

INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN INSOLVENCY

Examination 6 December 2013

INSOLVENCY

(3 HOURS)

- Part A:** All questions to be answered (10 x 1 mark questions)
Part B: All questions to be answered (5 x 2 mark and 5 x 4 mark questions)
Part C: All questions to be answered (2 x 15 mark questions)
Part D: Two from three questions to be answered (3 x 15 mark questions)

Candidates should answer Part A questions on the question paper itself which must be handed in whole at the end of the examination; candidates must enter their candidate number in the spaces provided in Part A of the examination paper.

Candidates should write their answers to all questions in Parts B, C and D separately on the answer paper provided, beginning each question on a new page.

The examiner will take account of the correct usage of English and the way in which the material is presented.

NOTES

Candidates should note that all questions are based on the law and best practice as at 1st January 2013.

Candidates must ensure that no pages from the examination paper are detached. At the end of the examination candidates must ensure that the question paper is attached to their answer papers using the treasury tag provided.

Candidates should remain seated until the Invigilator has collected the tagged question paper and answer papers. It is the candidate's responsibility to ensure that all answers are handed to the Invigilator.

References to the 'Act' are to the Insolvency Act 1986 as amended.

References to Sections and Rules are to the Insolvency Act 1986 and the Insolvency Rules 1986 as amended.

References to SIPs are to Statements of Insolvency Practice.

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PART A**MULTIPLE CHOICE QUESTIONS**

THE CORRECT ANSWER TO EACH OF THE QUESTIONS IS TO BE INDICATED BY PLACING A CROSS IN THE APPROPRIATE BOX. ONLY ONE ANSWER IS REQUIRED. THERE IS ONE MARK FOR EACH QUESTION.

- 1 Which one of the following is not a power of an Administrator or Administrative Receiver under Schedule 1 of the Act?
- a) Power to use the company seal
 - b) Power to carry on the business of the company
 - c) Power to present or defend a petition for the winding up of the company
 - d) Power to change the company's name
2. What is the 'official exchange rate' to be used when calculating claims in foreign currencies?
- a) The middle exchange rate on the London Foreign Exchange Market at close of business on the relevant day
 - b) The average exchange rate on the London Foreign Exchange Market at close of business on the date the debt became due
 - c) The lowest exchange rate on the London Foreign Exchange Market on the relevant day
 - d) The highest exchange rate on the London Foreign Exchange Market on the relevant day
3. In bankruptcy, if a spouse or civil partner at the date of the bankruptcy order has money owed to him/her, which is a bankruptcy debt, their claim is 'deferred'. If a dividend is payable from the estate where does this deferred claim rank?
- a) After payment of preferential debts in full.
 - b) After payment of preferential debts and unsecured debts in full.
 - c) After payment of preferential debts, unsecured debts and statutory interest in full.
 - d) No dividend is payable.
4. If the chairman of a creditors' meeting in a bankruptcy wishes to suspend the meeting for any reason, are they able to do so?
- a) Yes – the meeting can be suspended for a period of up to one hour.
 - b) No – the meeting cannot be suspended, only adjourned.
 - c) No – the meeting cannot be suspended and is deemed to have been held and completed
 - d) Yes – the meeting can be suspended for any reasonable length of time as the Chair decides.

5. How long before holding the final meeting pursuant to Sections 106 and 146 of the Act must a Liquidator send his draft report to the creditors?
- a) At least 1 month
 - b) At least 21 days
 - c) At least 8 weeks
 - d) At least 2 months
6. To whom does the Administrator not have to send his Proposals?
- a) The Registrar of Companies
 - b) The Court
 - c) Every Member of whose address he is aware
 - d) Every Creditor of whom he is aware
7. Where an undischarged bankrupt proposes an IVA, which one of the following does not need to be given notice of the application to court for an interim Order?
- a) Nominee
 - b) Official Receiver
 - c) Creditors
 - d) Trustee
8. How much does the registration with the Secretary of State of an approved IVA cost?
- a) £5
 - b) £15
 - c) £35
 - d) £50
9. Within what period must the liquidator fix his remuneration, in accordance with Rule 4.127(2) of the Rules, before it defaults to the Realisation Scale set out in Schedule 6 of the Rules?
- a) No limit
 - b) 3 months after issuing the first progress report
 - c) 12 months
 - d) 18 months
10. To be able to apply for a Debt Relief Order, what is the maximum amount of debt that an individual may owe?
- a) £5,000
 - b) £10,000
 - c) £15,000
 - d) £20,000

PART B

QUESTIONS 11-15 ARE 2 MARK QUESTIONS, QUESTIONS 16 – 20 ARE 4 MARK QUESTIONS. ALL THESE QUESTIONS SHOULD BE ANSWERED ON A SEPARATE SHEET OF ANSWER PAPER.

