



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN INSOLVENCY ENGLAND & WALES

Examination 1 December 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 6th 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. What value of creditors is required for an objection to the deemed consent procedure to be upheld?
- a) 10% in value of relevant creditors
- b) 25% in value of relevant creditors
- c) 10 in number of relevant creditors
- d) 25 in number of relevant creditors
2. What is the maximum sum relating to a prescribed part that can be put aside for the benefit of the unsecured creditors?
- a) £400,000
- b) £500,000
- c) £600,000
- d) £700,000
3. Within how many weeks from the date of a winding-up Order must the Official Receiver ("OR") decide whether or not to seek a nomination of a liquidator by the creditors?
- a) 4 weeks
- b) 8 weeks
- c) 12 weeks
- d) 16 weeks
4. Which of these is not one of the objectives of administration in accordance with paragraph 3(1) of Schedule B1?
- a) to enable a sale of the business as a going concern
- b) realising property in order to make a distribution to one or more secured or preferential creditors
- c) achieving a better result for the company's creditors as whole than would be likely if the company were wound up
- d) rescuing the company as a going concern
5. Who is unable to make a proposal for a company to be placed into a Company Voluntary Arrangement ("CVA")
- a) The directors
- b) The members
- c) A liquidator if the company is in liquidation
- d) An administrator if the company is in administration

6. In order to obtain further information the OR has the power to apply to the Court for a public examination pursuant to Section 133 IA86, of any past and present officers of a company. At this public examination who may attend and ask questions?
- a) Special manager
 - b) Any creditor who has tendered a proof
 - c) Contributory
 - d) All of the above
7. In a members' voluntary liquidation ("MVL") of a public company, what percentage is required to waive the requirement to provide members with at least 14 days' notice of a general meeting of members?
- a) 50%
 - b) 75%
 - c) 90%
 - d) 95%
8. The supervisor of a CVA is required to notify creditors that the arrangement has been terminated or fully implemented. Within how many days after the termination or full implementation must creditors be notified?
- a) Not more than 7 days
 - b) Not more than 14 days
 - c) Not more than 21 days
 - d) Not more than 28 days
9. The Statements of Insolvency Practice (SIPs) are regularly reviewed and amended by the Joint Insolvency Committee. What SIP provides guidance on "the presentation of financial information in insolvency proceedings"?
- a) SIP 1
 - b) SIP 9
 - c) SIP 7
 - d) SIP 17
10. Within what time period must the trustee deal with the matrimonial home to prevent it from re-vesting in the debtor?
- a) Within the period of 3 years beginning with the date of the bankruptcy
 - b) Within the period of 12 months beginning with the date of the bankruptcy 10 years
 - c) Within the period of 3 years beginning with the date of the appointment of an insolvency practitioner as trustee
 - d) Within the period of 12 months beginning with the date of the appointment of an insolvency practitioner as trustee

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. A creditor's membership of a committee can be automatically terminated under what condition(s)?

½ mark per point up to 2 marks

12. Where a company has gone into compulsory liquidation the Court may appoint any person to be a special manager of the business to assist in the management of the company. Name two of the special manager's duties.

1 mark per point up to 2 marks

13. What insolvency options are available to creditors of a partnership that is unable to pay its debts?

½ mark per point up to 2 marks

14. What are the effect(s) on a trustee of
- a) an annulment of a bankruptcy Order and
 - b) a bankrupt obtaining his discharge?

½ mark per point up to 2 marks

15. Which decisions in a proposed CVA are required to have three quarters or more in value of those responding vote in favour of?

1 mark per point up to 2 marks

16. What additional powers are commonly found within a mortgage deed to assist a receiver appointed under the Land of Property Act 1925, in carrying out his duties?

½ mark per point up to 4 marks

17. There are various legislative sources and non-statutory guidance which an Insolvency Practitioner should be comply with. List eight of these?

½ mark per point up to 4 marks

- 18.** A creditor's petition (Form 4.2) served against a company, must specify the grounds on which it is presented and the nature of the relief sought. What other information should also be contained on the petition?

½ mark per point up to 4 marks

- 19.** What are your obligations as an office holder under the Money Laundering regulations?

½ mark per point up to 4 marks

- 20.** What powers does the Act give to a supervisor In an Individual Voluntary Arrangement ("IVA")?

1 mark per point up to 4 marks

PART C

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

21. Ivor Bigdebt has approached your firm for assistance with his finances. Following the breakup of his marriage he has been suffering from stress and has admitted that he has been overspending, and has incurred debts in the region of £65,000.

Ivor currently lives in rented accommodation whilst his estranged wife remains in the family home with their three children. There is approximately £100,000 of equity in the matrimonial home and it is presumed that Mrs Bigdebt would like to remain living in the property until the children have finished their full time education. Ivor has confirmed that he pays £600 per month in respect of child maintenance through verbal agreement he arranged with his wife.

Ivor is employed as a lawyer and has a surplus income of £500 per month.

Requirement:

Write a memorandum to your principal, outlining the key issues taking account of his circumstances which he will need to discuss with Ivor to cover the requirements of SIP 3.1 during their first meeting.

1 mark per point up to 15 marks

Total 15 marks

22. a) Your principal has been appointed administrator of Wine Import Limited (“the Company”) on 20 March 2017 by Western Bank plc who have a qualifying fixed and floating charge over the assets of the Company. The Company operates from warehouse premises located in Manchester importing and distributing fine wine throughout the UK.

The purpose of the administration is to rescue the Company as a going concern and, to this end, the administrator has decided to continue to trade the Company until such a time that a sale as a going concern can be achieved. A number of parties have expressed an interest in the Company however to date, no viable offer has been received.

