



**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?**

*[Where a bankruptcy petition is filed by a creditor in China, the applicable bankruptcy test is "cash-flow" test and show that the debtor company is "cash-flow" insolvent, i.e. the debtor is unable to pay a debt that is due: see Article 7 of the China Enterprise Bankruptcy Law of 2006.]*

*That being said, in practice, the petition would likely be ignored if a creditor simply based on Article 7 above in filing a bankruptcy petition. The creditor should also obtain support from the local government before filing such petition.*

*For completeness, the balance-sheet test does not apply in the case of filing of bankruptcy petition by a creditor in China.]*

**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.**

*[Generally speaking, lawyers and accountants have dominated the Chinese regional bankruptcy administrator lists. A report published by the China People's Congress suggests that in 2021 there are a total of 5,060 law firms and accounting firms on the list, with 703 individual lawyers or accountants being qualified to practise insolvency law in courts.]*

*In practice, provincial courts seek collaboration from and consult with local lawyer and accounting associations, when are in turn controlled by local governments. Sometimes provincial courts simply select the largest local law firms and accounting firms without undergoing any assessments on qualification of the insolvency practitioners. The size of the law firms or accounting firms usually play a key role in the appointment in practice (based on the belief that larger firms should generally be more trustworthy).]*

**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.**

*[There are three forms of security available in China:- (i) fixed charges, (ii) pledges and (iii) liens. Only the first two types (i.e. fixed charges and pledges) are most used in China.*

*In respect of registration of charges, a charge should be registered under the China Civil Code of 2020 (upon payment of a small registration fee) or else it would be invalid:-*

- (i) Insofar as immovable property is concerned, application for registration should be made to the local office of the China Housing Management Authority (and, as a matter of practice, also to the local office of the China Land Management Authority for the sake of prudence).*
- (ii) Insofar as vehicles are concerned, application for registration should be made to the local police vehicle management office.*
- (iii) Insofar as machinery and other equipment is concerned, application for registration should be made to the local offices of the China Industries and Commerce Regulation Bureau.*

*Once registration is completed, a security certificate would be issued to the charge holder.*

*In respect of registration of pledges, there are two cases. For movable properties, no registration is required since the delivery of the secured assets itself should suffice. For immovable properties, registration is required or else the pledge would be invalid:-*

- (i) For trademarks, application for registration should be made to the China Industries and Commerce Regulation Bureau Central Office.*
- (ii) For patents, application for registration should be made to the China Intellectual Property Authority Central Office.*
- (iii) For shares of listed companies, application for registration should be made to the China Securities Depository and Clearing Corporation Limited.*
- (iv) For shares of non-listed companies, application for registration should be made to the local office of the China Industries and Commerce Regulation Bureau.]*

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

**Question 3.1 [maximum 8 marks] (4)**



***“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.***

*[At the outset, it is noted that there are three corporate bankruptcy options under the China Enterprise Bankruptcy Law of 2006 (“EBL”), which include (i) reorganisation, (ii) composition (or settlement) and (iii) liquidation. As will be explained below, the first two options are both rescue-oriented legal mechanisms, which shows that the EBL is rescue-oriented.*

***(i) Reorganisation (under Chapter 8 of EBL)***

*A company in financial difficulties can trigger the corporate reorganisation procedures in the EBL by making a voluntary reorganisation filing pursuant to section 2 of the EBL without adducing any evidence of insolvency or passing any bankruptcy test.*

*Upon acceptance of the reorganisation petition by the Court, a court-appointed administrator would take control of the company’s assets and business affairs. That said, following the commencement of the reorganisation procedures, the company may also apply to the Court for an order for completing the reorganization based on debtor-in-possession model. If the Court accedes to such application, the management of the company would regain control of the company while the court-appointed administrator would take up a supervisory role.*

*Where sufficient votes are obtained in respect of a reorganisation plan, final approval would be required from the Court. For completeness, it should also be noted that a cram-down is also available under Article 87 of the EBL provided that certain pre-requisites are met.*

***(ii) Composition or settlement (under Chapter 9 of EBL)***

*Alternatively, a company in financial difficulties can trigger the composition / settlement procedure by making a voluntary filing for the same together with a composition plan or settlement plan pursuant to section 95 of the EBL. If the Court is satisfied with the said composition plan or settlement plan, the Court would allow the company to convene a meeting of the creditors to vote on the plan.*

