



**INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN INSOLVENCY
SCOTLAND**

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 1st January 2017.

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 "2016 Act" are to the Bankruptcy (Scotland).

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

CANDIDATE NUMBER.....

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. Within what timescale, following the meeting of creditors, must the liquidator notify the accountant in bankruptcy of their appointment?
 - a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 28 days

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) £3,000

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. What is the maximum amount of paid, or credited as being paid, share capital a company can have to lodge a petition to wind-up the company at the Sheriff Court?
 - a) £50,000
 - b) £60,000
 - c) £100,000
 - d) £120,000

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 the company?
 - a) 14 days
 - b) 14 clear days
 - c) 15 days
 - d) 15 clear days

6. When adjudicating on claims in a protected trust deed the trustee has discretion to accept claims within what tolerance level of the documentary evidence provided?
 - a) 5%
 - b) 8%
 - c) 10%
 - d) 12%

7. In a sequestration what level of creditors can apply to have the trustee removed from acting?
- a) 10% of total value
 - b) 10% in number
 - c) 25% of total value
 - d) 25% in number
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
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. When a Sheriff appoints another person as trustee at a sequestration hearing, the interim trustee must send his/her accounts for intromissions to the accountant in bankruptcy for audit. Within what timescale must the accounts be submitted?
- a) Within 2 weeks of the award date
 - b) Within 1 month of the award date
 - c) Within 2 months of the award date
 - d) Within 3 months of the award date

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 conditions must be met before the Court will grant an administration order and when will the order take effect?

½ mark per point up to 2 marks

12. How can a commissioner be removed from office?

½ mark per point up to 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 a sequestration when can a debtor apply for a payment break in respect of the payments due under the debtor's contribution order?

1 mark per point up to 2 marks

15. When is an individual debtor not able to grant a trust deed?

1 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

17. In a 2016 Act sequestration, what expenses can the trustee pay at any time?

½ mark per point up to 4 marks

18. What information is recorded in the register of insolvencies?

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. You are the case manager dealing with the estate of Jason Bond, who signed his trust deed two days ago. Mr. Ford of Quick Build Services has been in contact and is very upset that the debtor continued to place orders with him when he was obviously aware of his worsening financial position.

Mr. Ford has never dealt with a customer who has signed a trust deed and he wants to know how Mr. Bond can get away with not paying his debts and what he can do to make him pay.

Your principal has asked that you draft Mr. Ford a letter summarising the main principles of a trust deed and advising of his rights as a creditor.

Requirement:

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

½ mark per point up to 11 marks

- b) Add a paragraph detailing Mr Ford's rights as a creditor to make the debtor bankrupt now the trust deed process has started.

½ mark per point up to 4 marks

Total marks 15

- 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 both a standard security over the Company’s commercial property and a floating charge created on the 14 July 2003 and registered at the Registrar of Companies shortly thereafter.

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 unlikely that they will be able to meet their monthly finance commitment to the Bank for the foreseeable future.

Requirement:

- a)** Draft an email to the Bank setting out their available insolvency options and detail 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 13 marks

- b)** What would the impact be for the bank had the floating charge been created on the 3 January 2004?

1 points per mark up to 2 marks

Total 15 marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED ON A SEPARATE PIECE OF 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 standard security and a 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 standard security registered 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 (“MBC”) holds a standard security and a floating charge, dated 8 January 2015 over the Company’s assets 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 Stirling which is owned by the Company together with a distribution warehouse located in Cumbernauld. 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 (“TPLL”) hold a second charge over the properties dated 30 September 2015 and are owed £100,000. TPLL has entered into a ranking agreement with MBC giving them 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 and 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. The relevant date is 10 January 2017.

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

The debtor is ignoring all correspondence you have issued in connection with the property and your principal is keen to ensure things are progressed as soon as possible.

Requirement:

- a)** Detail the key practical steps involved in establishing the quantum of the trustee's financial interest in the property.
½ mark per point up to 4 marks
- b)** Assuming there is equity what are the options available to the trustee to deal with his interest in the property?
½ mark per point up to 10 marks
- c)** If the trustee's 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?
½ mark per point up to 1 mark

Total 15 marks