



## **INSOLVENCY PRACTITIONERS ASSOCIATION**

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

**Examination 9 June 2017**

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**INSOLVENCY**

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**(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 6<sup>th</sup> April 2017 including the new Insolvency (England & Wales) Rules 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. Within how many days following the appointment of a liquidator should the liquidator notify the Registrar of Companies of the resolution to wind-up a company?
- a) 14 days
- b) 14 clear days
- c) 15 days
- d) 15 clear days
2. For a creditor to present a petition for the winding-up of a company what value of debt must they be owed?
- a) £750
- b) £1,000
- c) £2,500
- d) £5,000
3. Under the new rules, with the consent of the office-holder, creditors with 'small debts' do not have to formally prove their debts in order for a dividend to be received. What is the maximum value of a creditor's debt for it to be treated as 'small' in this way?
- a) £500
- b) £750
- c) £1,000
- d) £1,500
4. In a liquidation committee what is the maximum number of members?
- a) 3
- b) 5
- c) 7
- d) No limit
5. Creditors may make a request for a physical meeting to be held within what time period from the delivery of a notice of a decision procedure?
- a) Not later than five days after the date of delivery
- b) Not later than five business days after the date of delivery
- c) Not later than one week after the date of delivery
- d) Within 21 days of the date of delivery

6. What constitutes a quorum in the case of a meeting of creditors? Is it:
- a) At least one creditor entitled to vote
  - b) At least two creditors entitled to vote
  - c) At least one creditor entitled to vote and the convenor
  - d) At least two creditors entitled to vote and the convenor
7. At what time on a decision date, other than at a meeting, is a decision treated as being made? Is it:
- a) 08:59
  - b) 12:00
  - c) 17:00
  - d) 23:59
8. Under the new rules, when an email is sent, when is it deemed to have been delivered?
- a) The time at when the email was sent
  - b) 5:00pm on the day when the email was sent
  - c) 9:00am the following day after the email was sent
  - d) 2 days after the email was sent
9. The Statements of Insolvency Practice (SIPs) are regularly reviewed and amended by the Joint Insolvency Committee. What SIP provides guidance on “an administrative receiver’s responsibility for the company’s records”?
- a) SIP 1
  - b) SIP 7
  - c) SIP 10
  - d) SIP 17
10. Within how many days must a section 120 notice be submitted to the Pension Protection Fund following your appointment as liquidator or when you became aware of an occupational pension scheme?
- a) 1 month
  - b) 3 months
  - c) 6 months
  - d) 9 months

## **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 potential conduct by a director during the course of liquidation could result in a fine, a warrant for his arrest, and/or imprisonment?

**½ mark per point up to 2 marks**

12. A creditor may choose to opt out of receiving documentation in insolvency proceedings. There are however certain notices which must be sent to all creditors regardless of their decision to opt out. What do these notices relate to?

**1 mark per point up to 2 marks**

13. Rule 15.3 lists a number of decision procedures which a convenor may use to seek a decision from creditors. List four of them.

**½ mark per point up to 2 marks**

14. Name four grounds upon which a company can be wound up by the Court?

**½ mark per point up to 2 marks**

15. What are the thresholds required to be met in order for creditors to be able to request a physical meeting be held?

**2 marks**

16. Samuel and Paul are directors of a building company which over the years has been very successful. Samuel would like to retire from the business and both directors have sought your advice in respect of placing the company into members' voluntary liquidation ("MVL").

### **Requirement;**

- a) At your first meeting you advise the directors that the first step to placing the company into MVL is to call a board meeting in order to pass certain resolutions to commence the process. What resolutions do the directors need to pass at this board meeting?

**½ mark per point up to 2 marks**

- b) What guidance should be provided to the directors in respect of the swearing of a declaration of solvency?

**½ mark per point up to 2 marks**

17. If the convenor of a virtual meeting becomes aware that a creditor has been excluded from the meeting, say through a breakdown of internet access, what may they do?

