



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: 202122-336.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 “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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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 awarded)

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**:

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? (1 point)

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

Question 1.2 (1 point)

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 (1 point)

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 (1 point)

Select the correct answer:

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

- (a) Directors can file for company bankruptcy in a court.
- (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 (1 point)

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 (1 point)

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 (1 point)

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 (1 point)

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 (1 point)

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 (1 point)

Select the correct answer:

When drafting the corporate reorganisation chapter of 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) Russia.
- (c) Australia.
- (d) The United Kingdom.

QUESTION 2 (direct questions) [10 marks] (10 points awarded)

Question 2.1 [2 marks] (2 points awarded)

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

In case of a creditor petition under Article 7 of the China Enterprise Bankruptcy Law of 2006, the filing for liquidation must pass the cash-flow bankruptcy test (i.e., the debtor is unable to pay a debt that is due). The creditor will not be able to use the balance-sheet test to convince the court to accept the liquidation petition.

In case of a creditor petition under Article 2 of the China Enterprise Bankruptcy Law of 2006, the filing for reorganisation must pass either the cash-flow bankruptcy test or the balance-sheet test. In other words, the reorganisation petition by the creditor requires evidence that the debtor is either cash-flow or balance-sheet bankrupt. The creditor can use both bankruptcy tests when he presents such petition to the court.

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

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 in China that dominate Chinese regional bankruptcy administrator lists are (1) (local) lawyers, and (2) (local) accountants.

In many provinces, when a formal bankruptcy procedure commences, it is the provincial supreme people's court that will exercise its exclusive power of appointing a bankruptcy administrator thereby selecting a candidate from its so-called "qualified" insolvency practitioner list (in some provinces this power is exercised by a local intermediate people's court). In any case, the debtor and the creditors have no say in the bankruptcy administrators' appointment. The creditors can only request a replacement of the bankruptcy administrator if they present evidence of his lack of competence or impartiality.

The insolvency practitioner lists are generally made by the provincial supreme people's courts, with local law large law and accounting firms (or liquidation firms) simply selected by these courts themselves. For these firms to be included in the

lists, they do not have to go through any qualification exams or training courses. What is (more) important, though, is the size of these firms. The larger they are, the more reliable they are in the eyes of the provincial supreme people's courts. The courts believe them to be more financially strong and competent.

Question 2.3 [maximum 4 marks] (4 points)

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 available under Chinese law are (1) fixed charges and (2) pledges.

To establish a fixed charge or a pledge over assets, the security provider (i.e., the owner of the assets, which may either be the debtor or a third party whose consent has been obtained in advance) shall enter into a written agreement. Depending on the type of property, registration formalities must be completed before the fixed charge will become validly established and/or can be enforced as against bona fide third parties.

Fixed charges under Chapter 17 of the China Civil Code of 2020 ("Mortgage") are frequently used in China. A fixed charge over property (either movable or immovable) may be established without transferring the possession of the assets but requires registration.

In most cases, a fixed charge is created over immovable property, and more specifically upon buildings and the (associated) rights of use of land. According to Articles 209 et seq. of the China Civil Code of 2020, *inter alia*, (1) the establishment of a fixed charge over immovable property shall become effective upon registration in accordance with law, and shall not take effect without registration, unless otherwise provided by law; (2) the registration of immovable property shall be handled by the registration authority at the place where the immovable property is located; (3) the applicant shall provide the necessary evidence (for example, the proof of security, the area of the immovable property, etc.); (4) the fixed charge will be recorded in the register of immovable property as kept by the registration authority; for immovable property this is the local office of the China Housing Management Authority, whereas for the rights of use of a piece of land this is the local office of the China Land Management Authority (for safety, most security holders will register the fixed charge at both offices, since the use right of the land upon which the immovable property (buildings, houses) stands is part of the property; (5) the applicant who is successful will receive a certificate as proof of his entitlement to the security; and (6) the fee for the registration of immovable property shall be collected on a piece-by-piece basis and may not be collected in proportion to the area, size, or purchase price of the immovable property.

