



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: **[studentnumber.assessment9]**. An example would be something along the following lines: 202021IFU-314.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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. 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 **8 pages**.

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*

- (a) are mandatory and apply to all its members.
- (b) creates a set of rules which all jurisdictions have to incorporate into their insolvency frameworks.
- (c) 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.
- (d) 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 "Enlightened Creditor Value" approach to insolvency proposes the following with regard to the protection of competing interests in insolvency proceedings:

- (a) creditors' interests are of paramount importance and as such only these interests should be protected in insolvency.
- (b) The interests of stakeholders should be regarded in the same manner as those of creditors.
- (c) Creditors' interests are of paramount importance, however, the interests of other stakeholders should also be considered where this would be in the creditors' interests.**
- (d) 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

All insolvency professionals are fiduciaries.

- (a) True
- (b) False**

Commented [JL1]: TOTAL: 43 out of 50
Well done!

Commented [JL2]: 10 out of 10

Question 1.4

Being truthful and being honest is **not** the same thing.

(a) True

(b) False

Question 1.5

Tony 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, Tony 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.

(a) self-review

(b) self-interest

(c) advocacy

(d) intimidation

Question 1.6

A lack of independence and impartiality due to a prohibited relationship with a stakeholder can always be remedied by disclosing the relevant relationship to the relevant parties and issuing a declaration of independence.

(a) True

(b) False

Question 1.7

Julie is a well-known insolvency practitioner and is often sought out for her knowledge and expertise. She currently has ten ongoing insolvency matters (most of them quite complex) and has been feeling somewhat overwhelmed. Due to her impressive *curriculum vitae* she is contacted by a very large designer company in distress inquiring whether she would be able to take an appointment as an administrator. Julie should:

(a) Accept the appointment as it will boost her career even further.

(b) Accept the appointment as she can get one of her junior associates to take over all her other cases.

(c) Accept the appointment because as a professional she will have the ability to give all of the cases she is involved in some attention, although some of them will now only be overseen by her.

(d) Refuse the appointment as she will not be able to give all of the cases she is involved in the requisite level of attention.

Question 1.8

Johnson 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. Johnson 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 Johnson to do would be to:

- (a) Call a creditors' meeting requesting an adjustment to his agreed fees due to unforeseen circumstances.
- (b) 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.
- (c) Carry out his duties in a timely fashion and complete the appointment efficiently and without undue delay, only invoicing for work properly performed.
- (d) 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

Please choose 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.

- (a) This statement is true since jurisdictions always allow for an adjustment of fees where it is necessary.
- (b) This statement is false since the practitioner might have carried out more work and invested more resources than is reflected in the fee.
- (c) This statement is false since the practitioner will always receive more remuneration than what is reflected in the work carried out.
- (d) 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

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

Fathima has just completed Module 9 of INSOL International's Foundation Certificate. She works as a junior insolvency practitioner at a large firm. Her firm is contemplating the acquisition of a new information technology system to help ease the administrative burdens of the practitioners at the firm. This new system will digitise all of the documents in relation to insolvency appointments. All the practitioners and administrative personnel employed by the firm will have access to these files as long as they have access to an internet connection. Fathima should advise someone in the office to implement procedures and policies on _____ in relation to this proposed new system.

- (a) quality Control
- (b) risk Management

(c) compliance management

(d) fidelity insurance

QUESTION 2 (direct questions) [10 marks]

Commented [JL3]: 10 out of 10

Question 2.1 [maximum 4 marks]

What are the main fiduciary and other duties usually associated with insolvency professionals?

The main fiduciary and other duties usually associated with insolvency professionals are:

- 1) the duty to act in good faith - this duty implies honesty and fair dealings
- 2) the duty to act in the best interest of the beneficiary of the fiduciary duties
- 3) the duty to exercise the powers of the office in an independent and impartial manner- the duty includes the duty to avoid a conflict of interest, and
- 4) a duty to act with care, skill and diligence

Commented [JL4]: 4

Question 2.2 [maximum 4 marks]

Briefly explain the two-pronged nature of the duty to act with independence and impartiality.

