



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**

Commented [LJ1]: You did not comply with this instruction. Your answers to Q2 and 3 are copied and pasted from the Guidance Text.

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.**

Commented [LJ2]: Plagiarism

Commented [LJ3R2]: 25 out of 50

You have not demonstrated knowledge and understanding of the principles covered in this module.

Commented [LJ4]: 7/10

(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).

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 [LJ5]: 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

Commented [LJ6]: c

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 [LJ7]: 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]

Question 2.1 [maximum 3 marks]

Commented [LJ8]: 0/10

Your answers were copied and pasted from the guidance text.

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

A fiduciary is largely accepted to be a person:

- i) who undertakes to act on behalf of another, and*
- ii) who has discretion and power over the interests of the other.*

A further element of vulnerability is sometimes added as an indicator for the existence of a fiduciary relationship.

Commented [LJ9]: 3/3

Question 2.2 [maximum 4 marks]

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

Independence is two-fold. IPs must be independent in fact and also be seen or perceived to be independent.

- a) Independence in fact requires that the IP be factually free from any influences that could compromise his judgement. IPs must, therefore, avoid all personal and professional relationships and direct or indirect interests that will adversely influence, impair or threaten their integrity and ability to make decisions.*
- b) Independence in perception, on the other hand, includes the avoidance of circumstances that would lead a reasonably informed third party to conclude that the IP's integrity, independence and impartiality have been compromised.*

Being seen or perceived to be independent and impartial is of extreme importance in the context of insolvency proceedings. If the stakeholders involved in the proceedings perceive the IP to be biased, or to lack independence (even though it might be untrue), it would negate the trust and reliance that they have placed in him.

Commented [LJ10]: 4/4

Commented [LJ11R10]: Please paraphrase your answer and do not copy from the Guidance Text.

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.

Indemnity or professional insurance covers against the risk of stakeholders instituting action against the IP for acting negligently (without the reasonable care). Fidelity insurance protects stakeholders in the event of the IP (or someone working for him) acting dishonestly or defrauding the estate. Fraud in this sense does not necessarily refer to criminal fraud.

Given the extensive (and sometimes confusing) duties owed by IPs it would be sensible for Ips to obtain professional and fidelity insurance to protect themselves as well as the stakeholders in the estate.

Obtaining professional and fidelity insurance is crucial for IPs as it helps protect their professional reputation, provides financial security, and ensures they can meet their obligations in the event of a claim or fraudulent activity. It enhances the overall trust and confidence in the insolvency profession and assures stakeholders that IPs have taken appropriate measures to manage potential risks and liabilities associated with their work.

Commented [LJ12]: 3/3

This is copied from the GT though, word for word

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

Commented [LJ13]: 5/15

Your answers were copied and pasted from the guidance text. I have awarded discretionary marks.

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.

The ethical principle that requires IPs to act with integrity and adhere to high moral and ethical standards implies that they should conduct themselves in an honest, trustworthy, and principled manner throughout their professional activities. Acting with integrity goes beyond mere adherence to legal requirements and encompasses a commitment to doing what is morally right and just, even when faced with difficult decisions or temptations.

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.

Honesty implies that the IP should refrain from lying, while truthfulness means that the IP should not conceal any facts from parties with an interest in the outcome of the insolvency. Honesty further implies that the IP should be open and transparent in his decision-making and should not conceal or misrepresent any information. The IP should be honest and truthful when negotiating on behalf of the beneficiaries as well as when reporting on his acts and dealings.

The IP must refrain from misleading a creditor, employee or shareholder of the company through any act or omission. Honesty and frankness by the IP may also help neutralise any negative emotions during the insolvency proceeding. An honest and transparent approach to the procedure would instil confidence among beneficiaries and the public and facilitate better co-operation. In restructuring proceedings, this duty will include honesty and truthfulness regarding the prospects of success.

The Principle requires the IP to adhere to high moral and ethical standards in all aspects of professional practice. Morality and ethics are closely related but are not the same thing. Morals 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. Morals, therefore, tend to be subjective. However, morals also tend to provide the foundations for ethics. 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. So, although morals form the basis of ethics, ethics does not concern a set of beliefs regarding what is right or wrong, but rather what would be acceptable standards of conduct. This is why the INSOL Principle requires both. The IP should have a personal set of beliefs to guide his actions but should also adhere to the ethical values of the group he belongs to. Where there is a conflict between his personal beliefs and that of the profession, the professional standards should trump his personal opinions. This is because of the fact that a moral action can also be unethical. An example might be where an IP, due his personal beliefs and a moral desire to be open and honest with the stakeholders, divulges information which should be kept confidential in accordance with ethical guidance.

In summary, while high moral and ethical standards provide a broader framework for conduct, acting with integrity requires IPs to go above and beyond legal compliance and make decisions that align with their deeply held principles of honesty, trustworthiness, and fairness. Integrity demands a commitment to doing what is right, even in the absence of explicit legal requirements, and upholding the highest moral and ethical standards in all professional endeavors.

