a bankruptcy petition is filed **by a creditor** in China?

Pursuant to Article 7 of the EBL, the filing creditor must be able to demonstrate to the Court that the debtor is cash-flow insolvent, i.e. unable to pay a due debt. In practice, the creditor should also have the support of the local government otherwise the application is likely to fail.

Question 2.2 [maximum 4 marks] (4 points rewarded)

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

The two professions are accountants and lawyers. Pursuant to Article 22 of the China Enterprise Bankruptcy Law, the administrator shall be appointed by the Court, and pursuant to article 24, this includes teams of persons within a law firm, certified public accountant firm, a bankruptcy liquidation firm or any other public intermediary agency may serve as an administrator. Article 13 states that at the time that the Court accepts the liquidation petition, an administrator is to be appointed simultaneously from the list of available practitioners.

Question 2.3 [maximum 4 marks] (4 points rewarded)

Name the two main types of security available under Chinese law **and** explain how and where they are registered.

The two main types of security are fixed charges, and pledges. Firstly, fixed charges can be registered over both movable and immovable property, with the more common registration being over immovable property and is granted in favour of a secured creditor. These fixed charges have to be registered pursuant to *China Property Law of 2007*, otherwise the fixed charge is not valid. Following registration, a security certificate is then issued to the charge holder. To effect registration of immovable property, the registration authority is the relevant local office of the China Housing Management Authority. A further common option for registration is with the China Land Management Authority.

Pledges become valid and enforceable after the pledged movable asset is in the hands of the secured creditor, and where the pledged asset itself is movable, no registration is required – it is effective by virtue of the possession of the asset. Where the asset is intangible, such as a trademark, patent, or shares these must be registered with relevant authority such as the China Industries and Commerce Regulation Bureau Central Office for trademarks, and the China Securities Depository and Clearing Corporation Limited for shares of listed companies.

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

Question 3.1 [maximum 8 marks] (7 points rewarded)

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

Discuss this statement and indicate whether you agree or disagree with it, providing reasons for your answer.

The enactment of the EBL within China saw the dawn of a new era for business restructuring and operations moving forward within China. Ostensibly, the new law, in adopting a number of elements from the United States of America laws, saw an acknowledgement of the importance of business restructuring, rather than proceeding directly to liquidation. In principle, the statement is correct and I would agree that on the face of the EBL, the focus is very much on recovery. In practice however, the actual outcome may be different.

The EBL:

As noted by Professor Li, the new EBL has sought to emphasize the importance of reorganisation procedures in China rather than the use of bankruptcy liquidation, it was stated that the “new law encourages insolvent businesses to choose restructuring methods as first choice. Only when there is no business viability should the bankruptcy liquidation be adopted as a last resort.”¹

The EBL has introduced a number of processes that have often been utilised in other jurisdictions throughout the world as corporate rescue mechanisms.

Firstly, the introduction of the reorganisation provisions, often compared to that of both restructuring, and administration around the world has resulted in the EBL providing a strong emphasis on the restructuring and reorganisation of a debtor entity in circumstances where the debtor or creditor makes the application to the Court.²

Further, the EBL also provides for settlements to be reached between the debtor and creditors.³ As Godwin notes, the settlement procedure is important as it appears, on the face of the EBL, to be a streamlined and cost effective process for the debtors and creditors alike.⁴

The position in practice:

¹ Shuguang Li & Zhofa Wang, “Review of the PRC Bankruptcy Law in 2009”, *Insol international Technical Series Issues No 11 at 3 (2010)* (referred to in Emily Lee, “The Reorganisation Process under China’s Corporate Bankruptcy System, Vol45. No 4 (Winter 2011).

² EBL Art 70.

³ EBL Art 96.

⁴ Andrew Godwin, “A Lengthy Stay? The Impact of the PRC Enterprise Bankruptcy Law on the Rights of Secured Creditors”, *UNSW Law Journal*, Volume 30(3), 756, 762.

As noted in article 2 of the EBL, an enterprise legal person may undergo a reorganisation procedure in circumstances where the debts cannot be paid; assets are not sufficient to settle his debts, he lacks the ability to pay debts or the debtor has 'apparently forfeited the ability to pay of his debts'. It is an important distinction that the EBL immediately allows such a procedure to be expressly recognised in the EBL. As mentioned above, the drafting of the EBL drew significantly on the United States Approach, which provides significant provisions and structures for reorganisation as a first option when a business begins to experience issue and allows for appropriate applications to be made to the Court pursuant to sections 2 and 7 for voluntary reorganisation. That being said, the fact that the EBL clearly provides these options, does not translate into a widely used process.

