



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).
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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] (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 (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 (Incorrect, correct answer is (a))

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?

Upon the filing of an application for an individual insolvency resolution process, a moratorium arises which prevents creditors commencing or continuing actions against the debtor until the application is admitted. Once admitted, that moratorium remains in place but is expanded to also prevent the debtor from disposing of assets. This expanded moratorium remains in place for six months from the date of admission.

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.

Pursuant to the Presidency-Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 (the "Bankruptcy Acts"), the realisations arising from bankruptcy are applied in the following order of priority:

1. Firstly, in satisfaction of the expenses of the administration of the debtor's estate (e.g. the Official Assignee or Receiver's fees);
2. Second, jointly between preferential debts, which are:
 - a. debts due to the Government of India or any local authority;
 - b. wages of a clerk, servant or labourer for the period for four months for rendering services to the debtor (capped at INR 300 per clerk and 100 [er servant or labourer under the Presidency-Towns Insolvency Act 1909 and INR 20 under the Provincial Insolvency Act 1920; and
 - c. rent due to a landlord up to a limit of one month's rent; and
3. all other debts of the debtor (on a pro rata basis and without any preference).

Commented [CAM1]: This is relevant only for Presidency-Towns Act

Question 2.3 [maximum 3 marks] (2 out of 3)

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

To fall within the scope of the Code's bankruptcy provisions, currently the debtor must be a personal guarantor of a corporate entity's debts.

An adjudication as a bankrupt pursuant to the Insolvency and Bankruptcy Code may be sought:

1. if an insolvency resolution process application is rejected by the court on the grounds the resolution professional submitted the application with the intention to defraud creditors;
2. where the debtor prepares a repayment plan that is rejected by the resolution; or
3. the court has ordered that an approved repayment plan cannot be implemented to completion.

Commented [CAM2]: Application need not be submitted by the resolution professional

In the above scenarios, the debtor itself or a creditor has three months to make an application to the court where an insolvency professional may be nominated for a bankruptcy order.

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

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

Pursuant to section 44A of the Code of Civil Procedure, 1908, judgments passed by 'designated' courts of a reciprocating territory in a foreign country are eligible for enforcement in India, provided the foreign judgment is a money judgment and not awarded for taxes or of a nature similar to taxes. Designated courts are allocated by

the Government of India. The court may refuse to enforce such a judgment if any of the grounds set out in section 13, Civil Procedure Code is established.

QUESTION 3 (essay-type questions) [15 marks in total] (14 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.

This essay first considers the process for compulsory liquidation under the Insolvency and Bankruptcy Code 2016 (the "Code"). It then considers the process for voluntary liquidation. These processes are only available in respect of corporate debtors.

Compulsory liquidation will arise if a corporate insolvency resolution process ("CIRP") is unsuccessful. Specifically, the National Company Law Tribunal ("NCLT") (being the tribunal with authority to grant orders commencing liquidation pursuant to the Code) can order a company be placed into liquidation if:

1. the resolution professional does not submit a resolution plan to the NCLT which has been approved by the applicable committee of creditors within the required deadline;
2. the NCLT rejects any resolution plan submitted by the resolution professional on the grounds of non-compliance with the Code;
3. the resolution professional intimates to the court that over two-thirds of the committee of creditors has voted to liquidate the assets of the debtor; or
4. the debtor breaches a resolution plan that has been approved by the NCLT a party (other than the debtor itself) that is prejudiced by that conduct makes an application to the NCLT to liquidate the debtor company's assets,

(s. 33(5), the Code).

If the NCLT make a liquidation order, the following consequences arise:

- a. the liquidation of the debtor commences from that date;
- b. an announcement is made giving notice that the debtor is in liquidation;
- c. the NCLT will arrange for the liquidation order to be filed with the authority that the debtor is registered with (i.e. the Ministry of Corporate Affairs of the Registrar of Companies);
- d. a liquidator is appointed. Unless they decline to act, usually, this will be the resolution professional;
- e. an automatic moratorium applies (s.33(5) of the Code), which prevents:
 - a. any legal proceedings being brought against the debtor;
 - b. any legal proceedings being commenced by the debtor company (unless brought by the liquidator on behalf of the company and with the NCLT's prior approval);

- f. Deemed notice of discharge is given to the debtor's officers, employees and workmen (unless the liquidator intends to carry on the company's business during the liquidation).