In case of creation of a fixed charge over moveable property, it will depend on the type of moveable property how and where the charge will be recorded. For vehicles, the registration shall be handled by the local police vehicle management office; for machinery and other equipment, the registration shall be handled by the local office of the China Industries and Commerce Regulation Bureau.

Pledges under Chapter 18 of the China Civil Code of 2020 are less frequently used in China. The establishment of a pledge over moveable property and intangibles

normally requires the transferring of the possession of the pledged assets or instruments to the creditor.

For moveable assets no registration is required, since the transfer of (physical) possession thereof will be sufficient to protect the pledge; the pledge is effected upon the transfer. For intangible assets (for example trademarks, patents, shares), however, registration with the relevant authorities is required, since the possession of those intangibles cannot be transferred. The pledges are registered with different authorities depending on the type of intangible asset upon which they are created; the relevant pledges and corresponding registration authorities are as follows: pledges of trademarks shall be registered with the China Industries and Commerce Regulation Bureau Central Office located in Beijing; pledges of patents shall be registered with the China Intellectual Property Authority Central Office located in Beijing; pledges of shares of listed companies shall be registered with the China Securities Depository and Clearing Corporation Limited; and pledges of shares of non-listed companies shall be registered with the local office of the China Companies House where the company is incorporated.

QUESTION 3 (essay-type questions) [15 marks in total] (14 points awarded)

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

“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.

Corporate reorganisation was one of the key areas that were discussed during the drafting process of a new bankruptcy law in China that finally concluded in 2006. Although it was already possible under the old law, there were little to no cases involving corporate rescue in China. One of the goals of the insolvency reform process was to enact procedures that could be used for corporate rehabilitation.

The law reform process in China emphasised the importance of corporate rescue. This is also visible in the final structure of the text of the China Enterprise Bankruptcy Law of 2006. The reorganisation and composition chapters appear before the liquidation chapter, with Chapter 8 applying to reorganisation, Chapter 9 to composition (or settlement), and Chapter 10 to liquidation. Furthermore, both the reorganisation procedure as well as the composition procedure are rescue procedures and are aimed to avoid liquidation. The fact that the new law devotes two entire chapters to rescue procedures also shows the Chinese lawmakers' intent to promote the use of corporate rescue.

Moreover, important additions to the China Enterprise Bankruptcy Law of 2006 regarding the corporate reorganisation process are that both debtors and creditors are permitted to file a reorganisation petition and that the process may be used for both State Owned Enterprises ('SOE') and non-SOEs. The new law embraces many concepts drawn from the US Bankruptcy Code 1978 (in particular, Chapter 11 of this code was an important source of inspiration for the rescue-oriented China Enterprise Bankruptcy Law of 2006). Other significant changes are that the debtor can make a voluntary reorganisation filing without presenting any evidence of bankruptcy (and thus encouraging rescue efforts to be made as early a stage as possible; in theory, there is thus no threshold for entering the corporate reorganisation procedure), and

the introduction of the concept of **debtor-in-possession** to the extent that the debtor may apply to the court for approval to administer its assets and business affairs by itself under the supervision of the bankruptcy administrator.

It is also worth highlighting that according to Article 70 of the China Enterprise Bankruptcy Law of 2006, in cases in which a creditor has petitioned for the bankruptcy of a debtor (thus an involuntary liquidation procedure), the debtor itself or the shareholders holding more than 10% of the debtor's registered capital may apply for **the reorganisation of the** debtor after the court has accepted the application and before a bankruptcy declaration has been made. In other words, they can apply for a conversion from liquidation to reorganisation. This again indicates the Chinese lawmakers' intent to promote the use of corporate rescue.

Although the new law is far from perfect and requires further clarification in certain respects (and the courts are still reluctant to turn theory into practice), on the one hand, and the ultimate success of the development of the corporate rescue culture in China depends in great part on the creation of supporting insolvency infrastructures (such as the establishment of training courses for all actors dealing with insolvency law and its procedures), on the other hand, I indeed believe the China Enterprise Bankruptcy Law of 2006 is a mainly rescue-oriented piece of insolvency legislation, emphasising rescue over liquidation.

