



Candidate Number \_\_\_\_\_



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

**Examination 07 June 2013**

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**INSOLVENCY**

**(3 HOURS)**

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Part A: All questions to be answered  
Part B: All questions to be answered  
Part C: 2 questions to be answered

The questions in Part A carry the marks as indicated

All questions in Part B and Part C carry 15 marks

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 Part B and Part C questions in the ICSA booklet(s) 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 2013.

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 the answer booklet(s) using the treasury tag provided.

Candidates should remain seated until the Invigilator has collected the tagged question paper and answer booklet(s). 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 SIPs are to Statements of Insolvency Practice.

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CANDIDATE NUMBER.....

**PART A**

**MULTIPLE CHOICE AND SHORT FORM QUESTIONS**

**THE CORRECT ANSWER TO EACH OF THE QUESTIONS IS TO BE INDICATED BY PLACING A CROSS IN THE APPROPRIATE BOX.**

**FOR QUESTIONS 1 TO 10 ONLY ONE ANSWER IS REQUIRED. THERE IS ONE MARK FOR EACH OF THOSE QUESTIONS.**

**FOR QUESTIONS 11 TO 20 EACH QUESTION CARRIES THE MARKS INDICATED.**

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1. 1. Within what period after the date of publication in the Edinburgh Gazette of the granting of the trust deed must the Trustee send the documents to the creditors seeking protection of the trust deed (PTD regulation 8)?
- a) 5 days
  - b) 7 days
  - c) 2 weeks
  - d) 1 month
2. In a Members Voluntary Liquidation, within what period prior to the winding up resolution must the Declaration of Solvency be sworn?
- a) 5 weeks
  - b) 4 weeks
  - c) 3 weeks
  - d) 6 weeks
3. Which one of the following is not exempted from vesting in a Trustee in sequestration?
- a) Income of the debtor
  - b) Any property kept in a dwelling house which is not a non-essential asset
  - c) Proceeds from a compensation claim for personal injury
  - d) Any property held in trust
4. Who from the following may not propose a Company Voluntary Arrangement:
- a) Directors
  - b) Administrative Receiver
  - c) Administrator
  - d) Liquidator



5. What SIP deals with office holders' remuneration?
- a) SIP 7 (Scot)
  - b) SIP 8 (Scot)
  - c) SIP 9 (Scot)
  - d) SIP 10 (Scot)
6. Which power of a Liquidator in a Creditors Voluntary Liquidation requires sanction before it is exercised?
- a) Power to make a compromise with a creditor.
  - b) Power to carry on the business of the company so far as may be necessary for its beneficial winding up.
  - c) Power to make a compromise with a debtor.
  - d) Power to appoint an agent to do any business which the Liquidator is unable to do himself.
7. Which type of diligence cannot be cut down or equalised by virtue of an award of sequestration?
- a) An inhibition served within 60 days prior to the date of sequestration
  - b) An earnings arrestment
  - c) A Decree of Adjudication obtained 18 months before the date of sequestration
  - d) A Money Attachment executed after the date of sequestration
8. After receiving a request to consent to an application for a debt Payment Programme under DAS, a creditor has a certain period within which to lodge an objection to the application. Is it:-
- a) 14 days
  - b) 21 days
  - c) One month
  - d) 5 weeks



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- 9.** At any time after the presentation of a winding-up petition, the court may appoint a Liquidator provisionally. When such a Liquidator is provisionally appointed, what are his powers?
- a) Limited by the order appointing him.
  - b) The same powers as a Liquidator.
  - c) The same powers as a Receiver.
  - d) The same powers as an Administrator.
- 10.** Within what period after the anniversary of an Administrative Receiver's appointment must he file his statutory account of receipts and payments?
- a) 2 months
  - b) 1 month
  - c) 28 days
  - d) 6 weeks



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**NOTE: 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 are the general functions of a Liquidator in winding up by the Court? **(2 marks)**
12. After caution has been found in respect of a sequestration, what action is then required, and within what timescales, to notify both the insurers and the recognised professional body of the Trustee of the bonding details? **(2 marks)**



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13. What conditions must exist in order for the director of a company to apply to Court for an Administration order under Para 12? **(2 marks)**
14. Four months prior to the date of sequestration the debtor arranged for a book debt due to his self-employed business to be paid direct to one of his creditors. What action is available to the Trustee to challenge this transaction as an unfair preference, and why? Does the creditor have a defence against such a challenge? **(2 marks)**



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15. Your principal has been instructed to place a company into Members Voluntary Liquidation. The company holds some investment shares, which the sole shareholder of the company would like to acquire. State which resolutions should be passed at the general meeting of the company to put it into Liquidation. **(2 marks)**

**NOTE: 4 mark questions**

16. Section 1A of the Bankruptcy (Scotland) Act 1985 details the functions of the Accountant in Bankruptcy. Summarise the supervisory and other roles of the AiB **(4 marks)**



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17. Describe the particular threats which may need to be considered in the following circumstances: **(4 marks)**
- a) An IP has been instructed to assist in placing a company into Creditors Voluntary Liquidation. The IP's wife owns a business which will have a large claim in the Liquidation although this is disputed by the company's director.
  - b) An IP is investigating a transaction at undervalue with a view to making a claim against the insolvent company's director. However the director continually threatens to report the IP to his regulator for alleged technical failures in dealing with the insolvency.
18. Where there is heritable property in a trust deed, what action does the Trustee have to take in accordance with SIP3A (Scot)? **(4 marks)**





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19. You are preparing a set of minutes in relation to a general meeting of creditors in a Winding up by the Court. What information should be included in the minutes and what other considerations should be taken into account? **(4 marks)**
20. In terms of Section 51 of the Bankruptcy (Scotland) Act 1985, what is the order of priority of distribution of the funds in the debtor's estate? **(4 marks)**

**PART B****Both questions in this section are compulsory****21. Berkeley Property Support Limited – Creditors Voluntary Liquidation**

Below is the Liquidator's Abstract of Receipts and Payments for Berkeley Property Support Limited as at 31 May 2013.

