



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 **31July 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31July 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

Commented [JL1]: TOTAL: 49 out of 50
Excellent!!!

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

Commented [JL2]: 9 out of 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

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**

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

Commented [JL3]: c

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 [JL4]: 10 out of 10

Question 2.1 [maximum 4 marks]

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

[A fiduciary is a person who undertakes to act on behalf of another, and has discretion and power over the interests of the other. The main fiduciary duties associated with insolvency professionals include:

- 1.) the duty to act in good faith: the duty to act in good faith entails that an insolvency professional acts with honesty, integrity and fair dealing;
- 2.) the duty to act in the best interest of the beneficiary of the fiduciary duties. The implication of acting as a fiduciary is that the discretionary judgment of one controls the destiny of another. In the case of *Ventra Investments Ltd. v. Bank of Scotland Plc* [2019] EWHC 2058 (Comm), where the liquidators alleged that the relationship of the administrative receiver with the bank led to a reluctance to take legal action against the bank, which was not in the best interest of the creditors as a whole;
- 3.) the duty to exercise the powers of the office in an independent and impartial manner, the duty to avoid a conflict of interest.
- 4.) Other duties associated with insolvency that are not really fiduciary in nature but inextricably linked to fiduciary duties, includes the duty to act with care, skill and diligence.]

Commented [JL5]: 4

Question 2.2 [maximum 4 marks]

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

[The duty to act with independence and impartiality entails that the Insolvency practitioner does not allow bias, conflict of interest, or undue influence of others to override his professional judgment in his execution of his duties. The duty to act with independence and impartiality is two-pronged. First, the Insolvency practitioner must be independent in fact, secondly, the Insolvency practitioner must not just be independent but must be seen or perceived to be independent. Whereas independence in fact entail that the insolvency practitioner must be free from any influences that could compromise his judgment. He must avoid all personal and professional relationships, as well as direct or indirect interests that will adversely influence, impair or threaten his integrity and ability to remain neutral in his decisions. Being seen to independent on the other hand has to do with the insolvency practitioner avoiding circumstances that would lead a reasonably informed third party to conclude that the Insolvency practitioner's integrity, independence and impartiality have been compromised. The perception of stakeholders is very critical, because where the perceive an insolvency practitioner to be biased, even if their perception is false, it will negative affect their trust and cooperation with the process. The case of *Commonwealth Bank of Australia v Irving*[1996] 65 FCR 291[AUSTRALIA], reveals that even in a situation there is no actual bias personal relationships with stakeholders can result in a lack of independence due to the perception it has created. In the court's view a reasonable person would have trouble believing that

contrary to the Insolvency Practitioner's assertion, that he would be able to conduct the said investigation without bias. The court noted that the longstanding relationship with a director in the company would create doubt in a fair-minded person that he would be able to perform his duties in an independent manner.]

Commented [JL6]: 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 time-based fees is the preferred method of calculation of the insolvency practitioner's remuneration. It is regarded as the preferred method because it is believed to provide a fair compensation for work done. It ensures that the Insolvency practitioner is only remunerated for time properly spent on attending to a case, either on hourly, daily or as prescribed by legislation or professional body. One ethical issue in relation to this method of calculation is the profession's partiality for charging on the basis of time.]

Commented [JL7]: 2

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

Commented [JL8]: 15 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.

[Some insolvency proceedings may constitute threats to independence and impartiality of an insolvency practitioner, namely:

1. Pre-commencement/ appointment involvement- The prior consultations that occur between the Insolvency Practitioner and the company or its stakeholders, may constitute a threat to independence and impartiality when it creates the impression of a lack of independence and impartiality. It is not all forms of contact taking place between the Insolvency Practitioner and stakeholders prior to his appointment that results in lack of independence. The consultation needs to involve material engagement by any of the stakeholders to affect the practitioner's independence. In the case of Commonwealth Bank of Australia v Irving [1996] 65 FCR 291 [AUSTRALIA], The court noted that for a prior involvement to be capable of giving rise to questions of lack of independence, it must be substantial to detract the person's ability to act impartially. To help reduce threat of independence such prior-consultation should be limited to the company financial position, the company's solvency, the effects of potential insolvency, and any alternative to insolvency, while the Insolvency Practitioner makes adequate disclosure. Prior consultation is common place for large and complex corporate distress situation, provided that appropriate safeguards are put in place to avoid the existence of appearance of lack of independence should subsequent appointment prove necessary. In the case of Re Korda, Ten Network Holdings Ltd (Admn Apptd) (Recs and Mgrs Apptd) [2017] FCA 914 [AUSTRALIA], the court held that safeguard could include a potential administrator making it clear ab initio that he or she might become the actual administrator if other measures to fix the company do not succeed. In this case the court did not find actual or apprehended bias despite substantial pre-appointment consultation because the administrator's work was limited to definite aspects not involving any advice to the company or its directors.
2. Appointments by board of directors or a stakeholder- appointment by the board of directors, shareholders or creditors may influence the Insolvency Practitioner's independence where it leads the appointee to expect the practitioner to prioritise their

