



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

Commented [JL1]: TOTAL: 50 out of 50
EXCELLENT!!

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

Commented [JL2]: 10 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

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 duties associated with insolvency professionals are:

- (a) the duty to act in good faith: this would require the insolvency professional to act honestly and engages in fair dealing;
- (b) the duty to act in the best interest of the beneficiaries of the fiduciary duties: Although it is widely accepted that the main beneficiaries of an insolvency practitioners are the creditors, there may be other stakeholders, depending on the level of financial difficulty of the debtor, the relevant insolvency procedure (which may be liquidation or rescue), the stakeholder's right and the approach adopted by the respective jurisdiction in relation to its insolvency law;
- (c) the duty to exercise the powers in an independent and impartial manner: Such duty would also include a duty to avoid a conflict of interest. An insolvency professional should be independent and impartial in fact and also be seen or perceived to be independent and impartial.

The other (non-fiduciary nature) duty involves the duty to act with care, skill and diligence. This is indeed a very important duty for an insolvency professional since the debtor is in a vulnerable state of insolvency. As an insolvency professional has special qualifications and skills, he is expected to be held to a higher degree of care. Generally speaking, a two-fold test would be adopted. An insolvency professional should exercise his care, skill and diligence which may reasonably be expected for a reasonable professional in the circumstance (the objective test). A subjective test would then be applied based on the degree of experience and training of the insolvency professional **concerned**.

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 duty to act with independence and impartiality means that the insolvency practitioner is required (a) to be independent in fact; and (b) to be seen as independent or perceived to be independent.

The first limb, which requires to be independent in fact, means that the insolvency practitioner must be free from any influence which could compromise his independent judgment in fact. The practitioner should ensure that his relationship (including personal and professional relationship) as well as his interests (be it direct or indirect) should not influence, impair or threaten the integrity or his ability to make decisions in the exercise of his professional capacity. In some jurisdictions, the first limb is implemented by way of statutory restrictions for a person who is or has been appointed as certain capacity of the company (such as a director or an auditor) from being eligible to be appointed as the insolvency practitioner.

The second limb, which requires a person to be perceived to be independent, means that an insolvency practitioner should avoid situations which would make a reasonably informed person to conclude that the integrity, impartiality and independence of the practitioner in exercising his professional capacity is compromised. The second limb of the perception to be

independent is important since if other stakeholders involved in an insolvency proceeding consider that the practitioner is biased, the stakeholders would unlikely impose any trust or confidence to the practitioner and they would be unwilling to cooperate or work with the practitioner. However, the co-operation of parties is essential in most corporate rescue cases and the lack of trust and confidence may lead to the eventual failure of the rescue.

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 would be based on the time basis as this would provide a fair compensation for the work carried out by the insolvency practitioner.

However, there is an ethical issue that the time based system may incentive the practitioner to spend time on work which may not necessarily achieve any useful outcome.

Commented [JL6]: 2

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

Commented [JL7]: 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.

The following elements of insolvency proceedings are especially prone to create or give rise to threats to independence and impartiality:

(A) Prior appointment before the formal commencement of the insolvency proceeding: In modern insolvency and restructuring cases, especially those related to a mega scale and multinational company, it would be common for the company to have some prior consultations with professional before formally entering into any insolvency procedures. This would also allow the practitioners to have some understanding on the structure and business activities of the company. Once the appointment formally commences, the practitioners can carry out their roles and duties efficiently and effectively. However, such prior consultation may create an impression that the practitioners may lack independence and impartiality. The practitioners should exercise caution and limits in relation to the extent and level of such prior engagement. The practitioners may no longer be considered to be independent and impartial if the consultation involves a material engagement. It is suggested that the prior engagement should be limited to the financial position of the company, the solvency of the company, the effects of potential insolvency and any alternative of insolvency. In *Re Korda, Ten Network Holdings Ltd*, the Australian court accepted that prior consultation was necessary. Yet, appropriate safeguards, such as express notification to the board of directors about the appointee's duty and potential future appointment as an insolvency practitioner, as well as detailed documentation of tasks completed and meetings engaged with the company, should be implemented.

