



## **INSOLVENCY PRACTITIONERS ASSOCIATION**

### **CERTIFICATE OF PROFICIENCY IN INSOLVENCY ENGLAND & WALES**

**Examination 2 December 2016**

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**INSOLVENCY**

**(3 HOURS)**

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- 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 2016.

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.**

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1. Which one of the following cannot make a Court application pursuant to Section 304 of the Act against a trustee for misapplied or retained, or become accountable, for any monies which the bankrupt's estate has suffered a loss as a consequence?
- a) The Official Receiver ("OR")
- b) The Secretary of State ("SoS")
- c) The bankrupt
- d) The bankrupt's spouse
2. Pursuant to Section 238A of the Act, within how many years must a trustee deal with the bankrupt's interest in the matrimonial home before it re-vests in the bankrupt?
- a) 1 year
- b) 2 years
- c) 3 years
- d) 5 years
3. For a debtor to qualify for a debt relief order what is the maximum property value they must not exceed?
- a) £300
- b) £400
- c) £500
- d) £1,000
4. In administration, what type of recovery action cannot be assigned to a third party?
- a) Avoidance of a floating charge
- a) Preference
- b) Misfeasance
- c) Wrongful trading
5. You are required by law to notify the Redundancy Payments Service within a period of 90 days if you are proposing to dismiss how many employees?
- a) 10 or more
- b) 15 or more
- c) 20 or more
- d) 25 or more

6. Which one of the following statements in relation to a supervisor of an individual voluntary arrangement (“IVA”) is not true?
- a) A supervisor may apply to Court for directions on any matter
  - b) A supervisor may only apply to Court for directions where an interim order was first obtained
  - c) The Court may appoint a person to replace the existing supervisor
  - d) The Court may appoint a person to act as a supervisor alongside the existing supervisor
7. Following legislative changes in October 2015, where office holders are seeking approval to draw fees on a time costs basis, fees and costs estimates need to be provided in advance of approval being sought. Which type of formal insolvencies does this not apply to?
- a) Members voluntary liquidation (“MVL”) and bankruptcy
  - b) MVL and company voluntary arrangement (“CVA”)
  - b) Compulsory liquidation and administration
  - c) Creditors’ voluntary liquidation (“CVL”) and administration
8. You are declaring a dividend to the unsecured creditors. The company was previously in administration but is now in CVL. As the company traded overseas, several of the creditors’ claims submitted are in Euros and US Dollars. What exchange rate date should be utilised for the purposes of converting these claims to Sterling?
- a) The exchange rate on the date of the notice of dividend
  - b) The exchange rate on the date of the administration order
  - c) The exchange rate on the date of the commencement of liquidation
  - d) The exchange rate on the date of the creditors’ invoice
9. For a company to be placed into MVL, within what time frame must the declaration of solvency be filed with the Registrar of Companies?
- a) 7 days from the date it is made
  - b) 15 days from the date it is made
  - c) 7 days from the date of the commencement of the liquidation
  - d) 15 days from the date of the commencement of the liquidation
10. Which one of the following appointments does not need to be an insolvency practitioner?
- a) Supervisor of an IVA
  - b) Nominee of a CVA
  - c) Special manager
  - d) Provisional liquidator

## **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. What four types of companies are not eligible for a moratorium as part of a CVA?

**2 marks**

12. You are due to meet a debtor who is considering entering into an IVA. During the course of this meeting, what preliminary advice should be provided to the debtor at this early stage, in accordance with SIP 3.1?

**2 marks**

13. A former employee of a company arrives at a creditors' meeting held under Section 98 of the Act, with evidence of a protective award for £6,800 having been made 6 days ago. Neither a proxy form nor a proof of debt form has been submitted. What, if any, are his voting rights?

**2 marks**

14. A partner in a partnership has recently been declared bankrupt. What effect will his bankruptcy have on the partnership, should the Court apply the terms of an Insolvent Partnership Order?

**2 marks**

15. Notwithstanding any additional powers and duties which may or may not be provided to a receiver under the terms of a legal mortgage, what powers or duties does a receiver have if appointed under Law Property Act 1925?

**2 marks**

16. In order for a potential transaction at an undervalue pursuant to Section 339 of the Act recovery action to be successful, what main points must be satisfied?

**4 marks**

17. As a trustee in bankruptcy your principle function is to take possession of, realise and distribute the bankrupt's estate.

In carrying out his functions the trustee's conduct must be of the highest standard as an officer of the Court, and also have regard of his duties as trustee.

