



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**.

ANSWER ALL THE QUESTIONS

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

Who among the following **can be appointed** as a liquidator under the Companies Act 2013:

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

Question 1.5 (Correct)

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 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 (Correct)

Indicate which one of the following **is not** a disqualification for an insolvent under the Provincial Insolvency Act 1920:

- (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 (Correct)

Which of the following **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.

Question 1.8 (Correct)

In which of the following processes is section 29A of the Insolvency and Bankruptcy Code 2016 **not applicable**?

- (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 (Correct)

Which of the following avoidance actions is only available during a liquidation process under the Insolvency and Bankruptcy Code 2016?

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

Question 1.10 (Correct)

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.

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?

The difference between the moratorium upon filing of the petition and upon admission of the petition is that when filing an application, a moratorium is declared in relation to all creditor actions and continues until the date of the admission of the application. Once the application is admitted, a moratorium is declared on all the creditor actions and disposal of assets by the debtor and continues for a period of six months, beginning on the date of admission of the application

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.

under the Presidency-Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 are until the present day the Laws related to insolvency. Under both Acts, the priority is given to the expenses of administration of the debtor's estate, then to the Government or to any local authority and salary and wages of a clerk and laborer for the period of four months for rendering services to the debtor. Under the Presidency-Towns Act, rent due to a landlord not exceeding one month's rent is given the same priority as the dues.

Commented [CAM1]: Limits for clerk's and laborer's wages should have been specified

All of the priority debts need to be paid in full, unless the assets are insufficient to meet them, in which case they are to be paid in equal proportion among themselves.

After that, all debts of the debtor entered in the schedule are to be paid rateably from the proceeds of realization of assets without any preference.

Question 2.3 [maximum 3 marks] (0 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 of the debtor as a bankrupt can be started with a petition in cases where the debtor commits an "act of insolvency".

An "act of insolvency can be: (i) Transfer by the debtor, in India or elsewhere, of all or substantially all his property for the benefit of his creditors; (ii) Transfer by the debtor of its property or any part thereof with intent to defeat or delay his creditors; (iii) Transfer by the debtor of its property or any part thereof which would be void under any other enactment as a fraudulent conveyance; (iv) Departure or seclusion of the debtor.

It also can be (v) Sale or attachment of property in execution; (vi) Petition by the debtor to be adjudged an insolvent; (vii) Notice of suspension of payments; (viii) Imprisonment in execution of a money decree; and (iv) Non-compliance of an insolvency notice issued by a creditor.

Commented [CAM2]: Incorrect answer, the question was on the Insolvency and Bankruptcy Code and not on other Bankruptcy Acts.

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

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

It's important to note that there is no distinction between the rights of an Indian creditor and a foreign creditor under the Code; Indian law has long recognised the ability of foreign creditors to participate in Indian insolvency proceedings. India identifies 12 countries as "reciprocating territories" with specific courts of specific countries. A decree from such courts can be enforced in India as a decree from an Indian court (with certain exceptions) Decrees from other countries will not be enforceable in India and a fresh suit will have to be filed in India for the same cause of action

Commented [CAM3]: Should have covered that these have to be money decrees

QUESTION 3 (essay-type questions) [15 marks in total] (2 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.

The debtor will be liquidated in some cases such as if (i) no resolution plan is presented to the National Company Law Tribunal for approval; (ii) the plan submitted to the National Company Law Tribunal, after approval of the committee of creditors, is rejected for any reason; (iii) the committee of creditors decides, by a 66% majority (by value), that the corporate debtor ought to be liquidated; or (iv) the resolution plan as approved by the National Company Law Tribunal is breached.

Commented [CAM4]: Within the CIRP timeline

When in liquidation, the liquidator can then sell the assets of the corporate debtor standalone, collectively or in parcels.