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

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.

It is the court-appointed bankruptcy administrator who will verify the claims of the creditors as it is one of his main tasks. The declaration of claims is regulated in Chapter VI of the China Enterprise Bankruptcy Law of 2006. According to Articles 44 et seq., *inter alia*, (1) the creditor shall, within the time limit specified by the court for declaration of his claims (which is not less than 30 days at least but not more than three months at the most from the court from the court publicly announcing that it accepts the bankruptcy application), declare his claims to the bankruptcy administrator (however, he may still declare such claims afterwards before distribution of the bankruptcy property in the final instalment, but there is a risk that no more distribution shall be made to him if the property has been distributed earlier); (2) the creditor shall submit a written statement on the amount of his claims and on his secured situation, and present the relevant evidence; (3) the bankruptcy administrator shall register and examine the claims declared (he might check the debtor's accounting records and sit together with the debtor's financial representatives to verify the claims, but actually the law does not indicate how the bankruptcy administrator can check the claims and what he can do when he has doubts about a claim) and shall have a form of claims filled out which he will preserve (together with all materials for declaration of claims) for reference by interested parties; (4) the form of claims shall be submitted to the first creditor's meeting for checking (see Article 58; the power to investigate the claim(s) thus is accorded to this meeting, notwithstanding that the debtor, any creditor as well as the bankruptcy administrator seems still able to raise their doubts as to any claim); and (5) where the debtor or creditor has objections to what is recorded in the form of claims, he may file an action with the court that has accepted the application for bankruptcy (it thus being understood that the power to confirm the claims is given only to the court).

In addition, it is worth highlighting that (1) the debtor's employees may according to Article 48 directly ask the bankruptcy administrator to correct the record of their claims (which seems rather fair since the employees' wages and other entitlements are usually not filed by the employees themselves) where they disagree with the record and they can even file an action with the court if the bankruptcy administrator refuses to do so, and (2) any creditor who has declared a claim according to the law may according to Article 59 be a member of the creditors' meeting and has the right to attend the meetings of the creditors, and although only a creditor whose claims are confirmed can exercise the right to vote, the court can make a temporary confirmation as to the amount of his claims for the sake of his exercise of such right.

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

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

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.

Article 5 of the Chinese Bankruptcy Law of 2006 provides the basis and the criteria for recognising a foreign bankruptcy proceeding in China. Under this article, the Chinese courts may recognise foreign bankruptcy rulings affecting the debtor's assets that are in China on the following conditions: (1) the recognition application is based on a judicial assistance treaty between China and the foreign country over civil and commercial matters, or (if there is no such treaty) the principle of judicial reciprocity between China and that foreign country, and (2) the recognition of the foreign bankruptcy ruling does not infringe upon the basis principles of Chinese law; nor will it be against China's sovereignty, security and public interests, or prejudice the legitimate interests of China's domestic creditors.

Under Chinese civil procedure law, the bankruptcy liquidator seeking recognition of the Australian bankruptcy proceeding must do in the Chinese local intermediate people's court where the assets are located (*in casu* Shanghai).

Since China does not have a judicial assistance treaty over civil and commercial matters with Australia, the bankruptcy liquidator must prove that there is judicial reciprocity established between China and Australia. Given the very restrictive understanding of reciprocity in China, it eventually comes down to the fact whether the bankruptcy liquidator can prove that there is already a Chinese bankruptcy ruling recognised by Australia before. Moreover, the bankruptcy liquidator must also convince the court that the recognition of the bankruptcy ruling does not disadvantage the Chinese creditor who obtained the injunction freezing the debtor's assets in Shanghai (or other Chinese creditors).

It also worth highlighting that in 2012 the Chinese court (*in casu* the Wuhan intermediate people's court) did not recognise the status of the foreign bankruptcy liquidator based on Article 5 of the Chinese Bankruptcy Law of 2006 but on Article 282 of the China Civil Procedure Law of 1991, to facilitate the bankruptcy receivers' action to dispose of the debtor's assets in China.