11. Section 6A of the Act concerns 'False Representations' made for the purpose of obtaining the approval of the members or creditors to a Proposal for a CVA. What is the penalty? **(2 marks)**
12. In accordance with the Act, the Court may make an Administration Order if what two criteria are met? **(2 marks)**
13. How is the Prescribed Part calculated? **(2 marks)**
14. A Supervisor of a protocol compliant IVA can issue a completion certificate if (s)he believes that the debtor has substantially complied with the terms of the IVA. For the debtor to be able to obtain a completion certificate of 'substantial compliance' what must the debtor have done? **(2 marks)**
15. What are the conditions that apply to a creditor's debt for the creditor to be able to present a bankruptcy petition at court? **(1/2 mark each up to a maximum of 2 marks)**
16. A protocol compliant IVA will last to the end of the period as set out in the proposal (as modified). If an IVA does need to be extended, how do the Standard Conditions advise that this can be achieved? **(4 marks)**
17. What matters must be covered in a Trustee's report on an annulment application made under S282(1)(b) of the Act (payment in full)? **(1/2 mark each to a maximum of 4 marks)**
18. After the creditors' meeting to consider a debtor's IVA proposals, the Chairman of the meeting has to prepare a report to be sent to creditors and (where necessary) to the Court. Set out the contents of the report under Rule 5.27 of the Rules and what are the time limits for the notice to be sent? **(1/2 mark each to a maximum of 4 marks)**
19. What are the specific duties of the directors under S99 of the Act and what should the statement of affairs show? **(1/2 mark each up to a maximum of 4 marks)**
20. What creditors' claims rank preferentially (limits not required)? **(4 marks)**

PART C**BOTH QUESTIONS TO BE ANSWERED ON A SEPARATE SHEET OF ANSWER PAPER**

21. A Partner in your firm was appointed as Administrator of Calculator Limited five months ago. Value Bank hold a fixed and floating charge over the company's assets created on 17 August 2004. The company owns a freehold property over which Abacus Plc hold a legal charge which ranks in priority to Value Bank's security. Abacus Plc is owed £100,000 by the company and Value Bank are owed £600,000.

The property is shown in the company's accounts with a book value of £300,000 and your instructed agents anticipate that £400,000 may be achieved in a sale.

The following realisations have been made to date:

Plant and machinery (subject to floating charge)	£25,000
Book debts	£90,000

The book debt collection process was initially conducted 'in house' and £50,000 was realised before collection agents were instructed in respect of the remainder. The remaining debtor ledger reflects another £60,000 owed to the company. However your collection agents have advised that only 50% of this will be realised.

The company held a quantity of stock at the outset of the Administration with cost value of £100,000. The agents instructed to deal with the disposal of the stock advised that £10,000 of this was obsolete stock with no value and £10,000 worth of stock was returned to ROT creditors. The ROT claims have now all been settled and the agent anticipates that realisations in relation to the stock will be around 20% of the cost price.

The company held a motor vehicle on finance with Dear Asset Finance. The vehicle was sold for £11,000 and £6,000 was paid to the finance company.

The following costs have been agreed in relation to the sale of the freehold property:

Administrator's fees – fixed at 1.5% of the sale price
 Agents fees – fixed at 2.5% of the sale price
 Legal fees on a time cost basis – anticipated to be £4,000.

In addition, insurance costs relating to the property are likely to total £2,000 and you have calculated that there will be tax payable as a result of the sale of £14,000.

The Administrator's fees for work not related to the freehold sale are estimated to be £20,000. The agents who have dealt with the collection of the book debts will be paid fees equal to 10% of recoveries. The agents who have dealt with the physical assets have agreed with you fees of

15% of gross realisations, although the settlement to the finance company is to be deducted before their fees are calculated.

