



## **INSOLVENCY PRACTITIONERS ASSOCIATION**

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

**Examination 9 June 2017**

---

**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 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.

#### **Copyright Notice**

This examination paper and materials relating to it are copyright of the Insolvency Practitioners Association. No part may be reproduced in any material form except as may be authorised by law or with our consent in writing. All rights are reserved

**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. What percentage of the relevant creditors may object to an office holder seeking a decision by deemed consent?
- a) 5%
- b) 10%
- c) 25%
- d) 50%
2. For a creditor to present a petition for the bankruptcy of an individual what value of debt must they be owed?
- a) £750
- b) £1,500
- c) £2,500
- d) £5,000
3. 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
4. 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
5. 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

6. 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
7. What percentage of creditors may request the removal of the Official Receiver ("OR") as trustee in bankruptcy?
- a) 10%
  - b) 15%
  - c) 25%
  - d) 50%
8. Which one of the following cannot apply to the Court for an administration order?
- a) The company
  - b) The members
  - c) The directors
  - d) The supervisor of a Company Voluntary Arrangement ("CVA")
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. Where a trustee in bankruptcy intends to claw back an item of excess value pursuant to Section 308 IA86 he must serve notice on the bankrupt within how many days from when the item first came to his knowledge?
- a) 7 days
  - b) 14 days
  - c) 21 days
  - d) 42 days

**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. 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**

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

**2 marks**

13. 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**

14. In the eight week period following the issuing of a final report to creditors in a bankruptcy, creditors may do three things. State two of these things.

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

15. The Insolvency Service has said that, based on case law, an Insolvency Practitioner must exercise professional judgment in respect of a proposed Individual Voluntary Arrangement (“IVA”), ensuring what?

**½ mark per point up to 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**

**Total 4 marks**

17. Michael Atron is a self-employed joiner who was declared bankrupt on the 1 June 2016 following a petition being issued for the sum of £60,000 by one of his suppliers Le Go Blocks Limited.

The petition was issued on the 2 February 2016 and served on him on the 24 March 2016. Mr Atron had been waiting for a large customer to pay their final bill so that he could settle the sum due to Le Go Blocks Limited. On the 26 March 2016 the customer paid Mr Atron £30,000, on the same day he contacted the petitioning creditor's solicitors and paid them £30,000 towards the outstanding sum due to their client.

**Requirement;**

Your principal has subsequently been appointed trustee in bankruptcy of Mr Atron and asked you to review the payment made to the petitioning creditor's solicitor and whether this is recoverable for the benefit of the estate as a whole.

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

18. In accordance with the Rules what debts are not provable in a bankruptcy?

**½ mark per point up to 4 marks**

19. In order to determine a debtor'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**

20. 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**

## **PART C**

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

- 21.** At a virtual meeting of creditors convened to approve a debtor's IVA proposal under the new rules, one of the creditors, Mr Ford of Quick Build Services decides to vote against the proposal. Mr Ford is claiming that the debtor must have been fully aware of their financial position for a significant period prior to putting forward their proposal for an IVA and therefore is very upset as the debtor continued to place orders with him in the run-up to today's meeting.

Notwithstanding Mr Ford's rejection to the debtor's proposal, there were sufficient creditors who approved the arrangement however your principal (who is now the supervisor of the IVA) decides it would be prudent to write to Mr Ford setting out the position post approval, and also what he can do if he is still unhappy with the voluntary arrangement.

#### **Requirement:**

- a)** Draft a letter to Mr Ford as detailed above.

**½ mark per point up to 6 marks**

A couple of months into the voluntary arrangement you become aware that the debtor gave materially false and misleading information at the creditors' meeting and therefore your principal has little other alternative but to fail the voluntary arrangement.

#### **Requirement:**

- b)** Prepare a file note to the supervisor detailing
- i) the various grounds upon which a voluntary arrangement can be failed,
  - ii) what will happen to the arrangement in the event the debtor is declared bankrupt and
  - iii) the effect this will have on their creditors.

**½ mark per point up to 9 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.** 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”).

**½ mark per point up to 11 marks**

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

**½ mark per point up to 4 marks**

**Total 15 marks**

**24.** 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**

- 25.** Your principal has been appointed trustee in bankruptcy of Mr Ewing by the Secretary of State on 20 March 2016 following the bankrupt presenting his own petition for bankruptcy on 19 December 2014, when Mr Ewing was due declared bankrupt.

The main asset of the bankrupt's estate is the jointly owned matrimonial home which the bankrupt currently lives in with his wife and their two children.

Although initial dialogue and communication with the bankrupt was satisfactory this has started to deteriorate following your principal (as trustee of his estate) making several attempts to realise his beneficial equity interest in the property for the benefit of the unsecured creditors.

You are aware of Section 283A of IA86 and the three year 'use it or lose it' rule and based upon the lack of assistance your principal is starting to become concerned.

**Requirement;**

- a)** Detail the key practical steps involved in establishing the quantum of the trustee's beneficial equity interest in the property.  
**½ mark per point up to 4 marks**
- b)** What are the main options available to the trustee in dealing with his interest in the property and what should he do to avoid the property re-vesting in the bankrupt?  
**½ mark per point up to 7 marks**
- c)** If the trustee's beneficial equity interest in the matrimonial home is of no realisable value i.e. is in negative equity, how may a trustee hand-back his interest to the bankrupt if he does not want to wait for the property to re-vest in the bankrupt in accordance with the 'three year' provisions and why might this be advantageous?  
**1 mark per point up to 3 marks**

**Total 15 marks**