



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] **9)**

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 states that the creditor can make an application to the People's Court for a bankruptcy liquidation when the debtor cannot pay off his debts due. In this context, a cash-flow bankruptcy test must be used by the creditors for the court to accept the liquidation petition.¹

Question 2.2 [maximum 4 marks] **(3)**

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

Lawyers and accountants dominate Chinese regional bankruptcy administrator lists.² According to Article 22 of the China Enterprise Bankruptcy Law of 2006, it is up to the People's Court to appoint the administrator,³ while the Supreme People's Court is responsible for formulating measures for appointing administrators and setting their remuneration. In addition, the creditors' meeting may request the people's court to replace the administrator if the meeting believes that the administrator cannot perform his duties according to law or impartially or is incompetent to fulfill his duties.⁴ In summary, the Chinese court has the exclusive power to appoint a qualified administrator,⁵ who must be included in the local list of insolvency practitioners.⁶

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.

¹ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 8 and 21.

² ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 13.

³ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 18.

⁴ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 18.

⁵ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 18.

⁶ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 13.

*The China Property Law of 2007 provides for three main forms of security: (i) fixed charges; (ii) pledges; and (iii) liens. The first is the most used.*⁷

*The fixed charge must be registered in accordance with the Chinese Civil Code of 2020, and is valid only after registration with the government agency. Since the fixed charge is mainly used in relation to immovable property, the registration authority is the local office of the China Housing Management Authority. In addition, it is possible to register simultaneously at the local office of the China Land Management Authority, for greater creditor security. It should be noted that a fee may be charged for registering the fixed charge. Once registration is completed, a security certificate will be issued to the charge holder.*⁸

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

Question 3.1 [maximum 8 marks] (7)

“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 has three substantive bankruptcy procedures: (i) reorganization; (ii) compromise; and (iii) liquidation. The first two procedures aim at corporate rescue, being regulated in Chapters 8 and 9 of the 2006 law.⁹ The liquidation procedure is provided for in Chapter 10. Thus, the order in which the procedures are arranged in the China Enterprise Bankruptcy Law of 2006 demonstrates the intention of the Chinese lawmakers that the rescue be sought first.*¹⁰

In addition, Article 70 of the China Enterprise Bankruptcy Law of 2006 allows the debtor or its shareholder holding at least one tenth of the registered capital to apply for a conversion from liquidation to reorganization when the creditor has applied for an involuntary bankruptcy liquidation.¹¹ This application must be made after the People's Court accepts the application for bankruptcy and before it declares the debtor bankrupt.

*Zhang Zinian argues that there are three problems related to the application of Article 70. First, it is not clear how the debtor could apply for conversion, since the management of the company is removed by the appointment of the administrator by the court, which then takes control of the company.*¹²

⁷ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 15.

⁸ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 15.

⁹ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 8.

¹⁰ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 8.

¹¹ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 22.

¹² ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 22.

Second, the author argues that it seems unfeasible for the shareholder to be able to claim the conversion. Because by accepting the application for bankruptcy, the court would have recognized that the company passed the bankruptcy test. Therefore, altering this understanding can harm creditors.¹³

Third, Zhang Zinian points out that it is controversial for the court to decide on the possibility of conversion. In this sense, the author argues that it should be up to creditors to decide whether to convert liquidation into a reorganization procedure.¹⁴

Having made these considerations, Zhang Zinian indicates that only in a few cases this conversion is practiced.¹⁵

Finally, although the China Enterprise Bankruptcy Law of 2006 can be considered a rescue-oriented bankruptcy statute, the difficulty of its application in practice is highlighted. In this context, China has few cases of corporate bankruptcy, so that several Chinese companies in difficulty continue to exist precariously, which goes against the interests of stakeholders.¹⁶

Question 3.2 [maximum 7 marks] (0)

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.

[Type your answer here]

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.

