**Text, logo, company name

Description automatically generated**

**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 9**

**ETHICS AND PROFESSIONAL PRACTICE**

This is the **summative (formal) assessment** for **Module 9** of this course and is compulsory for 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 9**. 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.assessment9]**. An example would be something along the following lines: 202223-336.assessment9. **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 “studentnumber” 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 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

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**

Please choose the **most correct answer** from the options below:

INSOL International’s *Ethical Principles for Insolvency Professionals* –

1. creates a set of rules by which stakeholders and the public in most jurisdictions would be able to determine whether insolvency practitioners are acting in accordance with ethical principles.
2. are mandatory and apply to all its members.
3. creates a set of rules which all jurisdictions have to incorporate into their insolvency frameworks.
4. creates a set of best practice principles to inform and educate insolvency practitioners and stakeholders by providing ethical and professional guidance on issues of importance.

**Question 1.2**

The “Creditors Bargain Theory” approach to insolvency proposes the following with regard to the **protection of competing interests** in insolvency proceedings:

1. Creditors’ interests are of paramount importance and as such only these interests should be protected in insolvency.
2. The interests of stakeholders should be regarded in the same manner as those of creditors.
3. Creditors’ interests are of paramount importance, however, the interests of other stakeholders should also be considered where this would be in the creditors’ interests.
4. Only the shareholders of the company and the creditors of the company should be protected by the insolvency law (and in that order).

**Question 1.3**

Choose the **correct** answer:

Ethical behaviour by insolvency practitioners can undermine the entire insolvency framework of a country due to a lack of trust and confidence in the insolvency profession.

(a) True

(b) False

**Question 1.4**

Select the **most correct** answer:

Lee is a well-known insolvency practitioner in his jurisdiction and is very active on LinkedIn. He posts the following: “Not all IPs are created equal, most just take your money whilst others really try to help. I know which group I belong to”.

1. Lee’s behaviour online is acceptable as it is true. He is merely advocating for those IPs that are ethical and competent.
2. Lee’s behaviour online is unacceptable as it is true and should not be made known to the world and thereby bring the profession into disrepute.
3. Lee’s behaviour online is acceptable as he is warning people to ensure that they only engage the assistance of ethical IPs.
4. Lee’s behaviour online is unacceptable as it is untrue and brings the profession into disrepute.

**Question 1.5**

Select the **correct** answer:

Ho has been appointed as a liquidator of Company X. Company X has several major creditors, including ABC Bank. A year prior to the liquidation of the Company X, Ho was acting in an advisory capacity for ABC Bank in litigation against Company X where he attempted to advance ABC’s position as a creditor.

This situation is an example of ~~a /~~ an \_\_\_\_\_\_\_\_ threat.

1. self-interest
2. self-review
3. advocacy
4. intimidation

**Question 1.6**

John was appointed as the liquidator of DebtCO. One of DebtCO’s suppliers and major unsecured creditors, Mr Panesar, is very friendly towards John. Mr Panesar has heard in passing that John enjoys sport and managed to procure tickets to several events in the recent Commonwealth Games in Birmingham 2022, which John accepted. John realises that this will be deemed questionable behaviour and he fears that Mr Panesar will make the offer and acceptance of the gift public. This would certainly create a threat to his perceived objectivity.

This situation is an example of a / an \_\_\_\_\_\_\_\_ threat.

1. familiarity
2. self-review
3. advocacy
4. intimidation

**Question 1.7**

Select the **correct** answer:

Poh has been appointed as a liquidator of Company X after the company resolved to wind it up voluntarily. Company X has several major creditors, including ABC Bank. ABC Bank is supportive of the liquidation process and has even gone as far as to agree to contribute to the remuneration of Poh. The bank does not expect to be treated in a different manner to other creditors and assures Poh that their wish is for her to do her job as is ordinarily expected of her. Due to the nature of insolvency work there are often insufficient assets to cover the costs of the procedure.

