



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] (9)

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

Select the correct answer: (1)

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 (0)

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] (0)

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

If a creditor files for bankruptcy in China, according to Article 2 of the China Enterprise Bankruptcy Law of 2006, creditors need to provide evidence that the company is bankrupt either by cash flow or balance sheet.

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 professions that dominate Chinese regional bankruptcy administrators list are law and accounting firms. These law and accounting firms are appointed by provincial supreme people's courts in collaboration with local lawyers and accounting associations. The appointment usually relies on the size of the law and accounting firms.

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.

The most used type of security available under Chinese Law is fixed rate. This security affects both movable and imovable property by the very own debtor or third-parties (with the respective consent) and is usually constituted by banks upon building and the right to use land. The fixed rate security must be registered before the responsible government agency under the penalty of not being deemed valid. As an example, immovable property must be registered under China Land Management Authority local office and for vehicles, the local police.

A small charge shall apply to the registration and after the registry is concluded, a certificate is issued confirming the registry.

QUESTION 3 (essay-type questions) [15 marks in total] (7)

Question 3.1 [maximum 8 marks] (3)

"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.

One can say that China Enterprise Bankruptcy Law of 2006 is rescue-oriented because it provides for means to restructure the debt of a corporate entity aiming at the maintenance of the business activity (including employees jobs and the production chain) and the future economic benefits arising from the company's going concern, rather than simply liquidating the assets and distributing the proceeds among creditors.

In this regard, China Enterprise Bankruptcy Law of 2006 provides for two mechanisms that promote rescue: the reorganisation proceeding and composition/settlement. Both the reorganisation proceeding and the composition/settlement consist, in sum, in the submission of a restructuring plan to creditors vote and the restructuring of the company's indebtedness.

To file for a reorganisation proceeding or composition/settlement debtor does not need to be bankrupt, that means that companies that are likely to be bankrupt in the future could seek relief through these proceedings to overcome their financial crisis.

Question 3.2 [maximum 7 marks] (4)

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.

Creditors may challenge their claims through the filing of a claim form provided by the judicial administrator, who will analyse such proofs of claim according to the books and consulting financial staff from debtor to confirm whether the proof of claim should be accepted.

In case creditors intend to challenge the legality or accuracy of the claim a petition can be filed to the bankruptcy court to obtain a judgement on the merits. These challenges are usually resolved in an expedited manner.

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.

China has not adopted UNCITRAL provisions and will not recognize a foreign insolvency proceedings unless there is a treaty in place or grounded on the principle of reciprocity in case no treaty is available.

With that said, Singapore entered into a treaty with China regarding the recognition of foreign proceedings. In other words, China could indeed recognise the foreign insolvency proceeding filed before a Singaporean court.

Also, for the recognition of a foreign proceeding to occur, debtor must hold assets within Chinese jurisdiction, as per China Enterprise Bankruptcy Law of 2006 Article 5. As described in the case above, its is clear that the Singaporean company holds assets in China, since such assets were freezed by a Chinese company.

To obtain the recognition of the Singaporean bankruptcy, the liquidator would have to file a recognition request before the Chinese local intermediate people's court where the freezs assets are locates, that means, Shangai.

However, it is worth to highlight that most Chinese courts tend not to recognise foreign insolvency proceedings due to the possibility of harming Chinese sovereignty.

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.

Yes, the involuntary bankruptcy request can be convert into a reorganization proceeding under China Enterprise Bankruptcy Law of 2006. In such case, HuangPu

Food Limited and the very own CEO of Naking Limited, as a shareholder holding more than 10% of company's equity, could file a petition requesting the conversion of the proceeding into a reorganisation, as per Article 70 of the China Enterprise Bankruptcy Law of 2006.

However, this is not a common measure in China because it is unclear how debtor's board would request the conversion of the bankruptcy since the commencement of such proceeding causes the court-appointed administrator to take control of company's business activities.

A further problem to the conversion of the bankruptcy into a reorganisation proceeding is that for creditors to file for bankruptcy, the bankruptcy tests had to be complied with, that meant the financial distress of the company has been factually proven before court.

At last, the conversion is controversial and had only been performed in a small share of cases, since it involves creditors interests.

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.

Considering that the Plan has been approved by all classes of creditors and only voted down by the shareholders, court could still approve the plan under cram-down, if statutory provisions of Article 87 of the under China Enterprise Bankruptcy Law of 2006 are fully complied with.

According to the abovementioned Article, for court approval of the plan occur through cram-down, plan needs to be : approved by the secured creditors, and if not, the secured creditors must be fully paid out of secured assets; approved by the employee and tax authorities classes and, if not, these two classes must be paid in full; approved by ordinary unsecured creditors class and, if not, this creditors must not be paid less than they would have received in a liquidation proceeding; approved by shareholders where their equity is affected by the plan, and if not, the treatment of equity holders

should be fair and equitable; payment of the stakeholders in the same class should be fair, with the priority between shareholders and creditors upheld; and be feasible.

The CEO of Naking Limited could then argue that the plan does not provide for fair and equitable treatment of the shareholders, since their shares would be wiped-up.

All things considered, there is a chance the plan is not approved via cram-down by court in case such court renders that shareholders treatment is not considered fair and equitable.

Final mark: 37/50

* End of Assessment *