



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN INSOLVENCY ENGLAND & WALES

Examination 8 June 2018

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.

1. Following the making of a bankruptcy order what value of creditors is required to request a decision procedure be instigated for the removal of the Official Receiver (“OR”) as Trustee?
 - a) 10% of creditors’ claims in value
 - b) 25% of creditors’ claims in value
 - c) > 10 creditors, 10% of creditors in value or 10% in number of creditors
 - d) None of the above

2. If in a creditors’ voluntary liquidation (“CVL”), a creditor has opted out of receiving further communication, which of the following documents need not be sent to them?
 - a) Notice of intended dividend
 - b) Change in details of the office holder’s address
 - c) A final progress report
 - d) Notice of a block transfer order

3. What is the maximum term a bankruptcy restriction order (“BRO”) can run for? Is it:
 - a) 5 years
 - b) 10 years
 - c) 15 years
 - d) 20 years

4. A liquidator in a compulsory winding-up (“CWU”) is released from office following what?
 - a) 8 weeks after the date of the final account has been filed and no objections have been raised
 - b) The filing of the final account with the Secretary of State
 - c) 14 days after the date of the final account
 - d) Upon filing of the applicable notice in Court and Registrar of Companies

5. How far in advance of the decision date should all the information relating to the company history and statement of affairs be made available to creditors pending a Section 100 IA86 appointment of a liquidator?
 - a) At least 1 business day
 - b) At least 2 business days
 - c) At least 5 business days
 - d) At least 7 business days

6. What period of time must creditors be permitted to consider the draft final report of a trustee in bankruptcy?
- a) 4 weeks
 - b) 6 weeks
 - c) 8 weeks
 - d) 12 weeks
7. A liquidator of a company in a CWU has realised an asset and received the sum of £6,400 after payment of the costs of realisation. Within what time period must they remit this sum to the Insolvency Services Account?
- a) Immediately
 - b) Within 7 days of receipt
 - c) Within 14 days of receipt
 - d) Within 25 days of receipt
8. Within how many days after the decision date must a creditor wishing to appeal against a nominee's decision in respect of their entitlement to vote apply to Court?
- a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 28 days
9. On which of the following is the nominee of a Company Voluntary Arrangement ("CVA") not required to comment on according to SIP 3.2;
- a) Whether the CVA is manifestly unfair
 - b) Whether the company's financial position is materially different from that contained in the proposal, explaining the extent to which the information has been verified
 - c) Whether the ongoing trading of the company will be profitable
 - d) Whether the CVA has a reasonable prospect of being approved and implemented
10. Where a liquidator uploads documents onto a website, for how long must they remain available for?
- a) 2 months from the date that the documents were uploaded
 - b) 2 months from the date of the liquidator's release from office
 - c) 2 months from the date of the dissolution of the company
 - d) 2 years from the date of the liquidator's release from office

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. Pursuant to Section 283A of IA86, a trustee in bankruptcy must send a notice of his or her interest in a property which is the principal dwelling place of the bankrupt, his spouse or former spouse or his civil partner or former civil partner. What information should the notice contain?

½ mark per point up to 2 marks

12. Following the adjudication of the creditors' claims in a CVL your principal has asked you to reject specific claims. What should you do?

½ mark per point up to 2 marks

13. Upon what grounds can a petition for default be presented following the failure of an Individual Voluntary Arrangement ("IVA")?

1 mark per point up to 2 marks

14. Who may be summoned by the OR to appear before the court for a private examination in a bankruptcy?

½ mark per point up to 2 marks

15. Before the making of a winding-up order the petitioner may apply for the appointment of a provisional liquidator to preserve the assets and records of the company. Name two other duties of the provisional liquidator.

1 mark per point up to 2 marks

16. What restrictions are imposed on a debtor who is subject to a Debt Relief Order ("DRO")?

1 mark per point up to 4 marks

17. During the administration of Relax Sofas Limited (“the Company”) the administrators have realised various assets of the business as detailed below.

In accordance with SIP 7 and good practise, how should the following transactions be reported in your receipts and payments?

- i. The total sum of £16,500 has been paid to the landlord in respect of the Company’s former trading premises. £12,250 relates to rent arrears and the balance is in respect of the rent due during the administrators’ period of occupation.
- ii. Stock with a value of £32,650 was returned to supplies who had valid retention of title claims, although you did also pay the sum of £2,500 to another supplier in order to secure title to the stock supplied by him.
- iii. Amounts totalling £5,330 were received and disbursed to the former employees under the Employment Protection Act. You received a fee of £250 plus VAT for your work as the employer’s representative.
- iv. Fixtures and fittings were sold by your agents for the sum of £8,750 (including VAT). After deducting his charges of £3,875 (including VAT) the agent sent you via bank transfer the sum of £4,875.

½ mark per point up to 4 marks

18. Detail what types of disbursements can be charged to an insolvency estate and what authorisation if any, is required prior to drawing them.

½ mark per point up to 4 marks

19. Under the IVA consumer protocol and where the debtor is making monthly contributions from their income, what must a debtor do if they are made redundant?

1 mark per point up to 4 marks

20. SIP 16 was introduced to counter concerns of creditors that pre-pack sales were not in their best interests. An insolvency practitioner involved in a pre-pack sale is to keep detailed records of the reasoning behind the decision to undertake a pre-pack sale.

As part of administrator’s statement he is required to disclose specific information to the creditors in explanation of a pre-pack sale.

Requirement;

Excluding any details in relation to the transaction itself, what other information should be disclosed by the administrator?

½ mark per point up to 4 marks

PART C

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

- 21. a)** A bankruptcy petition has been presented against Stuart White on 7 April 2018 for the sum of £25,000. The bankruptcy hearing is scheduled for 15 May 2018.

