



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] (6)

Question 2.1 [2 marks] (2)

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

[If it's a liquidation petition, the creditor must convince the court that the debtor is cash-flow insolvent, namely that the debtor is unable to pay a debt that is due. Even though this is what the law states, in reality it depends upon the political support that the case has.

If it's a corporate rescue, it needs to prove the bankruptcy tests: either the balance sheets or the cash flow.]

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 two main professions that rule the insolvency practice in China are lawyers and accountants. In reality, these are mostly big law and accountant firms that have political and state support. There is no agency that regulates the insolvency practitioners and, in practice, it is mostly reserved to a small privileged group that would handle the small number of cases of bankruptcy. It is also important to highlight that to enter those lists, the size of the law or accountant firm is very important to take into consideration.]

Question 2.3 [maximum 4 marks] (2)

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

[1. Fixed charged: It can be created over both movable and immovable property in favour of a secured creditor. A charge must be registered under the China Civil Code of 2020 and is not valid until it has been registered. A security certificate is issued for the charge holder as soon as the charge is properly registered. When there is immovable property, registration takes place at the local office of the China Housing Management Authority, and creditors also register in the local office of China Land Management Authority.

2. **Pledge:** *It becomes valid after the pledged movable asset changes possession into the hands of the secured creditor. For movable assets, no registration of is required because with the change in possession is enough for it to be valid. However, when there are intangible assets such as trademarks, patents or so, it needs to be registered for it to be valid. The registration office vary depends on which assets would be pledge and it can be quite complex.*
3. **Liens:** *These are regulated in Chapter 19 of the China Civil Code of 2020 but are not quite used in the commercial world of China.]*

QUESTION 3 (essay-type questions) [15 marks in total] **10**

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 machanisms in this statute can support this statement.

[The fact that the 2006 law promotes rescue in chapter 8 and 9, before any reference to initiate liquidation. In addition to this, for entering liquidation there is a need to have a cash-flow bankruptcy test before being accepted in court. In practice, these petitions are ignored by the courts and, for it to succeed, court and political support is needed. Regarding a specific mechanism, Article 70 of the China Enterprise Bankruptcy Law of 2006 stipulates that the shareholders holding 10% or more of the company’s equity can apply to change from the liquidation process into a reorganisation.]

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.

[Whan a liquidation process begins, the liquidation administrator advertises the procedure in local and national newspaper. Creditors must submit their claims for validation from the administrator. If there is no agreement on the amounts or existence of the claim, litigation would take place on the same court. The result of this would be the finalised amount of the disputed claim.]

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

Question 4.1 [maximum 8 marks] **(6)**

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.

[In China, for them to be recognised a foreign insolvency procedure, it is necessary that the foreign bankruptcy court ruling must be recognised by a Chinese court before taking effect in China and that the recognition should be based either on a judicial assistance treaty signed and ratified between China and the requesting country. Fortunately for the case, Singapore is among one of the countries that has the required treaty. Unfortunately, in practice, Chinese courts are reluctant to accept foreign procedures, so, it would be necessary to have political and court support for it to succeed.]

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)

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.

[Taking into account that we are in an involuntary liquidation procedure, and applying what Article 70 of the China Enterprise Bankruptcy Law of 2006 stipulates, the CEO of Naking owns 32% of the shares of the company that is being liquidated. Therefore, they are eligible to apply to convert the liquidation procedure into a reorganization procedure. However, some

problems would need to be faced. First of all, the company is under a court-appointed administrator, and due to the liquidation procedure, the company's management is being dissolved. Second, the motion for conversion would alter the normal course of an ongoing liquidation procedure, which has already met the bankruptcy tests. Lastly, the request would be examined by the court, which would decide if it's convenient (even though it should be determined by the creditors). But, in conclusion, the mechanism exists in the law, and it's perfectly viable, even though a small number of cases have succeeded in practice.]

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.

[The plan is unlikely to be approved. Under China's Insolvency Law, the Article 85 states that when the equity of the company is affected or, in this case, cancelled by the reorganisation plan, the votes of shareholders is mandatory. Taking this into account and given the fact that shareholders are voting against the reorganisation plan suggested, the court can't approve such plan. However, Article 87 allows a cram-down approval by the court, which needs to meet the following requirements:

- I) Voted in favour by secured creditors or creditors must be paid by the secured assets.*
- II) Voted by the tax and employee classes, or fully paid in advance.*
- III) Voted by unsecured creditors or if this class would not receive less than they would on a liquidation procedure.*
- IV) Voted in favour by the shareholders where their equity is affected by the plan and, if not, the treatment of equity holders is fair and equitable*
- V) pays the stakeholders in the same class fairly, with the priority between shareholders and creditors upheld;*
- VI) be feasible.*

These are analyzed through three tests: i) fair and equitable test, ii) Absolute priority test and iii) feasibility test.

Therefore, although the plan may fail the voting caused by the vote of the stakeholders, the court may enforce it making it legally binding on all consenting and dissenting stakeholders.]

Final mark: 38/50

*** End of Assessment ***