1. Where a stakeholder offers to assist in ensuring costs are met a threat to independence can arise. Poh should, therefore, disclose the funding agreement and ensure that she treats ABC the same as the other stakeholders. She should also document all her interactions with the bank to manage any possible perception issues that might arise.
2. Where a stakeholder offers to assist in ensuring costs are met a threat to independence can arise. Poh should, therefore, enter into an agreement with ABC Bank to stipulate that she is not expected to treat them in a different manner to other creditors. In order to manage the perception issues that might arise, Poh should not disclose the agreement to other stakeholders.
3. As ABC Bank has already indicated that they don’t expect preferential treatment, Poh is in the clear and believe herself to be able to conduct the liquidation in an impartial and independent manner despite feeling very grateful to the Bank for their assistance.

**Question 1.8**

Select the **correct** answer:

Ronan has been appointed as a new associate at the firm where he is employed. In his new role he has to meet certain targets in relation to the fees he earns for taking appointments. Ronan is currently appointed as a liquidator for a small company. He realises that he will not meet the firm’s target for fees. The most ethical thing for Ronan to do would be to:

1. Ask his administrative assistant to invoice the estate for the use of the firm’s conference venue for meetings held there at a 50% increased fee.
2. Call a creditors’ meeting requesting an adjustment to his agreed fees due to unforeseen circumstances.
3. Carry out his duties in a timely fashion and complete the appointment efficiently and without undue delay, only invoicing for work properly performed.
4. Ask his administrative assistant to double check all the calculations in the case file and then bill the hours as part of his invoice.

**Question 1.9**

Select the **most correct answer** from the options below.

An insolvency practitioner using a fixed fee calculation method for determining the amount of remuneration owed to him, will receive a fair amount of remuneration.

1. This statement is false since the practitioner might have carried out more work and invested more resources than is reflected in the fee.
2. This statement is true since jurisdictions always allows for an adjustment of fees where it is necessary.
3. This statement is false since the practitioner will always receive more remuneration than what is reflected in the work carried out.
4. This statement is false since the only way to receive a fair amount of remuneration is to calculate the remuneration on an hourly rate.

**Question 1.10**

Select the **most correct answer** from the options below.

Timothy has been appointed as the judicial manager of a large public company. As a result of his appointment, he has been privy to confidential information regarding the company and its stakeholders. Timothy is aware that there is a duty on him to maintain confidential information and is very careful when he speaks to the press and members of the public. However, he often discloses work related information including sensitive information to his brother-in-law when they see one another over weekends and Timothy believes the information will be kept confidential by him.

Please select the statement that **best** describes Timothy’s situation:

1. Timothy is in breach of his duty to act in the best interests of the beneficiaries of his duties. Timothy’s disclosure of confidential information to his brother-in-law will pose a conflict of interest and create bias in the exercise of his duties.
2. Timothy is in breach of his duty to confidentiality. As an IP he should maintain confidentiality even in a social environment and should be alert to the possibility of inadvertent disclosure to an immediate family member like his brother-in-law.
3. Timothy is not in breach of his duty to act with good faith. He maintains confidentiality when engaging with the press and public. His disclosure to his brother-in-law poses no risk as disclosures to immediate family members are not regarded as threats to compliance.
4. Timothy is not in breach of his duty to confidentiality. He maintains confidentiality when engaging with the press and public. His disclosure to his brother-in-law poses no risk as he trusts him to keep the information to himself.

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 [maximum 4 marks]**

**In your own words**, please explain the difference between honesty and truthfulness and provide an insolvency-related example.

Honesty and truthfulness are essential character traits that an insolvency practitioner must embody in the performance of their duties. The expectation of an insolvency practitioner is that they will honour the trust of the creditors and take their interests into account appropriately.

It is possible to act honestly without also acting truthfully. Both characteristics have their own meaning, which can also be distinguished from each other.

An insolvency practitioner acts honestly if he or she does not deliberately assert untruths. He is therefore acting in good conscience. Honesty also means working transparently. Honesty in his actions is based externally on the basis of decisions that are visible to everyone. Honesty thus also expresses the conscientious, straightforward activity of the insolvency practitioner.

Those who act honestly can at best also act truthfully. In this case, everything that the insolvency practitioner has honestly stated also applies and also includes the whole truth. Truthfulness means that all aspects of the whole truth must be made known to the creditors. The insolvency practitioner is not telling an untruth if they are not telling the whole truth.

