



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN CORPORATE INSOLVENCY ENGLISH

Examination 6 June 2014

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 2014.

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 When is a compulsory liquidation deemed to commence when there has been no prior resolution passed to wind up the company?
- a) On the making of the winding up order
- b) On the service of the Statutory Demand
- c) On the presentation of the petition
- d) On the advertisement of the petition in the London Gazette
2. Which of the following are not able to make a proposal for a company voluntary arrangement?
- a) Shareholders
- b) Directors
- c) Liquidator where the company is in liquidation
- d) Administrator where the company is in administration
3. Which of the following is not a purpose of administration as set out in para 3(1) of Schedule B1 of the Act?
- a) To achieve a better result for the creditors as a whole
- b) To realise property in order to make a distribution to one or more secured or preferential creditors
- c) To prevent enforcement action being taken against the company
- d) To rescue the company as a going concern
4. What is the minimum value of the specific penalty bond which office holders are required to take out for each insolvency appointment?
- a) £499
- b) £5,000
- c) £10,000
- d) There is no minimum value
5. If some other person is appointed at a s98 meeting of creditors within how many days of the s98 meeting should the advising member hand over information regarding the company to the appointed liquidator?
- a) Within 14 days
- b) There is no time limit
- c) Within 21 days
- d) Within seven days

6. Whose responsibility is it to convene a s98 meeting of creditors?
- a) The proposed liquidator
 - b) The directors
 - c) Unsecured creditors
 - d) The shareholders
7. Which of the following is not a circumstance in which a company may be wound up by the court?
- a) The company passes a special resolution that it be wound up by the court
 - b) The company is unable to pay its debts
 - c) The court is of the opinion that it is just and equitable that the company should be wound up
 - d) 25% in value of creditors apply to the court
8. The Ethics Code advises that an insolvency practitioner should not accept an appointment in which of the following circumstances?
- a) Liquidator in a members' voluntary liquidation where the liquidator has previously acted as auditor
 - b) Liquidator in a creditors' voluntary liquidation where the liquidator previously acted as administrator
 - c) Trustee in bankruptcy where the trustee has previously acted as supervisor of a failed voluntary arrangement
 - d) Liquidator in a creditors' voluntary liquidation where the liquidator has previously acted as administrative receiver
9. Which SIP deals with Proxy Forms?
- a) SIP 10
 - b) SIP 12
 - c) SIP 7
 - d) SIP 3
10. Where an office holder chooses to make a report available to creditors via a website rather than in hard copy, for what period must the report be available on the website?
- a) Two weeks
 - b) Three weeks
 - c) Three months
 - d) For whatever period the office holder deems appropriate

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. In accordance with the Act state the circumstances in which a company may be wound up voluntarily.
(2 marks)

12. An office holder is permitted by s246 of the Act to conduct a meeting in such a way that persons who are not present together at the same place may attend it. What two rights does a person need to be able to exercise in order to be able to attend a meeting remotely?
(2 marks)

13. An administration will automatically end after a period of one year. How can the period of administration be extended?
(2 marks)

14. Explain how an administrator may dispose of property subject to a hire purchase agreement.
(2 marks)

15. Under Schedule 6 of the Insolvency Rules 1986 what is the scale for a Liquidator's remuneration for funds distributed?
(2 marks)

16. Where an administrative receiver is appointed he shall, within three months after his appointment, send to the Registrar of Companies, any trustees for secured creditors of the company and to all such creditors a report. On what matters should he report?
(4 marks)

17. In accordance with the Act, what are the requirements to be fulfilled, before accepting any appointment, which entitle an IP to be qualified to act?
(4 marks)

18. Outline who may make an application to the court that a CVA which has been approved unfairly prejudices the interests of a creditor, member or contributory of the company.
(4 marks)

19. a) You have been appointed liquidator of Bonham Limited and expect to realise the following assets:

| | |
|-------------------------|----------|
| Freehold property | £768,000 |
| Debtors | £46,700 |
| Motor vehicles | £13,600 |
| Furniture and equipment | £4,700 |

There is a secured creditor who is owed £800,000 in respect of a mortgage secured on the property and Midway Bank PLC are owed £72,000 in respect of the company's overdraft which is secured by way of a floating charge over the company's assets (created after 15 September 2003).

Preferential creditors total £13,400.

For what amount should the liquidator bond?