The liquidator can then exercise the powers provided for under s.35(1) of the Code to carry out the liquidation. A detailed review of the scope of these powers is outside the scope of this essay, but some of the key powers which relate the realisation of assets and distribution of payments include the liquidator's power to:

- i. take custody or control of the debtor's assets, property, effects and actionable claims that form part of the liquidation estate;
- ii. sell immovable and movable property and actionable claims by specified process (considered below);
- iii. institute or defend any suit, prosecution or other legal proceedings in the name or on behalf of the debtor; and
- iv. investigate the debtor's financial affairs to determine antecedent transactions (and subsequently, to pursue them).

Realisation of Assets

Before the liquidator can sell the debtor's assets on a breakup basis, there are several obligations that (may) apply to them.

Firstly, the liquidator is obliged to attempt to propose a scheme of arrangement or compromise pursuant to the Companies Act. The proposed scheme must be produced within 90 days of the liquidation order. Any time taken attempting to prepare such proposal is excluded from the liquidation period (which is important when considering the time limits imposed on liquidations generally, as considered below).

Second, if the CIRP committee of creditors recommends the debtor's assets be sold as a going concern, the liquidator is obliged to attempt to complete a sale on this basis. If such a sale has not completed within 90 days of commencement of the liquidation, the liquidator will proceed to sell the debtor's assets on a breakup basis (Regulation 32A, Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the "Regulations")).

Once the liquidator is in a position to sell the assets on a breakup basis, they have the power to do so by selling assets on a stand-alone basis, collectively, on a slump-sale basis or in parcels.

The default position under the Regulations is that the liquidator will sell the assets at a public auction. However, the liquidator may sell the assets by private sale if the relevant assets (i) are perishable, (ii) they are likely to deteriorate in value if not sold immediately, (iii) are not sold at a prior public auction and the liquidator then obtains a price higher than the reserve price applicable at that auction, or (iv) are subject to the permission of the NCLT permitting the sale of such assets outside of public auction (Regulation 33).

A liquidator must not sell any of the debtor's assets to:

1. themselves, any 'related party' or any professional appointed by them, unless prior permission has been obtained by the Adjudicating Authority; or
2. any persons that would be excluded from submitting a resolution plan in respect of the relevant debtor pursuant to section 29A of the Code. Section 29A provides an extensive, comprehensive and cross-jurisdictional list of excluded parties and therefore will not be recited here. A few notable exclusions include any persons:
 - a. that are undischarged insolvents; and

- b. any persons that were promoters or in the management or had control of the debtor company and the debtor company has carried out any preferential, undervalue, extortionate credit or fraudulent transaction.

The liquidator will not automatically be able to sell assets secured to third parties as a secured creditor has the option to realise its security interest. If it wishes to do so, it must confirm this intention to the liquidator within 30 days of the commencement of the liquidation. If it does not do so, it will be deemed to relinquish its security: the charged assets will become part of the liquidation estate, be realised in the manner set out above and proceeds distributed in accordance with the order of priority set out below.

Commented [CAM3]: Able TO?

After giving notice of its intention to release its security within the required timeline, the secured creditor can realise the secured asset and recover the proceeds less deductions for (i) its share of the CIRP costs and (ii) workmen's duties due by the Company for 24 months (payable within 90 days of commencement of the liquidation).

Distributions to Creditors

A liquidator must collect the claims of creditors within 30 days of commencement of the liquidation (s.38 of the Code). To do so, they are required to comply with various notification requirements, such as making a public announcement in a local and national newspaper. The liquidator will then review the claims received and must adjudicate them within 30 days from the final day for creditors to submit their claim. The liquidator will apply a number of rules set out in Regulation 30 of the Regulations to determine whether to admit or reject the claims (in either full or part). A liquidator's decision can be appealed by creditors to the Adjudicating Authority within 14 days of receipt of the liquidator's decision.

Commented [CAM4]: typo

Accepted claims will then be eligible to receive a distribution in the liquidation. Assets are distributed in accordance with the statutory order of priority set out at s. 53 of the Code, which provides for the following waterfall:

1. all costs of the CIRP and liquidation costs (with the liquidator's remuneration to be calculated in accordance with Regulation 4 of the Regulations) (to be paid in full);
2. workmen's dues for the period of 24 months ending on commencement of liquidation and debts owed to a secured creditor that has relinquished their security (to rank equally);
3. wages and unpaid dues owed to employees (other than workmen) for the period of 12 months ending on commencement of liquidation;
4. financial debts owed to unsecured creditors;
5. amounts due to the Central Government and the State Government and any shortfall due to a secured creditor following the enforcement of their security (to rank equally);
6. remaining debtors and dues; and
7. shareholders/partners of the debtor (with preferential shareholders ranking in priority to equity shareholders or partners).

Timeline

The liquidator must complete their liquidation of the debtor company's assets within one year of commencement of the liquidation. A 90-day extension applies if the liquidator has attempted a sale of the debtor's assets as a going concern. Further, as stated above, the period in which a liquidator attempts to put forward a scheme of arrangement or compromise will not be included in this deadline (up to a further 90 days).