A further £2,000 of insurance costs were paid in relation to these assets.

The company employed 25 staff, all of whom were owed in excess of £800 for wage arrears. Claims for redundancy and compensation for loss of notice are estimated to be around £80,000 and claims for unpaid holiday total £10,000. There are also unpaid employer and employee pension contributions relating to a period of three months prior to the Administration totaling £10,000.

You have instructed agents to assist with the winding up of the company's pension scheme and they have provided an estimated cost of £3,000 for dealing with this.

The company owes £40,000 of PAYE, £50,000 of VAT and other unsecured creditors total £150,000.

Prepare an Estimated Outcome Statement for Value Bank, to show what they can expect to receive from the Administration. (15 marks)

22. Your principal has just returned from a meeting with John Parker, a self-employed management consultant. Mr Parker is married with three young children aged 5, 7 and 10. Mrs Parker does not work but, because Mr Parker works very long hours and often works away from home for prolonged periods, she does his book-keeping for him and manages the family finances.

Over the last two years, due to the recession, Mr Parker has had to cut his daily rate, which has had a significant impact on his income and he has been using his credit cards and loans to plug the gap. Over the last six months he has been unable to service the minimum payments to his creditors which are as follows:

XYZ Credit Card	£14,235
Southdown Bank Loan	£23,491
Storecard PLC	£3,519
Westgate Financial	£17,857
Bluedog loans	£15,266
Direct Collection Company	<u>£18,512</u>
Total	£92,880

Mr Parker has filed his VAT returns but owes HM Revenue & Customs (HMRC) £13,450 in respect of VAT, interest and penalties because he was unable to pay when he filed his last three returns. HMRC have recently written to him threatening to take action against him. He has, however, made both of his payments on account of income tax and is therefore up to date with that. Given the decrease in his daily rate and, therefore, his turnover he has now de-registered for VAT.

The matrimonial home is jointly owned and has recently been valued at £250,000, however, there is a mortgage of £220,000 outstanding with a monthly instalment of £812 per month. If the property were to be sold it is estimated that estate agents fees on the sale would be 1.5% of the value plus VAT and conveyance costs would be £750 + VAT.

Mr Parker also owns a five year old Saab, worth £4,000, which he uses for his business.

Mr Parker's minimum monthly payments in respect of his debts are £1,200 per month. Your principal has calculated that, after allowing for his ongoing tax obligations, Mr Parker has a disposable income of £3,400 per month. His outgoings, including the mortgage payment, are £3,000, all of which your principal is confident would be regarded as reasonable if Mr Parker were to go bankrupt and a trustee were to seek an income payments order, which are estimated at being at 75% of the surplus income. Your principal think a solicitors costs for acting for the trustee on an application for possession and sale would be £3,000 plus VAT.

The Nominee's fees will be 6 months' worth of IVA instalments and Supervisor's fees will be 20% of realisations excluding instalments used for the Nominee fee. The Trustee's fees are calculated on the scale rate as per Schedule 6 of the Insolvency Rules

Prepare an estimated outcome statement comparing the likely outcome in a bankruptcy with what you think could be achieved for creditors in an IVA (15 Marks)

PART D**TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED**

- 23. a)** Describe how the following transactions would be reflected in a receipts and payments account having regard to the good practice set down in SIP 7. (Note: You are not required to prepare a receipts and payments account detailing the transactions).
- i. Plant and machinery has been sold by your agents in the sum of £22,500 (including VAT). After deducting his charges of £2,140 (including VAT) the agent sent you a cheque for £20,360.
 - ii. Stock with a value (at cost) of £15,000 was returned to suppliers with valid ROT claims. You have also paid the sum of £6,370 to another supplier in order to secure title to the stock supplied by him.
 - iii. You have paid rent to the landlord of a property of which £8,000 was in respect of rent arrears and £4,000 was in respect of rent for the period of your occupation.
 - iv. The following amounts were realised on the sale of assets:

Freehold property	£125,000
Plant and machinery	£22,780
Stock and WIP	£14,500
Goodwill	£7,650
 - v. Amounts totalling £8,600 were received from the redundancy fund under the employment protection legislation and were distributed to former employees. You received a fee of £860 plus VAT for your work as the employer's representative. **(5 marks)**
- b)** An office holder is required to prepare and keep separate financial records for each appointment. For how long should these records be retained by him where he is not succeeded by another office holder? **(1 mark)**
- c)** What additional information is required to be provided regarding dividend payments? **(1 mark)**
- d)** The directors of Summer Orchard Cider Limited have prepared a proposal for a creditors' voluntary arrangement (CVA) and have given written notice of the proposal to your principal, the intended Nominee, who has agreed to act. A date has been set for the creditors' meeting to consider the proposal and you have been asked to advise the Nominee on the adjudication for voting purposes of the following proxies/creditors' claims;
- i. A company officer attends the meeting in person on behalf of his company without lodging a proxy. The company has previously lodged a valid proof of debt. He wishes to vote in favour of the arrangement.
 - ii. A proxy in favour of the chairman directing the chairman to vote for the resolution, supported by a proof of debt disclosing that the creditor holds security (valued by him) in respect of part of the debt.
 - iii. A creditor, who is a sole trader, attends the meeting in person without lodging a proxy. He has previously lodged a valid proof of debt. He wishes to vote against the arrangement.

- iv. A properly completed faxed proxy in favour of the chairman is received by the deadline for the meeting from a creditor. The original proxy has not been received. The proxy directs the chairman to vote for the arrangement.
 - v. A proxy in favour of the chairman supported by proof of debt for an estimated sum but the value of the claim has yet to be ascertained. The proxy directs the chairman to vote in favour of the arrangement. **(5 marks)**
- e) Explain the rule for requisite majority in obtaining approval for a CVA and explain how the votes of connected creditors affect this. **(2 marks)**
- f) If the CVA is approved, which creditors are bound by the arrangement? **(1 mark)**

(Total 15 marks)

24. a) In accordance with the IVA Protocol, the debtor is to provide an expenditure statement to the Nominee. Certain items of expenditure require formal verification. What are these items and what verification is advised in the Protocol as adequate? **(1/2 mark per item and 1/2 mark per verification to max of 5 marks)**
- b) Under a Protocol Compliant IVA the debtor's net worth in a property should be considered for realisation. What are the limits on a re-mortgage to release the net worth as set out in the Protocol? **(5 marks)**
- c) Your principal is the Supervisor of a Protocol Compliant IVA and needs to consider the debtor's net worth in a property as the IVA is 54 months old. He has asked you to advise him on the following:
- i) If the debtor is unable to raise a re-mortgage, what discretion does the Supervisor have to accept alternative proposals from the debtor? **(2 marks)**
 - ii) What detail does he as Supervisor have to provide to the debtor regarding the potential net worth to be released under the Protocol? **(3 marks)**

(Total 15 marks)

- 25 a) Describe the main fiduciary duties of the directors in the period immediately prior to the commencement of a Creditors Voluntary Liquidation **(3 marks)**
- b) ABC (Southern) Limited (“the Company”) recently went into Creditors’ Voluntary Liquidation and your Partner was appointed liquidator. During the Section 98 meeting several of the creditors made various allegations about the directors’ conduct leading up to the date of the meeting. During your investigations into the Company’s affairs it was established that the directors had conducted themselves in an unfit manner. What should you do and to what extent? **(4 marks)**
- c) If the Disqualification Unit decides to pursue matters further following your D1 Report being submitted what, if any, further information or assistance may be required and in what format? **(2 marks)**
- d) The directors of XYZ Company Limited (“the Company”), which is to enter into Creditors’ Voluntary Liquidation, have indicated to your Partner prior to the Section 98 Meeting that they intend to make an offer to purchase the business and assets of the Company. In accordance with SIP 13 detail what information should be disclosed to the creditors of the Company regarding any sale of the business and assets to its directors? **(4 marks)**
- e) Your Partner has requested you to prepare a letter to the directors of the Company outlining their legal obligation(s) and possible risk(s) they expose themselves to should their purchase of the business and assets of the Company prior to the Section 98 Meeting be proceeded with. **(2 marks)**

(Total 15 marks)