**1 mark per point up to 4 marks**

18. In order to determine a company's Centre of Main Interests ("COMI") for the purposes of whether EC Regulations applies, what key factors are taken into account?

**1 mark per point up to 4 marks**

19. SIP 7 details certain information which should be disclosed in a receipts and payments account or by way of a note when the payments concerned are to the office holders and their associates. List four of the payments that should be disclosed.

**1 mark per point up to 4 marks**

20. Money laundering is a process by which the identity of "dirty money" is changed so that the proceeds appear to originate from legitimate sources, and is becoming a more and more important aspect of an Insolvency Practitioner's work.

**Requirement;**

Set out an Insolvency Practitioner's obligations and requirements in relation to Money Laundering Regulations.

**1 mark per point up to 4 marks**

## **PART C**

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

- 21.** Percy Pig is the sole director and majority shareholder of Hot Sausages Limited (“the Company”) holding 80% of the shares whilst his estranged wife holds the remaining 20% of the shares in the Company.

During a recent meeting with his bank manager, Percy was advised that he was dangerously close to going over his overdraft limit, and although the bank held adequate security by way of a fixed and floating charge over the assets of the Company, the bank was seeking assurances that the position would be rectified without delay. Failure to rectify the position would result in the bank requesting additional security and/or a personal guarantee from Percy, which he was very reluctant to provide.

The assets of the Company have an approximate value of £1.4 million and the bank is owed circa £1 million. There is also a second legal charge registered at the Registrar of Companies in favour of Mr Apple for £300,000.

Furthermore Percy believed that, although he had more recently been avoiding opening his post, that there were trade creditors of circa £700,000 and that the Company was unable to meet its’ debts as and when they fell due.

#### **Requirement;**

- a)** Describe the process by which the Company could be placed into creditors’ voluntary liquidation (“CVL”) by the members.

**½ mark per point up to 11 marks**

- b)** What are the principle duties of a liquidator following appointment by creditors?

**½ mark per point up to 4 marks**

**Total 15 marks**

- 22.** Your principal has been contacted by First Credit Bank Plc (“the Bank”) in respect of their borrower Townsend UK Limited (“the Company”). The Bank holds a debenture over the assets of the Company which was created on 14 July 2003 and registered at the Registrar of Companies shortly thereafter. The debenture includes a fixed charge over the Company’s most significant asset, a property and also a floating charge over the goodwill and book debts.

The Bank has also advised that following a recent meeting with the directors of the Company that the directors are currently experiencing cash-flow problems and it is highly likely that they will be able to meet their monthly finance commitment to the Bank for the foreseeable future.

**Requirement;**

Draft an email to the Bank setting out their available insolvency options and also the consequences to the Bank and the directors in respect of each of the available options to the Bank.

Ignore compulsory winding-up as the Bank wishes to rely on their security.

**1 mark per point up to 15 marks**

## PART D

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

23. The two directors of WhiteWash Limited (“the Company”) have formally instructed your firm to assist them in the winding-up of the Company via a CVL. The board meeting of directors has been fixed for 3 August 2017 and your principal has asked you to produce the Company’ statement of affairs and deficiency account for the purposes of this meeting.

You have been provided with the following information from the directors;

The paid up share capital is £10,000 being ordinary shares of £1 each.

MBC Bank holds a fixed and floating charge debenture over the Company’s assets dated 8 January 2015 and the sum due to them is £195,000.

The last set of audited accounts for the period ending 30 April 2016 detailed that the balance on the profit and loss account was £12,563.

The Company’s head office is located in Swindon which is owned by the Company together with a distribution warehouse located in Cardiff. The properties have a book value of £175,000 and £135,000 respectively and your agent believes that 85% of the book value is achievable.

Third Property Loans Limited hold a fixed charge over the properties dated 30 September 2015 and are owed £100,000. The loan company has entered into a Deed of Priority with MBC Bank to allow the latter charge to take priority for their full lending.