By the time the assets are realized, there will be a payment sequency in a priority of debts: (i) the amounts raised as interim finance during the CIRP to be part of the insolvency resolution process costs, which costs are required to be paid in priority to other debts of the company; (ii) unsecured financial creditors priority over unsecured non-financial creditors considering that all unsecured creditors are treated equally amongst each other; and (iii) the dues to Government are subordinated to all financial creditors including unsecured financial creditors. Only secured creditors enjoy this priority.

Commented [CAM5]: And liquidation costs

Commented [CAM6]: Doesn't mention the priority of workmen and secured creditors and employees etc

So, the priority of payments goes through the expenses of administration of the debtor's estate, then to the Government or to any local authority and salary and wages of a clerk, or laborer for the period of four months for rendering services to the debtor. All the priority debts need to be paid in full, unless the assets are insufficient to meet them, in which case they are to be paid in equal proportion among themselves.

Commented [CAM7]: This is not relevant for a liquidation under the insolvency and Bankruptcy Code

After that, all debts of the debtor entered in the schedule are to be paid rateably from the proceeds of realization of assets without any preference.

Regarding to the timeline for completion of the liquidation process, the Code provides that the corporate insolvency resolution process (CIRP) must be completed within 180 days from the date of admission of the application. However, if the committee of creditors passes a resolution with a 66% majority voting share in value to extend the timeline, there could be an extension. If the National Company Law Tribunal is of the opinion that the CIRP cannot be completed within 180 days, it may extend the duration of by a no longer period than 90 days.

In August 2019, section 12 of the Code was amended to stipulate that the CIRP has to be completed within a maximum of 330 days, including any extension granted by the National Company Law Tribunal.

Commented [CAM8]: Question is on liquidation and not on CIRP

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] (0 out of 7)

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

To the Board important to note that cross-border insolvency regime in India is not developed except in some cases such as child custody and anti-suit injunctions, there has been no case where the Indian courts accepts corporate insolvency.

India has not yet adopted the UNCITRAL Model Law on Cross-Border Insolvency (Model Law) and there is no special framework in place for dealing with cross-border insolvency cases.

On the other hand, there is no distinction between the rights of an Indian creditor and a foreign creditor under the Code; Indian law has long recognised the ability of foreign creditors to participate in Indian insolvency proceedings. India identifies 12 countries as "reciprocating territories" with specific courts of specific countries.

A decree from such courts can be enforced in India as a decree from an Indian court (with certain exceptions) Decrees from other countries will not be enforceable in India and a fresh suit will have to be filed in India for the same cause of action.

The Indian Code of Civil Procedure contains more than 200 sections to deal with cross-border insolvency cases. And the Government of India can enter into bilateral treaties with other countries to set out the manner and process of dealing with cross-border insolvency cases (although no such treaties have been signed till date). To start an application is necessary to request to a relevant court outside India (being in a country with which India has signed a bilateral treaty) for assistance in relation to assets of the corporate debtor situated outside India and within the jurisdiction of such court outside India.

Commented [CAM9]: The question is about out-of-court restructuring and not about cross border insolvency or enforcement of foreign judgements

Question 4.2 [maximum 8 marks] (2 out of 8)

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

The liquidation order passed by the National Company Law Tribunal is deemed to be a notice of discharge to the officers, employees, and workmen of the corporate debtor. From the date of his appointment, the management of the affairs of the corporate debtor is vested in the

interim resolution professional and the powers of the board of directors, or other governing body of the corporate debtor, is suspended.

Commented [CAM10]: Question not about liquidation

However, to help MSMEs that have been deeply affected by the COVID-19 pandemic, the Indian Government in April 2021 introduced a pre-packaged insolvency resolution process framework (pre-pack) for MSMEs by way of an ordinance.

The National Company Law Tribunal appoints that with the admission of the application for Pre-Pack the court will appoint a resolution professional approved by the financial creditors to take care of the proceedings, but the powers of the Board of Directors of the debtor are not vested in the resolution professional and the Board continues to function.

Also, duties of the Board of Directors apply during the pre-pack process, which includes the duty to protect and preserve the property of the MSME and manage its operations as a going concern.

(19.5 out of 50)

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