



**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: **[studentID.assessment9]**. An example would be something along the following lines: 202122-336.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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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: 47 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 the same thing.

(a) True

(b) False

**Question 1.5**

Select the **correct** answer:

Tony has been appointed as a liquidator of Company X. Company X has several major creditors, including ABC Supplies. Tony owns 30% of the shares in ABC supplies.

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**

Select the **correct** answer:

Thembi 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. Thembi 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**

Select the **correct** answer:

Rajesh 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. Rajesh 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 Rajesh 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**

Select the **most correct answer** from the options below.

An insolvency practitioner using a percentage-based 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 the value of the realisable or distributable assets.

(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**

Select 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]: 9 out of 10

**Question 2.1 [maximum 2 marks]**

The ethical principle of integrity implies “fair dealing”. How would this apply in an insolvency context?

An insolvency practitioner is required to treat people fairly or equitably when performing his or her duties. Although it is recognised that in an insolvency scenario it will not be possible to treat all the stakeholders equally, an insolvency practitioner should strive to ensure that similar stakeholders are treated fairly or equitably and to ensure that there is equitable treatment across the board.

Commented [JL4]: 2

**Question 2.2 [maximum 4 marks]**

Briefly explain the two-pronged nature of the duty to act with independence and impartiality.

An IP’s duty to act with independence and impartiality is two-pronged in nature because the IP must be independent in fact and must also be seen or perceived to be independent and impartial. Independence in fact dictates that the IP must be factually independent from anything that could impair or compromise his or her judgment. This includes all personal and professional relationships and direct or indirect interests that could adversely affect the IP’s independence. On the other hand, independence based on perception dictates that the IP must avoid circumstances that would lead to a reasonably informed third party concluding that the IP’s integrity, independence and impartiality have been compromised. Given the serious nature of an IP’s duty and the fiduciary duties an IP owes, perception is of extreme importance and it is important that the IP is seen or perceived to be independent and impartial by stakeholders in the context of insolvency proceedings.

A failure by an IP to independent and impartial, whether factually or by perception, could negate all the trust and reliance that has been placed on the IP and could lead to the discontinuance of the stakeholders’ co-operation with the IP and the insolvency process.

The IP must therefore employ a two-pronged approach when it comes to acting with independence and impartiality as being factually independent on its own will not be enough given the importance of perception. The IP must therefore ensure that he is both factually independent and independent based on perception of the relevant stakeholders.

Commented [JL5]: 4

### Question 2.3 [maximum 4 marks]

Contingency fee arrangements have been a controversial issue in relation to insolvency practitioners and their remuneration. Briefly reflect on this practice and the possible ethical issues in relation to this method of calculation.

Whether the term “contingency fees”, “success fees” or “conditional fees” is used, these arrangements have been controversial in the insolvency context. Essentially, these arrangements compensate the IP based on the occurrence of a contingency, condition or his success in the insolvency proceedings. These arrangements are usually entered into and the contingency is usually based on a successful outcome for the stakeholders. There is controversy surrounding contingency fee arrangements because an IP as a fiduciary is expected to carry out his duties with the same level of skill and care that is expected of fiduciaries, therefore, entering into a contingency fee arrangement would be otiose when the IP would already be seeking to achieve the best possible outcome for all relevant stakeholders based on his fiduciary duties. In other words, the impetus for the IP to achieve a better outcome because of the contingency fee is not necessary since he would already be trying to achieve that. Additionally, contingency fee arrangements are said to affect an IP’s duty as based on the contingency which is attached to his remuneration, this may cause the IP to divert his attention to achieving that contingency to benefit from the fee arrangement instead of focusing on carrying out his duties in a holistic manner. There is however a school of thought that there are no ethical issues with a contingency fee being paid where there is a truly remarkable outcome.

**Commented [JL6]:** 3  
If paid, outcomes should be objectively measurable.

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

**Commented [JL7]:** 13 out of 15

#### Question 3.1 [maximum 8 marks]

The ethical principle that requires insolvency practitioners to act with and maintain professional and technical competence is often linked to the duty of care. Elaborate on this duty and on the yardstick that would be used when determining whether a practitioner acted with the necessary care, skill and diligence.