(3 marks)

b) You have been appointed liquidator of Glassway Limited, a company which ceased to trade six months ago and there are no known assets. The directors have agreed to make the sum of £8,000 available to cover the costs and expenses of the winding up. For what amount should you, as liquidator, bond?

(1 mark)

20. In an Administration, under r2.95 of the Rules, what statements must be included in the notice of proposed distribution to creditors?

(1 mark per point up to 4 marks)

PART C

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

21. Walker Components Limited went into administration on 31 January 2014 with all assets being sold immediately following the administrator's appointment. You are the Senior Manager on the case. The Statement of Affairs (provided below) has been based mainly on the asset sale values agreed so you are confident that that the estimated to realise figures will be realised in full.

At the Para 51 creditors' meeting the pre-appointment costs of £9,000 were approved and the administrator's remuneration has been approved on the basis of time costs but with an upper limit of £30,000 including the pre-appointment time with authority to draw the same. You estimate that by the end of the assignment your post appointment time costs will be £25,000.

Your cashier has produced a receipts and payments account for the period since appointment to 31 May 2014 (see below).

You estimate that the only further expenses to be charged to the estate are £700.

Requirement:

Prepare an Estimated Outcome Statement as at 31 May 2014 to accompany the administrator's report to creditors, to include an estimate of the dividend available to the non-preferential creditors.

(15 marks)

Walker Components Limited
 Estimated Statement of Affairs as at 31 January 2014

| ASSETS | Book Value | ETR |
|--|-----------------------|------------------|
| Subject to Fixed Charge | | |
| | <u>£</u> | <u>£</u> |
| Sale of Goodwill | 65,000 | 50,000 |
| Less: Debenture to Finance4Business | <u>170,000</u> | <u>170,000</u> |
| Deficiency as Regards Fixed Charge | <u>(105,000)</u> | <u>(120,000)</u> |
| Subject to Floating Charge | | |
| Trade Debtors | 55,000 | 40,000 |
| Stock and WIP | 85,000 | 60,000 |
| Motor Vehicles | <u>30,000</u> | <u>25,000</u> |
| | <u>170,000</u> | 125,000 |
| LESS: PREFERENTIAL CREDITORS | | |
| Employee Claims | | <u>12,000</u> |
| SURPLUS AS REGARDS PREFERENTIAL CREDITORS | | 113,000 |
| Less: Prescribed Part | | <u>25,600</u> |
| | | 87,400 |
| Less: Deficiency as Regards Fixed Charge (Brought Down) | | <u>120,000</u> |
| SHORTFALL AS REGARDS DEBENTURE HOLDER | | <u>(32,600)</u> |
| Prescribed Part (Brought Down) | | 25,600 |
| LESS: NON PREFERENTIAL CLAIMS | | |
| Trade & Expense | 156,000 | |
| Bank Overdraft | 15,000 | |
| Crown Debts | 10,000 | |
| Employee Claims | <u>5,000</u> | |
| | | <u>186,000</u> |
| DEFICIENCY AS REGARDS NON PREFERENTIAL CREDITORS | | (160,400) |
| Add: Shortfall to Debenture Holder | | <u>(32,600)</u> |
| DEFICIENCY AS REGARDS CREDITORS | | (193,000) |
| LESS: SHARE CAPITAL | | |
| Ordinary Shares | | 75,000 |

DEFICIENCY AS REGARDS MEMBERS

(268,000)

Notes:

1. Excludes Costs
2. Finance4Business debenture dated 15 September 2008

Walker Components Ltd**Appendix
II****Joint Administrators' Receipts and Payments Account as at 31 May
2014**

| Receipts | S/A £ | Realised £ |
|---|------------------|-----------------------|
| Sale of Goodwill | 50,000 | 50,000 |
| Less: Debenture to Finance4Business | <u>170,000</u> | <u>(50,000)</u> |
| Deficiency as Regards Fixed Charge | <u>(120,000)</u> | <u>0</u> |
| | | |
| Subject to Floating Charge | | |
| Trade Debtors | 40,000 | 23,000 |
| Stock and WIP | 60,000 | 25,000 |
| Motor Vehicles | <u>25,000</u> | <u>25,000</u> |
| | <u>125,000</u> | <u>73,000</u> |
| | | |
| Payments | | |
| Debt Collection Costs | | 1,500 |
| Legal Fees | | 8,000 |
| Bond | | 300 |
| Agents' Fees | | 6,000 |
| Statutory Advertising | | 500 |
| Pre-Appointment Costs | | 9,000 |
| Joint Administrators' Fees | | 7,000 |
| | | <u>32,300</u> |
| | | |
| Balance in Hand | | <u>40,700</u> |

- 22.** Your new assistant has produced a report for your Principal to read out at the forthcoming meeting of creditors of Select and Replace Recruitment Limited which has been convened under Section 98 of the Insolvency Act 1986.

