



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]: 6 out of 10.

Commented [CAM2]: Incorrect. Correct answer is (c).

Commented [CAM3]: Correct.

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

Commented [CAM6]: Correct.

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

Commented [CAM7]: Incorrect. Correct answer is (c).

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.
- (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.

Commented [CAM8]: Correct.

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]: Correct.

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]: Incorrect. Correct answer is (c).

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]: Incorrect. Correct answer is (d).

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

Commented [CAM12]: 2 out of 2

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 the repayment plan. The resolution professional submits a report on the above-mentioned repayment plan.

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 Assignees are appointed, under the Presidency- towns Insolvency Act 1909, by the Chief Justice of the High Court in the jurisdiction where the act applies.

Receivers, for the purpose of the Provincial Insolvency Act 1920, are appointed by the insolvency court at the time of the passing of the Order of Adjudication, or at any time thereafter.

Commented [CAM13]: 3 out of 4.

Commented [CAM14]: Should have mentioned State Governments.

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?

On filing of a court application, a moratorium is declared on all creditor actions. The moratorium continues until the date of the admission of the court application. Upon admission of the application, a moratorium is declared on all the creditor actions as well as disposal of assets by the debtor and remains in force for a period of 6 months, commencing from the date of filing the application.

Secured creditors can then only file a proof of claim for the unsecured portion of their debt, failing which they forfeit their security.

Commented [CAM15]: 3 out of 3.

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?

Guidelines, issued by the Reserve Bank of India, are applicable to out-of-court restructuring by banks.

Commented [CAM16]: 0.5 out of 1.

Commented [CAM17]: Dates was required to be 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.

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.

On passing of the bankruptcy order by the court and appointment of the nominated resolution professional or another resolution professional as the bankruptcy trustee, a meeting of creditors is convened where a committee of creditors is constituted.

Commented [CAM18]: 7 out of 15.

Commented [CAM19]: This is incorrect terminology.

Commented [CAM20]: Incorrect terminology

Only non-related financial creditors of the corporate debtor are eligible to be members of the committee of creditors. The resolution professional and the members of the (now-suspended) board of directors of the debtor company as well as any major operational creditor (with debt equalling or exceeding 10% of the total debt of the corporate debtor) is entitled to attend but only as non-voting participants

Commented [CAM21]: Situation where there are no financial creditors is not covered. Basis of constitution is not covered

The committee of creditors supervises the resolution professional. It is also the primary decision-making body in the Corporate Insolvency Resolution Process (CIRP).

The resolution professional, as its non-voting chairman, organises meetings of the committee of creditors and these meetings are attended by the members of the committee. The bankruptcy trustee submits progress reports to to the court as well as the committee of creditors.

The committee of creditors' approval is required for matters such as instituting or defending suits or proceedings relating to the bankrupt's property, encumbering any property to raise funds, making compromises and arrangements as appropriate, extending the timeline of the CIRP, replacing / confirming the resolution professional and approval of the resolution plan.

Commented [CAM22]: More details were required

For items mentioned in Section 28 of the Insolvency and Bankruptcy Code, 66% approval of the voting members of the committee of creditors is required. For all other matters, 51% approval is sufficient.

Commented [CAM23]: What about withdrawal?

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]

Commented [CAM24]: Question was clear that Milky underwent CIRP and then liquidation.

0 out of 7

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.

As a liquidator of Milky, Mr Khan is required, under the Voluntary Liquidation Regulations, to submit a preliminary report to the company within 45 days of the commencement of liquidation.

Commented [CAM25]: These regulations are not applicable

Mr Khan is also required to do his best to complete the liquidation process within 12 months of the liquidation commencement date. If this is not possible, he is required to convene a

meeting of the contributaries of the company within 15 days from the end of the 12 month period (and every 12 months thereafter) to present an annual status report.

On completion of the liquidation process, he needs to prepare a final report and file it with the National Company Law Tribunal, the Registrar of Companies and the Insolvency and Bankruptcy Board of India. ON receipt of his final report, the National Company Law Tribunal may then pass an order of dissolution of the company.

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.

Under the Liquidation Regulations, Mr Khan is required to endeavour to propose a scheme of arrangement / compromise under the Companies Act within the first 90 days from the date liquidation commences. The costs are borne by the debtor.

Following CIRP, the committee of creditors has recommended sales of the corporate debtor as a going concern, Mr Khan has to first attempt to sell the debtor corporation as a going concern.

If such sale has not occurred within 90 days, then Mr Khan must attempt to sell the assets on a stand-alone basis, either in parcels or collectively and by way of public auction, except under certain circumstances (e.g. the assets are perishable, as in this case, likely to deteriorate in value significantly, etc). In such case, the assets may be sold by way of private sale.

Commented [CAM26]: 3 out of 8.

Commented [CAM27]: Liquidator is not required to make this endeavour

Commented [CAM28]: Eligible buyers not covered.
Facts not analysed.
Too many typos

*** End of Assessment ***

Total: 24.5 out of 50

Mark adjusted to 25/50 – Course Leader