While truthfulness only encompasses the quality of truthfulness, honesty amounts to the quality of sincerity. The latter therefore has a decidedly broader subjective approach, while the former is more objectively limited.

An insolvency practitioner is expected to work both honestly and truthfully and always disclose the whole truth. This is also an expression of his objectivity and independence.

In order to use examples from the everyday life of the insolvency practitioner for the purpose of clarification, the principle must be applied that the insolvency practitioner may not at any time deliberately tell creditors, employees or even shareholders of the debtor an untruth. He may not deceive the parties involved in the proceedings either by action or omission.

**Question 2.2 [maximum 4 marks]**

Contingency fee arrangements have been a controversial issue in relation to insolvency practitioners and their remuneration. Briefly reflect on this practice and the possible ethical issues in relation to this method of calculation.

So-called contingency fee agreements are, as the name suggests, not a simple fee agreement but one that makes the insolvency practitioner's fee dependent on a condition precedent. According to the principle of contingency fees, the insolvency practitioner should only receive his remuneration if he can prove "success". If he cannot prove this, he is not entitled to a fee.

This condition, the "success", typically refers to a favorable outcome for the parties involved, such as a completed "restructuring plan".

Setting a performance-related fee for an insolvency practitioner in the context of insolvency harbors controversy.

An insolvency practitioner should have an overview of all aspects of the insolvency proceedings and conduct the proceedings honestly and truthfully as an independent party vis-à-vis all other parties involved in the proceedings.

However, if his or her remuneration is made dependent on individual conditions, independence is jeopardized. The practitioner should neither achieve objectives with a crowbar nor disregard the holistic nature of the proceedings. This risk may exist if the practitioner aiming for certain goals in order to strengthen his claim to a fee in the first place.

In addition, the conditions to be applied are in any case the tasks imposed on the practitioner. The insolvency practitioner must be able to carry out his activities in such a way that his judgement is not impaired at any time.

These tasks, which the practitioner has to pursue in any case, are not intended to represent designated individual objectives in order to achieve a fee. It would probably be less ethically problematic if objectives were pursued that represent an "outstanding" result for all parties involved that can be measured on the basis of objective criteria.

**Question 2.3 [maximum 2 marks]**

Please provide **two** reasons why it is important for insolvency practitioners to keep proper records.

The reason why insolvency practitioners must keep proper records in connection with the insolvency proceedings they have to conduct is based on two main pillars.

Firstly, the records are important for his fee. The competent court and also third parties can use this as a basis for retracing the individual steps and decisions of the insolvency administrator. Insofar as the administrator receives his fee for carrying out the work imposed on him, it is in his own best interest to be able to justify the amount he charges. Against this background, this is no different for a lawyer who works on a fee basis and provides proof of performance.

The second pillar primarily serves to protect the insolvency practitioner against subsequent challenges to his actions by third parties who are not satisfied with his decisions.

In this respect, it is common for those affected by the decisions made by the insolvency practitioners to defend themselves in the aftermath of these decisions. In order to defend himself against these attacks, it is essential that the insolvency practitioner documents his administrative measures sufficiently so that he can justify his decisions.

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

**Question 3.1 [maximum 7 marks]**

Please reflect on the ethical duty of professional behavior as it relates to communication with stakeholders and the media and personal expression.

As insolvency practitioners are expected to perform their duties honestly and truthfully and thus create transparency in their actions, communication is an essential component of their work.

In the course of his activities, the insolvency practitioner must therefore provide information on the progress of the insolvency proceedings and endeavour to be honest and truthful.

The groups of people who have a specific interest in the development of the insolvency proceedings and therefore in the individual measures taken by the insolvency practitioner must be included in the communication. These groups of persons include the debtor's creditors and the debtor's shareholders.

The insolvency practitioner is by no means obliged to respond to every request for information. Rather, he must always weigh up the relevant interests in the interests of the insolvency proceedings and taking into account the overall development in order to make the decision to answer questions. Criteria may include, for example, the debtor's business secrets as well as existing confidentiality obligations. These bind the insolvency practitioner internally. By adhering to these obligations, the administrator nevertheless remains honest and truthful in his communication. The costs incurred by the insolvency practitioner in generating responses must also be weighed up in relation to the weight of the responses.

