



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

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 (1 point)

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) 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] (6 points)

Question 2.1 [2 marks] (1 point)

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

[The third type of bankruptcy option is Liquidation which is detailed in Article-7 of the China Enterprise bankruptcy law of 2006 i.e if a company is unable to pay its debt that is due, the creditor can file for liquidation in the court. In the case of a creditor petition under Article 2 of the China Enterprise Bankruptcy Law of 2006, the bankruptcy tests (either cash flow or balance sheet) need to be proved/convinced to the court to commence the liquidation proceedings.]

Question 2.2 [maximum 4 marks] (3 points)

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

[Two professions in China that dominate Chinese regional bankruptcy administrator lists are Accountants and Lawyers.

Accountants and Lawyers facilitate the implementation of the China Enterprise Bankruptcy Law 2006. The China Supreme People's Court instructed most provinces to establish their own regional qualified insolvency practitioner lists in 2007 however, many provincial selected some local large law and accounting firms to be incorporate in the lists without going through any qualification exams or training courses, since most provincial courts assume that a large law or accounting firm is more trustworthy both in terms of financial strength and in respect of competence. If a law firm is included in the local list, it can receive appointments as liquidator in the bankruptcy of a company.

The authority to include a law or accounting firm in the official insolvency practitioner list is exercised by provincial supreme people's courts, which often seek collaboration from local lawyer and accounting associations. These two associations are truly controlled by local government justice and finance departments, respectively.]

Question 2.3 [maximum 4 marks] (2 points)

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

[There are two main forms of securities in China:

1. Fixed charges
2. Pledges and liens.

A fixed charge can be created upon buildings or the use right of land, and shall be registered.

It is mandatory for a Fixed charge to be registered under the China Civil Code of 2020 and is invalid until it has been registered. A security certificate is provided to the charge holder once the charge has been properly recorded at the government agency. A small fee may apply for the registration of a charge. For immovable property the registration authority is the local office of the China Housing Management Authority and, for safety, most secured creditors, at the same time, tend to register the charge at the local office of the China Land Management Authority, since the use right of the land upon which the building stands is part of the property.

A pledge can be made upon assets such as shares, trademarks and patents, but also must be registered at relevant authorities. Liens are rarely used and almost commercially irrelevant in China.

As per Chapter 17 of the China Civil Code of 2020, pledges are used, although less frequently than a fixed charge. A pledge, as a matter of principle, becomes valid after the pledged movable asset changes custody, into the hands of the secured creditor. For movable assets, no registration of a pledge is required as the change of physical possession itself (delivery) is sufficient. Apart from movable tangible assets, many intangible assets, such as trademarks, patents, shares, cheques and even bonds, can also be pledged. However, for these pledges to be valid they must be registered, otherwise they are invalid.

In respect of pledge the registration authorities vary considerably. For trademarks, the registration authority is the China Industries and Commerce Regulation Bureau Central Office located in Beijing and for patents, it is registered at the China Intellectual Property Authority Central Office in Beijing. For shares of listed companies, the registration authority is the China Securities Depository and Clearing Corporation Limited, a state-owned company that has offices in Beijing, Shanghai, Shenzhen and Hong Kong. In the case of shares of a non-listed company, the registration of a pledge takes place at the local office of the China Companies House where the company is incorporated.]

QUESTION 3 (essay-type questions) [15 marks in total] (12 points)

Question 3.1 [maximum 8 marks] (5 points)

“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 China has a bankruptcy legislation for enterprises/companies and not a formal bankruptcy law for individuals. In 2006 China updated its bankruptcy law, leading to the proclamation of the China Enterprise Bankruptcy Law of 2006, a rescue-oriented piece of

bankruptcy legislation. The 2006 bankruptcy law applies to the bankruptcy of both SOEs (State owned) and private companies.

The bankruptcy law clearly favours rescue over the liquidation. Following points substantiate the same:-

1. There are three bankruptcy options provided in the bankruptcy law- Reorganisation, settlement and liquidation. The first two options emphasis on rescue rather than liquidation. Therefore, the order of these three options reflects the lawmakers preference of rescue rather than liquidation.
2. Even in the liquidation, rescue part is incorporated. Article-70 of the law states that in case of involuntary liquidation procedure, shareholders holding 10% voting power or debtors can approach the court to **convert** liquidation into reorganisation, clearly showing the rescue intent of the lawmakers.
3. The administrator is appointed by the court however, debtor can apply to the court to continue having control over the business and not let administrator take control of its business. With the court approval, he can do so clearly showing the intent that debtors continues to do and **control** its business and reorganise it.
4. Article-2 of the law also states that a voluntary reorganisation petition can be filled even when the company **is not yet b**ankrupt but is likely so in the near future, shows that it encourages rescue efforts at an early stage.]

Question 3.2 [maximum 7 marks] (7 points)

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 creditors shall approach the reorganisation administrator to prove their claims and they are normally required to fill a prescribed claim form. If claims are against the entire group, the creditors can file the claims against the group as a whole rather than against a particular company. On the basis of the claim form and evidences (bank statements, acknowledgement slips, contract copies, receipts etc), the administrator verify the claims of the creditors. In many cases, the administrator also go through the company's books and consult with company staff for verification.

In case of dispute over the legality or value of the creditor's claim, the creditor can litigate before the same court for a judgment, which occurs more frequently in practice. Courts have also arranged for an accelerated process to resolve these lawsuits.]

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

Question 4.1 [maximum 8 marks] (8 points)

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.

[Under Article-5 of the bankruptcy law, the foreign bankruptcy court ruling can be recognised in the China only if the debtor has some assets in China, which is there in the present case.

Then, he need to check whether there is judicial assistance treaty in civil and commercial matters between China and Australia At present, China has such treaties with almost 30 countries but not with USA and Japan.

If there is no treaty then, the foreign bankruptcy liquidator needs to prove to the satisfaction of Chinese Courts that there is judicial reciprocity between China and Australia. In this case, the liquidator shall establish and convince the Chinese Courts that there is already a Chinese judgement recognised by the Australian courts, therefore, in the absence of treaty it is very difficult to get bankruptcy proceedings recognition in China.]

Question 4.2 [maximum 7 marks] (7 points)

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

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.

[Article-70 of the law states that in case of involuntary liquidation procedure, shareholders holding 10% voting power or debtors can approach the court to convert liquidation into reorganisation, clearly showing the rescue intent of the lawmakers.

Therefore, Ergo, the liquidation procedure can be converted into reorganisation procedure as CEO of SanLong Limited is holding more than 10% equity of the company.]

Question 4.2.2 [maximum 3 marks] (3 points)

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.

[Article 85 of the China Enterprise Bankruptcy Law of 2006 states that in cases where the company's equity is affected, adjusted or cancelled by the reorganisation plan, it should also be voted on by the shareholders. The manner in which Article 85 is drafted suggests that all reorganisation plans shall also pass the vote of shareholders.

The approval of the reorganisation plan does not end after being voted by the creditors, as it shall be confirmed by the court before taking effect. Article 87 states that the court may cram-down a reorganisation plan that has been voted down by one or more class of creditors. Unlike a reorganisation plan that has successfully passed the vote of all classes of stakeholders and that should generally only be assessed by the court for its procedural legality, a reorganisation plan seeking cram-down approval by the court shall meet the statutory requirements of Article 87.

Thus, in the given case, the court can approve such plan under the current law in China whether or not the shareholders or the creditors have voted against or in favour of it. Further the approval of court must be in respect of the provisions of Article 87 of the law.]

43 out of 50 points awarded |

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End of Assessment