



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8D

INDIA

This is the **summative (formal) assessment** for **Module 8D** of this course and must be submitted by 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 8D. 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.assessment8D]**. An example would be something along the following lines: 202021IFU-314.assessment8D. **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 **7 pages**.

ANSWER ALL THE QUESTIONS

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

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

The Insolvency and Bankruptcy Code 2016 currently **does not** apply to:

- (a) Small companies.
- (b) Limited Liability Partnerships.
- (c) Individuals and Partnership Firms not being guarantors to corporate debtors.**
- (d) All of the above.

Question 1.2

Which of the following jurisdictions are currently exercised by the Debt Recovery Tribunals?

- (a) Recovery proceedings by Indian banks.
- (b) Disputes under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.**
- (c) Insolvency and bankruptcy of personal guarantors to corporate debtors under the Insolvency and Bankruptcy Code 2016.
- (d) All of the above.

Question 1.3

Which of these is **not** a function of the Insolvency and Bankruptcy Board of India under the Insolvency and Bankruptcy Code 2016:

- (a) Registration of insolvency professionals.
- (b) Registration of insolvency professional agencies.
- (c) Carrying out inspections and investigations of insolvency professionals.
- (d) Appointing an insolvency professional as a resolution professional for a company.**

Commented [CAM1]: 8 out of 10.

Commented [CAM2]: Correct.

Commented [CAM3]: incorrect. Correct answer is (d).

Commented [CAM4]: Correct.

Question 1.4

Which of these **can** be liquidated under the Insolvency and Bankruptcy Code 2016:

- (a) A banking company.
- (b) An insurance company.
- (c) National Housing Bank.

(d) A non-banking financial company with asset size of INR 5 billion.

Commented [CAM5]: Correct.

Question 1.5

Which one of the following **is not** a ground for a court to refuse to grant a discharge order under the Presidency- Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920?

- (a) The debtor has failed to maintain proper books and records of its financial position.
- (b) The debtor has borrowed provable debt when he had a reasonable expectation that he will not be able to repay such a debt.

(c) the debtor has travelled outside India without court's approval.

Commented [CAM6]: Correct.

(d) the debtor has brought about the insolvency due to rash and hazardous speculations.

Question 1.6

Indicate which one of the following avoidance powers is **not** available under the Provincial Insolvency Act 1920:

- (a) Avoidance of undue preferences.
- (b) Avoidance of transfers in consideration of marriage.

(c) Disclaimer of onerous contracts.

Commented [CAM7]: Correct.

(d) Avoidance of transfer other than to a *bond fide* purchaser for value.

Question 1.7

Which of these has the highest priority in bankruptcy of an individual under the Insolvency and Bankruptcy Code 2016:

(a) Workmen's dues for 24 months preceding the bankruptcy order.

Commented [CAM8]: Correct.

(b) Amounts due to the Government.

(c) Debt owed to the Government banks.

(d) Dues of the employees for a period of 12 months preceding the bankruptcy order.

Question 1.8

Pursuant to Section 10A of the Insolvency and Bankruptcy Code 2016, which of the following **can** be a basis for an application to commence a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016?

- (a) A payment default on January 31, 2020.
- (b) A payment default on March 31, 2020.
- (c) A covenant default on March 25, 2020.
- (d) A covenant default on January 31, 2020.

Commented [CAM9]: Incorrect. Correct answer is (a)

Question 1.9

Which of the following is **not** an action required to be undertaken by the resolution professional in respect of a corporate debtor during a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016?

- (a) Maintaining an updated list of creditors.
- (b) Preparation of the information memorandum.
- (c) Drafting and finalization of the resolution plan.
- (d) Filing applications for avoidance transactions.

Commented [CAM10]: Correct.

Question 1.10

Which of the following **is not** a requirement for withdrawing a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016:

- (a) Approval of the National Company Law Tribunal.
- (b) Approval of creditors by 90% majority by value.
- (c) Application to be made by the person on whose application the corporate insolvency resolution process was commenced.
- (d) Approval of a resolution plan.

Commented [CAM11]: Correct.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

In the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016, who prepares the repayment plan and who submits a report on such plan?

The debtor in consultation with the resolution professional prepares a repayment plan, which contains a proposal to the creditors for the restructuring of the debtor's debts or affairs. The resolution professional submits the proposal to the court, together with his report on the proposal, a statement of affairs of the debtor, and his opinion as to whether a meeting of the creditors should be called.

Commented [CAM12]: 2 out of 2.

Question 2.2 [maximum 4 marks]

Please describe how the Official Assignees under the Presidency- Towns Insolvency Act 1909 and the Official Receivers under the Provincial Insolvency Act 1920 are appointed.

