



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN INSOLVENCY SCOTLAND

Examination 4 December 2015

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 2015.

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. For how many years must an insolvency practitioner maintain their own records after the dissolution of a company?
- a) 3 years
 - b) 4 years
 - c) 5 years
 - d) 6 years
2. What is the relevant date for claims in a creditor's petition bankruptcy?
- a) The date the charge for payment expires
 - b) The date of the award of sequestration
 - c) The date of the warrant to cite
 - d) The date of registration of the award in the Register of Insolvencies
3. Who is unable to make an application for an order to remove a Commissioner from office in a sequestration?
- a) The Accountant in Bankruptcy
 - b) A person representing not less than 25% in value of creditors
 - c) The trustee
 - d) The debtor
4. Which of the following can only put a company into administration by applying to the court?
- a) The company
 - b) The directors
 - c) Creditors (other than qualifying floating charge holder)
 - d) Qualifying floating charge holder
5. What percentage of creditors, in value, must concur to apply to the court for an order that the liquidator's remuneration is excessive?
- a) 5%
 - b) 10%
 - c) 15%
 - d) 25%

6. What does SIP 11 deal with?
- a) A receiver's responsibility to preferential creditors
 - b) The handling of funds in formal insolvency appointments
 - c) Records of meetings in formal insolvency proceedings
 - d) Proxy forms
7. Which of the following debts is not a provable claim in a sequestration?
- a) Arrears of child support
 - b) Any fine imposed for an offence
 - c) Debt in a foreign currency
 - d) Pre-commencement interest
8. What is the official rate of interest payable on claims in a members' voluntary liquidation?
- a) 15%
 - b) 12%
 - c) 10%
 - d) 8%
9. A floating charge granted to an unconnected party may be challenged under Section 245 of the Act if created within what period of the onset of insolvency?
- a) 6 months
 - b) 2 years
 - c) 1 year
 - d) 5 years
10. Who is not required to be notified by the nominee of the commencement of a moratorium for a company?
- a) The Accountant in Bankruptcy
 - b) Any petitioning creditor
 - c) The company
 - d) The Registrar of Companies

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. Your principal has been appointed liquidator of Best Beds Limited however he is dissatisfied with the level of remuneration set by the liquidation committee. What can he do, if anything, in relation to this?

2 marks

12. Who must be notified of the Accountant in Bankruptcy's decision refusing an application to vary a debtor contribution order?

½ mark per point up to 2 marks

13. Where an administrator's proposals have been deemed to be approved under Rule 2.25(3) of the Act notice must be given to the Registrar of Companies. What notice must the administrator give to the Registrar and within what timescales?

½ mark per point up to 2 marks

14. What are the grounds upon which a liquidator can resign from office?

½ mark per point up to 2 marks

15. There are certain restrictions regarding the re-use of a company name. What is meant by a prohibited name?

2 marks

16. You have been acting as liquidator of S J Kent Limited which is in members' voluntary liquidation, for the past five months. Having advertised for claims a

number of significant claims have been received which you were not aware of at the time of the declaration of solvency having been made by the directors.

Agreement of these claims will result in the company being unable to pay its debts, including interest, in full within 12 months from the date of commencement of the winding up.

Requirement;

What steps should you now take, as a result of this?

4 marks

17. List four matters a nominee should bear in mind when considering a Company Voluntary Arrangement proposal.

4 marks

18. What advice must an insolvency practitioner give to a debtor considering granting a trust deed?

½ mark per point up to 4 marks

19. The appointment of an administrator ceases to have effect at the end of one year beginning when the administration takes effect. How may the period of an administration be extended?

4 marks

20. In what circumstances is a creditor no longer eligible to act on a creditors' committee?

1 mark per point up to 4 marks

PART C

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

21. Your principal has been instructed by the two directors of Trinder Limited (the “Company”) to assist them in winding the company up by means of a creditors’ voluntary liquidation.