However, the reality as distinct from the concepts set out in the legislation are very different. In a 2009 article, both Professor Li and Zhofa Wang noted that there were only 16 reorganisation cases of listed entities within China that had been accepted by the Courts.⁵ As an overall perspective, in the United States in 2009, there were 1,473,675 bankruptcy filings, whilst in China in the same period, there were 2,434.⁶ Very simply, the processes for reorganisation can be easily voted against by any class of stakeholder.⁷ The fact that the rescue process can be voted against means that the actual process can be limited where there are dissenting creditors, and ostensibly is severely hampered in this situation. Further, the reorganisation process can be lengthy and costly, which will also hamper further efforts to encourage utilisation of these mechanisms.⁸

Furthermore, the drafts of the legislation, particularly since the commencement of the drafting of the EBL and the reform process from 1994 onwards was widely applauded for the attempts to be a corporate rescue mechanism.⁹ Evidently it was hoped at this stage that the EBL was going to bring China's approach to insolvency in line with a number of other jurisdictions around the world, particularly those that were major trading partners and heavily involved with China commercially.

Clearly the intent of the EBL was to operate as a corporate rescue mechanism but the reality has turned out to be somewhat different from those initial expectations. Interestingly, the COVID-19 pandemic has had a significant impact on the use of the EBL, with 713 cases filed between January and April 2020.¹⁰ Further publications from the Supreme People's Court Bulletin on 31 March 2020 demonstrated that the of the 8 cases published in the bulletin, 5 companies were reorganized, 1 company was liquidated, 1 company ended in a compromise and 1 company proceeded through a formal execution-to-bankruptcy procedure.¹¹

Whilst the EBL initially did not appear to be as successful as initially hoped, it appears that with the passing of time, and increasing pressures on business, that the corporate rescue methods set out in the EBL have become more viable for creditors and debtors alike, and will continue to be utilised more openly within China. It is telling that as a result of a global

⁵ Andrew Godwin, "A Lengthy Stay? The Impact of the PRC Enterprise Bankruptcy Law on the Rights of Secured Creditors", *UNSW Law Journal*, Volume 30(3), 756, 762.

⁶ Yujia Jiang, "The Curious Case of Inactive Bankruptcy Practice in China: A comparative study of U.S. and Chinese Bankruptcy Law", 34(3) *Northwestern Journal of International Law and Business*, 559, 561.

⁷ EBL Art 87.

⁸ Emily Lee, "The Reorganisation Process under China's Corporate Bankruptcy System", *The International Lawyer* vol 45, no 4, 939, 942.

⁹ Charles D Booth, *The 2006 PRC Enterprise Bankruptcy Law: The Wait is Finally Over* (2008). Singapore Academy of Law Journal, Vol. 20, p. 275, 2008 301

¹⁰ Zhang Yang and Stacey Steele, "COVID-19 and the Current State of Insolvency in China", *Asian Legal Conversations*, Melbourne Law School, 18 June 2020.

¹¹ *Ibid.*

pandemic, that the figures have demonstrated that there are more filings that resulted in a rescue rather than a liquidation, meaning that where businesses may remain viable (to an extent), there is more of a likelihood for corporate rescue to be utilised in China.

Question 3.2 [maximum 7 marks] (7 points rewarded)

Briefly explain the process for the proof of claims in a reorganisation procedure and the procedure that is followed should the value or legality of a creditor's claim be disputed.

The EBL sets out the process for creditors to submit their claims and how they can then prove those claims across both liquidation but also in reorganisation procedures, along with the methodology for the creditor to further prove their claims in the event that the value or legality of those claims are challenged.

Firstly, it is important to note that the way in which creditors prove their claims applies equally across either liquidation or reorganisation. This confirmed by article 92, which states that where the creditor fails to declare their claims in accordance with the provisions of the EBL, they are not entitled to exercise their rights during the implementation of the reorganisation plan and may only seek the enforcement of their right after the conclusion of the implementation of the plan.