Stakeholders in the insolvency context expect an IP to have the necessary professional and technical competence to perform his or her duties to the standard that would be expected of such experts. Professional and technical competence to perform an IP’s duty is often linked to the duty of care as an IP should only accept insolvency appointments the IP has or can acquire sufficient expertise and an IP should not accept appointments when he lacks capacity to properly perform his duties due to a heavy case load and would not be able to give the appointment the necessary care and attention that will be required. Additionally, professional and technical competence is also linked to the duty of care, skill and diligence as when a company is in financial distress, it is important that the IP who is appointed does not act recklessly as the objective of protecting the interests of stakeholders in an insolvency proceeding can be frustrated through the incompetence and carelessness of the IP.

Before accepting an appointment an IP, the IP should do some level of self-realisation and introspection. This requires a two-fold test in relation to the duty of care, skill and diligence which requires the IP’s conduct to be measured based on an objective as well as a subjective test. The objective test is used to determine what the reasonable ordinary skilled IP would have done in the same situation and the subjective test takes into account the general knowledge, skill and experience of the specific IP.

Although IPs are generally regarded as experts in their field, certain appointments will require expertise in a certain area or industry. For example, an IP who is an expert in

handling appointments over companies in the financial industry may not be an expert at handling a company who is in the oil business. Therefore, the ethical principles to act with and maintain professional and technical competence and to act with the necessary care, skill and diligence might dictate that the IP ought not to take such an appointment as he does not have the requisite technical and professional competence in handling such companies. However, if the IP can obtain the necessary specialised skillset to handle such an appointment then he would be better placed to fulfil his duties of acting with professional and technical competence with the necessary care, skill and diligence.

**Commented [JL8]: 6**

In order to ensure full marks reference should have been made to the UNCITRAL Legislative guide's guidance and case law on the topic.

### **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?

It is common practice for IPs to seek legal advice from attorneys due to the complex legal issues that may be involved in an appointment, however, the legal fees paid to legal professionals by an IP is often one of the most contentious administrative costs incurred by the IP.

The issue of whether the services of legal professionals can be paid as disbursements or third-party costs was considered in the Singaporean case of *Kao Chai-Chau Linda v Fong Wai Lyn Carolyn*. The court stated that the fees for services of legal professionals can be claimed (i) as part of the IP's disbursements or (ii) by being billed separately and directly to the company by the legal professionals. However, when the costs are claimed as disbursements the IP has a duty to ensure that the costs are reasonable and appropriate. On the other hand, when the costs are billed directly to the company, the IP will still have to monitor and scrutinise the bill to ensure that it is reasonable and appropriate. The IP must also be alert to issues such as duplication of work done by the legal professional, for example, multiple fee earners at a firm claiming fees for performing the same tasks or legal professionals claiming fees for work done by other professionals. In such a situation the IP has a duty to justify claims for works done where there are other professionals instructed on the same matter.

An IP must be alert to the fees being claimed by legal professionals who are instructed to assist in the insolvency process. The new Insolvency Code of Ethics by the Institute for Chartered Accountants of England and Wales (ICAEW) requires that when an IP intends to instruct a third party the IP should evaluate whether such advice or work is warranted. Additionally, the IP should document the reasons for choosing a specific service provider and to evaluate whether the service will be the best value for the creditors. In evaluating whether the service provider is offering best value, the IP should consider the following factors:

- (i) the cost of the service, the expertise and experience of the provider;
- (ii) whether the provider holds appropriate regulatory authorisation; and
- (iii) the professional and ethical standards applicable to the service provider.

The IP should also be careful when using legal professionals who he has a relationship with as it could create the perception that he is not acting independently and impartially and could breach the IP's duty to act with independence and impartiality. An IP should also ensure that there are checks and balances when a legal professional is engaged to assist in the insolvency process to ensure that the stakeholders/creditors are getting the best value for the money spent on the legal services. This could for example require the IP to create a



checklist with set target deliverables by the legal professional and reasonable estimates or fixed fees for each part of the work. The IP could then monitor the checklist to ensure that the legal professional is performing his or her duties both on time and on target budget-wise.

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 its 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 financial 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 difficulties 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.

