



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: 202223-336.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 2023**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2023**. 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

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

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).

Commented [LJ1]: TOTAL: 46 out of 50
Well done!!

Commented [LJ2]: 8/10

Question 1.3

Unethical behaviour by insolvency practitioners can undermine the entire insolvency framework of a country due to a lack of trust and confidence in the insolvency profession.

(a) True

(b) False

Question 1.4

Being an officer of the court requires a person to act with integrity and to not mislead the court in acting on behalf of a client. An officer of the court recognises the importance of dishonesty in the justice system and as such would act in a manner which would further the administration of justice to the best of their ability.

(a) True

(b) False

Commented [LJ3]: b

Question 1.5

Select the **correct** answer:

Ho has been appointed as a liquidator of Company X. Company X has several major creditors, including ABC Bank. A year prior to the liquidation of the Company, Ho was acting in an advisory capacity for ABC Bank in litigation against Company X where he attempted to advance ABC's position as a creditor.

This situation is an example of a / an _____ threat.

(a) self-review

(b) self-interest

(c) advocacy

(d) intimidation

Question 1.6

John was appointed as the liquidator of DebtCO. One of DebtCO's suppliers and major unsecured creditors, S. Panesar, is very friendly towards John. Mr Panesar has heard in passing that John enjoys sport and managed to procure tickets to several events in the recent Tokyo 2020 Olympic Games, which John accepted. John realises that this will be deemed questionable behaviour and he fears that Mr Panesar will make the offer and acceptance of the gift public. This would certainly create a threat to his perceived objectivity.

This situation is an example of a / an _____ threat.

(a) familiarity

- (b) self-review
- (c) advocacy
- (d) intimidation

Commented [LJ4]: d

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 fixed fee calculation method for determining the amount of remuneration owed to him, will receive a fair amount of remuneration.

Please choose the most correct answer.

- (a) This statement is false since the practitioner might have carried out more work and invested more resources than is reflected in the fee.
- (b) This statement is true since jurisdictions always allows for an adjustment of fees where it is necessary.
- (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.

Timothy has been appointed as the judicial manager of a large public company. As a result of his appointment, he has been privy to confidential information regarding the company and its stakeholders. Timothy is aware that there is a duty on him to maintain confidential information and is very careful when he speaks to the press and members of the public. However, he often discloses work related information including sensitive information to his brother-in-law when they see one another over weekends and Timothy believes the information will be kept confidential by him.

Please select the statement that **best** describes Timothy's situation.

- (a) Timothy is not in breach of his duty to confidentiality. He maintains confidentiality when engaging with the press and public. His disclosure to his brother-in-law poses no risk as he trusts him to keep the information to himself.
- (b) Timothy is in breach of his duty to act in the best interests of the beneficiaries of his duties. Timothy's disclosure of confidential information to his brother-in-law will pose a conflict of interest and create bias in the exercise of his duties.
- (c) Timothy is in breach of his duty to confidentiality. As an IP he should maintain confidentiality even in a social environment and should be alert to the possibility of inadvertent disclosure to an immediate family member like his brother-in-law.
- (d) Timothy is not in breach of his duty to act with good faith. He maintains confidentiality when engaging with the press and public. His disclosure to his brother-in-law poses no risk as disclosures to immediate family members are not regarded as threats to compliance.

QUESTION 2 (direct questions) [10 marks]

Commented [LJ5]: 8/10

Question 2.1 [maximum 3 marks]

What are the most common elements associated with the existence of a fiduciary relationship generally?

Answer:

A fiduciary relationship generally involves the following elements:

(i) Acting on behalf of another: A fiduciary is largely accepted to a person who undertakes to act on behalf of another.

(ii) Power or discretion: The fiduciary has some level of power or discretion over the beneficiary's affairs or assets.¹

(iii) Vulnerability or dependence: The beneficiary is typically vulnerable or dependent on the fiduciary for protection, advice, or other services.²

Commented [LJ6]: 3/3

Question 2.2 [maximum 4 marks]

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

Answer:

Being an independent and impartial is a quality which is expected from the insolvency practitioner, as it will help him to exercise its discretion and powers in the best interests of beneficiaries or stakeholders. Accordingly, the duty to act with independence and impartiality in an insolvency context has a two-pronged nature. The details of the same is as under:

(i) The first prong is independence, and same should be considered both as a matter of fact and from the perspective of an informed observer. It should be considered with reference to jurisdictional guidance, whether legislative, professional or code based, but key assumption of this principle is that the insolvency practitioner must be independent of any improper influence, bias, or conflict of interest that could affect their ability to act objectively and in the best interests of creditors as a whole. This means that the insolvency practitioner must not have any direct or indirect financial or personal interest in the outcome of the insolvency appointment. For example, Insolvency Practitioner should not accept an appointment in connection with the estate if his (or a related party's) relationship with the directors of the company.