To bring a claim, a creditor must declare its rights to the administrator within the limits as specified by the Court,¹² and such time limit is specified by the Court at the time that the bankruptcy action is accepted by the Court (and should be no less than 3 days, and no more than 3 months for a creditor to declare such claims).¹³ Should the creditor fail to make their declaration within the time stipulated by the Court, the creditor may submit a supplementary declaration prior to any final distribution of the assets.¹⁴ The creditor must ensure that its claim is provided by way of a written statement that illustrates the amount of its creditors rights, whether it has any security and any supporting evidence.¹⁵ Finally, following the provision of claims in accordance with the procedure set out under the EBL, the administrator shall have all claims registered, as well as examine all of the claim and complete a form of claims. The administrator is also required to maintain a register of the claims, for inspection and reference by any interest party.¹⁶

Following the completion of the register of claims, it is to be submitted at the first meeting of creditors. Where both the debtor and the creditor have no objection to what is recorded in the form of the claims, the Court can then make a ruling confirming that claim.¹⁷ Where either the debtor or creditor has objections to what has been recorded in the form of the claims, the creditor or debtor may file a separate application in the same court that has accepted the bankruptcy proceeding.¹⁸ Effectively, this means that in circumstances where a creditors claim is disputed, either for the legality of the claim (i.e. an entitlement to actually make the claim) or the value of the claim (i.e. too high or too low based on records, contractual provisions and invoices for example), the creditor is entitled to litigate the entirety of the claim separately, within the same court as the main bankruptcy proceeding for a valid judgment that is legally enforceable and can be submitted to the administrator as part of the procedure.

¹² EBL Art 48.

¹³ EBL Art 45.

¹⁴ EBL Art 56.

¹⁵ EBL Art 49.

¹⁶ EBL Art 57.

¹⁷ EBL Art 58.

¹⁸ Ibid.

(DIP, early rescue, cram down should be discussed)

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

Question 4.1 [maximum 8 marks] (8 points rewarded)

The bankruptcy liquidator of an Australian company finds that some of the company's assets are located in Shanghai, China. A Chinese creditor has taken legal action in a local (Chinese) court, which has issued an injunction freezing the assets of the Australian company in Shanghai. The liquidator has approached you for advice on how the Australian bankruptcy proceeding can be recognised in China. Advise the liquidator.

Firstly, it is important to note the China has not adopted the UNCITRAL Model Law on Cross-Border Insolvency and as such, there is going to be no form of recognition through this. As a reference Australia has somewhat adopted the Model Law but this has no application in this situation. Given this, we must now turn to the EBL.

Article 5 of the EBL provides that a Chinese decision binds company assets around the world as well as stating that a foreign court bankruptcy ruling binds the assets within China, with some exceptions. The exceptions to the provisions of Article 5 are that the foreign judgment is required to be recognised by a Chinese court (on application to the relevant Chinese Court) before it is effective, and this recognition must be based on a judicial assistance treaty entered into between China and the Country making the request, or the under the principle of reciprocity should no treaty be in effect.

Furthermore, any application must also consider the following public interest issues, including that the recognition of the judgment should not have an effect on Chinese law, China's sovereignty, security and public interests and would not disadvantage any of the domestic creditors within China.

In this situation, we need to determine how the Australian bankruptcy proceeding could be recognised. As it stands, there is no judicial assistance treaty between Australia and China, and as a result any application to the relevant Chinese court would need to be based on the principle of reciprocity and satisfy the court that there are no detriments to the public interest issues as set out above.

Under Chinese Civil Procedure Law, the Australian liquidator would need to bring proceedings in the Chinese Local Intermediate People's court, closest to where the Company's assets are located. The Court application would have to demonstrate how the Australian bankruptcy is valid and enforceable, but more importantly (from the Chinese perspective) does not negatively impact the public interest considerations.

Concerningly for the Australian liquidator, the Chinese Courts are unlikely to grant the reciprocity in circumstances where the recognition of this foreign judgment is likely to have a negative impact on the Chinese assets of the company as a result of the Chinese judgment already. It is likely that whilst the Australian liquidator may be able to satisfy the Court that the recognition of this judgment does not affect Chinese law, its sovereignty or security, but any recognition of the judgment is likely to result in a small pool of assets to be distributed to any Chinese domestic creditor. On this basis alone, the application would likely fail.

Question 4.2 [maximum 7 marks]

Yangtze Steel Limited is a large steel manufacturing company based in Shanghai. In 2010, the company was unable to repay a RMB 23 million loan to the Bank of China (Shanghai

Branch) and was petitioned for bankruptcy liquidation by the Bank at the Shanghai Second Intermediate People's Court. Three days after submitting the petition, the Court accepted the liquidation filing and appointed Jingchen Partners, a local law firm included in the local bankruptcy administrator list, as the liquidation administrator.