Mr White does not dispute that the debt is due but has however contacted your office for some advice.

Requirement;

Write a letter to Mr White detailing the consequences for him if he is declared bankrupt, his obligations to the OR and/or trustee in bankruptcy and also the restrictions of being made bankrupt.

½ mark per point up to 11 marks

- b)** A trustee in bankruptcy has to comply with a number of regulatory and statutory matters following his appointment. Give examples of these.

½ mark per point up to 4 marks

Total 15 marks

22. a) Mrs Hope Full is a director of Every Cloud Silver Lining Limited (“Every Cloud”). She has recently visited your offices because she is concerned that she will not have sufficient funds available to pay the staff at the end of the month.

Every Cloud is a family run business and was set up by Mrs Full’s mother over 50 years ago. Recently the company won a lucrative contract with Good Sleep Limited, a national chain of 36 hotels. The contract is due to commence on 1 July 2018, and involves replacing all of the curtains at each of the hotels. Under the terms of the contract one hotel needs to be upgraded every month for the period of 3 years.

The total contract price is £576,000 with payments of £16,000 to be made monthly in arrears. Mrs Full confirms that monthly sales to other customers have recently declined and are now about £2,000 per month.

The company trades from rented premises and is currently paying rent of £12,000 per annum while business rates are £500 per month, and has been paid up until 31 May 2018.

Sewing machines and stock have been valued at £10,000.

Every Cloud employs 3 staff. Mrs Full is not considered an employee. All staff are paid monthly and the total gross salaries are £4,000 per month.

If the business were to close on 30 June 2018, staff would be owed the following:

Staff member	Arrears of wages - £	Holiday Pay - £
Mrs Empty	1,000	100
Miss Cold	1,000	NIL
Miss Happy	1,000	100

In order to fulfil all the orders Mrs Full believes that materials will cost £8,000 per month with other overheads totalling £800 per month.

The company currently has the following other liabilities:

	Amount (£)
Suppliers	34,000
HM Revenue & Customs	30,000
Mrs Full	10,000
Utilities	1,400
Stitch Bank - Loan	20,000

Mrs Full has advised that she has provided a personal guarantee to Stitch Bank in respect of the loan, and is currently paying monthly repayments of £500.

Mrs Full is very keen that the business does not close and has agreed that should the creditors agree to the CVA she would waive her right to a dividend.

Requirement;

Your principal has asked you to produce an estimated outcome statement comparing the likely return to creditors in a CVA and a CVL, assuming that both procedures commence on 1 July 2017. Show all workings and assumptions made. Advise what, if any, additional information is needed from Mrs Full.

In preparing the comparison, you should assume the following;

CVA expenses

- Nominee's fee is £4,000
- Supervisor's annual fee is £2,000
- Other costs including advertising and bond total £500

CVL expenses

- Statement of affairs fee is £6,500
- Liquidator's fees is £10,000
- Agent's fees are expected to be 10% of any proceeds
- Other costs including bond, insurance and advertising total £750

VAT should be ignored.

Total 10 marks

- b)** As part of your conversations with Mrs Full she has advised that if creditors decide to rejected her proposal for a CVA she will have no other alternative but to place the company into liquidation, and that she would be inclined to set-up a new company with a similar name in the hope to secure the future contract with Good Sleep Limited.

Requirement;

Advise Mrs Full of the provisions as set-out pursuant to Section 216 and 217 IA86, and the restrictions applicable in potentially re-using a company name which is similar to Every Cloud, and also what steps she should take if she wants to use a similar name.

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. Your principal has recently agreed to assist the directors of COBRA Limited (“the Company”) in placing the Company into CVL pursuant to Section 100 of IA86, and has asked you to set out in a memorandum the following;
- a) The procedure to be followed to appoint a liquidator;
 - b) Information to be provided to creditors prior to the creditors making a decision on the appointment of the liquidator; and
 - c) The options available to creditors if they disagree with the decision process chosen by the directors.

½ mark per point up to 15 marks

Total 15 marks

- 24.** Your principal was appointed out of Court by the directors, administrator of Go Green Plants Limited (“the Company”) on 25 June 2017.

You are aware that the anniversary of the administration is due shortly, and your principal has asked you to prepare a memorandum outlining the different options available for bringing an administration to a close, detailing briefly the circumstances in which each option would be most relevant.

½ mark per point up to 15 marks

Total 15 marks

- 25.** David Bent has approached your principal for assistance with proposals for an IVA. He has provided you with copies of his bank statements and recent wage slips and you are using them to verify his income and expenditure statement.

On the bank statements you notice regular payments being made into the account. You have asked Mr Bent what these payments relate to and he got very angry and abusive before telling you that they related to his army pension but that he did not think that this should be included in his IVA as he had fought for his country. Mr Bent has said that will go elsewhere for advice on an IVA if you insisted on including his pension and will make a complaint about you to the ombudsman.

Requirement;

- a)** Identify and define the fundamental principles of the Insolvency Code of Ethics which should be considered when taking and dealing with any insolvency appointment.

½ mark per point up to 4 marks

- b)** Identify and name the possible ethical threats for your firm if you decide to continue assisting Mr Bent.

½ mark per point up to 2 marks

- c)** With specific regard to the facts of this matter, detail the principles and key compliance standards set out in SIP 3.1 which should be discussed with Mr Bent regarding his reluctance to include his war pension payments in his financial statement.

½ mark per point up to 5 marks

- d)** What powers does the Act give to a supervisor In an IVA?

1 mark per point up to 4 marks

Total 15 marks