The two pronged nature of the duty to act with independence and impartiality are:

- 1) the duty in fact to act with independence and impartiality and
- 2) the duty to avoid the perception that you are not acting with independence and impartiality

Independence in fact requires that the IP be factually free from any influences that could compromise his judgement. The IP must, therefore, avoid all personal and professional relationships and direct and indirect interests that will adversely influence, impair or threaten his or her integrity and ability to make decisions. Must keep all information received professionally and in business confidential and must be objective in his assessment of issues and show care, skill and diligence in his conduct of practice.

Independence in perception, on the other hand, includes the avoidance of circumstances that would lead a reasonably informed third party to conclude that the IP's integrity, independence and impartiality have been compromised. These include activities by acquaintances of the IP whose nexus to the IP is so close that an informed third party will readily attribute their conduct to the IP's influence and vice versa.

Commented [JL5]: 4

Question 2.3 [maximum 2 marks]

What is the preferred method of calculation of insolvency practitioner remuneration? Name one ethical issue in relation to this method of calculation.

The preferred method of calculation of insolvency practitioner remuneration is the many judicial preferred time-based fee system. The ethical issue related to this method is that it has to be based on time properly spent on attending to the case. However, as explained in the *Mirror Group Newspapers plc v Maxwell, (No 2)* [1998] 1 BCLC 638 [England], at 652. "it has to assess the value of the work and not the cost of time expended in the performance of the work." The UNCITRAL Guide submits that this

system might incentivise time spent on the administration without necessarily achieving any outcome. Moreover, that it is possible that the method of calculating remuneration might not be reflective of the actual work done by the Insolvency professional. It is quite possible for an IP to do more work than the prescribed hourly or daily rate allows, equally so it might be the case that an IP is remunerated for more than the actual work performed.

Commented [JL6]: 2

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

Commented [JL7]: 10 out of 15

Question 3.1 [maximum 8 marks]

Which elements of insolvency proceedings are especially prone to create or give rise to threats to independence and impartiality? Please elaborate.

The elements of insolvency proceedings likely to create or give rise to threats to independence and impartiality are the following: self-interest, self-review, advocacy and familiarity and intimidation.

Advocacy is a situation in which a Member promotes a position or opinion to the point that subsequent objectivity may be compromised (e.g. a Member has acted on behalf of a significant creditor to advance such creditor's position). In such a case, it is unlikely that other creditors would consider Member to be impartial.

Self-Review – is a situation in which actions by a Member has, such a Member's firm, a close associate, or a close associate's firm is (or is perceived to be) subject to review only by such Member (e.g. where a Member's firm carried out the disposal of certain assets of the insolvent estate prior to insolvency, and there are suspicions that the disposal is in some way improper).

Self-Interest threat refers to a situation in which a Member has, or is perceived to have direct interests (including financial interests) in obtaining a particular outcome: for example, where such Member (or a close associate) is also a creditor or shareholder of the insolvent estate.

Familiarity is a situation in which a Member's relationship to a stakeholder impairs (or is presumed to impair) such Member's impartiality and objectivity owing to the Member being too sympathetic or antagonistic to the interests of others (e.g. where the Member is a close relative of a significant creditor or shareholder, or of a director of the insolvent estate).

Intimidation is a situation in which a Member is, or may be threatened or pressured (e.g. with litigation, unfounded complaints, or even physical harm).

IP s have a duty to be objective, independent and impartial in their duties to all the stakeholders involved in their duties. Failure of that creates the impression of conflict of interest. It is imperative for an IP to be independent in his deliberations and actions, familiarity with any of the stakeholders creates conflict of interest and lacks sense of independence. Impartiality is vitiated if the IP suffers from self-interest in the work he or she is doing. Advocacy of a position of any one or more of the stakeholders, other than all creates conflict of interest and destroys the impartiality, and integrity of the IP The IP has a duty of care to all the stakeholders and must be honest and truthful to them all. The IP must resist any pressure from any of the stakeholders to prefer his or her position over others. He or She has a duty to be firm and consistently manage the affairs of his duty for the benefit of all the stakeholders evenly.

