



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] (8 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 (Incorrect, correct answer is (b))

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 (Incorrect, correct answer is (a))

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 there is a stay against the disposal of the assets by the debtor which will continue to be enforce for a period of six months beginning on the date of admission of the petition of the Insolvency Resolution Process.

Question 2.2 [maximum 4 marks] (4 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 debts in bankruptcy under the Presidency-Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 is as follows:

1. First priority to the expenses of administration of debtor's estate;
2. Secondly, all debts due to the Government or to any local authority and salary and wages of a clerk, servant or labourer for the period of four months for rendering services to the debtor (not exceeding in the case of Presidency-Towns Act, INR 300 for each clerk and INR 100 for each such servant or labourer and in the case of the Provincial Act, not exceeding INR 20 in total), and rent due to landlord not exceeding one month's rent. These preferential debts rank equally among themselves and are to be paid in full, unless the assets are insufficient to meet the payments, the debts are to be paid in equal proportion among themselves.
3. All debts of the debtor entered in the schedule.

Commented [CAM1]: This is not applicable for Provincial Insolvency 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?

An adjudication as a bankrupt may be sought under the Insolvency and Bankruptcy Code 2016 in the event that the Court has rejected the IRP application based on the report by the resolution professional that avers that the application was made with the intention to defraud creditors or the resolution professional. An adjudication as a bankrupt can also be sought where the Court has passed an order that the approved repayment plan could not be implemented completely.

Commented [CAM2]: Rejection of repayment plan by the court is another ground.

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

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

Foreign judgements which has been passed by a designated court in a reciprocating territory outside India and that the judgment is not in relation to taxes or other charges similar in nature to taxes are eligible for enforcement in India.

QUESTION 3 (essay-type questions) [15 marks in total] (10 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.

Under the Insolvency and Bankruptcy Code 2016, a company can be placed in liquidation when:

- a. an order is made by the National Company Law tribunal to liquidate the company following occurrence of specific events at the end of the corporate insolvency resolution process (CIRP); and
- b. the company has voluntarily place itself in liquidation and that 75% of the shareholders of the company has resolved to place the company in voluntary liquidation.

Commented [CAM3]: What are the specific events?

Upon being placed under liquidation, no suit or other legal proceeding may be instituted by or against the company (other than by the liquidator on behalf of the company upon approval by the National Company Law Tribunal). Upon passing of the liquidation order, the officers, employees and workmen of the company is discharged except when the business of the company is continued by the liquidator during the liquidation process.

During liquidation, the liquidator shall take custody and control of all assets, property, effects and actionable claims of the company. The liquidator will then evaluate the assets and property of the company and prepare an asset memorandum. The asset memorandum will detail the value of the asset which is valued by at least two registered valuers, the intended mode of realisation of the asset and the expected amount of realisation. The asset memorandum will then be submitted to the National Company Law Tribunal.

The liquidator will then exercise his powers to sell the immovable and moveable property and actionable claims of the company by public auction. The liquidator can also sell the asset of the company by way of a private sale if the value of the asset deteriorates if not sold immediately, perishable assets, the value of the assets is higher than the reserved price of a failed auction or prior permission from the National Company Law Tribunal has been obtained. Pursuant to the Liquidation Regulations, the liquidator can sell the assets on a stand-alone basis, collectively, on a slump-sale basis, or sell the assets in parcels. Further, the liquidator can also sell the company or business of the company as a going concern. The liquidator, the parties related to the company, and any professional appointed by the liquidator are not eligible to purchase the asset of the company in liquidation without approval from the Adjudicating Authority.

Commented [CAM4]: What about the CoC decision in relation to such a sale.

Commented [CAM5]: 29A?

All proceeds received by the liquidator on behalf of the company or from the realisation of the assets of the company shall be deposited into an account opened by the liquidator with a scheduled bank in the name of the company (in liquidation). The proceeds from the sale of liquidation assets shall be distributed in the following order of priority:

1. the insolvency resolution process costs and the liquidation cost;
2. workmen's dues for the period of 24 months preceding the liquidation commencement date, and debts owed to a secured creditor in the event that such secured creditor has relinquished its security to the liquidation estate (of which shall ranked equally);
3. wages and unpaid dues owed to employees (other than workmen) for the period of 12 months preceding the liquidation commencement date;
4. financial debts owed to unsecured creditors;
5. any amount due to the Central Government and State Government, in respect of the whole or any part of the period of two years preceding the liquidation commencement date, and debts owed to a secured creditor for any amount unpaid following the enforcement of its security interest (of which shall ranked equally);
6. any remaining debts and dues;
7. preference shareholders, if any; and
8. equity shareholders or partners as the case may be.

The liquidator is required to complete the liquidation within one year (an additional 90 days is allowed if a sale as a going concern is being attempted) and if he does not do so, he is required to make an application to the National Company Law Tribunal explaining why the liquidation could not be completed within the one-year period and specify the additional time needed. If it appears to the liquidator that there will be insufficient asset to cover the cost of liquidation process and that the affairs of the company do not require any further investigation, the liquidator may apply to the National Company Law Tribunal for early dissolution of the company.

Commented [CAM6]: Voluntary liquidation not covered at all.

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] (6 out of 7)

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

The current legal regime for out-of-court debt restructuring is based on the guideline issued by the Reserve Bank of India ("RBI"), India's central bank in 2019. The guidelines issued by RBI did away with all previous guidelines relating to out-of-court restructuring issued by RBI. Indian banks which is covered under the legal regime must undertake a review of the financial situation of the borrower within 30 days after the default. If the Indian Banks decide that they would want to restructure the debt of the Company, the Indian banks are required to enter into an inter-creditor agreement with the Company. Any decision by the Indian banks must be approved by the lenders representing 75% value of the total outstanding debt and 60% numbers of creditors. The inter-creditor agreement will provide for a stand-still which will bar the participants of the agreement from pursuing individual enforcement action and mechanics for arriving at an out-of-court resolution plan. If no plan is agreed and implemented, the Indian banks are required to make additional provisioning of 20% from the 181st day and another 15% from the 366th day over and above the usual provisioning for non-performing loans, which may be reversed in half when the Indian banks file to initiate insolvency proceedings for the Company under the Code and the rest when such petition is accepted.

Commented [CAM7]: Advice to the Board?

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.

During a corporate insolvency resolution process of the company, the powers of the Board to manage the affairs of the Company, and the powers to act and execute in the name and on behalf of the Company on all deeds, receipts, and other key documents are suspended. This powers are now vested upon the appointed Interim Resolution Professional or the Resolution Professional. The Board however are entitled to attend meetings of committee of creditors as a non-voting participants. The Board also needs to be mindful to exercise due diligence in minimising the potential loss to creditors if they knew or ought to have known that there was no reasonable prospect of the Company avoiding the commencement of the corporate insolvency resolution process. This is because the Board can be liable to contribute to the assets of the Company in order to make good such loss to the creditors should the resolution professional decides to make application for wrongful trading under the Code to the National Company Law Tribunal. During the corporate insolvency resolution process, the Board have the duty to report to the Interim Resolution Professional and provide him with access to all documents and records of the Company as may be required.

(39 out of 50)

*** End of Assessment ***

Commented [CAM8]: But what about duties?

Commented [CAM9]: Good point!

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