



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] **(10)**

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

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

Article 7 of the China Enterprise Bankruptcy Law of 2006 provides for a cash-flow bankruptcy test as it provides that if the company is unable to pay a debt that is due, the creditor can file for liquidation in Court.

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

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 in China that dominate Chinese regional bankruptcy administrator lists are law firms and accounting firms. In practice, the bankruptcy administrator is appointed at the sole exclusive discretion of the Court (and without the debtor or the creditor having any say). The bankruptcy administrator is selected from a local list of insolvency practitioners.

Creditors are authorized, under Article 22 of the China Enterprise Bankruptcy Law of 2006, to request the replacement of a court appointed administrator where the administrator has behaved unlawfully or is biased - this does not however generally happen in practice.

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.

There are three types of securities available under Chinese law: (a) fixed charges; (b) pledges; and (c) liens. Fixed charges are the most used type of security, followed by pledges.

A fixed charge can be created over both movable and immovable property such as buildings, houses or the use of right of land. The charge is not valid until it is registered under the China Civil Code of 2020, registration for which a small fee may apply. For immovable property, the charge is to be registered with the local office of the China Housing Management Authority (and for safety, can also be registered at

the local office of the China Land Management Authority because the land upon which the building stands is part of the property).

A pledge can be made over movable tangible or intangible assets (such as shares, trademarks, bonds, cheques and patents). No registration is required for a movable asset because the change of physical possession is sufficient. Registration is required however, for a pledge over an intangible asset to be valid - the registration authority for these pledges will depend on the type of pledge. For trademarks, the registration authority is the China Industries and Commerce Regulation Bureau Central Office, for patents, it is the Intellectual Property Authority Central Office, for shares of listed companies, it is the China Securities Depository and Clearing Corporation Limited and for shares of non-listed companies, it is the local office of the China Industries and Commerce Regulation Bureau where the company is incorporated.

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.

The China Enterprise Bankruptcy Law of 2006 supports rescue in the following respects:

- (a) Reorganisation - Article 2 provides that when a company is likely to become bankrupt in the near future, the company can voluntarily file for reorganisation in court. This means that a voluntary reorganisation filing can be made without showing any evidence of bankruptcy and encourages rescue efforts to be made as early as possible. The application can be made by either the company or its creditors. Further, Article 81 provides that a reorganisation plan must include a business restructuring sub-plan showing that there is an aim to revive the company's business.*
- (b) Composition or settlement - Article 95 provides for a rescue procedure that can be filed by either the company or its creditors. The procedure is a voluntary one and when the company files for composition it must present a composition/settlement plan to the court to be approved by the court. If approved by the court, then the plan will be voted on by a meeting of the creditors, which will then need final approval of the court before taking effect.*
- (c) Converting a liquidation to reorganisation - Article 70 provides that in the event of an involuntary bankruptcy liquidation procedure (ie filed by a creditor), the debtor or its shareholders (with more than 10% of the company's equity) can apply to the court to convert the liquidation into a reorganisation.*

(d) Moratorium - Article 19 provides that all executions against the company must be stayed once the court accepts a reorganisation filing and begins a formal reorganisation procedure. The moratorium binds secured creditors.

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.

Claims in a corporate liquidation procedure are made to the liquidation administrator by way of a claim form. The liquidation administrator will then verify the claim by reference to the company's books and consult with the finance team of the company. If the administrator and the creditor cannot agree on the amount of a claim, then the claim will be adjudicated in the same court for a judgment on the amount - the decision of the court will be the final amount of the disputed claim. Courts often arrange for an expedited process to resolve these disputes.

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.

Article 5 of the China Enterprise Bankruptcy Law of 2006 provides that a foreign court bankruptcy ruling binds the company's assets located in China. However, in order for the Singaporean liquidator to take effect in China, the Singaporean bankruptcy ruling must first be recognised by a Chinese Court. The Chinese Court will recognise the Singaporean bankruptcy ruling on the basis of either a judicial assistance treaty signed and ratified between China and Singapore, or on the principle of reciprocity.

Singapore and China have signed a judicial assistance treaty and so the Singaporean liquidator can seek recognition under the treaty by application to a Chinese local intermediate people's court where the company's assets are located. Upon application, the Chinese court will consider the Singaporean bankruptcy ruling in accordance with the Singaporean treaty and decide whether or not to enforce the judgment - the Chinese court will not give effect to a request for assistance where it would contravene the basic principles of PRC law, the State's sovereignty and public interests or prejudice the legal interests of any PRC creditors. There is precedent from 2020 where a court in Xiamen recognised a corporate bankruptcy order from

Singapore Here however, the Chinese Court may have concerns that the Chinese creditor who has taken legal action and obtained a freezing injunction may be prejudiced by the recognition.

Once the Singapore liquidator has gained recognition, the Singapore bankruptcy ruling will bind the company's assets located in China.

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] (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.

As Naking is a controlling shareholder holding 32% of the equity in HuangPu Food Limited, and the bankruptcy was commenced by a creditor, Naking has standing to petition to the court for a conversion of the liquidation procedure into a reorganisation procedure. This is permitted under Article 70 of the China Enterprise Bankruptcy Law of 2006. If the court approves the conversion, then the liquidation will be changed into a reorganisation. It should be noted however, that in practice, only a very small number of liquidations will be changed into a reorganisation.

Question 4.2.2 [maximum 3 marks] (2)

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.

Article 85 of the China Enterprise Bankruptcy Law of 2006 provides that in situations where the company's equity will be affected, adjusted or cancelled by the reorganisation plan, it should also be voted on by the shareholders. This means that if the plan has been voted down by the shareholders, the Court cannot approve the plan unless the Court relies on Article 87 to cram down the reorganisation plan. Article 87 allows the Court to forcibly approve a plan that has failed in the vote of any class of stakeholders (including shareholders), making it legally binding on all consenting and dissenting stakeholders.

Final mark: 45/50

* End of Assessment *