In principle, the insolvency practitioner's "duty of communication" is limited to the groups of persons who have a specific interest in the insolvency proceedings. By way of exception, third parties may also be included if the proceedings have a particularly high public profile.

What is particularly relevant here is the ratio of the effort and costs to the public interest at the expense of the debtor's assets. If the information cannot be justified, then this information does not have to be disclosed at the expense of the proceedings. The insolvency practitioner always makes his decision in the interests of the debtor and therefore also his creditors and groups with specific interests in general.

The basis for communication, in particular with regard to public interest, also significantly affects communication with the media. Here in particular, the insolvency practitioner must weigh up whether they are acting in the interests of the debtor.

Personal interests must also always be scrutinised in the light of the interests of the proceedings. It is important to ensure that the insolvency practitioner acts as a party and not as a private individual. Incidentally, they act primarily in the interests of the debtor and therefore the interest groups, so they should exercise restraint when making personal statements and judgements. Professional distance must always be maintained.

**Question 3.2 [maximum 8 marks]**

As insolvency appointments often involve complex legal issues, it is common practice for insolvency practitioners to rely on the advice and services of legal professionals. What ethical considerations should be borne in mind, especially regarding the fees of these legal professionals?

In the course of insolvency administration, the practitioner is regularly confronted with the need to commission third parties to provide services. If the practitioner commissions third parties, he must always justify the remuneration of the third parties in detail, as their remuneration is paid from the assets.

If the third parties are lawyers whose advisory services are necessary in the opinion of the insolvency practitioner, these costs can be categorised as "expenses" or "costs for third parties".

When categorising them as expenses, the practitioner checks the correctness of the payment. If the costs are categorised as third-party costs, these costs must be charged to the company, which leads to comprehensive justification by the practitioner. It is recognised as particularly problematic when it comes to services that may have already been commissioned and are now being billed twice.

It must never be forgotten that the insolvency practitioner acts in the interests of the debtor's assets and therefore in particular in the interests of the debtor's creditors. Every investment that the practitioner makes and has to draw on the debtor's assets to do so reduces these assets and initially harms the interest groups.

This is precisely the "ethical" problem with the use of external legal advice, especially as insolvency practitioners are regularly lawyers themselves. If the practitioner takes money from the assets to cover such costs, he must be able to justify this and be held accountable.

In principle, an insolvency practitioner must not only carefully examine whether consultancy services are necessary at all and whether the debtor's financial situation justifies the use of external legal advice. In a second step, he must justify the selection of a particular consultant and his fee. The motives for utilising external legal advice and, moreover, a specific advisor should always be carefully documented.

These requirements for the insolvency practitioner are in line with the principles set out in the Institute for Chartered Accountants of England and Wales (ICAEW) Insolvency Code of Ethics.

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

WeBuild Ltd is a private company registered in Eurafriclia. The company specialises in construction and property development and is well known in the area where it conducts its business. Mr B Inlaw, Dr I Dontcare and Mrs I Relevant are the directors of the company. The company has ten shareholders, with Mr B Inlaw and Dr I Dontcare also holding shares in the company.

The company traded profitably for the last 10 years but recently started to experience financial difficulties. One of the main reasons for the financial decline is the fact that several of the company’s employees have instituted a class action claim against WeBuild for workplace-related injuries due to faulty machinery. This also resulted in bad publicity that led to a decline in contracts. The directors of the company were made aware of the issues relating to the machinery, but chose not to take any action to remedy the situation. When the company’s financial position started to decline the directors continued to trade as if nothing was amiss and even made several large payments to themselves by way of performance bonuses. When they received a letter of demand from the company’s major secured creditor, ABC Bank, the directors decided to call a shareholders’ meeting to discuss the company’s options.

Present at this meeting were the shareholders, the directors and Mr Relation, a lawyer and licensed insolvency practitioner, to provide them with information and advice in relation to their options. Some of the shareholders recognised Mr Relation as Mr B Inlaw’s brother-in-law and godfather to his daughter. During the meeting, Mr Relation suggests that the company enter into a voluntary administration procedure. Mr B Inlaw suggests that the company appoint Mr Relation as administrator. He accepts the appointment, ensuring that he discloses his relationship with Mr B Inlaw and says that he will declare that he believes that he will still be able to act with the required independence and impartiality – an undertaking that he complies with by subsequently issuing a written declaration of independence.