Question 4.2 [maximum 7 marks] (7 points awarded)

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 awarded)

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.

Under Article 70 of the China Enterprise Bankruptcy Law of 2006, an involuntary liquidation procedure (i.e., cases in which a creditor has petitioned for the bankruptcy of the debtor) can be converted to a reorganisation procedure. The debtor itself or the shareholders holding more than 10% of the debtor's registered capital may apply for a conversion from liquidation to reorganisation.

The bankruptcy liquidation procedure was filed by a creditor of Yangtze Steel Limited, namely by Bank of China (Shanghai Branch). So, there is an involuntary bankruptcy liquidation procedure.

Whereas it is not clear how Yangtze Steel Limited's own board can exercise its right to apply to the court to convert the bankruptcy liquidation to reorganisation (having been replaced by the court-appointed liquidation administrator), there is no doubt that SanLong Limited as a shareholder holding 32% (and thus more than 10%) of the equity of Yangtze Steel Limited can submit a conversion request to the Shanghai Second Intermediate People's Court after it has accepted the liquidation filing but before a bankruptcy declaration has been made. It is that court that then also makes a decision in that regard.

However, the shareholders' competence to alter the course of bankruptcy (by submitting the conversion request under Article 70 of the China Enterprise Bankruptcy Law of 2006) has come in for criticism and will continue to do so. Either way, there are also only a few cases in practice in which the court decided to convert the existing liquidation into a reorganisation procedure.

Question 4.2.2 [maximum 3 marks] (3 points awarded)

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.

Under Article 85 of the China Enterprise Bankruptcy Law of 2006, all reorganisation plans should also be voted on by the shareholders in cases where the debtor's equity is affected, adjusted or cancelled by the reorganisation plan.

The approval of the reorganisation plan does not end after being voted down by the shareholders and approved by all the classes of creditors, as it must ultimately be confirmed by the Shanghai Second Intermediate Court before taking effect.

However, pursuant to Article 87 of the China Enterprise Bankruptcy Law of 2006, the Shanghai Second Intermediate Court may cram-down the reorganisation plan that has been voted down by SanLong Limited and the other shareholders of Yangtze Steel Limited. The Shanghai Second Intermediate Court will then not only have to assess the reorganisation plan for its procedural legality, but it must also check whether the reorganisation plan meets the statutory provisions of Article 87.

In casu, the reorganisation plan has been approved by *all* the classes of creditors and does meet the conditions that (i) the secured creditors have adopted the reorganisation plan (if not, they must be paid in full as far as the specific property is concerned, the losses caused by postponed payment will be compensated for in a fair manner, and the secured interests will not be substantially impaired) (1st condition), (ii) both the employees and the tax authorities have adopted the reorganisation plan (if not, they must be paid in full) (2nd condition), and (iii) the ordinary unsecured creditors have adopted the reorganisation plan (if not, the proportion for repayment of the common claims will not be lower than that as allotted under the procedures for bankruptcy liquidation at the time when the draft plan is submitted for approval) (3rd condition).

Since the reorganisation plan affects the equity of Yangtze Steel Limited (the plan proposes to cancel the shares of all previous shareholders) and has not been adopted by the shareholders of Yangtze Steel Limited, the Shanghai Second Intermediate Court must check whether the rights and interests of SanLong Limited and the other shareholders of Yangtze Steel Limited are adjusted fair and equitable (4th condition).

And, lastly, the Shanghai Second Intermediate Court must also check (i) whether the reorganisation plan treats the stakeholders in the same class fairly, and the order arranged therein for payment of the claims does not contravene the priority between shareholders and creditors (5th condition), and (2) whether the reorganisation plan is feasible (6th condition).

Notwithstanding the fact that the reorganisation plan has been voted down by all the shareholders of Yangtze Steel Limited, the Shanghai Second Intermediate Court may still confirm and forcibly approve the reorganisation plan if it meets all the aforementioned six conditions, making it binding on all consenting (*in casu* all creditors) and dissenting (*in casu* all shareholders) stakeholders of Yangtze Steel Limited.

49 out of 50 points awarded

*** End of Assessment ***

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