(ii) The second prong is impartiality, which requires that the insolvency practitioner must be impartial in the treatment of all creditors and stakeholders, without favouring any one group or individual over another. This means that the insolvency practitioner must be fair and objective in the way they carry out their duties and decisions, and should not show any undue preference or hostility towards any particular stakeholder. Together, these two prongs create a framework for the insolvency practitioner to act with integrity, objectivity, and

1 Nimmer, R. T., & Feinberg, R. B. (1989). Chapter 11 Business Governance: Fiduciary Duties, Business Judgment, Trustees and Exclusivity. *Bankr. Dev. J.*, 6, 1.

2 Valsan, R. (2016). Fiduciary duties, conflict of interest, and proper exercise of judgment. *McGill Law Journal*, 62(1), 1-40.

fairness in the discharge of their duties, ensuring that the interests of all stakeholders are protected and balanced to the greatest extent possible³.

Question 2.3 [maximum 3 marks]

Explain the difference between professional and fidelity insurance and elaborate on why it is of particular importance for Insolvency Practitioners to obtain this type of insurance.

Answer:

Professional insurance and fidelity insurance are two distinct forms of insurance that serve different purposes. Professional Indemnity insurance covers against the risk of stakeholders instituting action against the IP for acting negligently (without reasonable care) while fidelity insurance protects stakeholders in the event of the IP (or someone working for him) acting dishonestly or defrauding the estate⁴. Considering the fact that IP has to perform varied nature of duties, it would be sensible for IP to purchase a required or reasonably available, appropriate professional indemnity and/or fidelity insurance in keeping with the best interests of stakeholders.

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

Question 3.1 [maximum 6 marks]

The ethical principle that requires insolvency practitioners to act with integrity also states that he should adhere to high moral and ethical standards. Explain what is meant by this and provide examples to illustrate the difference between these concepts.

Answer:

Principle 1 of the INSOL International's Ethical Principles for Insolvency Professionals deals with the integrity and states that *"In addition to complying with applicable law, Members should endeavour to demonstrate the highest levels of integrity by being straightforward, honest, and truthful; and by adhering to high moral and ethical principles in all aspects of their professional practice"*. Acting with integrity implies fair dealing, honesty and truthfulness in the professional practice by the IP. The stakeholders in the insolvency process are *"at the mercy of the"* the IP's discretionary powers⁵ and they have to trust and / or rely on the IP to protect their interests. Accordingly, it would be crucial on the part of the IP to be honest and truthful with the beneficiaries and to act with integrity towards them at all times.

Further IP is also required to adhere to high moral and ethical standards in the insolvency proceedings. Morality and ethics are closely interlinked but they are unique concepts from each other. Morals tends to be subjective and usually refer to a person's personal beliefs regarding what is right or wrong and is therefore often influenced by upbringing, education, culture and even religious beliefs. On the other hand, ethics refer to the specific rules and actions that are regarded as correct behaviour and often relate to a specific group of people who function in similar circumstances – such as the IP profession. Where there is a conflict

³ INSOL International. (2021). Ethical Principles for Insolvency Professionals. London: INSOL International. See Principle 2: Objectivity, Independence and Impartiality.

⁴ INSOL International. (2021). Ethical Principles for Insolvency Professionals. London: INSOL International. See Principle 6: Practice Management.

⁵ F Cassim et al, Contemporary Company Law (2nd ed, Juta 2012) 512 – "Typically, in fiduciary relationships, one party is vulnerable to, or is at the mercy of, another party's discretion."

Commented [LJ7]: This question required a discussion of independence in fact and independence in mind - that is factual independence and perceived independence
I have awarded discretionary marks for the content of your discussion.
2/4

Commented [LJ8]: 3/3

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between the personal beliefs and that of the profession, the professional standards should trump the IP personal opinions.

Difference between acting with integrity and adhering to high moral and ethical standards:

These two concepts are closely related but distinct. Acting with integrity is a component of adhering to high moral and ethical standards, but adhering to high moral and ethical standards goes beyond merely acting with integrity. For example, an insolvency practitioner who acts with integrity will not engage in fraudulent activity or misrepresent information to their stakeholders or creditors. They will maintain a high level of transparency and honesty in all their dealings. However, adhering to high moral and ethical standards goes beyond this. It means that the insolvency practitioner should also consider the impact of their actions on all stakeholders involved in the insolvency process, including employees, creditors, shareholders, and the wider community. The practitioner should strive to act impartially and avoid any conflicts of interest that could compromise their professional judgement.