Commented [JL8]: This question required you to identify elements of the insolvency PROCESS that might cause issues in relation to independence and impartiality. See page 16 of the GT for this discussion. It seems that you have misread or misunderstood the question. Your discussion is an accurate explanation of issues or rather threats to independence and are not elements of the insolvency process although you do refer to the elements of the process. However, the question was not answered. I have awarded discretionary marks.

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Question 3.2 [maximum 7 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?

The ethical considerations involved here is objectivity of an IP in determining whether the job should really be assigned and that it has not already been assigned to another professional for which there will be duplicative billing for the same job. In *Re Koda*, in the matter of *Storkford Ltd* (2004) 140 FCR 424, 443[51] [Australia],

the court said an IP should act with the same care as a prudent businessman would act in his own affairs when dealing with disbursements. A businessman will only litigate as a last resort and if it is unavoidable will keep it under close scrutiny. A prudent businessman will shop around to ensure the best legal advice at the best rates by negotiating for the best fees and monitoring the fees incurred. Personal relationship should not obscure the IP's duty. The sole selection criteria should be benefit to him as litigant. So, he should avoid cosy relationship with solicitors and counsel. The nature of their professional relationship might lead to familiarity issues being created between the Ips and the service professionals. The familiarity issues give rise to lack of independence, creating conflict of interest. This is to be avoided in order to enhance the trust and confidence in the IP and the insolvency regime.

And in *Rao Chai-Chan Linda v Fong Wai Lyn Carolyn* [2015] SGHC 260[2016] 1 SLR 21,23[Singapore] the court identified two further issues relating to the fees billed to the company directly:

- a) allegations of over-servicing, referring to all instances in which unnecessary work was performed and
- b) allegations that work was duplicative, particularly when professionals such as lawyers were engaged

In the ICAEW, in the section dealing with specialist advice and services, the Code requires that when an IP intends to rely on the advice or work of a third party, the IP should evaluate whether such advice or work is warranted. The code also requires an IP to document the reasons for choosing a specific service provider. Additionally, where a professional or personal relationship exists between the IP and the service provider, the Code suggest full disclosure of the relevant relationship and the process undertaken to evaluate whether the service will be the best value for the **creditors**.

Commented [JL9]: 7

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

Commented [JL10]: 13 out of 15

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 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 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, 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. *

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 difficulty 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. *

INSTRUCTIONS

There are at least THREE major ethical issues in this factual scenario.

Please identify these 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.

The three ethical issues included in the above problem are: 1) Integrity, 2) Independence and 3) Impartiality

Integrity is an ethical issue, it calls for fair dealings, honesty and truthfulness. Mr Relation, the Insolvency Practitioner (IP) failed in addition to complying with applicable law as an IP Member, he is also expected to demonstrate the highest levels of integrity by being straightforward, honest and truthful and by adhering to high moral and ethical principles in all aspects of his professional practice. IP Members are deemed to act in good faith if they act

with honesty, integrity and confidentiality. IPs in some particular professions are required to demonstrate impeccable probity and honesty. The beneficiaries in the insolvency proceedings are "at the mercy of" the IP's discretionary powers, they have to trust and or rely on the IP to protect their interests. This reliance and trust in the IP demands honesty, truthfulness and transparency on the part of the IP. It is crucial for the IP to be honest and truthful with the beneficiaries and to act with integrity towards them at all times. Honesty implies that the IP should refrain from lying while truthfulness means that the IP should not conceal any facts from the parties with an interest in the outcome of the insolvency. Honesty further implies that the IP should be open and transparent in his decision-making and should not conceal or misrepresent any information. The IP should be honest and truthful when negotiating on behalf of the beneficiaries as well as when reporting on his acts and dealings. Mr Relation relied on the detailed notes of his brother-in-law Mr. B In Law for the information and analyses of the financial problems of the WeBuild Ltd. thus vitiating his responsibilities of independence and thus creating conflict of interest by being bias in favour of the directors. He told the directors at a meeting that he will not focus his investigation on them but rather on how to resuscitate the financially failing company. But Mr Relation has a duty as an IP to investigate the directors for the failings of the company. He also told the stakeholders that his investigation revealed that the directors were at no fault even though the directors themselves had told him they were paying themselves bonuses for excellent performances while they knew the company was financially failing and they also continued doing business as usual when they knew they were to protect the interest of the creditors at a time when the finances of the company had taken a downturn.

