



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: **[studentID.assessment8D]**. An example would be something along the following lines: 202122-336.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 "studentID" 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 **7 pages**.

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ANSWER ALL THE QUESTIONS

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

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 (correct)

Which of the following remedies **is** available to a non-Indian creditor?

- (a) Recovery proceedings before the Debt Recovery Tribunal.
- (b) Enforcement of security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
- (c) Initiation of insolvency proceeding against corporate debtors under the Insolvency and Bankruptcy Code 2016.**
- (d) Mandatory out-of-court restructuring under the inter-creditor agreement.

Question 1.3 (Correct)

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.**

Question 1.4

Who among the following **can be appointed** as a liquidator under the Companies Act 2013: [\(Correct\)](#)

- (a) An Insolvency professional agency.
- (b) An insolvency professional.**
- (c) A creditor.
- (d) A judge of the National Company Law Tribunal.

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? [\(Correct\)](#)

- (a) The debtor has travelled outside India without court's approval.**
- (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 failed to maintain proper books and records of its financial position.
- (d) the debtor has brought about the insolvency due to rash and hazardous speculations.

Question 1.6

Indicate which one of the following **is not** a disqualification for an insolvent under the Provincial Insolvency Act 1920: [\(Correct\)](#)

- (a) Appointment as a magistrate.
- (b) Election to a local authority.
- (c) Voting as a member of a local authority.
- (d) Entry into a partnership for a new business.**

Question 1.7

Which of the following **has the highest priority** in bankruptcy of an individual under the Insolvency and Bankruptcy Code 2016: [\(Correct\)](#)

- (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.

Question 1.8

In which of the following processes is section 29A of the Insolvency and Bankruptcy Code 2016 **not applicable**? ([Incorrect, correct answer is \(a\)](#))

- (a) Corporate insolvency resolution process of an MSME.
- (b) Pre-pack insolvency process of an MSME.**
- (c) Sale of assets of a company in liquidation.
- (d) Sale of assets under voluntary liquidation.

Question 1.9

Which of the following avoidance actions is only available during a liquidation process under the Insolvency and Bankruptcy Code 2016? ([Correct](#))

- (a) Avoidance of preferential transactions.
- (b) Avoidance of undervalued transactions.
- (c) Disclaimer of onerous property.**
- (d) Avoidance of transactions defrauding creditors.

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: ([Correct](#))

- (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.**

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks] ([2 out of 2](#))

In the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016, briefly describe the difference between the moratorium upon filing of the petition and upon admission of the petition?

- (i) The moratorium upon filing of the petition stays any existing legal action or proceeding regarding the debt owed by the debtor and prohibits new legal action or proceeding regarding the debt owed by the debtor until the admission of such application (interim-moratorium period).

(ii) The moratorium upon admission of the petition includes the same effect as (i) but also has the effect to prohibit the debtor from transferring, alienating, encumbering or disposing of any of his assets or his legal rights or beneficial interest therein.

Question 2.2 [maximum 4 marks] (3 out of 4)

Briefly describe the priority of debts in bankruptcy under the Presidency-Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920.

The priority of debts in bankruptcy under the Presidency-Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 is as follows:

Commented [CAM2]: Should have mentioned expenses for administration of assets

A. Presidency-Towns Insolvency Act 1909

(i) First priority ((a) - (c) below are equally treated):

- (a) All debts due to any government authorities;
- (b) Salary and wages of a clerk, servant or labourer for the period of four months for the provision of services to the debtor (at the maximum, INR 300 for each clerk and INR 100 for each servant or labourer); and
- (c) Rent payable to a landlord capped at one month's amount.

(ii) Second priority

- All other debts of the debtor entered in the schedule.

B. Provincial Insolvency Act 1920

(i) First priority ((a) and (b) below are equally treated):

- (a) All debts due to any government authorities; and
- (b) Salary and wages of a clerk, servant or labourer for the period of four months for the provision of services to the debtor (at the maximum, INR 20 in total).

(ii) Second priority

- All other debts of the debtor entered in the schedule.