interest. Whenever, the appointee as principal believes it is within his power to influence the Insolvency Practitioner this threat exists. To avoid this threat a practitioner must be able to make it clear that he is expected to act in the interest of all the beneficiaries and must not make any promises or assurances to his appointees to favour them in any way. The Insolvency Practitioner therefore has an obligation to look out for possible association or conflict of interest in any stakeholder prior to accepting an appointment.

3. Subsequent appointments- subsequent appointment may constitute lack of independence where the same Insolvency Practitioner is allowed to act in different insolvency capacities in relation to the same debtor company. Subsequent appointments has the tendency to create self-review and self-interest threat. A self-review threat entails a situation where an Insolvency Practitioner due to his prior-decision making will not be able to appropriately evaluate the results of previous judgment made or services rendered. The self-interest threat refers to a situation where the interest (especially financial interest) of the Insolvency Practitioner might inappropriately influence his judgment. Subsequent appointment could constitute a self-interest where it results in an Insolvency Practitioner being remunerated twice for work done in relation to the same company, which usually poses a problem. An Insolvency Practitioner could because of the desire and interest in subsequent remuneration, not put in his best effort into saving a company in financial difficulty in order to appointed as the liquidator subsequently and remunerated again.
4. Secret monies and personal transactions with the company- an Insolvency Practitioner as a fiduciary is expected to act in the best interest of the beneficiaries. He is not allowed to make any secret profit at the expense of the beneficiaries or place himself in a situation where his personal interest conflicts with duties. The Insolvency Practitioner must not be seen as serving his interest instead of the interest of the beneficiaries. For example in a situation where an Insolvency Practitioner in a frbid to purchase assets from the company manipulates the transaction by fixing an advantageous price. He, as a fiduciary, by the no-profit rule is not allowed to profit from his position of trust by receiving secret kick-backs or commissions. He is by the no-conflict rule not allowed to allow his interest conflict with his duty, like by transacting with the company in his personal capacity. In case of Commonwealth Bank of Australia v Irving[1996] 65 FCR 291[AUSTRALIA], reveals that even in a situation there is no actual bias personal relationships with stakeholders can result in a lack of independence due to the perception it [created.]

Commented [JL9]: 8

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 consideration here is mainly the ethical consideration on remuneration and disbursements. Remuneration of legal practitioners is one of the most contentious administrative costs because their remuneration can translate into multiple sets of professionals to be paid as professional fees. The remuneration of legal professional can either be categorised as disbursements or third-party costs. That was the position of the court in Singaporean Kao case by Chong, that the professional can claim the legal fees as part of the Insolvency practitioner's disbursement or add it as third-party's cost, in which case the cost can be billed separately and directly to the debtor company. Whichever option is chosen raises some ethical issues. These disbursement could make some significant impact on the value of the estate, because the insolvency practitioner as a fiduciary has a duty to minimise the extent of the impact of these administrative costs. He must ensure his

commercial judgement is reasonably exercised. In *Re Korda*; in the matter of *Stockford Ltd*(2004) 140 FCR 424, 443[51][Australia], where Finkelstein J stated that a practitioner should act with the same care as a prudent businessman would act in his own affairs when dealing with disbursements. It was his position that a prudent businessman will only litigate as a last resort, and when it is unavoidable will only do so at close scrutiny. A prudent business will shop around to ensure he gets the best legal advice at the best rates by negotiating for the best fees. An Insolvency practitioner must not allow personal relationship to obscure his practitioner's duty. He must avoid cosy relationship with solicitors. The criteria for selection should be the benefit of the estate. He must not allow familiarity issues created between Insolvency Practitioners and service providers to becloud his independence or create conflict of interest. His independence is critical in gaining the trust and confidence of the stakeholders in insolvency. He must guard against over-servicing and duplication of task, which points to the duty of care. According to the ICAEW Insolvency Code of Ethics, the Insolvency Practitioner has a burden to justify claims for work performed by the legal professional in a situation where there are other professionals instructed on the same matter. In the Singaporean *Kao* case it was the issue before the court. He must ensure that no unnecessary tasks were performed and must not allow the legal professionals to charge for work already performed. As a fiduciary he must ensure the expenses were reasonably incurred. Where an Insolvency Practitioner requires the services of a legal professional, he should be able to show that it is really necessary. The ICAEW Insolvency Code of Ethics provides where an Insolvency Practitioner intends to rely on the advice of a specialist or work of a third party, the Insolvency Practitioner should evaluate whether such advice or work is warranted. The Insolvency Practitioner must be able to explain why he chose a specific legal practitioner. The Insolvency Practitioner must also make full disclosure of any existing professional or personal relationship between the Insolvency Practitioner and the legal practitioner to the stakeholders. He must be able to provide details of processes he followed to arrive at the conclusion that the legal practitioner as a service provider would offer the best value for the beneficiaries/ creditors.]