Commented [LJ10]: How did you reach this conclusion?

To illustrate the difference between these concepts, consider a situation where an insolvency practitioner is tasked with selling the assets of a stressed company to raise funds for creditors. Acting with integrity would require the practitioner to ensure that the assets are sold at a fair market value and that all relevant information is disclosed to potential buyers. However, adhering to high moral and ethical standards would go beyond this and require the practitioner to consider the impact of the sale on the employees of the company and the wider community. The practitioner may need to consider alternative solutions to avoid job losses or negative impacts on the local economy, where possible.

In summary, acting with integrity is an important component of adhering to high moral and ethical standards for insolvency practitioners. However, adhering to high moral and ethical standards goes beyond merely acting with integrity and involves considering the broader impact of their actions on all stakeholders involved in the insolvency process.

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Question 3.2 [maximum 9 marks]

Which **elements of insolvency proceedings** are especially prone to create or give rise to threats to independence and impartiality? Please elaborate with reference to primary and secondary sources of law.

Answer:

An IP is expected to exhibit highest levels of independence and impartiality in the exercise of their powers and duties during the insolvency proceeding. However, the insolvency being a complex process can create or give rise to threats to independence and impartiality in several ways. The following are some of the elements of insolvency proceedings that are especially prone to such threats:

(i) Nature of pre-commencement/appointment involvement: Normally, in practice a prior consultation happens between the IP and the company or stakeholders and these consultations may create an impression that IP may not be independent and impartial. However, as such not all form of prior consultations between the IP and stakeholder parties would necessarily result in a lack of independence. But material engagement by any of the stakeholder parties, the IP would no longer be independent and should therefore not be appointed as practitioner.

In the matter of ***Re Korda, Ten Network Holdings Ltd (Admn Apptd) (Recs and Mgrs Apptd) [2017] FCA 914 [AUSTRALIA]***: the administrators' firm had been involved in reviewing the company's financial position for several months prior to their appointment. The question before the court was whether they should be allowed to continue to act as administrators given their "long-term, substantial and remunerative involvement" with the company. In hearing evidence, it was generally accepted that the administrators' firm in this case refrained from providing advice to the board of directors, the creditors or any other stakeholders. Accordingly, the court did not find actual or apprehended bias or conflict (despite the substantial pre-appointment work) as the administrators work in this regard was limited to certain aspects and the engagement did not involve any advice to the company or its directors.

(ii) Appointment: The appointment of the insolvency practitioner can create a potential conflict of interest. Insolvency law in many jurisdictions has provisions that IP can be appointed by either the board of directors or a stakeholder (usually a shareholder or creditor). Accordingly, it is essential for the IP to be aware of his responsibilities in this regard and he should refrain from making any promises to those who appointed him. Further, he shall act in the interest of all the stakeholders in the insolvency process. For example, in India under the Insolvency and Bankruptcy Code, 2016 Insolvency Professional is appointed by the financial creditors and can create conflict of interest situation.

(iii) Subsequent appointments: Subsequent appointments refer to a situation where the same IP is allowed to act in different insolvency capacities in relation to the same debtor company. In some jurisdictions, such as India, New Zealand⁶, England and Wales⁷ and Singapore, IPs are allowed to be appointed in this manner. Subsequent appointments pose problems in relation to independence and impartiality due to the self-review and self-interest threat it creates. In India, there is growing concern that certain IPs force the company into liquidation to appoint themselves as a liquidator and earn additional fee from such appointment.

In certain jurisdictions subsequent appointments in relation to the same debtor company are prohibited due to the threats expressed above. South Africa is a good example of this. The South African Companies Act of 2008 provides that a business rescue practitioner may not be appointed as the liquidator of the debtor in subsequent liquidation proceedings.⁸

(iv) Secret monies and personal transactions with the company: Another potential area that give rise to threats to independence and impartiality during the insolvency proceeding is Secret monies and personal transactions with the company. As a fiduciary, an IP shall not be allowed to make a secret profit at the expenses of the stakeholders in the insolvency process. For example: where IP (Friend/family of IP) like to purchase assets from the company, this may cause a strong suspicion that the IP is serving in his own interests instead of those of the beneficiaries

The case of ***Commonwealth Bank of Australia v Irving [1996] 65 FCR 291 [AUSTRALIA]***: highlights that personal relationships with stakeholders can result in a lack of independence due to the perception created thereby.