After the meeting adjourns, Mr B Inlaw requests the other directors and Mr Relation to stay behind for a brief “planning” meeting. During this subsequent meeting the directors inform Mr Relation that they are concerned about their personal liability for breach of duty. Moreover, they are worried that they might land in hot water due to their decision to continue trading when the company was clearly in dire financial straits. Mr Relation assures them that his focus will not be on them but on trying to rescue the company.

In the weeks that follow, Mr Relation conducts a superficial investigation into the affairs of the company and the circumstances leading to the financial difficulties of the company. He relies on detailed reports drafted by Mr B Inlaw regarding the company’s business and drafts a strategic plan for recovery based on his investigation and the reports he received.

At a meeting of creditors to consider the plan, Mr Relation states that he has found no evidence of any wrongdoing or maladministration by the company’s directors. Mrs Keeneye, a lawyer attending the meeting on behalf of ABC Bank, the major secured creditor, recognises Mr Relation from a television interview where Mr Relation expressed the opinion that banks should be more accommodating in restructuring proceedings and that he thinks that the interests of lower ranking creditors should sometimes outweigh “big money” (referring to financial institutions). She immediately feels uncomfortable with his appointment as administrator.

Several months later the administration fails due to a “lack of funding” to finance the rescue. The administration is subsequently converted to liquidation proceedings and Mr Relation is appointed as the liquidator. A week after his appointment Mr Relation posts a picture of himself and Mr B Inlaw on a catamaran on Instagram and Twitter with the following captions: #IPhardatwork #familyfirst #hopemyassistantcopes.

Mr Relation’s firm has been implementing a work-from-home arrangement for employees, and his secretary and associate have several sensitive documents pertaining to WeBuild Ltd in their possession and on their personal computers at home.

**INSTRUCTIONS**

**Please identify as many ethical issues in the factual scenario as you can find.**

**You are required to identify the ethical issues and explain in detail why they are in fact ethical issues. Your answer should include reference to the ethical principles and the commentary thereon. Where appropriate and suitable, you should also endeavour to elaborate on possible remedies or safeguarding mechanisms to minimise or remove the ethical threats.**

**You may also make use of case law and secondary sources to substantiate your answer.**

Various circumstances from the facts of the case indicate that the imperatives of objectivity and neutrality are not being observed by the insolvency administrator, Mr Relation, in particular towards the creditors and the debtor. There are also indications that professional behaviour is not consistently observed by Mr Relation.

1. Family Relationship with Managing Director

The fact that Mr Relation is the brother-in-law as well as the godfather of the daughter of Mr Inlaw, one of the debtor's managing directors, allows the assumption of "partiality" on the part of the insolvency practitioner to be made. An insolvency practitioner such as Mr Relation is required to avoid all personal and professional relationships and direct or indirect interests that could compromise their integrity and decision-making ability.

The conduct of an insolvency practitioner should always express the fact that his activities and commitment are not prejudiced against a particular party and that he is therefore not acting in favour of the debtor as a whole. It is precisely for this reason that an insolvency practitioner, such as Mr Relation, should not accept a mandate if his relationship with a managing director, for example, may imply a lack of independence.

It must not be disregarded that the managing director of a company, who, as in the present case, is likely to have direct responsibility for the economic and financial decline of the company, may pursue interests that differ significantly from those of ordinary creditors or shareholders of the company. The close family connection between the managing director, Mr Inlaw, and Mr Relation and the fact that Mr Inlaw proactively proposed Mr Relation as practitioner may give rise to mistrust in the independence of the practitioner´s activities.

In principle, a simple statement and disclosure of the insolvency practitioner's relationship with a managing director does not restore "independence" across the board if the impression of a lack of independence has arisen in the first place.

The question that arises is essentially whether the disclosure of his relationship with Mr Inlaw and the indication that he will not be influenced by it in terms of his independence, as well as the issuing of the declaration of independence, is sufficient to remove any mistrust in Mr Relation's independence. The relationship with Mr Inlaw can be harmless with disclosure and declaration of independence if this is "only" superficial and therefore not material.