It is not possible to recognize an foreign insolvency proceeding in China, since it has not adopted the UNCITRAL Model Law on Cross-Border Insolvency.¹⁷ Still, it is possible to recognize a legally effective judgment or ruling made on a bankruptcy

¹³ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 22.

¹⁴ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 22.

¹⁵ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 22.

¹⁶ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 9.

¹⁷ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 38.

case by a court of another country that involves a debtor's property within the territory of China.

Under Article 5 of the China Enterprise Bankruptcy Law of 2006, it is permissible for a judgment or ruling of a foreign court to bind a company's assets located in China as long as there is a judicial assistance treaty between China and the foreign country.¹⁸ In this regard, Article 282 of the China Civil Procedure Law of 2007 allows for a foreign judgment to be recognized if the foreign country has a judicial assistance treaty with China.¹⁹ In this case, Singapore has a treaty with China,²⁰ so that it is possible to seek recognition of decisions taken by the Singapore court within the scope of the insolvency process.

Furthermore, Zhang Zinian records that "[i]n 2020, a maritime court in Xiamen, Fujian Province, recognised a corporate bankruptcy order from Singapore, paving the way for the Singaporean liquidator to collect the company's assets located in China".²¹

That said, the liquidator of the Singaporean bankruptcy proceeding can apply for recognition to a Chinese local intermediate people's court where the assets are located or where the Singapore company has domicile.²²

However, Article 5 of the China Enterprise Bankruptcy Law of 2006 provides that the Chinese court may fail to recognize a judgment or ruling that harms the legitimate rights and interests of creditors in Chinese territory. The action filed by a Chinese creditor in a local (Chinese) court, which issued an injunction freezing the Singapore company's assets in China, may represent an obstacle to the recognition of the Singapore court's decision.²³

Therefore, if the Chinese court understands that there is no prejudice to the Chinese creditor or other public interest reservations, the judgment or ruling of the Singapore court may be recognized and consequently authorized the liquidator to collect the company's assets located in China.

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

¹⁸ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 38.

¹⁹ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 41.

²⁰ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 39.

²¹ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 39.

²² ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 41.

²³ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 38-39.

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.

Considering that Naking Limited is a controlling shareholder holding 32% of the equity of HuangPu Food Limited, it is possible to apply to the court to convert liquidation to a reorganization procedure under Article 70 of the China Enterprise Bankruptcy Law of 2006, since the requirement to be a shareholder with more than 10% of the registered capital was met.²⁴

The shareholder can convince the court that there are still several HuangPu Food Limited businesses that are viable and that a piecemeal liquidation of the company will not be in the interests of any of the stakeholders. Furthermore, it is critical to seek the support of the local government before the application for conversion is taken to court.²⁵

Therefore, although in practice there are not many cases of conversion,²⁶ in this case it would be possible for Naking Limited to apply for the conversion of liquidation to a reorganization procedure.

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

²⁴ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 30.

²⁵ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 30.

²⁶ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 30.

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 Shanghai Second Intermediate Court can approve the plan in accordance with Article 87 of the China Enterprise Bankruptcy Law of 2006. In this device, the Chinese lawmakers adopted the possibility of Cram-Down, that is, the court can confirm a plan that was not approved by one or more classes of creditors or by the shareholders.²⁷

*To be cram-down approved by the court, the plan must meet the requirements of Article 87. In relation to shareholders, subparagraph (4) of Article 87 provides that the reorganization plan, if rejected by the shareholders, must adjust their rights in fair and impartial manner. According to Zhang Zinian, this means that the court must apply the *pari passu* principle between creditors of the same class.²⁸*

Therefore, if the Shanghai Second Intermediate Court finds that the plan meets the fair and equitable test, it will be possible to approve the plan by cram-down under Article 87 of the China Enterprise Bankruptcy Law of 2006.

Final mark: 41/50

* End of Assessment *

²⁷ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 34.

²⁸ ZINIAN, Zhang, Module 8B Guidance Text: China (PRC), INSOL International, London (2022), p 34-35.