The Official Assignee is appointed by the Chief Justice of the High Court in the jurisdiction where the act applies while the Official Receivers for the purposes of the Provincial Act are appointed by the insolvency court at the time of passing of the Order of Adjudication, or any time thereafter. Official Receivers are appointed by the relevant State Governments to act within local limits. Usually such Official Receivers are appointed by the insolvency courts as receivers in specific cases.

Commented [CAM13]: 4 out of 4.

Question 2.3 [maximum 3 marks]

Please describe the moratorium that becomes effective during the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016?

The moratorium that becomes effective during the insolvency resolution process for individuals under the insolvency and Bankruptcy Code 2016 can be described as follows: there are no suits or proceedings to recover provable debt that can be instituted by a creditor against the debtor in the middle of the insolvency process.

But secured creditors can still proceed to realise their security during the moratorium. This implies that the moratorium does not apply to secured creditors. This moratorium covers both the suits and proceedings against the debtor and his property.

Commented [CAM14]: 1 out of 3

Commented [CAM15]: Two types of moratorium has not been covered.

Question 2.4 [maximum 1 mark]

Please indicate the guidelines applicable to out of court restructuring by banks in India and the regulator who has issued these guidelines?

The Reserve Bank of India issued revised guidelines for out of court debts restructuring. The revised guidelines stipulate that the Indian banks and financial institutions are required to review the financial situation of the debtor for the first 30 days after default and decide whether they would like to restructure the debtor's debt. In the event the creditors decide to restructure the debt of the debtor, they are required to enter into an inter-creditor agreement that provides for a stand-still and the mechanics for arriving at out-of-court resolution plan. If no such plan has been agreed and implemented by the creditors within 180 days of default, the creditors are required to make additional provisioning (20% from the 181st day and another 15% from 366th day) over and above the usual provisioning for non-performing loans, which may be reserved if the creditors file to initiate insolvency proceedings for the debtor under the Code and the such petition is accepted.

Commented [CAM16]: 0.5 out of 1

Commented [CAM17]: Reversed? Date not mentioned

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

Write a short essay on the constitution and role of the committee of creditors in the corporate insolvency resolution process of a company under the Insolvency and Bankruptcy Code 2016.

Commented [CAM18]: 11 out of 15

Your answer should make reference to at least the following:

- Who constitutes the committee and what is the basis of constitution;
- Who is eligible to be a member of the committee and who is not; and
- various actions that require the committee's approval and the applicable percentages for the same.

Introduction

The essay is on the constitution and role of the committee of creditors in the insolvency resolution process of a company under the Insolvency and Bankruptcy Code 2016. Furthermore, the essay will elaborate on the following:

- who constitute the committee and what is the basis of the constitution?
- Who is eligible to be a member of the committee and who is not?
- Various actions that require the committee's approval and the applicable percentages for the same.

Constitution of the committee of creditors

The interim resolution professional constitutes the committee of creditors within two days of the verification of claims received by him. The constitution of the committee happens only after the interim resolution professional has verified the claims received by him and has made a detailed list of creditors.

Members of the committee of creditors

Only financial creditors can be members of the committee of creditors and credit classes are not required to be formed. In the scenario where there are no financial creditors, or only related party financial creditors, the committee of creditors should comprise a maximum of 18 of the largest operational creditors by value and one elected representative each for workmen and employees.

Roles of the committee of creditors

The committee of creditors is the supervisory body for the resolution professional and the primary decision-making body in the corporate insolvency resolution process (CIRP). The resolution professional organizes the meetings of the committee of creditors. Although the resolution professional is the chairperson of the committee of creditors, he or she is a non-voting chairperson. The committee of creditors meetings are attended by the members of the committee which are the unrelated financial creditors of the corporate debtor. Additionally, any operational creditor whose debt equals or exceeds 10% of the total debt of the corporate debtor and the members of the board of directors of the debtor even though suspended, are also entitled to attend the meetings of the committee of creditors as non-voting participants.

The committee of creditors is required to approve the extension of the timeline of the CIRP, replacing or confirming the resolution professional. It is also required to approve resolution plan in respect of the corporate debtor. Furthermore, the committee of creditors is required to approve by a resolution passed by 66% majority by value in respect of the following transactions:

- Raising interim finance for the corporate debtor.
- Changing the capital structure of the corporate debtor, including issuing additional securities.
- Recording any changes in the ownership interest of the corporate debtor.

Commented [CAM19]: Voting percentages required for these actions not mentioned.

Withdrawal, sale of assets during CIRP, liquidation, approval of costs and expenses for the IRP has not been mentioned

- Giving instructions to banks which are maintaining accounts of the corporate debtor, for transactions more than a limit decided by the committee of creditors.
- Undertaking any related-party transactions.
- Amending the constitutional documents of the corporate debtor.
- Delegating the resolution professional's authority to any person; and
- Making any change to the management of the corporate debtor or any of its subsidiaries.