Commented [LJ14]: 6/6

Copied and pasted from GT

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.

Several elements of insolvency proceedings can create or give rise to threats to independence and impartiality. These threats may affect the IP's ability to fulfill their duties objectively and without bias.

The elements of the insolvency proceedings dealt with below are particularly cumbersome and often give rise to threats to the independence and impartiality of the IP and specifically the CIP:

(1) Nature of pre-commencement / appointment involvement

In practice, prior consultations often occur between the CIP and the company or stakeholders. These consultations may also create the impression of a lack of independence and impartiality on the part of the CIP. Yet the prior consultations

need not result in the disqualification of that person as practitioner and may in fact constitute a crucial part of the insolvency process. Therefore, not all forms of contact between the CIP and stakeholder parties prior to the practitioner's appointment would necessarily result in a lack of independence. Nevertheless, there should be limits to what would be deemed acceptable engagement during such consultations. Should the consultation involve material engagement by any of the stakeholder parties, the CIP would no longer be independent and should therefore not be appointed as practitioner. The advice provided by the practitioner in the prior consultation should be limited to the company's financial position, the company's solvency, the effects of potential insolvency and any alternatives to insolvency. It would also make sense for the CIP to set out the nature and extent of prior consultations in a disclosure statement. This would facilitate improved transparency and help prevent accusations of a lack of independence.

(2) Appointment

In many jurisdictions the CIP can be appointed by either the board of directors or a stakeholder (usually a shareholder or creditor). This may lead the appointee to expect that the practitioner would prioritise their interests. In some instances, these persons, being the "principal", even believe that it is within their power to influence the CIP. Thus, it is vitally important for the CIP to be aware of his responsibilities in this regard. The practitioner should not make any promises to those who appointed him and should make it very clear that he is expected to act in the interests of all the beneficiaries. The duty of independence also obliges the CIP to scrutinise each given situation prior to accepting an appointment. Such scrutiny would include reasonable steps to determine any possible association or conflict of interest with any stakeholder.

(3) Subsequent appointments

Subsequent appointments refer to a scenario where the same CIP is allowed to act in different insolvency capacities in relation to the same debtor company. In some jurisdictions, such as England and Wales and Singapore, CIPs 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. The Insolvency Code of Ethics of the Institute of Chartered Accountants of England and Wales (ICAEW) recognises the potential conflict of interest in this regard and utilised the scenario "sequential insolvency appointments" as an example of circumstances that might lead to a self-review threat being created. A self-review threat refers to a situation where a CIP, due to being involved in prior decision-making, will not be able to appropriately evaluate the results of previous judgements made or services rendered.

The self-interest threat relates to the issue of remuneration of the CIP. The reason subsequent appointments might pose an issue in relation to the remuneration of the CIP, is that the CIP will be remunerated twice for work done in relation to the same company. A self-interest threat refers to a situation where the interests (including financial interests) of the CIP might inappropriately influence his

judgement or behaviour. An example of a way in which a subsequent appointment and the corresponding subsequent remuneration might influence the behaviour of the CIP, could be that a rescue or turnaround practitioner might not put his best effort into saving the debtor from liquidation due to the fact that he knows he would subsequently be appointed as the liquidator and be paid again. CIPs who engage in subsequent appointments often hold the view that the previous appointment does hold some benefits and advantages in the subsequent appointment (such as institutional knowledge) and as professionals have the opinion that they are able to act with independence and impartiality. In jurisdictions where subsequent appointments are allowed, the opinion is held that the benefits outweigh the risks.

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. As already mentioned, other jurisdictions such as England and Wales, Singapore and New Zealand permit subsequent appointments.

(4) Secret monies and personal transactions with the company

The CIP should act in the best interests of the beneficiaries of his duties at all times and in all transactions. As a fiduciary, a CIP is not allowed to make a secret profit at the expense of the beneficiaries, or place himself in a position where his personal interests (or that of parties related or connected to him) conflict with his duties. If his judgement was influenced by the fact that he stands to gain personally from a decision, it cannot be said that he was acting in the best interests of the beneficiaries of his duties. This is of particular importance in situations where the CIP (or family / friend of the CIP) would like to purchase assets from the company. This could in effect place the CIP at both ends of the contract, which may cause a strong suspicion that the practitioner, being a fiduciary, is serving his own interests instead of those of the beneficiaries.

There are also a number of ways in which the CIP would be able to manipulate such a transaction for his own benefit, for example fixing an advantageous price, as the CIP would have knowledge of the bare minimum the company would accept and drafting (or having input into the drafting of) a contract with favourable clauses. To this end it is important that a CIP follows the necessary procedural steps (disclosure) and obtains the necessary informed consent where a jurisdiction permits transactions between the CIP and the company.

The CIP's duty to act with independence and impartiality therefore encapsulates the same values as the familiar "no-profit" and "no-conflict" rules in Corporate Law and underpins his duty of undivided loyalty to the beneficiaries.

The no-profit rule determines that a fiduciary may not profit from his position of trust (his position as CIP) and thereby be unjustly enriched, for example by receiving secret kick-backs or commissions.