**Requirement;**

Prepare a file note outlining the trustee's duties.

**4 marks**

18. You have recently been appointed as administrator of Basketcase Limited and are considering whether you should continue trading the business.

**Requirement;**

What matters should be taken into account when deciding whether to continue trading or not?

**4 marks**

19. You have been asked by your principal to review various retention of title ("ROT") claims recently received from creditors.

**Requirement;**

What matters should you consider when adjudicating these claims?

**4 marks**

20. As part of an Insolvency Practitioner's Code of Ethics he is required to comply with several fundamental principles.

**Requirement;**

Detail what these principles are and explain how an insolvency practitioner should conduct himself in order to comply with each principle.

**4 marks**

## **PART C**

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

- 21.** Your principal is due to be appointed as administrator of Clean Cut Limited (“the Company”) shortly, and it is proposed that the Company’s business will be sold to a connected party immediately upon your appointment to avoid the loss of any goodwill.

#### **Requirement;**

Prepare a memorandum to your principal detailing the key points that should be considered and addressed pursuant to SIP 16, including details of the transaction as a whole.

**Total 15 Marks**

22. Mr Rob Lloyd is due to attend a meeting at your office later this afternoon. During your initial telephone conversation with Mr Lloyd you gather that he was formerly a director and main shareholder of Gyms Direct Limited (“the Company”).

The Company previously traded in providing home gym equipment. However, following various disagreements with his suppliers, Mr Lloyd was left with little other alternative but to place the Company into CVL with another firm of insolvency practitioners.

Mr Lloyd is also concerned with his personal financial position. Following providing personal guarantees to now dissatisfied suppliers, many creditors are threatening to call upon these personal guarantees and therefore, he is considering the possibility of entering into an IVA.

At the meeting Mr Lloyd arrives in a new Mercedes Benz which you and your principal are slightly surprised about and believe based upon previous knowledge, that the motor vehicle is worth in excess of £50,000.

During the meeting Mr Lloyd also advises that he is currently married and lives with his wife in Cheam with two young children. He believes that the matrimonial home is currently worth approximately £350,000 with a mortgage of £275,000. There is also a second charge registered against the property in respect of one of Mr Lloyd’s business debts for £25,000. Mrs Lloyd is claiming she has no knowledge of this second charge.

It is understood that the liabilities in respect of the personal guarantees are approximately £100,000, and in addition to this Mr Lloyd has run up several credit card liabilities and loans in his personal name totalling approximately £60,000.

From your discussions with Mr Lloyd it is established that he had several very loyal customers which, notwithstanding the disagreements with his suppliers, he could have made the Company a success.

Mr Lloyd believes that he would be able to source alternative suppliers and intends to form a new company and potentially draw an annual salary of £30,000.

**Requirement;**

Draft an email to your principal detailing the main advantages and disadvantages should Mr Lloyd decide to enter into an IVA compared to bankruptcy proceedings.

**Total 15 Marks**

**PART D**

**TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED ON A SEPARATE SHEET OF ANSWER PAPER**

- 23.** A principal of your firm has recently been approached by a director of a company who wishes to enter into some formal or informal arrangement with their creditors in order to avoid the risk of enforcement action and to save the company.

**Requirement;**

Set out the advantages and disadvantages of the various options available to the director.

**Total 15 marks**

24. Brothers, John and Dennis have carried on in a partnership business for a few years, trading as Westlip Fabrications (“Westlip”). They set up the business in 2005 to manufacture and sell small steel frame buildings and also to carry out steel repairs primarily to agricultural buildings. They come from a farming and engineering background and promoted the business as an alternative to working on their parents’ farm, known as West Down Farm.

Westlip trades from a workshop on the farm which is rented from their parents. The brothers and partners, have invested heavily in machinery for the business, initially utilising funds borrowed from their parents but subsequently from funders known as Twin Peaks.

Lately they have struggled with cash-flow and have been unable to pay their trade creditors in accordance with the agreed terms. In addition to this, they have fallen into arrears with HM Revenue & Customs (“HMRC”) resulting in HMRC presenting a petition to wind-up the partnership and also bankruptcy petitions against each of the partners.

Your principal has been appointed as liquidator of Westlip and also as trustee of the two bankruptcy estates. The OR took steps to close the business immediately following the making of the bankruptcy and winding-up orders and dismissed the four remaining employees. Agents were instructed to take control of the workshop and all of its contents. Your principal was subsequently appointed by the SoS at the request of the unsecured creditors.

