



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] (7)

Question 2.1 [2 marks] (2)

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

Under Chapter 10 Article 7 of the China Enterprise Bankruptcy Law of 2006, a creditor must employ the cash-flow bankruptcy test to the court in a bankruptcy petition.

Question 2.2 [maximum 4 marks] (2)

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

The legal and Accounting profession dominate the Chinese regional bankruptcy administrator lists. The Provincial Supreme Courts select local large law and accounting firms to be included on the list. In practice bankruptcy administrators are appointed by the court under Article 13 of the China Enterprise Bankruptcy Law of 2006, when the petition for reorganisation is accepted by the court.

Question 2.3 [maximum 4 marks] (3)

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

Securities most used under Chinese law include;

- Fixed Charges are the most used type of security prescribed under Chapter 17 of the China Civil Code of 2020. A charge is a form of security over a debtor's movable (such as vehicles and machinery) and/ or immovable assets (normally buildings or the right of use of land) in favour of a secured creditor. A security certificate is issued to the charge holder once the charge is recorded properly at the relevant government office after the payment of the prescribed fee. A fixed charge over movable property like vehicles is registered with the local police vehicle management office, while machinery is registered with the local office of the China Industries and Commerce Regulation Bureau. A fixed charge over immovable property is registered with the local office of the China Housing Management Authority.

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

Question 3.1 [maximum 8 marks] (5)

“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.

- Article 2 of the China Enterprise Bankruptcy Law of 2006 prescribes that a voluntary reorganisation petition can be made when the company is not yet bankrupt, but is likely to be bankrupt in the future. This has been done to encourage rescue efforts as soon as possible to avert liquidation and the loss of jobs.
- The conversion of a liquidation into a reorganisation is another legal mechanism in support of business rescue. Article 70 of the China Enterprise Bankruptcy Law of 2006 provides that in the case of an involuntary liquidation, the debtor or its shareholdings who hold more than 10% of the company’s equity can apply to court to sanction the conversion of a liquidation to a reorganisation.
- A formal reorganisation allows for a moratorium on executions against the company and its assets to enable an orderly reorganisation to enable creditors to agree on a reorganisation plan and breathing space for the debtor.
- Article 73 of the China Enterprise Bankruptcy Law of 2006 is a further legal mechanism designed to encourage rescue proceedings in that it provides for debtor-in -possession proceedings which are sanctioned by the court. The debtor is in control of the reorganisation process including the drafting of the reorganisation plan for the creditors to vote on. It facilitates the continuation of trade of viable businesses thus enabling them to trade out of insolvency.
- Article 42 of the China Enterprise Bankruptcy Law of 2006 allows an administrator to treat newly generated employee wages, pension contributions and other post-bankruptcy debts as costs of administration to be paid before all creditors, should these expenses be incurred while the company continues to trade whilst under a bankruptcy procedure. This is to encourage viable companies to continue trading and therefore supports business rescue.
- The court, under Article 87 can cram-down 1 or more class of dissenting creditors including shareholders when approving a reorganisation plan subject to certain statutory limitations. Cramming-down creditors and shareholders, where rescue plans appear viable is another legal mechanism of business rescue.
- Payment to creditors under a reorganisation is subject to the negotiations of the rescue plan. This is to enable viable companies to return to trading as a going concern. In a liquidation on the other hand, the administrator is obligated to

follow the *pari passu* method of distribution amongst creditors and the absolute priority rule between creditors and shareholders. The ability to negotiate payments with creditors as opposed to the strict application of the *pari passu* rule, gives the bankruptcy administrator some flexibility to manage business rescue and a re-organisation of the entity so as to bring it back into trading as a going concern.

Question 3.2 [maximum 7 marks] (7)

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.

After the acceptance by the court of the liquidation petition, and the appointment of a liquidator by the court, the liquidator administrator publishes the liquidation procedure in both local and national newspapers informing creditors to submit claims.

Disputed creditors' claims are litigated in the same court that accepted the liquidation petition and the final result resolves the amount of the disputed claim.

QUESTION 4 (fact-based application-type question) [15 marks in total] (14)

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.