*Where sufficient votes are obtained in respect of the composition / settlement plan, final approval would be required from the Court.*

*As can be seen above, the aforesaid two legal mechanisms under the EBL constitute powerful tools for company to pursue corporate rescue. In the premises, the EBL is clearly a piece of rescue-oriented legislation.]*

**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.**

*[Generally speaking, according to Article 45 of the EBL, the Court should specify the time limit for creditors to declare their claims. Such time limit, calculated from the date when the Court announces its acceptance of the application for liquidation, shall be not less than 30 days at least but not more than three months. According to Article 48 of the EBL. Within such timeframe, the creditors should declare their claim with the liquidators. It should also be noted that when creditors declare their claims, they shall also make written statements on the amount of their claims.]*

*Where a creditor fails to declare his claims within the said time limit for declaration of claims, the creditor may declare such claims afterwards before the final distribution of the bankruptcy property. However, if assets of the company have been distributed at an earlier stage, no retrospective distribution can be sought: see Article 56 of the EBL.*

*The liquidators would then verify the claims. According to Article 57 of the EBL, after receiving the materials for declaration of claims, the liquidators shall proceed to register and examine the claims, and then fill out a form of claims. Such form of claims should be made available at the first creditors' meeting for verification: see Article 58 of the EBL.*

*Where there are disputes in respect of the value or existence of a creditor's claim, the liquidators would bring the dispute to the Court pursuant to section 58 of the EBL for adjudication on the dispute. The Court would then make a determination of the value or existence of the creditor's claim, and such determination should be final.]*

**QUESTION 4 (fact-based application-type question) [15 marks in total] (13)**

**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.***

*[The liquidator should seek recognition of the Singaporean bankruptcy rulings in China pursuant to Article 5 of the EBL.]*

***According to Article 5 of the EBL:-***

- (i) *First, the Singaporean ruling in question should be legally effective and should involve a debtor's property within the territory of China. In this regard, some of the company's assets are located in Shanghai, China and this requirement is met.*
- (ii) *Second, where the Singaporean Court requests the Chinese Court to recognize and enforce the judgment, the Chinese Court shall conduct examination of the judgment according to the relevant international treaties. The existence of such international treaties is essential for a foreign bankruptcy ruling to be recognized in China. In this regard, Singapore has already entered into such treaty with China.*
- (iii) *Third, the ruling should not (a) violate the basic principles of the laws of China, (b) jeopardize the sovereignty and security of the State or public interests, (c) undermine the legitimate rights and interests of the creditors within the territory of China. In this regard, the facts of the present case do not suggest that any of these factors are present.*

*In the premises, the prerequisites in Article 5 of EBL are *prima facie* met.*

*As a matter of procedure, since the assets of the company are located in Shanghai, the liquidator should apply for recognition to the Shanghai Intermediate People's Court. In doing so, the liquidator may refer the Shanghai Court to the precedent of recognition granted by the Xiamen Court in 2020. ]*

Question 4.2 [maximum 7 marks] (5)

***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.**

*[Yes, even though the Court has accepted the liquidation filing, conversion of procedure is available under the EBL. Naking Limited, being a shareholder holding more than 10% of the equity of HuangPu Food Limited (the "Company"), may, pursuant to Article 70 of the EBL, apply to the Court for conversion of the liquidation procedure to a reorganisation procedure before the Court declares the Company bankrupt.]*

*If the Court considers that the application made by Naking Limited for reorganization conforms to the provisions of the EBL, the Court may order that the debtor should undergo reorganization and shall make this known to the public: see Article 71 of the EBL.*

*Naking Limited should however note that there were only very few real-life precedents in respect of the said conversion.]*

Question 4.2.2 [maximum 3 marks] (1)

**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.**

*[Under the current law in China, the Court cannot approve such plan. It is because where the organisation plan has been downed down by the shareholders, the Court would need to substantive review the reorganisation plan. In this regard, pursuant to Article 87 of the EBL, the Court would need to be satisfied that the treatment of shareholders under the draft reorganisation plan are "fair and equitable" (unless the shareholders being affected have voted in favour of the plan, which is not the case here) before the Court may proceed to approve the reorganisation plan. Since (i) Naking Limited (as a shareholder whose interest is being affected) voted against the plan and (ii) the cancellation of all shares is clearly not "fair and equitable" in the circumstances, the Court cannot approve the reorganisation plan.]*

Final mark: 41/50

**\* End of Assessment \***