(B) Appointment: in many jurisdictions, the law would allow the company (usually the board of directors or the members) or other stakeholders, such as the creditors, to decide the appointment of the insolvency practitioners. This may create an impression that the insolvency practitioners would work in favour of the persons who appoint them. The appointers may have such impression and consider that they can influence the insolvency practitioners. However, the insolvency practitioners owe duty to act in the best interest of

all the stakeholders. The practitioners should make this clearly to the appointer and should not make any promises which may compromise their independence or impartiality. The insolvency practitioners should also review their personal and professional relationships with the appointee as well as other stakeholders (ie doing a conflict check) before accepting appointment. In *Commonwealth Bank of Australia v Irving*, the Australian court agreed that the administrator, who had a very close relationship with the director (both personally and professionally) would cause a reasonable person to doubt whether the administrator would carry out his duties and investigations without bias.

- (C) Subsequent appointment: a number of jurisdictions allow the insolvency practitioners to act in different capacities in relation to the same company. For example, the UK Insolvency Act 1986 allows an administrator to be appointed as a liquidator when the administration ends and the company decides to enter into winding up process. There are benefits to such procedure as the insolvency practitioners would have accumulated knowledge on the company and extensive costs may be saved if the same practitioner can be retained. Yet, such appointment would create self-review threat (defined as a situation which a practitioner's action is reviewed by the same practitioner and hence not be able to appropriately review the judgments made and the services rendered) and self-interest threat (defined as a situation which the practitioner has or is perceived to have a direct interest in obtaining certain outcomes, for example, reviewing the remuneration of the administrator by the liquidator or doing the same tasks twice and charge remuneration twice). These threats would cause concerns to the independence and impartiality of the insolvency practitioners.
- (D) Secret money and personal transactions with the company: The insolvency practitioners owe fiduciary duties to the stakeholders and should always act in their best interest. A fiduciary is not allowed to make secret profits, at the expense of beneficiaries or puts himself in a position where his personal interest is in conflict with the interest of the beneficiaries (ie the no profit and no conflict rule for directors of a company). Hence, if an insolvency practitioner (or his family or close associate) is engaged in a transaction of buying assets from the company which the practitioner is appointed, there would be issues to the independence and impartiality of the practitioner as a reasonable person may suspect that the practitioner is serving his own interest but acting at both sides of the contract, such as by selling at a low price, disclosing the confidential information (such as the minimum accepted price) or making a favourable **term**.

Commented [JL8]: 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?

When insolvency practitioners engage legal professionals for the provision of advice and services, the following ethical considerations should be borne in mind:

- (a) When the legal costs form part of the disbursements (ie the legal professional is engaged by the insolvency practitioners with the fees paid by the insolvency practitioners in discharging the duties of the insolvency practitioners), the insolvency practitioner has the burden to satisfy that the bill is reasonable and appropriate given the circumstances. The practitioners are expected to exercise reasonable commercial judgment which a prudent practitioner would monitor the fees claimed by the legal profession;
- (b) When the legal costs form part of the third party costs (ie the company would pay the legal costs directly from the estate), as it would affect the other stakeholders (notably creditors)

directly (in terms of estate which can be distributed), the insolvency practitioners must monitor the fees and scrutinize the bill. The insolvency practitioners should also avoid duplication of work done by the legal professional and should be prepared to provide justifications to satisfy why they would engage legal professional when there are other professionals working on the same matter;

- (c) The insolvency practitioners, especially for those who do not have legal qualifications, would evaluate whether the engagement of the advice or work from legal professional is necessary and should document the reasons for choosing certain legal professions;
- (d) The insolvency practitioners should also make frank and full disclosure of their relationship with the legal profession engaged (especially there may be relationship where it may cause the insolvency practitioners to be perceived as not independent or impartial);
- (e) The insolvency practitioners should undertake the process to evaluate whether the legal professional service is in the best value for the creditors. In considering whether such legal service offers the best value and service, the insolvency practitioner would have to consider (I) the cost of the legal service, the expertise and experience of the provider; (II) whether the provider holds appropriate regulatory authorization; and (III) the professional and ethical standards applicable to the service provider.