The Indian insolvency regime recognises that it may not be possible to realise certain assets within this relatively narrow default time frame, and therefore has recently developed to allow liquidator's to assign assets that are not 'readily realisable'. Such assets include certain causes of action, including those for challenging preference, undervalue, extortionate credit and fraudulent transactions under the Code.

If the liquidator has not completed the liquidation within the required time, they must apply to the NCLT to explain the reasons for the delay and specify the extra time required.

The liquidator is also able to apply to the NCLT to move the debtor company to dissolution (thereby prematurely ending the liquidation) if it appears there are insufficient assets to cover the liquidation costs.

Various other time limits apply during the liquidation process, some of which are explored above, which are outside the scope of this essay. They principally relate to various reporting obligations on the liquidator.

Voluntary Liquidation

A debtor can put itself into voluntary liquidation by passing a special resolution (requiring over 75% of member support) to do so. A lower threshold of an ordinary resolution can apply if provided for in the debtor's articles. The shareholders' resolution will also confirm who is to act as the liquidator.

A debtor cannot use this process if it is already in default of its payment obligations to creditors. It is only available where the director(s) of the debtor swears in an affidavit that (i) they have carried out a full inquiry into the company's affairs and are of the opinion it is has no debts or will be able to pay its debts in the liquidation process and (ii) the liquidation is not intended to defraud any person. If a liquidator determines the above criteria cease to exist at any point during the liquidation process, they can make an application to the NCLT to suspend the voluntary liquidation and for the NCLT to make such order as it sees fit.

The process for notifications, submitting and adjudicating proofs of claims, realising assets, distributing proceeds of assets and investigative and antecedent transactions is the same as that for compulsory liquidators.

Similarly, there is also a 12-month deadline for the voluntary liquidator to complete the liquidation. If they do not do so, the liquidator must hold a meeting of the debtor's contributories (within 15 days of expiry of the 12-month period) and present an annual status report. This can be done annually.

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] (7 out of 7)

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

Application

India has a rescue focused insolvency regime. As part of this, it has guidelines for out-of-court workout, which are issued by the Reserve Bank of India ("RBI") and which are followed by Indian bank. This process is relevant to the Board as it appears the Company's largest creditors are its Indian bank lenders.

Process

The current guidelines for out-of-court work outs were issued by the RBI on 7 June 2019 and supersede all previous guidelines issued on the subject matter. They provide that:

1. On the occurrence of an event of default, Indian banks and financial institutions must review the financial status of the Company for 30 days, after which they must determine whether they wish to restructure their debt with the Company.
2. If the banks and financial institutions do wish to pursue a restructuring, they are required to enter into an inter-creditor agreement (between all banking and financial institutions that are creditors of the Company) which (i) sets out the proposed mechanics for putting in place an out-of-court resolution plan and (ii) also provides for a standstill on all enforcement action against the Company.
3. There is then an initial 180 day period, commencing from the date of default, within which to complete the out-of-court resolution plan. If the plan is not agreed within this period, the creditors (i.e. the bank's and financial institutions) must make additional provisioning on the non-performing loans at a specified rate of 20% from the 181st day and 15% from the 366th day). This additional provisioning means the creditors are recognising a loss on their loans ahead of time. As a result, the banks have an incentive to agree a timely workout, or to abandon the restructuring altogether if it appears not feasible. the provisioning may be reversed in the event of the Company's subsequently entering insolvency proceedings.

Appropriateness

The appropriateness of pursuing an out-of-court restructuring will depend on various factors, including (i) the number of different financial institutions the Company has received finance from, any inter-creditor arrangements they have in place and therefore their appetite to collectively pursue a rescue and (ii) the number of other, unsecured trade creditors with the requisite debt level that may look to scupper the rescue by instigating insolvency proceedings in respect of the debt. In respect of (ii), it is notable that the out-of-court restructuring route does not afford the Company the protection of a moratorium on proceedings being brought against it, as the in-court process does.

Commented [CAM5]: excellent point!

Advice to the Board

If the Board considers the Company is capable of rescue and wishes to pursue such an option, the Board should engage with the Company's lenders as soon as possible and provide them with all requested information to allow the lenders to determine whether they consider the

Company is a viable option for restructuring. This will include providing additional creditor information, cash flow forecasts, etc.

