



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)

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] (0 point)

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

- A Cash flow test or balance sheet bankruptcy test will be applied to the debtor company before a formal liquidation procedure is considered.
- Normally, a debtor can provide an audited financial report to prove that the company is balance sheet solvent.

Question 2.2 [maximum 4 marks] (2 points)

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 that dominate the Chinese regional bankruptcy administrator are accountants and lawyers.
- The accounting firms and law firms are selected to be included in the regional qualified insolvency practitioner lists by provincial supreme people's courts with collaboration from local lawyer and accounting associations.

- In practice, the size of the accounting or law firm will be considered as the main criteria by the provincial supreme people's courts in selecting the firms for inclusion into the regional qualified insolvency practitioner lists.
- Power to appoint bankruptcy administrators from the list are vested in the local provincial supreme people's court or in other provinces, by a local intermediate people's court.

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 China Property Law of 2007 are Fixed Charges and pledges.
- Fixed charges is to be registered under China Civil Code of 2020 to be valid. Charge holder will normally register the charge for the right to use land and/or immovable asset simultaneously at the local office of the China Land Management Authority for a small fee for the registration.
- Upon the charge being recorded at the government agency, a security certificate will be issued to charge holder.
- Pledges can be placed for tangible assets such as movable assets and intangible assets such as trademarks, patents, shares, cheques and bonds.
- For movable tangible assets, no registration is required. However, for intangible assets, the pledges are registered at the respective authorities to be valid. For example, pledges for trademarks is registered with the China Industries and Commerce Regulation Bureau Central Office. Pledges on patents is registered at the China Intellectual Property Authority Central Office. Meanwhile pledges for listed shares is registered with the China Securities Depository and Clearing Corporation Limited.

QUESTION 3 (essay-type questions) [15 marks in total] (11 points)

Question 3.1 [maximum 8 marks] (4 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.

In theory, the China Enterprise Bankruptcy Law 2016 is a rescue oriented insolvency legislation emphasising rescue over liquidation. This is evidence as most companies are eligible to enter into corporate reorganisation procedure and that corporate reorganisation fillings voluntarily initiated by debtors does not requires a threshold for the company to be in a balance-sheet bankrupt position. Moreover, the China Enterprise Bankruptcy Law 2016 allows for conversion of an existing liquidation procedure into a reorganisation procedure. A moratorium is also imposed upon commencement of the corporate reorganisation which allows for a stay of all executions against the company and its assets.

However in practise, the Court are considerable cautious in granting corporate reorganisation making it rare for reorganisation to be use to resolve companies

insolvency issues. Notwithstanding that debtors are not required to show that the company is in a balance sheet bankrupt position when applying for reorganisation, almost all reorganisation cases requires the company to be in a balance sheet bankrupt position before the Court opens any procedure to consider the corporate reorganisation filling. The Court is also strict to allow for corporate reorganisation as the Court would need to be convinced that the reorganisation proposal will be highly achievable and/or that the debtor have already obtained a buy in from key stakeholders in advance. In the case where corporate reorganisation is granted, notwithstanding that the legislation provides for a moratorium to stay all execution against the company and its asset, some courts often refused to withdraw the pre-existing asset freezing orders against the company. This will pose an obstacle for the reorganisation administrator to carry out the company's reorganisation proposal.

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 process for creditors to proof their claims will involved the creditors to fill in a claim form to be submitted to the reorganisation administrator. The reorganisation administrator will verify the claims by reviewing the company's books and consulting with the company's finance personnel for verification. Should there is a dispute on the value or legality of the creditors claim, the creditor may apply to court to litigate the matter and obtain a judgment for the claim to be accepted.

QUESTION 4 (fact-based application-type question) [15 marks in total] (12 points)

Question 4.1 [maximum 8 marks] (6 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.

Notwithstanding that China has not adopted the UNCITRAL Model Law on Cross-Border Insolvency, Article 5 of China Enterprise Bankruptcy Law of 2006 provides that foreign court bankruptcy ruling binds the company's assets located in China. In order for the foreign court ruling to take effect, the foreign liquidator is required to apply to Chinese court for recognition.

In recognising the foreign court bankruptcy ruling, the Chinese Court will rely on either the judicial assistance treaty signed and ratified by China and the requesting foreign country or when there is no treaty, on principal of reciprocity. As such, the Australian liquidator may need to check whether Australia have signed any judicial assistance treaty with China.As of 2015. If there is no judicial assistance treaty signed between Australia and China, it is still possible for the Australian liquidator to apply for recognition as the Chinese court may recognised the Australian court ruling based on judicial reciprocity. However, it should be noted that the Chinese judicial system takes the view that the foreign country must already had a recognition precedent in favour of a Chinese party in the first place before rendering assistance to the foreign court to recognise their ruling in China. The Chinese court would also not recognise foreign bankruptcy ruling if

the ruling infringe on fundamental principles of Chinese law, Chinese sovereignty, security and public interest and if the ruling disadvantage China's domestic creditors.

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)

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.

The controlling shareholder may seek to **convert** the existing liquidation of Yangtze Steel Limited to reorganisation. This is because Article 70 of the China Enterprise Bankruptcy Law 2006 allows the debtor or its shareholders holding 10% or more of the company's equity to make application for the reorganisation conversion in the event of involuntary bankruptcy liquidation procedure. The controlling shareholder may need to consider obtaining local government support for their application as the court may view it as essential before considering to grant the conversion. The shareholders will be required to submit their conversion request to the court for their decision. However, it should be noted that in practise, only a very small number of conversion cases are granted. This is due to the issues that by allowing the shareholder to raise a conversion motion will impede the interest of the creditors when the company is already been acknowledged by the Court to be in a bankruptcy position. As such, the controlling shareholder may need to consider obtaining a buy-in from the key stakeholders in advance to help their cause.

Question 4.2.2 [maximum 3 marks] (2 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.

Pursuant to Article 87 of the China Enterprise Bankruptcy Law 2006, the ultimate confirmation of the court on the reorganisation plan is required for the plan to take effect. Article 87 of the China Enterprise Bankruptcy Law 2006 also provides the provision for the court to cram-down a reorganisation plan that has been voted by one or more classes of creditors and in the case of Yangtze Steel Limited, the shareholders if the application to cram-down the reorganisation plan meets the statutory provisions of Article 87 of the China Enterprise Bankruptcy Law 2006.

39 out of 50 points awarded

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*** End of Assessment ***