**You are required to 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.**

There are major ethical issues which are present in the factual scenario and can be summarised under the following ethical principles:

- (i) lack of independence and impartiality;
- (ii) lack of professional behaviour;
- (iii) failure to act in the best interest of the beneficiary of the fiduciary duties;
- (iv) lack of integrity; and
- (v) failure to carry out duties with care, skill and diligence.

For convenience, each issue will be addressed under the corresponding ethical principle although it is understood that certain principles are closely intertwined and therefore the same fact may give rise to multiple ethical issues.

#### Lack of independence and impartiality

There are numerous issues involving Mr Relation's lack of independence and impartiality. These include:

- his acceptance of the appointment after providing initial advice to the directors in relation to the financial difficulties of the company;
- his acceptance of the appointment as administrator despite his personal relationship with Mr B Inlaw, one of the company's directors;
- the fact that the shareholders recognised him as Mr B Inlaw's brother-in-law and godfather of his daughter; and
- recognition of Mr Relation by Mrs Keeneye in view of previous statements made by Mr Relation against banks with the company's main creditor being a bank.

An IP should not only be factually independent but should also be perceived to be independent and impartial and will only be able to perform his duties and exercise his powers in the best interest of the stakeholders if he is independent and impartial.

Prior consultations between an IP and a relevant stakeholder may affect his independence and impartiality. Whereas not all prior consultations will affect the impartiality and independence of an IP, the nature of that consultation will play a major factor in whether the IP has lost his independence and impartiality. In this case, Mr Relation was consulted by the directors of the company in relation to the financial troubles of the company prior to his

appointment as administrator and he also gave the advice to the company that it should go into administration. Mr Relation ought not to have accepted the appointment where he had provided prior legal advice to the company on its financial situation, particularly when the suggestion was that the company go into administration and then he would become the administrator. This creates a conflict of interest as for example, Mr Relation may have negligently given the company advice and the company could possibly bring a claim for negligence against Mr Relation.

An IP should not accept an appointment where his independence and impartiality will be called into question by the existence of a relationship with a stakeholder. Even though Mr Relation disclosed the existence of his relationship with Mr B Inlaw, disclosure alone cannot necessarily cure the lack of independence and this is even more difficult since he has had a longstanding personal and professional relationship with Mr B Inlaw, one of the directors of the company. The fact that even though he disclosed his relationship with Mr B Inlaw and promised to perform his duties based on the highest ethical standards, he subsequently told the former directors that he would not be investigating them for possibly personal liability. It is clear that the disclosure by Mr Relation did not guarantee his impartiality and independence and he did not act independently and impartially when performing his duties as an IP.

An IP should not only be factually independent and impartial but he must also be seen to be as such. In this case, there are two questions that call into Mr Relation's independence and impartiality based on perception. Firstly, the shareholders recognised him as Mr B Inlaw's brother-in-law and daughter to his god daughter. This might give the impression that Mr Relation is closely affiliated with Mr B Inlaw and therefore he will not be able to independently and impartially carry out his duties in relation to the company which could potentially include bringing claims against Mr B Inlaw for personal liability in relation to insolvent trading and making payments to the directors when the company was in financial distress. This is made even clearer by the case of *Commonwealth Bank of Australia v Irving* where the IP had a close relationship with one of the former directors of the company who had resigned – the former director had provided legal advice to the IP in numerous previous appointments of the IP. Even though the IP had disclosed his relationship before taking on the appointment, the court found that his relationship with one of the former directors created the perception that he held the former director's judgment in high regard and relied on his professional advice and judgment. As a result, a reasonable person would have trouble believing that (despite the IP's assertions to the contrary) he would be able to conduct his investigations into the company without any bias. The facts of this case are similar to the case involving Mr Relation and the court would likely find that he did not act independently or impartially. Secondly, the fact that Mrs Keeneye recognises Mr Relation as having made previous inflammatory statements about banks as creditors. As ABC is a creditor of the company, Mr Relation's previous statements may create the impression that he will not act in the best interest of ABC when performing his duties as administrator.

#### Lack of professional behaviour

- recognition of Mr Relation by Mrs Keeneye in view of previous statements made by Mr Relation against banks with the company's main creditor being a bank.

An IP should always conduct himself in a manner that reflects the standards and customs associated with a profession. As an IP, Mr Relation ought to have recognised that there may be instances where he may be appointed as an IP over a company where its creditors may be "big money" creditors. By making such public statements against "big money" creditors Mr Relation may not be considered as being independent or impartial whenever he is acting in an insolvency scenario where there are big money creditors of the company.

