



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8B

CHINA (PRC)

This is the summative (formal) assessment for Module 8B of this course and must be submitted by all candidates who selected this module as one of their elective modules.

The mark awarded for this assessment will determine your final mark for Module 8B. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

- 1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.**
- 2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters - please do not change the document settings in any way. DO NOT submit your assessment in PDF format as it will be returned to you unmarked.**
- 3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).**
- 4. You must save this document using the following format: [studentID.assessment8B]. An example would be something along the following lines: 202223-336.assessment8B. Please also include the filename as a footer to each page of the assessment (this has been pre-populated for you, merely replace the words "studentID" with the student number allocated to you). Do not include your name or any other identifying words in your file name. Assessments that do not comply with this instruction will be returned to candidates unmarked.**
- 5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6. The final submission date for this assessment is 31 July 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.**
- 7. Prior to being populated with your answers, this assessment consists of 9 pages.**

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total] (10)

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)

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) Partnerships and sole traders.

(d) Individuals or sole traders.

Question 1.2 (1)

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)

Select the correct answer:

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

- (a) The bankruptcy administrator can only be 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 can appoint provisional bankruptcy administrators when filing.**
- (d) The court can only appoint a bankruptcy administrator after getting consent from both the debtor and the creditors.**

Question 1.4 (1)

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 debtor is allowed to file.**
- (d) Both creditors and shareholders of the company may file for bankruptcy.**

Question 1.5 (1)

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 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 is automatically selected once a reorganisation procedure is commenced.**

Question 1.6 (1)

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 treated as unsecured creditors in China and are not given preferential treatment.**

Question 1.7 (1)

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 the Chinese courts.**
- (c) If shareholders do not support / approve the reorganisation plan, the plan cannot be crammed-down by the courts.**
- (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)

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 from countries which have adopted socialism.

Question 1.9 (1)

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)

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 most?

(a) The United States of America.

(b) Russia.

(c) Poland.

(d) The United Kingdom.

QUESTION 2 (direct questions) [10 marks] **9**

Question 2.1 [2 marks] **(2)**

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

Answer:

Under Article 7, the creditor can file for liquidation in court if the company is unable to pay a debt that is due. Cash flow bankruptcy test is required.

Question 2.2 [maximum 4 marks] **(3)**

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

Answer:

In China, law or accounting professions usually dominate the Chinese regional bankruptcy administrator list. The power of including which firm in the list is generally exercised by provincial supreme people's courts.

When the liquidation petition is accepted by the court, appointment of the bankruptcy administrator will be made by the court simultaneously. The court generally use the roster of the locally qualified bankruptcy administrator list to select the candidate firm.

Question 2.3 [maximum 4 marks] **(4)**

Name the most used type of securities available under Chinese law and explain how and where they are registered.

Answer:

Fixed charge is the most used type of securities available under Chinese Law. It can be created over both movable and immovable property in favour of a secured creditor. Under the China Civil Code of 2020, a charge is not valid until it has been registered. A security certificate is issued to the charge holder once the charge has been properly recorded at the government agency by paying a small registration fee.

For immovable property, the registration authority is the local office of the China Housing Management Authority, although most secured creditors will register the charge with the China Land Management Authority since the right of use of the land upon which the building stands is part of the property. For movable property, such as vehicles, the registration authority is the local police vehicle management office; for

machinery and other equipment, the local office of the China Industries and Commerce Regulation Bureau is responsible for registering charges.

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

Question 3.1 [maximum 8 marks] (8)

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

Discuss what legal mechanisms in this statute can support this statement.

Answer:

The rescue-oriented China Enterprise Bankruptcy Law of 2006 comprises three bankruptcy options or procedures.

First option is reorganisation. When a company is bankrupt, it can trigger a corporate reorganisation procedure under the China Enterprise Bankruptcy Law of 2006. A voluntary reorganisation filing can be made without showing any evidence of bankruptcy. This is to encourage rescue efforts to be made at as early a stage as possible. The privilege given to the debtor’s management under debtor-in-possession is not automatic. When the court accepted a reorganisation petition, a court-appointed administrator will take control of the company’s assets and business affairs. Debtor’s management can only regain control from the reorganisation administrator if such request is sanctioned by the court. The reorganisation administrator will take a supervisor role for the remainder of the procedure if so. The reorganisation plan requires voting by creditors in four different classes, namely i) secured creditors, ii) employees, iii) tax / revenue authorities, and iv) ordinary unsecured creditors. The plan is passed if it is voted in favour of by 50% or more of attending creditors in number, representing two-thirds or more attending creditors in value of each class. If the plan was 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 the China Enterprise Bankruptcy Law of 2006.

Second one is composition or settlement. Unlike the reorganisation procedure, the composition procedure is reserved for a voluntary filing only. Under Article 95 of the China Enterprise Bankruptcy Law of 2006, when the company files for composition, it must also present a composition or settlement plan to the court. If the court is satisfied with the plan, a meeting of the creditors will be convened to vote on the plan. If more than a half of the attending creditors in number holding two-thirds or more of the total claims voted in favour of the plan, the plan will be passed to the court for final approval and taking effect.