The Company has book debts with a book value of £120,000 and for the purposes of the statement of affairs the directors believe a bad debt provision of £40,000 should be made and a general provision of 10%.

The fixtures and fittings have a book value of £25,000 and your agents have valued them at £15,000.

Each of the directors has a motor vehicle which is leased from Car Pool. The leasing company has been telephoning your office repeatedly requesting details of the whereabouts of the motor vehicles and when they can collect them. They have advised that they are owed £6,000 and also £5,000 in relation to a termination payment of the lease agreement.

You note from the management accounts that the motor vehicles have a book value of £50,000 and your agent values for them at £35,000.

The Company has 20 employees who are owed a combined total of £23,850 in respect of holiday pay.



The unsecured creditors include trade creditors of £187,000; HM Revenue & Customs for PAYE/NI of £57,200 and VAT of £34,900; directors' loans of £95,360.

**Requirement;**

Prepare the Company' statement of affairs and an estimated deficiency account.  
Show your full workings.

**Total 15 marks**

- 24.** Your principal has been approached by the directors of Tramps Distribution Limited (“the Company”) for advice as the Company has recently suffered a bad debt and they have heard that a Company Voluntary Arrangement (“CVA”) may be suitable for them and enable the Company to carry on trading.

**Requirement;**

- a)** Prepare a briefing note comparing the duties of the nominee and of the supervisor of a CVA as outlined in SIP 3.2.

**7 marks**

- b)** Set out the requirements for the contents of a CVA proposal as set out in the Rule 2.3 IR86, to enable you to properly brief the directors of the issues they need to consider.

**8 marks**

**Total 15 marks**

- 25.** Following discussions between the directors of Roofs Direct Limited (“the Company”) and your principal David Pike, it has decided that although there is no longer a requirement to hold a physical meeting of creditors, it would be prudent to hold a virtual meeting on 5 May 2017 for the purpose of placing the Company into CVL.

At this meeting you have been asked by the Chairman on whether the following claims should be admitted for voting purposes in whole or in part, and if so the amount and basis for which they should be permitted or rejected.

- a)** A proof of debt and proxy form has been received from a creditor in the sum of £12,000 and appointing the Chairman of the meeting. The creditor has also advised that his claim is in respect of a guarantee provided by the Company for extension works on his property, and that his claim is the estimated costs in the event of remedial work being required.
- b)** A proof of debt and a specific proxy form has been received in the sum of £10,000. You note on the proxy form that Mrs White, who is another insolvency practitioner, is the proxy holder, and that special instructions have been given for her to vote for herself as liquidator.
- c)** A proof of debt has been received from a utility company for £2,000 together with a proxy form appointing the Chairman of the meeting. No voting instructions have been given.
- d)** HM Revenue & Customs have submitted a proxy form in favour of the Chairman of the meeting with instructions to vote for the appointment of David Pike as the liquidator. The accompanying proof of debt is for £28,000 but the statement of affairs discloses a debt of £50,000.
- e)** A proxy form has been received from an overseas creditor via email appointing the same Mrs White as above, as their proxy holder. The proof of debt is for a valid claim of £6,000 but there are no voting instructions.
- f)** A proxy in favour of the Chairman of the meeting and proof of debt from a brick supplier in the sum of £18,000. They are also claiming retention of title over stock which the creditor is claiming is worth £10,000 that was delivered last week.
- g)** A proof of debt form has been received from a former employee of the Company for £3,000 and a proxy form voting in favour of the Chairman of the meeting. The directors have advised that this claim is in respect of an injury at work which happened some eight months ago, and was in the hands of the insurance company.
- h)** A proof of debt form has been received from Pipes Direct Limited in the sum of £15,000. The directors have for 7 years disputed this debt from day one and do not believe this sum is due. No enforcement action has been taken by Pipes Direct Limited. A valid proxy form has also been received voting in favour of the Chairman of the meeting.

**Total 15 marks**