



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN CORPORATE INSOLVENCY

SCOTLAND

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 (Scotland) Rules 1986 (as amended).

References to the '1985 Act' are to the Bankruptcy (Scotland) Act 1985 (as amended).

References to the PTD Regs are to the Protected Trust Deeds (Scotland) Regulations 2013.

References to SIPs are to Statements of Insolvency Practice (Scotland).

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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 Whose responsibility is it to convene the s98 meeting of creditors?
- a) The proposed liquidator
 - b) The directors
 - c) Unsecured creditors
 - d) The shareholders
2. The Ethics Code advises that an insolvency practitioner should not accept an appointment in which one 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 a sequestration where the trustee has previously acted under a failed trust deed
 - d) Liquidator in a creditors' voluntary liquidation where the liquidator has previously acted as administrative receiver
3. Within how many business days following the directors' filing Notice of Intention to Appoint Administrators do the directors have to file the Notice of Appointment of Administrators?
- a) 5 days
 - b) 7 days
 - c) 10 days
 - d) 14 days
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 possession/information regarding the company's assets to the appointed liquidator?
- a) Within 14 days
 - b) There is no time limit
 - c) Within 21 days
 - d) Forthwith
6. How many days' notice is required to be given to creditors of the s98 meeting of creditors?
- a) At least seven days' notice
 - b) Five business days
 - c) Seven business days
 - d) At least 14 days' notice
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. 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 creditors as a whole than if the company were wound up (without first being in administration)
 - 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

9. Which SIP deals with Proxy Forms?

- a) SIP 10
- b) SIP 12
- c) SIP 7
- d) SIP 3

10. Where an administrator 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. To whom should a provisional liquidator give notice of his appointment?

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

12. The Administrator can make an application to the court for an order of limited disclosure in relation to statement of affairs information supplied in his proposals. What concerns would lead to him to make such an application?

(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. In accordance with SIP 2 what steps should be taken in an insolvent liquidation to reach an assessment about possible recoveries for the estate?

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

15. The Administrator can request a statement of affairs of the company from one or more relevant persons. Who are considered to be “relevant persons”?

(2 marks)

16. In an administration under R2.41 (Scot) when can an administrator make a distribution to unsecured creditors?

(4 marks)

17. Where a receiver is appointed he shall, within three months after his appointment, send to the Registrar of Companies, the holder of the floating charge by virtue of which he was appointed, any trustees for secured creditors of the company and to all such creditors a report. On what matters should he report?

(1 mark per point up to 4 marks)

18. What documents should be attached to a Form D1(SCOT) in reporting on the directors' conduct?

(1 mark per point up to 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. 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.

(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 as a Pre-pack with all assets being sold immediately following the joint administrators' 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-administration costs of £9,000 were approved and it has been agreed that the basis for future remuneration will be time costs properly incurred by the administrators and their staff but with an upper limit of £30,000 including the pre-administration costs. 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 July 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 July 2014 to accompany the administrators' report to creditors, to include an estimate of the dividend available to the Ordinary creditors.

(15 marks)

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

ASSETS	Book Value	ETR
Secured assets		
	<u>£</u>	<u>£</u>
Sale of Heritage	65,000	50,000
Less: secured to Finance4Business	(170,000)	(170,000)
Shortfall c/d to floating charge	<u>(105,000)</u>	<u>(120,000)</u>
Assets subject to Floating Charge		
Trade Debtors	55,000	40,000
Stock and WIP	85,000	60,000
Motor Vehicles	30,000	25,000
	<u>170,000</u>	<u>125,000</u>
LESS: PREFERENTIAL CREDITORS		
Employee Claims		12,000
SURPLUS AVAILABLE TO FLOATING CHARGE HOLDER		113,000
Less: Prescribed Part		<u>(25,600)</u>
		87,400
Less: Balance due to floating charge creditor		<u>(120,000)</u>
SHORTFALL TO FLOATING CHARGE CREDITOR		<u>(32,600)</u>
Prescribed Part (Brought Down)		25,600
LESS: ORDINARY CREDITORS		
Trade & Expense	156,000	
Bank Overdraft	15,000	
Crown Debts	10,000	
Employee Claims	5,000	
		<u>(186,000)</u>
DEFICIENCY AS REGARDS ORDINARY CREDITORS		(160,400)
Add: Shortfall to Floating Charge Creditor		<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 floating charge dated 15 September 2008

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

Receipts	S/A £	Realised £
Sale of Heritage	50,000	50,000
Less: secured to Finance4Business	170,000	(50,000)
Deficiency to Secured creditor	(120,000)	0
Subject to Floating Charge		
Trade Debtors	40,000	23,000
Stock and WIP	60,000	25,000
Motor Vehicles	25,000	25,000
	125,000	73,000
Payments		
Debt Collection Costs		1,500
Legal Fees		8,000
Bond		300
Agents' Fees		6,000
Statutory Advertising		500
Pre-Administration Costs		9,000
Administrators' Fees		7,000
		32,300
Balance in Hand		40,700

- 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 Act.

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

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 SIP 8 (Scotland):

- 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 criteria must be met before an administrator can make a distribution to secured or preferential creditors?

(4 marks)

- b) You have drafted an annual report for an insolvency assignment and are considering the information that should be provided to substantiate that the time charged to the case, and claimed as remuneration, is reasonable as outlined in SIP 9 (Scotland).

You are aware that there is a remuneration resolution in place that fees can be charged 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 suggested by Appendix A of SIP 9 (Scotland). You do not need to populate the table with allocated costs.

(5 marks)

- c) In accordance with SIP 9 (Scotland) 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 31 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 Registers of Scotland has revealed that, since 02 February 2012, the title to the property has been in the name of the managing director and is free of any charges.

Requirement:

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

8 marks for (i) and 7 marks for (ii)

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 on a regular basis. Despite the directors' best efforts to expand the business only a small operating profit has been achieved, 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 (CVA).

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 the company is unable to pay this. Further pressure is being received from three other suppliers and HMRC who are all threatening to petition the 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 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