



**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]

Commented [CAM1]: 9 out of 10

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

#### Question 1.1

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.

Commented [CAM2]: Correct.

#### 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.

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

#### 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 [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]: 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]: 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 prepares the repayment plan albeit by consulting a resolution professional. The repayment plan sets out a proposal for the creditors on how the debtor seeks to address his debts.

Commented [CAM12]: 2 out of 2

The resolution professional submits a report on the repayment plan to the court along with a statement of the debtors' assets and liabilities.

**Question 2.2 [maximum 4 marks]**

Commented [CAM13]: 4 out of 4

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.

Official Assignees are appointed under Section 77 of the Presidency-Towns Insolvency Act 1909 by the State Government in consultation with and with concurrence of the Chief Justice of the High Court which has relevant jurisdiction.

In contrast, Official Receivers are appointed under Sections 56 and 57 of the Provincial Insolvency Act 1920 by the insolvency court at the time of the order of adjudication or by the State Government with relevant jurisdiction, acting through the insolvency courts.

**Question 2.3 [maximum 3 marks]**

Commented [CAM14]: Good answer. 3 out of 3

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

Following an application under Section 94 or 95 of the Insolvency and Bankruptcy Code 2016 (relating to applications by debtor or creditor for initiation of an insolvency resolution process), Section 96 provides for an interim moratorium to be effective and which commences on the date of the said application. The interim moratorium continues up to the date such application is admitted.

During the period of the interim moratorium, any legal action or proceeding in respect of any debt is stayed and no creditor shall be able to initiate any such legal action or proceeding for any debt.

Once the application is admitted pursuant to Section 100 of the Insolvency and Bankruptcy Code 2016, Section 101 enables a moratorium to come into effect in relation to all debts and which ceases after 180 days from the date the application was admitted under Section 100, or the date an order is passed on the repayment plan under Section 114, whichever is earlier.

The effect of a moratorium under Section 101 is the same as Section 96, however Section 101 also restricts the ability of the debtor to transfer, encumber or dispose of any assets or interests the debtor may have in any such assets.

**Question 2.4 [maximum 1 mark]**

Commented [CAM15]: 0 out of 1

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

The Corporate Debt Restructuring framework issued by the Reserve Bank of India includes guidelines for banks to undertake out of court restructurings.

Commented [CAM16]: CDR guidelines have been repealed.

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

Commented [CAM17]: 11 out of 15.

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.

In the context of a corporate insolvency resolution process of a company, a committee of creditors is constituted by an interim resolution professional under Sections 18(c) and 21(1) of the Insolvency and Bankruptcy Code 2016. After constituting the committee of creditors, the interim resolution professional is responsible to monitor the assets of a company and manage its operations, until a resolution professional is appointed by the committee of creditors under Section 18(d). The committee of creditors is then responsible to supervise, monitor and decide matters relating to the corporate insolvency resolution process.

Commented [CAM18]: Basis for constituting not mentioned.

Commented [CAM19]: This is not exactly accurate.

Pursuant to Sections 21(1), (2) and (6) of the Insolvency and Bankruptcy Code 2016, the committee of creditors is comprised of all individual financial creditors (in a consortium or otherwise) of a corporate debtor (except those which are related parties to the company) in their own capacity or as represented by a trustee or agent through a syndicated facility, for example. Each financial creditor shall have a voting share as determined on the basis of the financial debts owed to them under Section 21(3).

Commented [CAM20]: What about no financial creditors? What about non-voting participants?

Sections 21(4) and (5) sets out that where financial creditors are also operational creditors, the role of such financial creditor in the committee of creditors is limited to the extent of their financial debt, and not their operational debt, including that operational debt which has been assigned to a financial creditor.

In line with Section 21(8), all decisions of the committee of creditors shall be taken by a vote not less than 66% of the voting share of financial creditors. The committee of creditors operates on the basis of financial information supplied to it by the resolution professional.

Pursuant to Sections 22 and 28, the committee of creditors can (i) appoint the interim resolution professional as the resolution professional or replace him with another resolution professional by a majority vote of 66%; (ii) provide its approval by a vote of 66% or more to a resolution professional to raise interim finance, create any security interest, change the capital structure of a corporate debtor, record a change in the ownership interest of the company, give instructions to financial institutions for a debit transaction, undertake related party transactions, amend constitutional documents, dispose of shares of any shareholder to third parties, make any changes in management, transfer rights, financial debts or operational debts or make changes in appointment terms of personnel or of statutory auditors.

Commented [CAM21]: What about withdrawal of CIRP

Under Section 12(2), the committee of creditors can pass a resolution (by a vote of 66% or more) to instruct a resolution professional to apply to the National Company Law Tribunal to extend the period of a corporate insolvency resolution process beyond 180 days. Section 30(4) allows the committee of creditors to approve a resolution plan by a vote of 66% or more. Any other matters before the committee of creditors requires a majority vote of 51%.

**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 [CAM22]: 5 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 responsible to report on various matters as outlined in Regulations 5, 13 and 15 (amongst others) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

Regulation 13 in particular requires that a Preliminary Report be submitted to the National Company Law Tribunal within 75 days of the liquidation commencement date while Regulation 15 requires Progress Reports be submitted to the National Company Law Tribunal within 15 days after the end of each quarter.

Similarly Regulation 34 requires the liquidator to prepare an asset memorandum within 75 days of the liquidation commencement date which is to be filed with the National Company Law Tribunal while Regulation 31(2) requires a list of stakeholders to be filed with the National Company Law Tribunal by the liquidator within 45 days of the last date of receipt of claims.

The above is aside from the public announcement that the liquidator needs to be made within 5 days of his appointment under Regulation 12.

Failure to abide by the required timelines may open up the liquidator to complaints being filed against him before the Insolvency and Bankruptcy Board of India under Section 217 of the Insolvency and Bankruptcy Code 2016.

Commented [CAM23]: Completion of the process not covered.

**Question 4.2 [maximum 8 marks]**

Commented [CAM24]: 4 out of 8

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

The process of realising Milky's assets through liquidation is set out in Chapter VI of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

Regulation 32 provides that the liquidator may sell assets on a standalone basis, a slump sale, on a collective basis, in parcels or sell the corporate debtor (or its business) as a going



concern. The preference is for sale as a going concern particularly if this was the recommendation of the committee of creditors during the corporate insolvency resolution process.

Regulation 33 outlines the mode of sale that a liquidator should pursue, namely through an auction or a private sale (for perishable assets, or those that will deteriorate in value significantly if not immediately sold or if a price higher than the reserve in a failed auction can be achieved), in each case in the manner set out in Schedule I.

The basis for the realization of assets is an asset memorandum under Regulation 34, followed by a valuation of such assets under Regulation 35, resulting in an asset sale report pursuant to Regulation 36.

As a liquidator, Mr Khan is also required to comply with the Companies Act 2013 including efforts for a scheme of arrangement or compromise.

**Commented [CAM25]:** This is not a mandatory requirement

Please note that in the context of a private sale, a related party of the corporate debtor, a related party of the liquidator or any professional appointed by the liquidator do not qualify as eligible buyers under Regulation 33(2) unless approved by the National Company Law Tribunal.

**Commented [CAM26]:** Section 29A ineligible buyers not covered  
Application to facts not mentioned.

**\* End of Assessment \***

**Total: 38 out of 50**