Shortly after the commencement of the bankruptcy of Yangtze Steel Limited, the CEO of SanLong Limited, a controlling shareholder holding 32% of the equity of Yangtze Steel Limited, approaches you for advice.

Using the facts above, answer the questions that follow.

Question 4.2.1 [maximum 4 marks] (4 points rewarded)

The CEO of SanLong Limited tells you that the various businesses of Yangtze Steel Limited are still viable and that a piecemeal liquidation of the company will not be in the interests of any of the stakeholders. Since Yangtze Steel 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.

Pursuant to article 70 of the EBL, the conversion from liquidation to reorganisation may occur where the liquidation is involuntary and has been commenced by a creditor, at which point either the debtor or an equity shareholder with more than 10% of the shareholding of the debtor company can make an application to the Court for the conversion to occur.

This may be difficult to complete as the Company has evidently met the bankruptcy test to enter into the process, any such application is at the expense of creditors. Further, the CEO has to demonstrate how the management of the company will proceed as there has been no information from the CEO as to the ongoing management and the Court, as well as opposing creditors will likely want to see how the Company is going to proceed.

Given that the liquidation has been commenced by a creditor, and the likely entity being SanLong Limited, with a 32% shareholding of Yangtze Steel, such an application would be able to be brought before the Court.

However, SanLong Limited must be aware that whilst such the application for conversion can be brought, they are generally not accepted by the Courts. Furthermore, given the creditor that has commenced the insolvency proceeding is the Bank of China, it is considerably more unlikely to be granted as any plan will also be required to be approved by the Local Government.

Question 4.2.2 [maximum 3 marks] (2 points rewarded)

Assuming that the bankruptcy liquidation of Yangtze Steel Limited is successfully converted to a reorganisation procedure, a reorganisation plan for Yangtze Steel Limited is eventually voted on by the various stakeholders. Due to the fact that Yangtze Steel Limited is insolvent, the reorganisation plan *inter alia* proposes that the shares of all previous shareholders be cancelled. Unhappy that its equity in Yangtze Steel Limited will be wiped out by the reorganisation plan, SanLong 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 Second Intermediate Court for approval.

Advise the CEO of SanLong Limited as to whether the Court can approve such a plan under the current law in China.

Pursuant to Article 86 of the EBL, any reorganisation plan must, following a vote approving the plan, present the Plan to the Court. However, where the plan has been voted on, has received some positive votes, but has been voted against by at least one voting group, the plan can be presented to the Court for a 'cram-down' pursuant to article 87. Essentially, a cram-down can force the plan to be adopted and applied to the reorganisation but must meet the following statutory criteria.

Firstly the plan must be approved by the secured creditor class – if not, then secured creditors must be fully paid out of the secured assets, as well as receive fair compensation as a result of the delay to foreclosure on that asset.¹⁹ Similarly, the employee and tax authority classes of creditors must vote in favour of the plan. If this category does not vote in favour, they must be paid out in full.²⁰ Further, the ordinary unsecured creditors must also vote in favour of the plan, but if they do not vote in favour, they must receive a more favourable deal under the plan than they would have received under a liquidation. Essentially, this means that they must receive more per dollar owed to them under the plan than if the liquidation was to continue.²¹ Next, and most importantly for SanLong Limited, the shareholders must have voted in favour of the plan. In the event that they do not vote in favour, they must receive fair and impartial treatment under the plan.²² Arguably, this has not occurred as part of the plan, and to that end it's possible that the application would struggle at this point. The loss of any equity is not fair not impartial for any of the shareholders.

Following on from the shareholder vote, any persons that vote within the same class must be treated fairly, with the priority between both creditors, and the shareholders to be upheld. Further, it is important that the potential plan does not contravene the order of payment as set out for liquidations under s113 of the EBL.²³ Finally, the plan must also be deemed to be feasible in the reorganisation of the entity.²⁴

It is likely that the application for a cram-down may struggle given the treatment of the shareholders, as the reorganisation is not fair and equitable for the shareholders.
(given the company is insolvent, it is fair to cancel the shareholders' equity)

48 out of 50 points rewarded

*** End of Assessment ***

¹⁹ EBL Art 87(1)

²⁰ EBL Art 87(2)

²¹ EBL Art 87(3)

²² EBL Art 87(4)

²³ EBL Art 87(5)

²⁴ EBL Art 87(6)