Commented [JL10]: 7

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

Commented [JL11]: 15 out of 15

WeBuild Ltd is a private company registered in Eurafriolia. 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.

[1. Ethical Principle of objectivity, independence and impartiality- an insolvency practitioner by this principle should not allow bias, or circumstances that will result in a conflict of interest or allow the undue influence of others to override his professional judgement in the execution of his duties. An Insolvency Practitioner must not only be independent but must be seen to independent by an informed observer. He must not accept an appointment where his relationship with a director or any stakeholder would give rise to a possible or perceived lack of independence or impartiality. Threats to independence and impartiality could take the form of self-interest, self-review, advocacy, familiarity and intimidation. The Insolvency Practitioner's independence is critical because he can only exercise his discretion in the best interest of the beneficiaries if he is independent and impartial. Any relationship that influences, impairs and threaten an Insolvency Practitioner's ability to act in the best interest of the beneficiaries that he is representing is a pointer to his lack of independence. Lack of independence is not cured by disclosure, where the Insolvency Practitioner cannot confidently say that he would still be able to perform his duties independently and impartially,

or that the relationship does not pose a threat, which is the whole essence of the disclosure. If a relationship is merely superficial, and not a case of long standing personal relationship with a stakeholder, the Insolvency Practitioner may still be able to act independently and impartially. In the case of *Ventra Investments Ltd v. Bank of Scotland Plc* [2019] EWHC 2058 (Comm) [England and Wales] where there was the issue of the administrative receivers taking appointment when they were so closely linked to one of the stakeholder like in the instant case. It was the argument of the liquidators that the administrative receivers were under the control of the bank, which made them to unduly favour the lender. The believed that their relationship resulted in the reluctance of the administrative receivers to take legal action against the bank for wrongdoing. Even though the administrative receiver denied that their relationship will result in lack of independence or impartiality, yet the perception created by the facts of the case could lead an informed observer to hold a contrary opinion. In the instant case, there is both real and perceived lack of independence, because some shareholders recognised Mr. Relation as Mr. B inlaw's brother-in-law and godfather to Mr. B's daughter. Mr. Relation's disclosure never cured the perception of the stakeholders of his lack of independence and his bias because, subsequently, Mr. Relation granted Mr. B Inlaw request for a separate meeting with Mr. Relation and others director to the exclusion of other stakeholders, where Mr. Relation was making assurances to the directors to protect their interest. Mrs Keeneye, whose is the lawyer representing ABC Bank, the major secured creditor, was also uncomfortable with Mr. Relation because of his position in an earlier television interview shows his bias against the big creditors. No wonder the rescue lacked funding because the stakeholders lacked confidence in the Insolvency Practitioner and in the process. There were obvious conflicts of interest and lack of independence established by Mr. Relation's relationship with Mr. B Inlaw. Mr. B Inlaw's being the person that appointed Mr. Relation as administrator further increased the bias, introducing the risk of an expectation that the practitioner, Mr. Relation would prioritise his interest, being his 'principal' or 'appointee', which was eventually what happened. Mr. Relation's declaration of independence is useless because there was both a case of real and perceived lack of independence. There is also the issue of self-interest as Mr. Relation mismanaged his duty as an administrator only to be remunerated a second time as a liquidator. The best thing Mr. relative would have done was to reject the appointment when he noticed the perceived lack of independence and impartiality.