Commented [JL9]: 7

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

Commented [JL10]: 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.

FIRST ISSUE

The first ethical issue relates to the Mr Relation's pre-commencement involvement when having a meeting with the shareholders and the directors to explore the options and his subsequent appointment as the administrator and liquidator of WeBuild Ltd, as well as his public speech in a television interview of not favouring large banks.

Under Principle 2 of the INSOL International's Ethical Principles for Insolvency Professionals, an insolvency professional should exhibit the highest levels of objectivity, independence and impartiality in the exercise of his powers and duties and should avoid circumstance likely to result in a conflict of interest.

The commentary to Principle 2 provides that independence must be considered both as a matter of fact and from the perspective of an informed observer.

Although it is recognized that prior consultation between an insolvency practitioner and the company (or its stakeholder) often occurs, such consultation may create an impression of the lack of independence and impartiality of the insolvency practitioner. The prior consultation should be limited and should avoid material engagement with any of the stakeholder parties. In *Re Korda, Ten Network Holdings Ltd*, the Australian court held that for pre-commencement appointment, proper safeguards should be implemented to avoid the existence or appearance of conflict. These safeguards include making clear to the board of directors that he is the person who might become the actual insolvency practitioner as well as proper record keep of all of the meetings held and tasks performed. Other possible safeguards include limitation of the scope of work (limited to understanding of the operations and positions of the company)

and that the practitioners should not meet any of the board members or management of the company prior to their appointments.

In this case, Mr Relation met with the full board of directors for his pre-commencement involvement. It appears that Mr Relation also did not restrict his scope of appointment and instead provided detailed advice and that Mr Relation did not keep detailed records of his engagement and advice provided.

As to his television interview, this would likely give an honest observer to conclude that Mr Relation may prefer small creditors than financial institutions in his insolvency appointment. This would be a conflict of interest. Further, in order to carry out a successful restructuring, it would be essential to obtain the major secured creditor's support. Mr Relation prior interview would likely make ABC Bank uncomfortable and hence may prejudice the restructuring of WeBuild Ltd.

Accordingly, it seems that Mr Relation would likely be in breach of Principle 2 on independence and impartiality. To mitigate the problem, it seems that Mr Relation should refuse to act as the administrator for WeBuild Ltd and resign immediately from his post as an insolvency practitioner as he no longer appears to be independent and impartial.

SECOND ISSUE

The second ethical issue relates to the personal relationship between Mr. Relation and Mr. Blnlaw, the director of WeBuild Ltd. It also involves Principle 2 of the of the INSOL International's Ethical Principles for Insolvency Professionals as provided in the first ethical issue.

The commentary to Principle 2 provides that an insolvency practitioner should not accept an appointment in connection with the estate if his or a related party's relationship with the directors of the company or any of the stakeholders would give rise to a possible or perceived lack of independence.

In the present case, Mr Relation has a long term private relationship with Mr Blnlaw (as brother-in-law and godfather to his daughter). It would be fairly arguable that the personal relationship between them may give rise to a lack of independence in the eyes of an informed observer. Further, Mr. Relation failed to disclose his relationship with Mr. Blnlaw during the pre-commencement engagement until the shareholders recognized him.

Although Mr Relation has made disclosure subsequently, it should be emphasized that following the commentary to Principle 2, lack of independence cannot necessarily be cured by disclosure. The disclosure would only be useful in situations where the relationship is not substantial and of a merely superficial nature. It would be very difficult to convince other stakeholders that the insolvency practitioner is independent and impartial if he has a longstanding personal relationship with someone related to the insolvency procedures.

Given that Mr Relation and Mr Blnlaw relationship is built on family, it would be considered that a mere disclosure would not be sufficient to satisfy the independence and impartiality requirement. This is reflected in the Australia case *Commonwealth Bank of Australia v Irving*. In such scenario, it seems that the only possible remedy for Mr Relation is to decline to appointment (or resigns from the appointment as accepted) as he is no longer considered to be independent and impartial from the perspective of an informed observer.

THIRD ISSUE

Commented [JL11]: Your argument in this regard is probably sound, however the real issue is one of advocacy.

