



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:41 out of 50
Well done!

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 following fiduciary duties can be labeled as the **main fiduciary duties** of the insolvency professionals:

- 1) **Act according to the best interest of the beneficiary of the fiduciary duties:** This duty necessarily implies the identification of the beneficiaries of the fiduciary duties (Jacobs, 2020).
- 2) **Act in good faith:** According to this duty, the IP must act within the framework of good faith and honesty (Jacobs, 2020).
- 3) **Exercise the powers granted impartially and independently:** This duty also includes the duty to avoid conflict of interest (Jacobs, 2020).

Finally, it is necessary to highlight **the duty to act with care, skill and diligence**. Although the aforementioned duty is not part of the main fiduciary duties, it is important to refer to it taking into account its relevance and the close relationship it has with the main fiduciary duties. The fulfilment of this duty implies that the IP should act in a diligent manner, given their skills and qualifications (Jacobs, 2020).

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 dual nature of the duty to act with independence and impartiality is given by: (i) the perception that a third party might have of the IP and (ii) the independence that the IP in fact has (Jacobs, 2020).

- 1) **Independence in fact:** It means that the insolvency practitioner is free from any circumstance that could compromise his judgment. This is related to relationships and interests that have the potential to negatively affect his decision-making ability (Jacobs, 2020).
- 2) **Independence in perception:** This aspect is related to the perception that third parties have of the IP's independence, integrity, and impartiality (Jacobs, 2020).

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.

Preferred method of calculation of insolvency practitioner remuneration	Ethical issue
Time-based fees	The ethical problem that may arise from this method is related to the partiality of the calculation of the practitioner's

	remuneration based on the time spent on the case. In fact, the UNCITRAL has held that this method may lead to circumstances in which the time invested is not related to the outcome (Jacobs, 2020).
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Commented [JL6]: 2

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

Commented [JL7]: 11 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 could pose a threat to independence and impartiality:

- 1) **Appointment:** This element applies to those jurisdictions where it is possible to appoint a CIP, and the appointment may be done by a stakeholder or a board of directors. Impartiality and independence may be affected since the persons who made the appointment may believe that the professional must prioritize their interests or they may influence its professional practice (Jacobs, 2020).

Notwithstanding the above and the expectations that the persons who appointed the CIP may have, it is possible to eliminate this scenario, if the CIP takes the necessary measures to ensure its impartiality and independence. On the other hand, the CIP can state in front of the stakeholders or the board of directors that its professional practice is governed by independence and clarity regardless of the source of the appointment (Jacobs, 2020).

- 2) **Subsequent appointments:** The next element is also related to the designation of the CIP, however, the problem stems from the possibility to designate the same CIP in different stages in the insolvency proceeding of the same debtor. It is pertinent to highlight that the associated problem of subsequent appointments has different approaches that are determined by weighing benefits and disadvantages. The subsequent appointments are allowed in jurisdictions in which the advantages related to prior contact with the debtor outweigh the potential threat of the PIC occurring in self-review and self-interest, (Jacobs, 2020).
- 3) **Secret monies and personal transactions with the company:** This element is related to the position that the CIP has when it is designated, given that from its designation it is possible to affirm that he has an advantageous position. Independence and impartiality may be affected if the CIP takes advantage of its position in the following circumstances: (i) the CIP obtains secret profit from the beneficiaries and (ii) the exercise of the CIP's duties is implicated due to the existence of a conflict of interests (Jacobs, 2020).
- 4) **Nature of pre-commencement / appointment involvement:** This concept refers to situations in which prior consultations between the company or interested parties and the CIP may lead to a lack of impartiality and independence. The inability to be appointed should be determined according to the content of the consultation depending on whether some kind of material commitment was established between

the parties, or whether the consultation referred to aspects related to the situation of the company and the scope of possible insolvency (Jacobs, 2020).

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?

The most relevant ethical consideration is related to the control of fees and the rate charged by the IP. In this sense, it is necessary to take into account that it is possible for the IP to resort to legal services as long as the expenses are justified (Jacobs, 2020).

The IP can rely on the advice and services of legal professionals however; the IP must bear in mind the following aspects: (i) the cost of the service in terms of the provider's experience and knowledge, (ii) the legal framework applicable to the provider and (iii) the provider's suitability, which is related to the due regulatory authorization (Jacobs, 2020).

Commented [JL9]: 3

Although your answer is correct, we expected a little more discussion as this is an essay question. Your answer is therefore lacking some detail and expansion. Some elements are also missing from this discussion such as the duplication of work for example.

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

Commented [JL10]: 10 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.

Ethical issue	Description of the ethical issue	Comments
Appointment	Impartiality and independence may be affected since the Directors may believe that the professional must prioritize their interests (Jacobs, 2020)	<p>In this case, the declaration of the appointment as an administrator is the only way to effectively address the ethical issue. The foregoing, taking into account that the disclosure of the relationship and the declaration of independence does not necessarily provide impartiality (Jacobs, 2020).</p> <p>In addition, the ethical dilemma is compounded when the Sr. Relation promises the directors that he is not going to focus on them. The foregoing considering that after the directors decided to appoint Sr. Relation as an administrator, they shared with him their concerns regarding their personal liability given the decisions taken in relation to the continuity of the</p>

		<p>company when We Built Ltd was in financial distress.</p> <p>This dilemma could have been adequately addressed if the administrator had made clear that its professional practice was governed by independence and clarity, regardless of the source of the appointment.</p>
Subsequent appointments	Self-review given the role of Sr.Relation in shareholders' meeting.	<p>The ethical issue, in this case, is related to the self-review of the IP. Given that prior to the appointment as administrator, Sr. Relation advised the company before the beginning of the voluntary administration process, in fact, he recommended the procedure.</p> <p>By virtue of the foregoing, it is possible to think that his capacity to judge past events/decisions is compromised by his role in the decision-making process carried out at the shareholders' meeting.</p>
Associate	This ethical issue is related to the relationship that exists between Sr. Relation and Sr.B In Law, considering that the former is the brother-in-law of the latter. This dilemma has been recognized in the field as a threat to the impartiality and independence of the professional. In fact, the Code of Ethics for Professional Accountants recognizes the familiarity of the professional account as a threat to its objectivity (International Federation of Accountants, 2005).	In this case, the only way to effectively address the ethical issue is through the declination of the appointment as an administrator. The foregoing, taking into account that the disclosure of the relationship and the declaration of independence does not necessarily provide impartiality.

Commented [JL11]: A reasonable attempt but again lacking in detail. I would have liked to see a more direct application of the principles. Due to the way in which you answered the question (by using the table) you missed certain opportunities to make the application clearer. Still a good attempt.
10

References

International Federation of Accountants. (June de 2005). Code of Ethics for professional accountants.
Jacobs, L. (September de 2020). Ethics and Professional Practice. London, United Kingdom.

*** End of Assessment ***