Question 4.2 [maximum 8 marks] (6 out of 8)

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

It is understood that the Board does not require detailed advice on the process for implementing a corporate insolvency resolution process (the "CIRP") in this note and that they are aware that the CIRP is a rescue mechanism, whereby control of the Company is handed to an insolvency professional for a designated period, such that eligible parties can put forward resolution plans to save the Company as a going concern. During this period, a moratorium will apply which protects the Company from having enforcement action taken or commenced against it.

This note will first address the powers and duties of directors in the ordinary CIRP process. As the Company's financial difficulties have arisen during COVID, and as we do not have sufficient information to determine whether the Company is a micro, small and medium enterprise (an "MSME"), the note will go on to consider the powers and duties of directors in a pre-pack insolvency resolution process (a "pre-pack") implemented by the Indian Government in April 2021 by way of ordinance.

Suspension of the Powers of the Board

During the CIRP, the ordinary powers of the Company's Board are suspended. The Board does not have the right to manage the Company, its affairs, or assets in anyway. This suspension occurs from commencement of the CIRP, which is the date on which the CIRP application is first admitted by the National Company Law Tribunal (the "NCLT"), also being the date on which the moratorium applies which prevents actions being taken or continued against the Company.

Commented [CAM6]: This actually occurs from the date of the appointment of the IRP

While the Board's powers are displaced, the responsibility for managing the affairs of the Company is vested in (i) the interim insolvency professional appointed by the NCLT on commencement of the CIRP and (ii) from the first meeting of creditors, the resolution professional appointed by a 66% resolution of the committee of creditors (which may or may not be the same individual as the interim resolution professional).

Duties of the Board

During the CIRP, the Board is subject to a duty to report to the interim resolution professional and provide them with access to all documents and records of the Company as the interim resolution professional may require.

The Board is encouraged to cooperate with the resolution professional in this respect. A failure to do so may result in action being brought by the resolution professional against members of the Board.

Powers to Participate in the CIRP

The Board can participate in the CIRP in certain, limited ways.

Firstly, the Board shall have the power to attend meetings of the committee of creditors in the CIRP. While the Board will not be entitled to vote at such meetings, which is where vital

decisions concerning the CIRP are voted on (such as which resolution plan shall be proposed), their attendance means that they can continue to have visibility over such key matters.

Second, members of the Board (or them collectively) may also have the power to present a resolution plan, provided none of them fall within the list of excluded persons set out at section 29A of the Code. Provided that resolution plan is compliant with the Code and the Regulation (as confirmed by the resolution professional's examination), it will be put before the CIRP's committee of creditors and voted upon in the usual way.

Hand Back of Power

Once a resolution plan is approved by the NCLT (following approval by the committee of creditors) the resolution professional will vacate his office and the ordinary powers and duties of the Board will be reinstated. This is subject to any amendments to the Board, its powers and duties that are provided for by the approved resolution plan. The moratorium preventing creditor action against the Company also falls away at this stage.

If the CIRP fails, the Company will move to liquidation. A liquidator will be appointed, and the control of the Company will not revert to the Board at any stage.

Claims against the Board

While not linked to their powers and duties during the CIRP, the Board should also be aware that their conduct of the affairs of the Company prior to commencement of the CIRP will be reviewed. If they have breached their duties, exceeded their powers, or carried out any antecedent transactions (as detailed in Code), the Board's members may be subject to claims brought by the resolution professional in the name of the Company.

Commented [CAM7]: Should have mentioned wrong and fraudulent trading too

Pre-Pack

If the Company is a MSME it may be eligible to enter a Pre-Pack.

An MSME is a company that has:

- (a) less than INR 1,00,00,000 investment turnover and INR 5,00,00,000 annual turnover (a micro enterprise);
- (b) less than INR 10,00,00,000 investment turnover and INR 50,00,00,000 annual turnover (a small enterprise); or
- (c) less than INR 50,00,00,000 investment turnover and INR 250,00,00,000 annual turnover (a medium enterprise).

The Company will be eligible to file to initiate a Pre-Pack (in respect of itself) if it:

- i. is in default of INR 1 million;
- ii. has shareholder approval to do so (by special resolution, i.e. over 75% of member support) and approval from unrelated financial creditors of 66% majority;
- iii. has not subject to a CIRP or liquidation under the Code;
- iv. has not undergone a pre-pack or completed a CIRP in the last 3 years; and
- v. it is not otherwise ineligible under section 29A of the Code.

The key difference in a Pre-Pack as against a CIRP from the Board's perspective is that the Board continues to function. Its powers remain in situ and the resolution professional adopts a more limited, supervisory function.

During the Pre-Pack, the Board is subject to additional duties. This includes a duty to preserve and protect the property of the Company and to manage its operations as a going concern. These duties mirror those that a resolution professional is subject to in any ordinary CIRP.

(44 out of 50)

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