The creditors’ meeting held pursuant to Section 98 of the Act has been set for 30 January 2016 and you have been provided with the following information by the directors;

- The Company trades from freehold premises which has a book value of £300,000. Your agent has advised that the premises have an estimated market value of £250,000.
- The Company has a standard security and a floating charge with Kingsholm Bank (the “Bank”) which was entered into on 1 June 2006 and is for £400,000.
- The Company has a debtor’s ledger to the value of £200,000. The directors have advised that a debt in the sum £50,000 is a bad debt and therefore irrecoverable. They consider that of the balance 80% is recoverable. You consider that a further general provision of £20,000 would be prudent however.
- The Company has fixtures and fittings with a book value of £37,500. Agents have valued the fixtures and fittings at £22,500. A charge was granted over the fixtures and fittings in favour of Twelvetrees Limited (“Twelvetrees”) for £10,000 on 1 June 2007. A ranking agreement is held and signed by the relevant parties to allow Twelvetrees’ charge to have priority over the Bank’s charge.
- The Company owns five vans, two of which the Company owns outright and have a book value of £5,000 each. Your agent believes a realistic realisable value is £3,500 per van.
- In respect of the other three vans, these are all subject to hire purchase and have no realisable value.
- HM Revenue & Customs are owed £275,000 and £42,000 in relation to PAYE & NIC and VAT respectively.
- Trade creditors are owed £196,000 and the directors are owed £8,000 each.
- There are 25 employees who are owed a combined total of holiday pay of £12,000 and outstanding wages of £10,000. There are no claims for redundancies.
- Share capital is 10,000 shares of £1 each, equally held between the directors.
- The last set of accounts held for the year ending 31 December 2014 show a loss for the year of £66,000 with no dividends being paid for that year.

Requirement:

- a) Prepare the statement of affairs for the purposes of the creditors’ meeting (show all workings and detail any assumptions made)

11 marks

b) Prepare the deficiency account to accompany the statement of affairs

4 marks

Total 15 marks

22. Your principal has been appointed trustee of the sequestrated estate of Daisy May with effect from 1 September 2015. The warrant to cite was made on 12 August 2015.

Daisy lives with her partner and their three children aged 14, 17 and 23 in a four bedroom property in a leafy suburb of Linlithgow. She has advised that she and her partner purchased the property jointly some 15 years ago and it is subject to an outstanding mortgage which is in their joint names. She also advised that the property is subject to a second secured loan but thinks that this was paid off around three years ago.

Daisy's partner has contacted your principal to say that he paid for a conservatory that was added to the property six years ago at a cost of £10,000. He is expecting to be repaid for the cost of the conservatory and wants to get his 'proper share' from the property.

Requirement;

- a) What steps should the trustee take in the first two to three months of their appointment in respect of the above property to confirm;
1. What interest (if any) the trustee holds in the property; and
 2. To protect any interest held

10 Marks

- b) How would the trustee go about realising his beneficial interest in the property?

5 marks

Total 15 marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED

- 23.** Your principal has been approached by the directors of Fox's Knitwear Limited (the "Company") for some advice on the financial position of the Company.

You have been made aware that the turnover of the Company has fallen dramatically over the last twelve months due to the sudden and unforeseen illness of the sales director.

The sales director has now made a full recovery and is back at work however the impact on the Company's cash-flow has been severe during his period of illness.

Whilst the directors are confident that sales can be brought back into line, the Company requires some assistance in the short term.

Administration has been suggested as an appropriate option however the directors are unclear about how the administration will be brought to a close and what the end result will be.

Requirement;

Prepare a memo for your principal outlining the different options available for bringing an administration to a close, detailing briefly the circumstances in which each option would be most relevant.

Total 15 marks

- 24.** SIP 2 sets out the basic principles and essential procedures with which an office holder is required to comply with when conducting an investigation into the financial affairs of an insolvent company.

Requirement;

- a)** In accordance with SIP 2, detail what practical steps should be undertaken by an office holder in respect of carrying out his initial investigation.

7 marks

- b) You have identified a possible transaction at an undervalue pursuant to Section 238 of the Act. What matters would need to be proven in order to unwind this transaction in an insolvent liquidation and what orders may the court make?

8 marks

Total 15 marks

25. Georgina and Brett, a married couple, established a specialist sports equipment outlet targeted at elite sportsmen and women in a range of sports but focussed primarily on triathlon events; swimming, cycling and running (Georgina is an accomplished triathlete), and also on cricket, which is Brett's first love as a former county cricket player. They decided to target the mountaineering market as well. They set up in business as a partnership and traded from a premium retail outlet in Edinburgh. The partnership trades under the style of 'High Achievers'.

High Achievers commenced trading four years ago and whilst the business attracted interest from sports enthusiasts, because of the range and cost of the equipment involved they have always struggled with cash-flow. They invested heavily in fitting out the store to create a premium brand image. However, they have struggled to establish a distinctive, competitive identity in a fiercely competitive market.