Question 2.3 [maximum 3 marks] (3 out of 3)

Indicate the situations in which an adjudication as a bankrupt may be sought under the Insolvency and Bankruptcy Code 2016?

An adjudication as a bankrupt may be sought under the Insolvency and Bankruptcy Code 2016 under the following situations:

- (i) where the court rejects an IRP application based on the resolution professional's report predicated that the application was made to defraud creditors or the resolution professional;
- (ii) where the court rejects the repayment plan submitted by the debtor; or
- (iii) where the court decides that the approved repayment plan has not been performed completely.

Question 2.4 [maximum 1 mark] (0.5 out of 1)

What kind of foreign judgements are eligible for enforcement in India?

A judgement by a foreign court in one of the 12 reciprocating territories (including the United Kingdom, Singapore, United Arab Emirates and Hong Kong) is generally eligible for enforcement in Indian courts unless the judgement does not fall within the exception set out in Article 13 of the Civil Procedure Code.

Commented [CAM3]: Judgement has to be for a sum of money

For a judgement by a foreign court in a non-reciprocating territory to be executed, a new lawsuit will need to be brought to Indian courts.

QUESTION 3 (essay-type questions) [15 marks in total] (11 out of 15)

Write a short essay on the liquidation process of a company under the Insolvency and Bankruptcy Code 2016, focusing on the process of the disposal of assets and distribution of the proceeds.

Your answer should make reference to at least the following:

- the various means of sale of assets available to the liquidator including the eligibility requirements to purchase assets in liquidation;
- the priority of debts in liquidation; and
- a timeline for completion of the liquidation process.

1. Liquidation under the Code

There are two routes to liquidation process of a company under the Insolvency and Bankruptcy Code 2016 ("Code"): (i) liquidation after a corporate insolvency resolution process ("CIRP") and (ii) voluntary liquidation, as discussed in details below.

2. Liquidation after a CIRP

(1) Overview

If any of the following events occurs in relation to a CIRP process, the National Company Law Tribunal ("NCLT") may order the liquidation of the corporate debtor:

- (i) the resolution professional was not able to submit a resolution plan approved by the committee of creditors ("CoC") to the NCLT within the CIRP period;
- (ii) the NCLT rejected the resolution plan submitted to it;
- (iii) the CoC has resolved to liquidate the corporate debtor with 66% approval by value; or
- (iv) the corporate debtor violated the resolution plan approved by the NCLT, and any third party (whose interests were adversely affected) has filed for liquidation of the corporate debtor.

(2) Disposal of Assets

How a liquidator should dispose the corporate debtor's assets is set out in the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations").

First, the liquidator needs to make efforts to propose a scheme of arrangement or compromise under the Companies Act during the 90 day period from the liquidation commencement date.

Second, in the case where the CoC has recommended to sell the corporate debtor as a going concern, the liquidator needs to attempt to do so. If such sale as a going concern does not take place during the 90 day period from the liquidation commencement date, the liquidator must sell the assets in another way.

In principle, the liquidator must sell the debtor's assets by (i) public auction. However, under certain limited circumstances such as urgent needs for the asset sale, the liquidator is allowed to sell the assets by way of (ii) private sale.

Commented [CAM4]: Should have mentioned modes of disposal

Commented [CAM5]: Should have specified these circumstances

The liquidator is prohibited from selling any of the debtor's assets to his or the corporate debtor's related parties or any professional appointed by him. The debtor's assets also cannot be sold to any of the persons who are not eligible to submit a resolution plan for the corporate debtor under Section 29A of the Code.

(3) Distribution of Proceeds

The liquidator must distribute the proceeds received from the realization of the assets in accordance with the order stipulated under Section 53 of the Code (as cited below).