Although China has not adopted the UNCITRAL Model Law on Cross-Border Insolvency, Article 5 of the China Enterprise Bankruptcy Law of 2006 recognises that a foreign court bankruptcy ruling binds company assets located in China but with restrictions. The restrictions are;

1. The foreign bankruptcy court ruling must be recognised by a Chinese Court and
2. The recognition should either be based on a judicial assistance treaty signed and ratified between China and the requesting country or if there is no treaty on the principle of reciprocity.

3. The foreign ruling should not infringe on the fundamental principles of Chinese Law, China's sovereignty, security and public interests and does not disadvantage China's domestic creditors.¹

Singapore has signed a judicial assistance treaty with China.

The proceedings for recognition are commenced in a Chinese local intermediate court where the company's assets are located or where the company is domiciled. Foreign creditors/shareholders receive the same treatment as local creditors/shareholders.

To initiate recognition of the Singaporean bankruptcy proceeding in China, the Singaporean judgment must be final and conclusive. The following are entitled to make the recognition application namely;

- a. An interested party or,
- b. By a foreign court on behalf of the parties in dispute.

As an interested party, the Singaporean liquidator can commence recognition of the Singaporean bankruptcy proceedings in the Shanghai local intermediate court where the company assets are located or where the company is domiciled. Singapore has signed a judicial assistance treaty with Singapore. The liquidator must ensure the Singaporean proceedings do not infringe on the fundamental principles of Chinese law, China's sovereignty, security and public interest and it does not disadvantage China's domestic creditors. The Singaporean proceedings must be final and conclusive. Chinese courts in the past have recognised insolvency orders from foreign jurisdictions for purposes of foreign liquidators collecting company assets in China. An example is in 2020 a maritime court in Xiamen, Fujian Province, recognised a corporate bankruptcy order from Singapore.

Question 4.2 [maximum 7 marks] (6)

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] (3)

¹ Article 82 China Civil Procedure Law of 2007.

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.

Article 70 of the China Enterprise Bankruptcy Law of 2006 enables a shareholder with more than 10% of the company's equity to apply to court to convert the existing liquidation to a reorganisation. The reorganisation process will commence after the granting of such court order. There is no threshold for entering the reorganisation procedure, however it is best to present a rescue proposal that has been accepted by a majority of the stakeholders, which demonstrates reorganisation is likely to be achieved.

The reorganisation plan which comprises of either debt forgiveness or equity adjustment or both must pass a vote by the creditors to be implemented. It must include a business restructuring sub-plan.

At the time the reorganisation petition is accepted by the court, the court will appoint the bankruptcy administrator, whose job is to take control of the company's assets and business affairs until the end. The administrator verifies claims and investigates the company's assets. Under Article 84, the reorganisation plan must be accepted by each class of creditors and voted on in favour by at least 50% of attending creditors whose claims represent 2/3 or more of the entire claims in each class.

In cases such as these where the company's equity was affected/adjusted, Article 85 provides that the plan should be voted on by the shareholders.

Approval of the plan must be confirmed by the court before taking effect.

The CEO of Naking Limited holds 32% of the equity of HuangPu Food Limited. Under the law the company holds more than 10% of equity and is therefore entitled to approach the court to convert the existing liquidation into a re-organisation. In his application to the court, he should present a rescue proposal that has been accepted by a majority of the stakeholders. The plan must be accepted by each class of creditors and voted on in favour by at least 50% of attending creditors whose claims are at least 2/3 of the entire claim in each class. The Shareholders are also entitled to vote on the rescue plan. However dissenting creditors can be crammed down by the court.

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.

For a reorganisation plan to take effect after being voted on it must be confirmed by the court. The bankruptcy administrator is entitled to seek cram-down approval by the court under Article 87 subject to certain provisions relevant to Huangpu Food Limited as a shareholder namely;

- a) If the shareholders whose equity is affected by the plan do not vote in favour of the plan, their treatment should be fair and equitable,
- b) The plan should pay stakeholders in the same class fairly, with the priority between shareholders and creditors upheld; and
- c) The plan should be feasible.

If the safeguards provided for under Article 87 are met by the bankruptcy administrator, the court can cram-down Naking Limited's dissenting vote and approve the plan under the current law in China.

Final mark: 43/50

*** End of Assessment ***