The third ethical issue relates to Mr Relation's brief "planning" meeting and superficial investigation thereafter. Principle 2 of the of the INSOL International's Ethical Principles for Insolvency Professionals also applies to this issue.

When an insolvency practitioner is appointed by the board of directors or a stakeholder, the practitioner should not make any promises to those who appointed him and should make it very clear that he is required to act in the interests of all the beneficiaries.

In this case, Mr Relation is appointed by the directors. However, he has a secret meeting with the directors where he assures them that his focus will not be on them but on trying to rescue the company. This is clearly in breach of the independence and impartiality principles.

Further, under Principle 1, an insolvency practitioner must in addition to complying with applicable laws, endeavour 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 their professional practice.

Mr Relation's behaviour is clearly unacceptable as an insolvency practitioner has the legal obligations to investigate the failure of the company, makes reports on his findings and when circumstances justify, takes actions against the relevant parties (including the directors) for their breach of the duties owed to the company.

The case provides that the directors were aware of the deteriorating financial position of the company as well as the causes (injuries caused by faulty machinery which resulted in class actions by employees and bad publicity; bad publicity leading to decline in contracts and reduction of profits). Nonetheless, the directors continued the business without paying any attention to these matters and made large bonuses to themselves. Mr Relation probably knew this information but chose to ignore and disregard such in the investigation. Instead, he simply relied on a report provided Mr B Inlaw, which clearly has a conflict of interest, in making his report to the creditors that no evidence of wrongdoing or maladministration is made by the directors. Such omission is a mislead to the creditors. In addition to breaching Mr Relation's fiduciary duty owed to the stakeholders, Mr Relation may have potentially committed criminal offences.

FOURTH ISSUE

The fourth ethical issue relates to the subsequent appointment of Mr Relation as a liquidator. It also involves Principle 2 of the of the INSOL International's Ethical Principles for Insolvency Professionals as provided in the first ethical issue. In the commentary to Principle 2, threats to objectivity, independence and impartiality may include self interest and self review.

According to INSOL International's Ethical Principles for Insolvency Professionals, a self interest threat relates to a situation where an insolvency practitioner has or is perceived to have a direct interest in obtaining a particular outcome. In a subsequent appointment case, such threat arises if a restructuring practitioner knows that he would be appointed as a liquidator, he may not put his best effort in the restructuring as he would be remunerated again when being appointed as a liquidator.

In this case, the same applies to Mr Relation when he is appointed as a liquidator after the administration fails. One would need to check with the law of Erafriclia to see if such subsequent appointment is allowed. Even if such subsequent appointment is allowed in law, Mr Relation should assess the risk associated and consider whether he is independent and partial enough for the subsequent appointment.

A self review threat, on the other hand, refers to a situation where actions are taken by an insolvency practitioner or his close associate is or is perceived to be subject to review only by such practitioner. In this case, as Mr Relation becomes the liquidator, he would be the person to review the administrator's work.

One would need to check with the law of Erafricia to see if such subsequent appointment is allowed. Even if such subsequent appointment is allowed in law, Mr Relation should assess the risk associated and consider whether he is independent and partial enough for the subsequent appointment.

However, on the facts of this case, Mr Relation has closed relationship with the director of WeBuild Ltd and the major secured creditor, ABC Bank appears to be uncomfortable with this administrator appointment. Further, Mr Relation's investigation as an administrator appears to be superficial and it seems that he has not exercised his fiduciary duty to act in the best interest for the stakeholders (in particular creditors) when he is appointed as an administrator, by failing to do any meaning investigation and to rely on the report prepared by the directors who may be involved in misfeasance and wrongful trading.

Accordingly, it is considered that the self review and self interest threats are very serious for Mr Relation to be appointed as a liquidator. It is considered that Mr. Relation should refuse from being appointed as a liquidator (or resign) even if the law of Erafricia allows subsequent appointment as he is no longer as a matter of actor or from the perspective of an informed observer an independent and impartial insolvency practitioner.

*** End of Assessment ***

Commented [JL12]: Excellent answer!
15
You could also have mentioned the duty of care and also integrity.