The business carried significant amounts of expensive stock, some of which quickly became obsolete due to the speed of innovation, in particular in cycling equipment. The business ran out of cash and came under considerable pressure from creditors.

One significant supplier approached your principal and asked that they provide consent to act. The supplier subsequently petitioned for the sequestration of High Achievers and both partners. Warrant to cite were issued on 2 November 2015 and your principal was appointed trustee of each estate.

You have interviewed the debtors and obtained the following information:

- (a) The rent for the leasehold trading premises in Edinburgh is £60,000 per annum. The lease was entered into four years ago for a term of ten years of which six years is remaining. There are currently arrears of £15,000 and the landlord has advised you of his intention to claim £30,000 in respect of dilapidations. The landlord has

been given possession of the premises and has indicated that he expects to be able to re-let the premises in no more than six months and wishes to claim for future rent until the property is re-let.

- (b)** The agent instructed by the trustee took safe custody of the stock with a book value of £75,000 but it is only expected to realise £20,000 at auction.
- (c)** A supplier of stock currently held by the agent is claiming retention of title. The supplier is owed £19,000 and the cost of the equipment held by your agent is £8,000 (and is expected to realise £4,000). You have reviewed the retention of title claim and it appears to be valid. The supplier wishes to collect their stock from your agent.
- (d)** All fixtures and fittings were paid for by the partnership at a total cost of £30,000. Unfortunately these had to be left at the premises and are not expected to realise anything for the estate.
- (e)** High Achievers have outstanding book debts of £65,000 but two companies with debts due to the partnership totalling £15,000 are subject to insolvency proceedings and the dividend prospects are poor. The remaining book debts are expected to realise 80% of the book value.
- (f)** High Achievers has cash at bank of £2,000.
- (g)** HM Revenue & Customs is owed £23,500 for unpaid VAT and £7,000 for unpaid PAYE/ NIC. In addition, Schedule D assessments have been raised against the partners in the sum of £8,000 for Georgina and £6,000 for Brett.
- (h)** Georgina bought her own car two years ago, a Landrover, which cost £9,000 and is now worth £6,000. She borrowed £5,000 from her parents to help purchase the car and they are still owed the sum in full.
- (i)** Brett likes his cars and is very proud of his Maserati which he bought six years ago. He is a little coy about the value but your agent has indicated that it is likely to realise about £28,000 at auction. He is claiming that the car is essential for getting to and from work.
- (j)** Brett is also the proud owner of some cricket memorabilia which is worth approximately £10,000 but he is claiming these are personal items and should not be regarded as assets because they are nothing to do with the business.
- (k)** Georgina's bike which she uses for triathlons cost £3,000 and is now worth £2,000. She paid for this from her drawings from the partnership.
- (l)** Your agent has agreed to a fee basis of 10% of realisations (including VAT) of any assets they are instructed to sell.
- (m)** The store had a total of five full and part-time employees. Their wages were paid up to date but they are owed a total of £8,000 in respect of pay in lieu of notice. In addition to this, three of the employees are each owed £1,200 relating to holiday pay. The combined redundancy entitlement is £20,000.
- (n)** Both Georgina and Brett have secured new employment. Georgina's net monthly surplus income has been assessed at £400 and she has agreed to make contributions at this level for a period of three years. You have assessed Brett's monthly surplus income as £300 but he disputes this. However, he does not appear to have valid grounds and you anticipate obtaining an Income Payment Order ("IPO") (if necessary) at the level you have assessed.
- (o)** Georgina and Brett own their house in Edinburgh which is currently worth £350,000 and is subject to a mortgage of £260,000. They are joint tenants having purchased the property together.

- (p)** The business has trade creditors totalling £120,000 and has borrowed £25,000 to assist with cash-flow from an independent source (Smart Lending Limited) which has not taken any security.
- (q)** The petitioning creditor incurred petition costs of £1,500 for each of the partners and £2,000 for High Achievers.
- (r)** The trustee's fees and outlays for Georgina will be £6,000, for Brett will be £15,000 and the liquidator's fees for the partnership will be £12,000, all inclusive of VAT.
- (s)** You estimate that your legal costs will be £2,400 (including VAT) in connection with claiming Brett's assets and obtaining an IPO.
- (t)** You also expect to incur legal fees totalling £5,000 (including VAT) in dealing with the sale of the house in Edinburgh.

Requirement:

Prepare an Estimated Outcome Statement and dividend forecast for High Achievers and the partners. Please support your answer by clearly stating any assumptions and showing your workings where appropriate.

Total 15 marks