You consider that it is wholly inadequate and does not comply fully with the requirements of Statement of Insolvency Practice 8 (SIP 8).

Requirement:

- a)** Set out a briefing note to your assistant explaining what is required to be disclosed to the meeting in respect of the following matters to comply with SIP8:
- i. The previously held share-holders meeting. **(5 marks)**
 - ii. Payments made to your principal in respect of work done prior to the s98 meeting. **(4 marks)**
 - iii. Transactions between the company and the directors which are outside the ordinary course of the company's business. **(4 marks)**
- b)** What resolutions may be passed at the s98 meeting of creditors?
(1/2 mark per point up to 2 marks)

Total 15 marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED

23. a) What are the bases upon which an office holder's fees may be approved? (4 marks)

b) You have drafted an annual report for an insolvency assignment and are considering the information that needs to be provided to creditors in respect of their understanding that the remuneration charged to the estate is reasonable as outlined in Statement of Insolvency Practice 9 (SIP 9).

You are aware that there is a remuneration resolution in place that fees can be drawn on a time costs basis and that for the period of the report the time charged is £14,500 and in total fees of approximately £32,000 are expected during the life of the case.

Set out in tabular format the headings and categories for reporting time costs as required by SIP 9. You do not need to populate the table with allocated costs.

(5 marks)

c) In accordance with SIP 9 reports to creditors should provide a narrative overview. What are the relevant matters for such an overview in respect of reporting on remuneration matters?

(1/2 mark per point up to 2 marks)

d) Explain what is meant by Category 1 and Category 2 disbursements and provide two examples of each.

(4 marks)

Total 15 marks

24. Your principal has been appointed liquidator of Jeans Limited, a clothing retailer. The company was wound up by an order of the court made on 21 March 2014 following a petition issued by HMRC on 15 January 2014 and served on the company on 07 February 2014. Your principal has asked you to review the books and records and your investigations have disclosed the following:

- i. On 12 September 2013 the company paid the sum of £25,000 to Sew Limited, a clothing manufacturer which Jeans Limited had owed money to for 18 months and who had refused to supply further goods until their debt was repaid.
- ii. The management accounts for the year ended 30 January 2012 show that the company owned the freehold on the property it trades from and this was valued at £125,000 in the accounts. A search of HM Land Registry has revealed that, since 02 February 2012, the title to the property has been in the name of the managing director.
- iii. On 05 February 2014 the company made a payment of £15,000 to Clothing Storage Limited, a clothing warehouse that a company search has shown is owned by the managing director's wife. A review of the accounts shows that this was for a debt that had been outstanding for two years.

Requirement:

Prepare a memo for your principal setting out your initial view on the above matters.

Total 15 marks

25 You have been contacted by the directors of Flat Square Limited, a local t-shirt manufacturing company. The company has been operating for four years and has a number of local customers who it supplies to on a regular basis. Despite the directors best efforts to expand the business only a small operating profit has been achieved and the company is experiencing cash flow problems and is unable to meet its debts as and when due.

The company has recently won a larger contract to supply a national chain of menswear shops which will ultimately alleviate the company's problems but in the meantime the directors need to address the current cash flow problems and they have contacted you for advice in relation to a company voluntary arrangement.

The company has been issued with a statutory demand from a supplier of linen, Eco Cloth Limited, in the sum of £26,000 and the directors advise you that they are unable to pay this. Further pressure is being received from three other suppliers and HMRC who are all threatening to apply to court for a winding up order to be made.

The directors are anxious to resolve matters as soon as possible and to secure the new contract by ensuring that creditors cannot continue with their threatened actions.

Requirement:

a) Explain why a company voluntary arrangement (CVA) would be beneficial to the company if it could obtain a moratorium under the provisions of the Act and the conditions which must apply to the company to enable it to obtain such a moratorium.

(4 marks)

b) Outline the steps to be taken to obtain a moratorium and, when obtained, the effect it has on creditors and the company.

(9 marks)

c) What are the duties of the nominee in connection with monitoring the company's performance during the moratorium?

(2 marks)

Total 15 marks