Members should exhibit the highest levels of objectivity, independence and impartiality in the exercise of their powers and duties. Independence is two-fold. IPs must be independent in fact and must also be seen or perceived to be independent. Independence in fact requires that IP be factually free from any influences that could compromise his judgment. IPs must, therefore, avoid all personal and professional relationships and direct or indirect interests that will adversely influence, impair or threaten their integrity and ability to make decisions. Independence in perception, on the other hand, includes the avoidance of circumstances that would lead a reasonably informed third party to conclude that the IP's integrity, independence and impartiality have been compromised. Being seen or perceived to be independent and impartial is of extreme importance in the context of insolvency proceedings. If the stakeholders involved in the proceedings perceive the IP to be biased, or lack independence (even though it might be untrue), it would negate the trust and reliance that they have placed in him. Without trust and reliance, the stakeholders and beneficiaries will no longer believe that the IP is bound to act in their best interest, which could lead to a discontinuance of their co-operation with the IP and the insolvency process. This could be particularly cumbersome in rescue proceedings where co-operation of certain parties is essential to success of implementing a rescue plan or strategy. In other words, a perceived lack of independence could undermine the success of an entire rescue proceeding.

Members should avoid circumstances likely to result in conflict of interest. Independence should be considered both as a matter of fact and from the perspective of an informed observer. It should be considered with reference to jurisdictional guidance, whether legislative, professional or code-based, but the key tenet underlying the principle of independence should be ensuring that an IP Member's conduct is, and is seen to be, not unfairly or improperly biased towards any party, including Members themselves or their associates. A Member should not accept an appointment in connection with estate if his (or related party's) relationship with the directors of the company or any of the stakeholders would give rise to possible or perceived lack of independence. As it was in the case between Mr Relations and his brother-in-law, Mr B In Law.

In pursuit of ensuring the independence of IPs, jurisdictions usually identify certain personal and professional relationships or situations that might give rise to a lack of independence. These might include any professional or personal association with the company or a company director, a company shareholder, a company employee, company business partners, other firms or entities controlled by the company, either secured or unsecured

company creditors, company debtors, or even the relatives of company officials. As the aforementioned list does not purport to be a numerus clausus of relationships, each instance alleged lack of independence would have to be assessed against the prevailing circumstances. In the case of Commonwealth Bank of Australia v Irving [1996] 65 FCR 291 [Australia] the Corporate Insolvency Practitioner (CIP), Mr Irving, a chartered accountant had professional and personal relationship with Mr Townsend, a retired director of the financially distressed company. The court found their relationship enough to create in the mind of an informed third party a perceived doubt as to his independence and impartiality in his handling the job as CIP. In the case of WeBuild Ltd, Mr Relation is a brother-in-law of Mr B-In Law. He is the godfather of Mr B in Law's daughter and he was recognized as such by some of the shareholders at the meeting of shareholders. This created doubt as to the independence of Mr. Relation's performance as the CIP for the financial restructuring of the financially distressed company, WeBuild Ltd of Eurafriclia. Mr. Relation was also recognized by Mrs Keeneye, a lawyer for the major secured creditor of WeBuild Ltd, ABC Bank as he advocated on the television interview for more accommodation in restructuring proceedings that the interest of lower ranking creditors should sometimes outweigh "big money" (referring to financial institutions) that made Mrs Keeneye immediately uncomfortable upon recognizing him as the appointed administrator of the estate of the financially distressed WeBuild Ltd. It is little wonder that the administration proceeding of WeBuild Ltd failed due to failure of creditors to support the financial restructuring of the financially distressed company and had to be converted into liquidation. Lack of independence cannot necessarily be cured by disclosure or by appointment of an independent joint practitioner or officeholder, although both options may be considered and may be appropriate in certain circumstances. The call to independence and impartiality of the IP aims to ensure that the IP does not allow bias, a conflicting interest, or the undue influence of others to override his professional and or business judgments in the execution of his duties and obligations.