As a result of reviewing the handover documents from the OR and your first meeting with the bankrupts, you establish the following:

- The agents instructed by the OR took the plant & machinery with a book value of £75,000 into safe custody. It is expected to realise only £20,000 at auction. Agents’ costs will be 10% of the total of all realisations, excluding motor vehicles.
- The agents also took possession of all of the stock. One of the suppliers, J Williams, is currently claiming ROT over the stock for which he is owed £17,000. The cost of the stock the supplier is claiming ROT over is valued by your agents at £8,000, the balance of which has been utilised. You have reviewed the ROT claim and it appears to be valid. The supplier wishes to collect their stock from your agent.
- The remaining stock to the value of £18,000 is not subject to ROT, and it is expected to realise £12,000.
- Westlip have outstanding book debts totalling £55,000. It is thought that due to two debtors themselves entering into insolvency proceedings that £15,000 of this total will be uncollectable and dividend prospects look to be poor. The remaining debts are expected to realise 50% of their book value.
- Westlip has cash at bank of £2,000.
- HMRC are owed £19,500 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 £6,000 for John and £8,000 for Dennis.
- The workshop was rented from West Down Farm six years ago on a ten year lease term. The annual rent is £20,000 and is two quarters in arrears. The landlord has given notice of their intention to claim dilapidations totalling £15,000, together with

outstanding rent to the end of the term of the lease. The property is in an isolated location and the landlord believes that the property will be unlettable for at least a year.

- Westlip entered into a formal loan agreement with West Down Farm, to borrow £50,000 unsecured and on favourable terms, when they set up the business and £32,000 remains outstanding.
- John is married and lives in a cottage which he jointly owns with his wife, Anne. They bought the property together six years ago. The property is believed to be worth around £180,000 and is subject to a mortgage of £120,000.
- John also borrowed £4,000 personally from his parents, which he still owes.
- Dennis is single and lives with his parents on the farm to whom he pays rent of £300 a month. There are no arrears. He has run up £22,000 on credit cards and personal loans.
- John has obtained a job offer as a metal worker on a salary of £20,000 and you have reviewed his projected income & expenditure. John has agreed to enter into an Income Payment Agreement for £200 a month for the usual maximum length.
- Dennis utilised the proceeds of a PPI claim of around £22,000 to buy a Range Rover three years ago. He is a little vague about the value but your agents have indicated that it is likely to realise about £18,000 at auction. He is claiming that the car is essential for getting to and from work.
- Your agents' costs will be 8% of the sale proceeds for dealing with any vehicle sales.
- Westlip had four employees who are all due one month's wages. Two of the employees are owed £1,200 each and the other two £700 each. In addition, two of the employees are each owed £500 holiday pay. The total (combined) redundancy entitlement due to all employees is £12,000.
- The business has trade creditors (excluding the supplier J Williams), totalling £80,000. It also borrowed £25,000 to assist with cash-flow from Twin Peaks which has not taken any security.
- The petitioning creditor incurred petition costs of £1,500 for each of the partners and £2,200 for Westlip.
- The OR's costs and disbursements, net of the deposits on the petition, are £2,300 for Westlip and £1,600 for each of the partners.
- The SoS fee for John will be £7,800, for Dennis £5,400 and £11,800 for the partnership.
- The trustee's fees for John will be £8,000, for Dennis £2,500 and the liquidator's fees for the partnership will be £18,000.
- You also expect to incur agents and legal fees totalling £5,000 in dealing with the sale of the trustee's interest in John's cottage.

### **Requirement;**

Prepare an estimated outcome statement and dividend forecast for Westlip and both the bankruptcy estates. Your answer should be supported by clearly stating any assumptions and showing your workings where appropriate. Ignore VAT.

**Total 15 marks**

- 25.** You have recently been appointed by the SoS as trustee in bankruptcy of Colin Clark following a bankruptcy order being made on 31 August 2016 following a petition being served on the debtor by Haphazard Limited on 16 June 2016.

During a recent meeting of creditors' it became apparent that there are a number of issues to be resolved and you sought to form a creditors' committee.

**Requirement;**

- a) Set out who may be appointed to act as a committee member and when committee meetings will be held?

**4 marks**

- b) What are the functions of the creditors' committee?

**5 marks**

- c) As part of the SoS's application to the Court to apply for a Bankruptcy Restriction Order what matters, as set out in Schedule 4A of the Act, should be taken into consideration on whether an application will be successful?

**6 marks**

**Total 15 marks**