#### Failure to act in the best interests of the beneficiaries

Mr Relation has a duty to act in the best interests of the beneficiaries. Although there are questions over who the beneficiaries are, typically, when an IP has been appointed over the company the beneficiaries will largely include the creditors of the company. It is clear from Mr Relation's actions that he was merely concerned with trying to rescue the company and although this may have been in the creditor's interests, one of the things he ought to have considered was whether the former directors could be held personally liable for the financial difficulties being faced by the company.

#### Lack of integrity

- his promise not to pursue the directors for personal liability with his focus solely being on rescuing the company
- his conducting of a superficial investigation into the company
- his preparation of a recovery plan based on superficial investigation and documents provided to him by Mr B Inlaw
- his statement that he found no evidence of wrongdoing or maladministration despite conducting a superficial investigation and being told by the directors that they were concerned they could be personally liable for insolvent trading and payments made to themselves

An IP must be honest and truthful with the stakeholders and act with integrity towards them at all times. Mr Relation, as the IP, should refrain from lying, not conceal or misrepresent any information and should be honest and truthful when reporting on his acts and dealings.

It is clear from the facts that Mr Relation misrepresented the facts to the stakeholders when he told them that his investigations into the company had found no evidence of wrongdoing or maladministration. This is evident from the fact that he only conducted a superficial investigation and he had in fact been told by the directors that they were concerned about possible personal liability for insolvent trading and payments made to themselves. Had Mr Relation acted with integrity he would have disclosed this information to the stakeholders and possibly tried to clawback the payments from the former directors and pursue them for insolvent trading.

#### Failure to carry out duties with care, skill and diligence

- his promise not to pursue the directors for personal liability with his focus solely being on rescuing the company
- his conducting of a superficial investigation into the company
- his preparation of a recovery plan based on superficial investigation and documents provided to him by Mr B Inlaw

The duty to act with care is of paramount importance in insolvency situations given the dire circumstances of the debtor. Mr Relation is under a duty to perform his duties in the manner that an ordinarily reasonably skilled and careful IP would. As a fiduciary, Mr Relation ought not to allow any relationship with any relevant stakeholder affect his ability to perform his duties with care, skill and diligence.

Firstly, Mr Relation promised not to pursue the directors for personal liability and that his focus was going to be on rescuing the company. An ordinary reasonably skilled IP would perform his duties in such a manner that if his investigations revealed that the former directors acted below an acceptable standard and were subject to be found personally liable for the company's financial troubles, then the IP would ensure that he pursues the former

directors personally for any losses that have been caused to the company that could be attributed to the acts or omissions of the directors. In this case, it is likely that an ordinary reasonably skilled IP would have found that there was a case against the directors by the company for insolvent trading and the payment of performance bonuses to themselves despite the company's financial distress.

Secondly, Mr Relation conducted a superficial investigation into the affairs of the company. Not only did Mr Relation conduct a superficial investigation into the company which dictates that he did not act with the care, skill and diligence expected of an IP, he also relied on information that was only provided to him by Mr B Inlaw, with whom he has a very close personal relationship. Mr Relation should have conducted a proper, full and complete investigation into the affairs of the company and sought information from all the other directors. By carrying out a superficial investigation in reliance on documents provided by Mr B Inlaw, Mr Relation has failed to perform his duties with the care, skill and diligence that ought to be expected from a reasonably ordinarily skilled IP. Mr Relation's subsequent preparation of a recovery plan based on the superficial investigation and documents provide by Mr B Inlaw is also indicative of conduct that falls below the acceptable standard of that of an IP. There may be a claim against Mr Relation for negligence in relation to the performance of his duties of an IP in light of the eventual liquidation of the company which may be in part due to his failure to properly perform his duties as an IP.

Overall, it could be said that Mr Relation performed his duties as an IP well below the ethical standards that are expected of an IP. As a result, Mr Relation might be subject to disciplinary measures from the oversight body and may even be pursued by the company or creditors for his performance of his duties as an IP of the [company].

Commented [JL11]: An excellent and well-structured answer.

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**\* End of Assessment \***