Besides items mentioned in section 28 of the Insolvency and Bankruptcy Code and the items specified here, the committee of creditors can take all decisions by a resolution passed by a 51% majority of the committee by value.

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

Milky Limited (Milky) is a dairy and milk products company in India. Milky underwent a corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code 2016; however due to the COVID-19 pandemic, no resolution plans were approved and Milky was sent into liquidation by the National Company Law Tribunal. The resolution professional appointed during the CIRP has not provided her consent to act as the liquidator. Milky currently has a large stock of perishable dairy products.

Basis a request from the National Company Law Tribunal, the Insolvency and Bankruptcy Board of India nominated Mr. Salman Khan, an insolvency professional, to act as the liquidator for Milky and the National Company Law Tribunal has confirmed his appointment as the liquidator

Mr. Khan has contacted you to advise him on the liquidation process under the Insolvency and Bankruptcy Code 2016. In this context, answer the questions below.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 7 marks]

Prepare a note for Mr Khan on reporting requirements as a liquidator of Milky and the timelines for the same. Please also advise him on how to deal with a situation where the timeline for completion of liquidation has not been met.

Under the Insolvency and Bankruptcy Code 2016, the liquidator is required to submit a preliminary report to the National Company Law Tribunal within 75 days of the commencement of the liquidation process. The report must detail the capital structure, an estimate of the assets and liabilities and the proposed plan of action for carrying out the liquidation.

Thereafter, the liquidator is required to provide progress reports to the National Company Law Tribunals as follows:

- First report within 15 days after the end of the quarter in which he was appointed.
- Subsequent progress reports within 15 days after the end of every quarter where he acts as the liquidator.

The liquidator provides a final report along with an application for dissolution of the corporate debtor after completion of the liquidation process.

Commented [CAM20]: 6 out of 7

Commented [CAM21]: What about Asset memorandum and Asset Sale Reports

The corporate debtor stands dissolved upon the National Company Law Tribunal issuing an order of dissolution.

The liquidator is required to apply to the National Company Law Tribunal if he could not complete the liquidation within one year and an additional 90 days is allowed if a sale as a going concern is being attempted. He has to explain why the liquidation could not be completed within the one-year period and specify the additional required time to complete the liquidation process.

The liquidator may apply to the National Company Law Tribunal for the early dissolution of the corporate debtor if after preparation of the preliminary report it appears to the liquidator that the realisable property of the corporate debtor will be insufficient to cover the cost of the liquidation process, and the affairs of the corporate debtor do not require any further investigation.

Question 4.2 [maximum 8 marks]

Please prepare a note for Mr Khan on the process of realization of assets of Milky during liquidation and the eligible buyers.

In terms of Liquidation Regulations, liquidator can sell the assets using any of the following method:

- Stand-alone basis,
- Collectively,
- On a slump-sale basis, or
- Sell the assets in parcels.

Further, the liquidator can sell the corporate debtor or the business of the corporate debtor as a going concern.

There is a provision under the Liquidation Regulations which requires liquidators to make efforts to propose a scheme of arrangement/compromise under the Company's Act within the first 90 days from the date liquidation commences. The time taken to prepare such compromise or arrangement which does not exceed 90 days is not included in the liquidation period. The costs associated to such compromise or arrangement are borne by the corporate debtor and during this period the liquidator is entitled to the same remuneration as the resolution professional during the CIRP.

The liquidator is first required to try and sell the corporate debtor as a going concern, if during the CIRP the committee of creditors have recommended the sale of the corporate debtor as a going concern. If there is no such recommendation from the committee of creditors, the liquidator can decide which assets and liabilities should be sold together as a going concern. If such a sale as a going concern has not occurred within 90 days from the liquidation commencement date, the liquidator must then sell the assets on a standalone basis, in parcels or collectively.

The Liquidation Regulations specifies that the liquidator is required to ordinarily sell the assets by way of public auction. But, if:

- The assets are perishable.
- The assets are likely to deteriorate in value significantly if not sold immediately.
- The assets are sold at a price higher than the reserve price of a failed auction; or

Commented [CAM22]: 6 out of 8

Commented [CAM23]: No application to facts

- Prior permission of the National Company Law Tribunal has been obtained for such sale

The assets can be sold by way of a private sale.

The liquidator needs approval of the Adjudicating Authority to sell any assets to his own or corporate debtor's related parties, or any professional appointed by him. The liquidator is not allowed to sell the assets to any person who was ineligible to submit a resolution plan for the corporate debtor under section 29A of the Code.

*** End of Assessment ***

Total: 38.5 out of 50