The no-conflict rule determines that a fiduciary may not allow a conflict to arise between his duty and the interests of the beneficiaries, for example transacting with the debtor company in his personal capacity.

Commented [LJ15]: 9/9

Copied and pasted from the GT

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

WeBuild Ltd is a private company registered in Eurafriclia. 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 Keeney, 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.

Based on the provided factual scenario, there are some major ethical issues that can be identified. These ethical issues are as follows:

1. Conflict of Interest and Impartiality:

The relationship between Mr Relation, the lawyer and licensed insolvency practitioner, and Mr B Inlaw, one of the directors and shareholders of WeBuild Ltd, raises concerns regarding conflict of interest and impartiality. Mr Relation's

familial relationship with Mr B Inlaw, as his brother-in law and godfather to his daughter, creates a personal connection that can compromise his independence and impartiality in acting as the administrator and subsequently as the liquidator.

Ethical Principles: **The ethical principle of independence requires IPs to act without bias and conflicts of interest. The principle of integrity calls for practitioners to adhere to high moral and ethical standards.**

Remedies/Safeguarding Mechanisms: **To minimize the ethical threat, it is essential to ensure that IPs are independent and impartial. This can be achieved by implementing robust conflict of interest policies that require practitioners to disclose any personal relationships or interests that may compromise their objectivity. Independent oversight and scrutiny of appointments, such as approval from regulatory bodies or professional associations, can also help mitigate conflicts of interest.**

Case Law/Secondary Sources: **Reference can be made to case law or secondary sources that highlight the importance of independence and impartiality in insolvency proceedings. For example, the UK case of Re Hicks (a Bankrupt) [2010] EWHC 2187 (Ch) emphasized the need for insolvency practitioners to maintain independence and avoid conflicts of interest.**

2. Breach of Duties:

The directors of WeBuild Ltd breached their fiduciary duties by failing to address the workplace-related injuries caused by faulty machinery, continuing to trade when the company was in financial distress, and making large payments to themselves in the form of performance bonuses. These actions demonstrate a disregard for their duty to act in the best interests of the company and prioritize their personal gain over their responsibilities as directors.

Commented [LJ16]: Is this an ethical issue or a breach of duty?

Ethical Principles: **The ethical principle of integrity requires IPs to adhere to high moral and ethical standards. In this case, the directors' actions violated their duty to act in the best interests of the company and demonstrated a lack of integrity.**

Remedies/Safeguarding Mechanisms: **It is crucial to emphasize the importance of directors fulfilling their fiduciary duties and acting with integrity. Legal frameworks, such as company law and corporate governance codes, set out the standards of conduct expected from directors. Implementing robust compliance and oversight mechanisms, such as regular reporting and independent audits, can help detect and prevent breaches of director's duties.**

Case Law/Secondary Sources: **Reference can be made to case law or secondary sources that discuss director's duties and the consequences of breaching those duties. For example, the UK case of Re Barings plc (No. 5) [1999] 1 BCLC 433 highlighted the duty of directors to act in the best interests of the company and the potential liability for breach of fiduciary duties.**

3. Lack of Thorough Investigation and Impartial Reporting:

Mr Relation's superficial investigation into the affairs of WeBuild Ltd and his reliance on reports drafted by Mr B Inlaw raise concerns about the adequacy of the investigation and the impartiality of the reporting. By relying solely on the director's reports, Mr Relation may not have thoroughly examined the circumstances leading to the company's financial difficulties, potentially compromising the accuracy and objectivity of his findings.

Ethical Principles: *The ethical principles of competence and due care require insolvency practitioners to perform their professional duties with diligence, skill, and thoroughness. The principle of independence emphasizes the need to maintain objectivity and avoid undue influence.*

Remedies/Safeguarding Mechanisms: *To ensure a thorough and impartial investigation, insolvency practitioners should exercise professional skepticism and critically evaluate the information provided by the company's directors. They should conduct independent inquiries, review relevant documents and financial records, and engage external experts if necessary. Regular reporting to stakeholders, such as creditors, can provide transparency and build trust in the process.*

Case Law/Secondary Sources: *Reference can be made to case law or secondary sources that discuss the importance of thorough investigations and impartial reporting in insolvency proceedings. For instance, the Australian case of Re HIH Insurance Ltd [2003] NSWSC 17 emphasized the need for liquidators to conduct proper investigations and report impartially.*

In conclusion, the three major ethical issues in the provided scenario are conflict of interest and impartiality in the appointment of Mr Relation, the breach of director's duties by the directors of WeBuild Ltd, and the lack of thorough investigation and impartial reporting by Mr Relation. These issues highlight the significance of upholding ethical principles, such as independence, integrity, competence, and due care, in insolvency proceedings. Implementing remedies and safeguarding mechanisms, such as conflict of interest policies, robust compliance frameworks, and thorough investigations, can help minimize or eliminate ethical threats in such situations.

Commented [LJ17]: 13/15

* End of Assessment *