- (a) *the insolvency resolution process costs and the liquidation costs paid in full*
- (b) *the following debts which shall rank equally between and among the following:*
 - (i) *workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*
 - (ii) *debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;*
- (c) *wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
- (d) *financial debts owed to unsecured creditors;*
- (e) *the following dues shall rank equally between and among the following:*
 - (i) *any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*
 - (ii) *debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
- (f) *any remaining debts and dues;*
- (g) *preference shareholders, if any; and*
- (h) *equity shareholders or partners, as the case may be.*

(4) Timeline for Liquidation Process

In general, the liquidator must complete the liquidation process within one year (if the liquidator attempts to sell the debtor as a going concern, 90 days are added). Otherwise, the liquidation needs to apply to the NCLT for the extension of the liquidation period with an explanation about the reasons of such extension. After the completion of the liquidation process, the liquidator submits to the NCLT the final report together with an application for dissolution of the debtor, and upon the NCLT's order to dissolve the debtor, the debtor becomes dissolved.

In case where the assets to be realized are not sufficient to cover the liquidation costs, and any further investigation about the corporate debtor is not needed, the liquidator may make an application to the NCLT for early dissolution of the debtor.

3. Voluntary Liquidation

If a company is not in default of its payment obligations, it may put itself under voluntary liquidation by obtaining 75% approval from its shareholders and appoint an insolvency professional as liquidator.

The process of disposal of the debtor's assets and distribution of proceeds is generally the same as the one described in Section 2 (2) and (3) above.

Regarding the timeline, the liquidator must make effort to complete the liquidation process within 12 months. If more time is required, the liquidator needs to hold a shareholders' meeting within 15 days after the 12 month period and provide an annual status report.

After the completion of the liquidation process, the liquidator submits the final report to the NCLT, the Registrar of Companies and the Insolvency and Bankruptcy Board of India together with an application for dissolution of the debtor, and upon the NCLT's order to dissolve the debtor, the debtor becomes dissolved.

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

Fours and Sixes Limited (the Company) owns a cricket stadium in India. Due to the COVID-19 pandemic, there were no games played in the stadium and the revenue was negligible. In the latest meeting of the Board of Directors of the Company, it was noticed that the financial performance of the Company has not improved materially and that the Company is likely to default on an upcoming payment instalment to its creditors in June 2022. The lenders of the Company are primarily Indian banks.

The Board of the Directors of the Company has contacted you to advise them on the options available to them and key considerations. In this context, answer the questions below.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 7 marks] (3 out of 7)

Prepare a note for the Board on the legal regime for an out-of-court debt restructuring for the Company.

There are the guidelines regarding the out-of-court workouts issued by the Reserve Bank of India in 2019, with which the previous ones were replaced. Indian banks are expected to follow the guidelines.

Under the current guidelines, the relevant Indian banks and financial institutions must review the debtor's financial situation for 30 days from the default and decide whether they wish to restructure the debtor's debt. If they decide so, they must enter into an inter-creditor agreement that provides for a standstill and the mechanics for the banks to achieve an out-of-court resolution plan.

Commented [CAM6]: What are the next steps after the ICA?

In this case, as the Company is likely to default on an upcoming payment instalment to its creditors in June 2022, according to the guidelines, the banks will review the Company's financial situation for 30 days from the default and (if they decide to do so) they will enter into an inter-creditor agreement as described above.

Question 4.2 [maximum 8 marks] (5 out of 8)

Prepare a note for the Board describing their powers and duties during a corporate insolvency resolution process of the Company.

During the CIRP period of the Company, generally, the interim resolution professional ("IRP") or the resolution professional (after its appointment) ("RP") has the power to manage the Company. On the other hand, the powers of the board of directors of the Company is suspended. In addition, the directors of the Company report to the IRP or RP and are obligated to grant the IRP or RP the access to all the documents and records of the Company.

Although the Board of the directors is suspended during the CIRP period, the members of the Board are eligible to attend the meetings of the CoC as non-voting participants.

Under the pre-pack insolvency resolution process for MSMEs, which was introduced in 2021, the powers and the duties of the board of directors remain the same while the powers of the resolution professional under the pre-pack process are limited.

However, in this case, it is highly likely that the Company is not eligible to use the pre-pack proceeding since the Company does not fulfil the requirements to be an MSME under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (the threshold for the investment in equipment is "not exceeding INR 50,000,000") considering the fact that the Company owns a cricket stadium in India.

Commented [CAM7]: Fraudulent trading etc not mentioned

[\(36.5 out of 50\)](#)

*** End of Assessment ***