The last one is liquidation. It is the last resort if the above 2 options failed. However, under Article 70 of the China Enterprise Bankruptcy Law of 2006, there is still a way

for a liquidation procedure filed by a creditor be converted to reorganisation procedure.

The order of these 3 options and the conversion from liquidation procedure to reorganisation procedure reflect that the lawmakers expect or encourage rescue to be attempted first, emphasising rescue over liquidation.

Question 3.2 [maximum 7 marks] (6)

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

Answer:

Articles 44 to 58 regulates the process for declaration of claims. For creditors to prove the claims, they must approach the administrator within the time limit specified by the court (usually be not less than 30 days at least but not more than three months at the most since court's announcement its acceptance of the application for liquidation). The creditor shall make a written statement (usually be required to fill in a claim form provided by the administrator) on the amount of his claims and on whether there is any property guaranty, and present the relevant evidence. The administrator will check the company's books and consult with staff from the company's financing unit for verification.

If the creditor failed to submit the proof of claims within the time limit as specified by the court, he may do so afterwards before distribution of bankruptcy property in the final installment. However, no restrospective distribution shall be made to him for bankrtupcy property being distributed earlier.

If the value or existence of the claim be disputed, the creditor can litigate before the bankruptcy court for a judgment.

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

Question 4.1 [maximum 8 marks] (8)

The bankruptcy liquidator of a Singaporean 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 Singaporean company in China. The liquidator has approached you for advice on how the Singaporean bankruptcy proceeding can be recognised in China. Advise the liquidator.

Answer:

Article 5 of China Enterprise Bankruptcy Law of 2006 provides that a foreign court bankruptcy ruling also binds the company's assets located in China, if such ruling be recognised by a Chinese court before taking effect in China. The recognition should be based either on a judicial assistance treaty signed and ratified between China and the requesting country, or on the principle of reciprocity if there is no treaty. Also, such recognition should not infringe upon the fundamental principles of Chinese law, China's sovereignty, security and public interests and does not disadvantage China's domestic creditors.

As Singapore is one of the countries that signed judicial assistance treaty with China, the Singapore liquidator can seek recognition in a Chinese local intermediate people's court, where the company's assets are located (i.e. Shanghai).

However, there is an injunction order freezing the assets of the Singaporean company in China. The Singapore liquidator cannot dispose the assets without the injunction order being lifted.

Question 4.2 [maximum 7 marks] (7)

HuangPu Food Limited is a large beverage 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 Fenda Partners, a local law firm included in the local bankruptcy administrator list, as the liquidation administrator.

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

Using the facts above, answer the questions that follow.

Question 4.2.1 [maximum 4 marks] 4)

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

Answer:

Under Article 70 of the China Enterprise Bankruptcy Law of 2006, in the event of an involuntary bankruptcy liquidation procedure, the debtor or its shareholders holding more than 10% of the company's equity can apply to the court to convert liquidation

to reorganisation, and if sanctioned, the reorganisation procedure will commence immediately.

Since the CEO of Naking Limited is a controlling shareholder holding 32% of the equity of HuangPu Food Limited and the current liquidation procedure is filed by a creditor (Bank of China Shanghai Branch), the CEO can apply to the court to convert the liquidation procedure into reorganisation procedure under Article 70. After sanction by the court, reorganisation procedure takes effect, which means that the reorganisation plan has to be passed by creditors in four different classes.

Question 4.2.2 [maximum 3 marks] (3)

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

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

Answer:

Under the current law in China, apart from creditors eligible to vote on the reorganisation plan, Article 85 provides that where the company's equity is affected, adjusted or cancelled by the reorganisation plan, it should be voted on by the shareholders. However, Article 87 allows the court may cram-down a reorganisation plan that has been voted down by one or more class of creditors or by the shareholders if it meets the statutory provisions:

- 1. be voted in favour of by the secured creditor class and, if not, secured creditors must be fully paid out of the secured assets;**
- 2. be voted in favour of by the employee and tax authority classes and, if not, be paid in full;**
- 3. be voted in favour of the ordinary unsecured creditor class and, if not, this class of creditors must not be paid less than they would have received under a liquidation procedure;**
- 4. be voted in favour of by the shareholders where their equity is affected by the plan and, if not, the treatment of equity holders is fair and equitable;**
- 5. pay the stakeholders in the same class fairly, with the priority between shareholders and creditors upheld; and**

6. be feasible.

In view of the plan has only been voted down by the shareholders and approved by all the classes of creditors, the Shanghai Second Intermediate Court is likely to cram-down and approve the plan as the proposal of all shares of all previous shareholders be cancelled is Ofair and equitable to all previous shareholders.

Final mark: 48/50

* End of Assessment *