However, this is unlikely to be the case here. There is a personal relationship between the insolvency practitioner and a managing director, which is in any case also known to shareholders. The fact that Mr Relation willingly cooperates and does not check the liability of the management despite indications confirms that this relationship exceeds the professional limits of independence. The personal relationship is by no means superficial and therefore not material. As a result, it can therefore be assumed that the principle of independence has been breached.

1. No overall investigation

This next issue of an "ethical problem" may in principle be related to the issue of the close relationship dealt with in section 1. In contrast to section 1, in which the close relationship between Mr Relation and Mr Inlaw alone can give rise to doubts about his independence as an insolvency practitioner, in this section 2, specific behaviour resulting from the close relationship can significantly fuel mistrust of independence.

The insolvency practitioner is fundamentally subject to the same principles and values as those expressed in the "no-profit" and "no-conflict" rules in corporate law. He is therefore obliged to show undivided loyalty to the debtor. In particular, the no-conflict rule states that the trustee must not allow a conflict to arise between his duties and the interests of the debtor if, for example, he conducts business with the debtor company in his personal capacity.

The company's economic crisis was also largely caused by misconduct on the part of the managing directors. After Mr Inlaw, as one of the managing directors, sought the appointment of his brother-in-law and his daughter's godfather, Mr Relation, as insolvency practitioner, the management informed Mr Relation of their fear of being exposed to personal liability due to the breaches of duty.

Mr Relation assured them that he would "not focus on them" in his examination. In the subsequent "superficial" investigation, which Mr Relation based largely on a report by Mr Inlaw, he also came to the conclusion that no misconduct on the part of the management could be established.

In Commonwealth Bank of Australia v Irving [1996] 65 FCR 291 [AUSTRALIA], in a similar situation where the insolvency practitioner did not investigate the personal liability of a director whom he had known privately and professionally for 16 years, the court held that the insolvency practitioner should have investigated the affairs of the company and also the conduct of the directors, including the conduct of the director known to him, to determine whether action should be taken against them or any of them. His relationship with the one director gave the impression that the insolvency practitioner valued the director's judgement and relied on his professional advice and judgement. In the court's view, a reasonable person would have difficulty believing that he would be able to conduct the said investigation impartially.

The situation is no different here, as the " familial" relationship between Mr Relation and Mr Inlaw clearly expresses mutual trust and Mr Relation appears to have refrained from examining the personal liability of the managing directors out of affection. Particularly in view of the indications of breaches of duty by the management disclosed to him, Mr Relation should also have examined their liability.

This reveals an obvious ethical problem.

1. Discussion at the creditors' meeting

A further ethical problem could also arise from the fact that Mr Relation subsequently stated directly at the creditors' meeting that there had been no misconduct by the management. The ethical problem is expressed in the fact that Mr Relation achieved precisely this result, namely that Mr Inlaw is not exposed to any liability, and presented it definitively to the creditors' committee in this way.

1. Unprofessional behaviour due to statement in television interview

Another ethical problem may lie in the fact that Mr Relation expressed the opinion in a television interview that banks should be more accommodating in restructuring procedures and that he believes that the interests of subordinated creditors should sometimes be more important than the interests of banking institutions.

As an insolvency practitioner, Mr Relation belongs to a profession that has a representative role and is therefore required to behave in accordance with certain standards and practices. In addition to the obvious obligation not to disclose any confidential information about a debtor in a sensitive phase and to carefully select the information that is disclosed, the insolvency practitioner must also exercise caution in their own advertising and marketing. An insolvency practitioner should neither make exaggerated or misleading claims nor, in particular, derogatory claims about other insolvency practitioners.

Statements made in public should also not violate the trust of the parties involved in insolvency proceedings. It is imperative that an insolvency practitioner conveys to the parties involved that he or she plans to deal professionally with all parties involved and takes into account the principles of fairness. For example, similar creditor groups should be treated equally in insolvency proceedings. Rajah, JA explains that the insolvency practitioner must act fairly in the fulfilment of his duties. He must be independent and treat the competing interests of creditors, contributories and his appointees equally. An insolvency administrator must never favour the interests of his appointees over the interests of other legitimate claimants to the company's assets.