Threats to objectivity, independence and impartiality may include any of the following singly or in combination:

- Self-Interest
- Self-review
- Advocacy
- Familiarity; and
- Intimidation

In order to address threats to independence and impartiality, some jurisdictions provide for the disclosure of the relationship and declaration of independence, Mr Relation offered to disclose his relationship to Mr B In Law. In this document the disclosure of the relationship and declaration of independence, an IP would be required to truthfully disclose any and all relationships that he might have with any stakeholders in the insolvency proceeding, as well as the nature of said relationship and the level of interaction with the stakeholder. The IP would also be expected to state that despite the existence of a relationship with a stakeholder he would still be able to perform his duties independently and impartially. This Mr. Relation did but was in fact a ruse given his familial ties with Mr B In Law as his brother-in-law. However, disclosure of such a relationship does not suddenly render them harmless. If the relationship is not substantial and of a merely superficial nature, disclosing it and declaring independence might remedy the situation. However, it will be a much harder task convincing stakeholders of independence and impartiality when the IP has had a longstanding professional or personal relationship with someone related to the proceedings or one of the stakeholders. The mere disclosure of any relationship as a solution, is flawed. No disclosure serves as a guarantee of impartial and objective conduct. Instead, the declaration by the IP should be seen as a disclosure of those relationships that do not pose any risk to the practitioner's independence. Mr Relation's relationship to Mr B In Law is one that cannot be cured simply by disclosure. They are a family.

Subsequent appointments pose problems in relation to independence and impartiality due to the self-review and self-interest threats it creates. The Insolvency Code of Ethics of the

Institute of Chartered Accountants of England and Wales (ICAEW) recognizes the potential conflict of interest in this regard and utilised the scenario “sequential insolvency appointments” as an example of circumstances that might lead to self-review threat being created, A self-review threat refers to a situation where CIP, due to being involved in prior decision-making, will not be able to appropriately evaluate the results of previous judgments made or services rendered. The acceptance by Mr Relation of the subsequent Liquidator position also created ethical threats of self-interest and self-review.

The self-interest threat relates to the issue of remuneration of the CIP. The reason subsequent appointments might pose an issue in relation to remuneration of the CIP, is that the CIP will be remunerated twice for work done in relation to the same company. A self-interest threat refers to situation where the interests (including financial interests) of the CIP might inappropriately influence his judgment or behaviour. An example of a way in which subsequent appointment and the corresponding subsequent remuneration might influence the behaviour of the CIP, could be that a rescue or turnaround practitioner might not put his best effort into saving the debtor from liquidation due to the fact that he knows he would subsequently be appointed as the liquidator and be paid again. Mr Relations acceptance of the Liquidator position after his acceptance of the administration position of the financially distressed WeBuild Ltd created self-interest ethical threat.

In many jurisdictions the CIP can be appointed by either the board of directors or a stakeholder (usually a stakeholder or creditor) This may lead the appointee to expect that the practitioner would prioritise their interests. In some instances, these persons, being the “principal”, even believe that it is within their power to influence the CIP. Thus, it is vitally important for the CIP to be aware of his responsibilities in this regard. The practitioner should not make any promises to those who appointed him and should make it very clear that he is expected to act in the interests of all the beneficiaries. The duty of independence also obliges the CIP to scrutinise each given situation prior to accepting an appointment. Such scrutiny would include reasonable steps to determine any possible association or conflict of interest with any stakeholder. These Mr Relation failed to do

The CIP's duty to act with independence and impartiality therefore encapsulates the same values as the familiar “no-profit” and no-conflict” rules in Corporate Law and underpins his duty of undivided loyalty to the beneficiaries. The no-profit rule determines that a fiduciary may not profit from his position of trust (his position as CIP) and thereby the unjustly enriched, for example by receiving secret kick-backs or commissions. The no-conflict rule determines that a fiduciary may not allow a conflict to arise between his duty and the interests of the beneficiaries, for example transacting with the debtor company in his personal capacity.

Commented [JL11]: A good answer in general but with some limited application of the theory to the facts in certain parts. Nonetheless a good attempt.
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*** End of Assessment ***