The Company leases forklifts from ForkLift Leasing Limited (“ForkLift”). During the administration period you have been contacted by ForkLift who have raised concerns over the arrears due to them and that the administrators continuing to use the forklifts without authority as per the terms of its’ lease agreement with the Company.

The administrator was unaware of the position with ForkLift, and although he has tried to come to some sort of arrangement with them ForkLift have advised of their intention to remove and collect the forklifts if the arrears are not settled immediately in full.

The directors of the Company have advised that the Company would be unable to continue trading without the forklifts and that given that the Company is in administration, it is highly unlikely that any other leasing company would agree to supply forklifts.

Requirement;

State what action(s) can be taken by the administrator in response to ForkLift’s demands.

½ mark per point up to 10 marks

b) An administrator is required to send out a progress report covering the period of six months commencing on the date the company entered administration and every subsequent period of six months pursuant to Rule 18.6(1).

What information needs to be detailed within this report in accordance to Rule 18.3 and 18.4?

½ mark per point up to 5 marks

Total 15 marks

PART D

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

- 23. a)** In accordance with SIP 2 a liquidator has a duty to investigate what assets there are, and also what recoveries can be made in respect of potential claims against parties including directors.

In order for the liquidator to comply with his specific duties what practical steps should he bearing in mind and undertake in respect of his initial investigation?

½ mark per point up to 7 marks

- b)** During your investigation you have identified what you believe is a possible claim in respect of wrongful trading pursuant to Section 214 IA86. Explain what is wrongful trading, what matters would need to be proven in order for a claim to be successful, and also any possible defence to the claim.

1 mark per point up to 8 marks

Total 15 marks

- 24. a)** Following the exit of the administration via creditors' voluntary liquidation ("CVL") your principal was appointed liquidator of Books & Comics Limited ("the Company"). Whilst in office, the former administrator traded the Company with a view to selling the business as a going concern. Unfortunately, this was unsuccessful and the workforce was made redundant.

The Company traded from three branches located in the South East of England, and also had a head office in Eastbourne where the administrative functions were carried out. The Company employed 30 employees across all four sites.

Little information has been received from the former administrator in respect of the period prior to the administration. No information has been received in respect of the administrator trading period but it is assumed that the administrator paid the employees whilst they were employed in the trading period.

In light of the redundancies during the administrator's trading period, provide details of the employees' claims that you expect to be submitted, and how these would be calculated.

½ mark per point up to 12 marks

- b) Where a company moves from administration to CVL, notification is given to the Registrar of Companies and the administrator is obliged to provide a final progress report.

Requirement:

Up to what date is this progress report and what happens, if anything, in the interim?

1 mark per point up to 3 marks

Total 15 marks

25. Your principal has asked you to complete a receipts & payments account in anticipation of an annual report becoming due in the bankruptcy of Amanda Dawn Smith (“the Bankrupt”). Mrs Smith was declared bankrupt following a petition being presented by HM Revenue & Customs on 22 May 2016, and your principal was appointed as trustee in bankruptcy on 31 May 2016.

At the time of the handover of the case there was an OR debit balance of £1,785 and a General fee of £6,000.

From reviewing the file you have retrieved the following information;

The Bankrupt lived in the jointly owned freehold property known as 11 Debtors Close (“the Property”) with her husband.

The Statement of Affairs (“SoA”) also identified the other following assets and liabilities;

- Cash at bank - £462
- Shares - £2,000
- Motor vehicles - £1,100
- Book debts - £3,264
- Liabilities
- Banks - £125,025
- Other financial institutions - £3,500
- HM Revenue & Customs (Tax) - £66,607
- HM Revenue & Customs (VAT) - £53,278

The Property was sold on 24 February 2017 for £190,000, and the associated costs of sale were as follows;

- Estate agent fees including VAT - £3,375
- Solicitors fees including VAT - £2,118
- Telegraphic transfer fees - £35
- White Horse Mortgages - £74,482

The solicitors acting for the trustee have forwarded the Bankrupt’s share of the sale proceeds to the Insolvency Services account.

The Bankrupt has claimed that she requires the motor vehicle to get to work thus to date, the motor vehicle has not been realised. It is however, your principal’s intention to review this matter shortly.

One of the Bankrupt’s debtors, who owed £278 has also been made bankrupt and it is not expected that there will be any dividend declared to the unsecured creditors.

In addition to the above detailed assets, the Bankrupt agreed to an Income Payment Agreement (“IPA”) dated 15 September 2016. Under the terms of the agreement she would pay the monthly sum of £180 over the period of 3 years commencing from the date of the agreement.

All other assets have been realised.

A notice of intended dividend was advertised on 1 February 2017 and the following claims were received;

- HM Revenue & Customs (Tax) - £94,753. In addition to their petition costs of £1,990 which were paid on 2 April 2017.
- JG Alternative Lending - £5,402
- White Horse Bank - £645

Claims were not received from Church Finance and EastWest Bank.

A dividend of 35 pence in the £ was declared on 10 June 2017.

The creditors have approved the trustee's remuneration to be fixed on a time cost basis with an estimate of £15,000. To date £6,960 has been drawn on account of this. Category 2 disbursements have not been approved.

Other expenses incurred and drawn are as follows;

- Specific bond - £40
- DTI cheque fee - £6
- EPC certificate £75
- Land registry searches - £3
- Insurance - £315
- Postage - £21
- Photocopying - £26
- Provision of a meeting room within your offices- £50
- Statutory advertising - £80

The Bankrupt was VAT registered and a VAT refund was received in the sum of £2,009.

Requirement:

Prepare a receipts & payments account to be included within the first annual report.
Show your full workings.

Total 15 marks