2. Integrity- an Insolvency Practitioner is expected to demonstrate the highest levels of integrity and probity in the discharge of his duties. He must be found to be honest, straight forward and truthful. He must act in good faith, which entails dealing fairly and maintaining confidentiality. An Insolvency Practitioner as a fiduciary acts on behalf of others, with wide discretionary powers, which makes the beneficiaries vulnerable and at the mercy of the Insolvency Practitioner. The Insolvency Practitioner occupies a position of trust, as the beneficiaries rely on or trust him to protect their interests. Honesty entails that he should refrain from lying, he should be open and transparent, he must not conceal or misrepresent issues and information. Truthfulness on the other hand entails that he should not conceal material facts from stakeholders on the company's insolvency. An Insolvency Practitioner must be both honest and truthful in reporting his dealings on behalf of the beneficiaries or negotiations made on their behalf. He must not be guilty of misleading creditors, employees or shareholders by his action and inaction. The honesty and transparency of an Insolvency Practitioner is very important in instilling confidence among beneficiaries and securing the co-operation of the stakeholders. In the instant case Mr. relative obviously is not honest and truthful, his integrity is obviously in question and has negatively affected the co-operation of the stakeholders. Mr. Relation was not transparent in his dealings on behalf of the beneficiaries, Mr. Relative consented to having another meeting with the directors under the guise of a "brief planning". Mr. Relative and the directors misled, concealed and misrepresented the intention of what transpired under the guise of "brief planning". Mr. Relation lack of honesty manifested in his willingness to cover up the misbehaviours of the directors. He did not act in good faith by conducting a superficial investigation, he did not do

the best he could do under that circumstance. He was not truthful and honest when he said he has found no evidence of wrongdoing by the company directors. Mr. relative attitude obviously made the administration to lack the necessary co-operation and funding it needed to succeed.

3. Under Practice management- an Insolvency Practitioner should implement policies, procedures and systems to ensure proper record-keeping, quality control, risk management, compliance management, complaints management and professional indemnity/ fidelity insurance. The Insolvency Practitioner must keep proper records. He should keep record of his course of action and the reasons he chose a particular course of action. As part of the quality control, professional bodies usually set an expected standard to regulate the profession. These are measures to ensure the profession is not brought to disrepute by the shoddy work or negligence of the insolvency practitioner. The Insolvency Practitioner must not be seen to be negligent in handling the affairs of a distressed company. Quality control ensures that the Insolvency Practitioner claimed remuneration is for work properly done. As part of compliance management, policies and procedures should be put in place to ensure that the Insolvency Practitioner complies with the standards applicable to the Insolvency profession. Under complaints management, the Insolvency Practitioner must create a forum to handle people complaints which usually arise in the course of the insolvency process. It helps to deal with agitations and anxieties of stakeholders, before it escalates. In jurisdictions where professional indemnity or fidelity is provided for, it is important as part of this ethical principle to take out indemnity insurance covers. Indemnity insurance protects the interest of the stakeholders, by providing cover against risk of stakeholders instituting action against the Insolvency practitioner for acting without reasonable care or acting negligently. Fidelity insurance on the other hand protects stakeholders in situations where the Insolvency Practitioner is acting dishonestly or defrauds the estate. In view of the wide powers an Insolvency Practitioners have, it is important to obtain professional and fidelity insurance in other to protect both themselves and stakeholder in the estate. It is possible for an Insolvency Practitioner's carelessness to affect the interest of stakeholders. Mr. Relative in the instant case sacrificed his professionalism on the altars of bias occasioned by his relationship with Mr. B Inlaw. Mr. Relation is a qualified professional but did not demonstrate expertise in this case, by solving the root cause of the decline in contract, which was bad publicity, instead he made the image of the company worse. Mr. Relative did not manage complaints of shareholders, employees and creditors well. It would have nipped the bad image problem on the board, it would made the stakeholders have confidence in the process and fund it. He did not prosecute the directors for the wrong doing, he did not make the directors payback the bonuses and take personal responsibilities for their wrongdoing, in order to recover enough money for the estate. Mr. Relation mismanaged the administration, He is not demonstrate reasonable care in the discharge of his duty, he should be made personally liable for his actions and omissions that resulted in the failure of the administration. Mr. Relative should be sued instead of allowing him to play the role of a liquidator, thereby further benefitting from his misbehaviour. Professional indemnity and Fidelity insurance is important in cases like the instant one, if the jurisdiction concerned allows that, in other to protect the stakeholders who are victims of Mr. Relative's dishonesty and negligence.]

End of Assessment

Commented [JL12]: Although I am unsure whether I agree with your last issue, you have argued it quite convincingly. A very good attempt!
15