Against this background, Mr Relations' statement should not initially be regarded as completely irrelevant. It could give the impression that he is not acting impartially towards banks as special insolvency creditors in insolvency proceedings. However, Mr Relation is certainly allowed to publicly express his impressions and assessments and it cannot be denied that Mr Relation's statements can be classified as harmless overall. For example, he states that banks "sometimes" "should" be more accommodating and that "sometimes" subordinated creditors are more important. This does not give the impression that he actually treats banks differently and favours subordinated creditors. Rather, he seems to be complying with the principle of fairness, but only positioning himself critically. This does not necessarily give rise to mistrust on the part of creditors.

Therefore, restraint should be exercised when making such statements, but there is probably no real "ethical problem" in the present case.

1. Unprofessional behaviour by Post regarding the work of its employees

Mr Relation could also expose himself to accusations of unprofessional behaviour by posting a picture of himself and Mr Inlaw on a catamaran on Twitter from a holiday after the failure of the receivership and his appointment as receiver, adding hashtags to it saying the family was going ahead and hoping his assistants would manage the process alone.

This behaviour, unlike that under section 4, is likely to constitute manifestly unprofessional conduct. Not only does it create the impression to the outside that the liquidation proceedings are not important to Mr Relation. This is reinforced by the fact that he is on holiday with Mr Inlaw, of all people, as the former managing director of the company concerned, after the insolvency proceedings conducted by him failed. In particular, he does not appear to attach any importance to the proceedings, as he leaves the proceedings to his post after his assistance and only expresses the "hope" that the proceedings will be continued properly.

In addition, this information, which destroys any trust in his responsible work as insolvency administrator and liquidator among all those involved in the proceedings, especially the creditors, was publicised via a social media platform. Insolvency practitioners must exercise particular caution when dealing with social media, as even "harmless" posts can have a lasting negative effect on insolvency or liquidation proceedings. Very quickly, as happened here, the impression can arise that the insolvency practitioner is not competent and independent.

This behaviour is also highly unprofessional in that it reflects badly on the profession of insolvency administrator. At a time when employees are worried about their future and creditors are uncertain whether their claims will be considered and settled, commenting on the proceedings from holiday in such an ignorant manner reflects badly both on Mr Relation and on all colleagues in his profession.

1. Unprofessional behaviour by keeping confidential information in the home office

Following Mr Relation's introduction of a Home-Office policy for his employees and the fact that his secretary and employees keep sensitive documents relating to the company in question at home and on their private computers, unprofessional behaviour is likely to have occurred again.

Confidentiality with regard to the debtor's information is part of the fiduciary duties incumbent on the insolvency administrator. Customer lists, business secrets, confidential business discussions and internal financial reports are examples of such information and sources of information. As this information is often one of a debtor's key assets, the utmost care must be taken to ensure that this information is not disclosed to third parties. It is the task of the insolvency administrator to create a system in which the secure handling of such information is guaranteed. In doing so, the insolvency administrator must also ensure that they do not inadvertently make sensitive information obtained from insolvency proceedings accessible to third parties, for example by taking this information and documents home privately and thus giving family members access to them.

However, the handling of sensitive information of a debtor company in insolvency proceedings, especially when working from home, is not per se a breach of the confidentiality obligations of an insolvency practitioner. For example, an exercise in dealing with confidentiality and home office has arisen in connection with the coronavirus. The only relevant factor is that the insolvency practitioner takes clear rules and measures to ensure that confidentiality obligations are observed in the home office.

First of all, it is obvious that Mr Relation has created a regulatory framework for working from home with the aforementioned Working from Home Directive. It can therefore be assumed that this directive also takes into account the handling of the debtor's sensitive data. However, there could also be doubts in this respect if employees are able to carry out their work from their private computer. In this case, it is reasonable to assume that confidentiality does not necessarily appear to be possible, especially as the solution is simply to work from a company computer.

Overall, it can therefore be concluded that unprofessional behaviour may also be present with regard to the home office directive regulated by Mr Relation due to the risk of disclosure of sensitive information. The possibility for employees to work from private computers is an indication of this.

**\* End of Assessment \***