Commented [LJ12]: 9/9

⁶ Companies Act 2003, s 239ABY provides that the administrator is to be the default liquidator. This section was inserted into the Act by the Companies Amendment Act of 2006.

⁷ An example can be found in the Insolvency Act 1986, Sch B1, para 83(7)(b), which allows for an administrator to be a liquidator in a subsequent appointment

⁸ Companies Act 71 of 2008, s 140(4).

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

WeBuild Ltd is a private company registered in Eurafriicia. 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 and licensed insolvency practitioner, 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. An undertaking that he complies with by subsequently issuing a written declaration of independence.

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 Keeneeye, 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.

Mr Relation's firm has been implementing a work-from-home arrangement for employees, and his secretary and associate have several sensitive documents pertaining to WeBuild Ltd in their possession and on their personal computers at home.

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.

Answer:

The three major ethical issues in this scenario are as under:

- (i) Mr Relation's conflict of interest and lack of independence.
- (ii) Conducting superficial investigation into the affairs of the company.
- (iii) Breach of confidentiality and data protection.

(i) Mr Relation's conflict of interest and lack of independence:

Mr Relation's conflict of interest as Mr B Inlaw's brother-in-law and godfather to his daughter creates a situation where his personal interests may conflict with his duty to act independently and impartially as the company's administrator and later, liquidator. His lack of independence is further demonstrated by the fact that during the meeting with directors he assures them that he will not focus on the breach of duty by them, by continuing trading while the company was in financial stress. He further conducts a superficial investigation into the affairs of the company and relies upon the reports drafted by Mr B Inlaw regarding the company's business, which may be biased or incomplete.

According to the ethical principle of Objectivity, Independence and Impartiality, insolvency practitioners have a duty to act independently and impartially in the administration and liquidation of companies. Further IP should avoid circumstances likely to result in a conflict of interest. The principle also states that lack of independence cannot necessarily be cured by disclosure. Accordingly, in the instant case a mere disclosure and undertaking by the IP cannot ensure that IP is independent and impartial in his conduct. In the case of ***Commonwealth Bank of Australia v Irving [1996] 65 FCR 291 [AUSTRALIA]***, the court held that longstanding friendly and professional relationship of IP with one of the directors would create doubt with a fair-minded person that he would be able to perform his duties in an independent manner and therefore it would not be appropriate for IP to continue as the administrator of the company.

Remedies or safeguarding mechanisms to minimize or remove the ethical threats posed by Mr Relation's conflict of interest and lack of independence could include appointing an independent administrator or liquidator, implementing a clear and comprehensive conflict of

interest policy for insolvency practitioners, and ensuring regular training on ethical standards and the duty of independence for insolvency practitioners.

(ii) Conducting superficial investigation into the affairs of the company:

Second important ethical issue is that, Mr Relation's conducted 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. This result in situation that several months later the administration fails and same is converted to liquidation proceedings.

According to the ethical principle of Professional Behaviour, the IP should not allow their personal relationships with other Members to unduly influence or adversely affect their dealings with the estate. Accordingly, as highlighted in this case during the meeting with directors IP assures them that he will not focus on the breach of duty by them, by continuing trading while the company was in financial stress will result in breach of principle of professional behaviour by them.

Remedies or safeguarding mechanisms to this situation is that IP shall show higher professional behaviour in this circumstance and conduct proper investigation into the affairs of the company and take proper actions against the director for breach of duties by them.

(iii) Breach of confidentiality and data protection:

Mr Relation's secretary and associate having several sensitive documents pertaining to WeBuild Ltd on their personal computers at home may breach the company's confidentiality and data protection obligations. The sensitive documents may contain personal data of employees, confidential business information, and financial information.

According to the ethical principle of Professional Behaviour, insolvency practitioners have a duty to maintain the confidentiality of information obtained in the course of their work. It is understood that the IP will normally acquire a vast amount of sensitive information like Client lists, trade secrets, confidential business discussions and internal financial statements during the insolvency process. In the present times the corporate information is regarded as one of a company's most valuable commodities, makes confidentiality a significant obligation of the restructuring IP in the context of stressed company. Accordingly, an IP must maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.

Remedies or safeguarding mechanisms to ensure protection of confidential data is to ensure that IP shall not grant access of the same to their associates and team members. In case of urgency if any data is to be provided to the associates IP shall maintain proper trail records of the same and confidentiality undertaking may also be signed by his secretary and their team members.

Commented [LJ13]: Excellent discussion.
15/15

*** End of Assessment ***