**BERKELEY PROPERTY SUPPORT LIMITED  
IN LIQUIDATION**

**LIQUIDATOR'S ABSTRACT OF RECEIPTS AND PAYMENTS ACCOUNT  
FOR THE PERIOD 4 APRIL 2011 TO 31 MAY 2013**

<b>RECEIPTS</b>	Per S.A. £	Realised £
	<u>          </u>	<u>          </u>
Plant & Machinery	500	485
Motor Vehicles	7,000	7,250
Stock	750	400
Trade Debtors	<u>80,000</u>	<u>76,435</u>
	<u>88,250</u>	84,570
 <b><u>LESS: PAYMENTS</u></b>		
Agents' Fees & Expenses		8,207
IT Support Services		435
Preparation of S of A		6,000
Statutory Advertising		305
Specific Penalty Bond		120
Storage		746
Liquidator's Disbursements		<u>577</u>
		<u>16,390</u>
<b>Balance in Hand</b>		<u><u>68,180</u></u>

The Liquidator's Remuneration has been fixed at £11,250. Ignore VAT.

Preferential Creditors have been agreed at £10,700.

The Bank is owed £113,280 and is secured by way of a floating charge dated 25 September 2009.

The Non Preferential Creditors have been agreed at £244,920.

There will be no further realisations or further costs incurred.



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**Requirement:**

- |   |         |
|---|---------|
| 1. Calculate the Prescribed Part                                    | 5 Marks |
| 2. Calculate the Sum payable to the Bank (expressed as p in £)      | 2 Marks |
| 3. Calculate the Dividend payable to the Non Preferential Creditors | 3 Marks |
| 4. Prepare a Final Outcome Statement                                | 5 Marks |

**Total 15 marks**



## 22. Bankruptcy Outcome

- A) A sequestration petition was presented to Court on 31 January 2012, and the appointment of your principal as Trustee was made on 30 April 2012, being the date on which sequestration was awarded. At the Statutory Meeting of Creditors held on 16 June 2012 the appointment of your principal as Trustee was confirmed by those present at that Meeting.

The family home is jointly owned by the debtor and his spouse, and the only asset available to the sequestrated estate is the debtor's half interest in the property. The property has been valued at £400,000 over which there is one registered standard security for £220,000. The mortgage is up-to-date and there are no plans by the mortgagee to commence legal proceedings for possession. The non-bankrupt spouse has made no claims for an increased share of the equity.

There are limited creditors in the sequestration. Three creditors have lodged valid claims which total £25,000. Further claims are expected to be lodged by the following creditors: Eleco for £1,000, Natclays Bank for £9,000 and O3 phones for £250. No other creditor claims are expected.

The debtor's spouse is not in a position to purchase the half-share of the equity which vests in the Trustee, and there is no possibility of third party funds being introduced to do so. The debtor and his spouse have agreed to sell the property on the open market with agents who will charge 1.5% of the sale price + VAT. The agents are advising that a sale at £500,000 is achievable and a sale should be concluded by 31 October 2013.

The conveyance for the sale will be carried out by solicitors for £2,000 + VAT.

The debtor and his spouse have enquired as to whether the sale of the property will allow all the creditors to be paid in full, and they have asked your principal to provide them with a calculation so that they can see if there will be surplus funds available after all liabilities and costs have been met.

The remuneration of the Trustee up to the date of the Statutory Meeting was fixed at £3,500 by the Accountant in Bankruptcy. Commissioners were elected at the Statutory Meeting. Within the last week the Trustees' remuneration from the date of the Statutory Meeting has been fixed by the Commissioners at £6,000 + VAT which includes an estimated sum of £2,000 required to finalise the sequestration. The Trustee has incurred advertising outlays of £100 + VAT.

The petitioning creditor's costs are £1,275 (VAT inclusive), and agents' fees for the property valuation of £150 + VAT. The case has been bonded with a bond fee of £210 and insurance has been obtained by your principal over his interest in the property at the sum of £200. The audit fees payable to the Accountant in Bankruptcy are £525, and fixed fees payable to the Accountant in Bankruptcy are £82.



There have been no asset realisations to date.

**Requirement**

Compile an estimated payment-in-full calculation for the debtor and indicate whether the estimated equity vesting in the estate will be able to clear the sequestration in full.

**(10 marks)**

- B) The spouse is not happy about the extent of the Trustee's fees. She wants a breakdown of costs.

**Requirement**

What are the remedies available to the spouse to question or oppose the Trustee's remuneration?

**(2 marks)**

- C) The sale completes and the debtor wishes to recall the sequestration on the grounds that all creditors are able to be paid in full.

**Requirement**

Provide a short memo to your principal advising the procedure regarding recall, which should detail the obligations on both the debtor and the Trustee in the process.

**(3 marks)**

**PART C****Only two questions in this section are required to be answered**

- 23.** Your principal has been appointed Nominee in relation to a Company Voluntary Arrangement for Shelley's Shoes Limited. According to the director, sales have recently seen an increase and it is intended that the company will pay contributions from continued trading and the director will inject some personal funds into the Arrangement. The company owns an investment property and it is the intention to sell this and inject the net proceeds into the Arrangement. The director has had favourable discussions concerning continued trading with its key suppliers, most of whom are based in the Netherlands. The director has provided a list of creditors and has also advised you that one customer recently came into the premises threatening to sue the company as their shoes had caused them to have an accident whilst running.

**Requirements**

1. With reference to the facts and in accordance with SIP 3, what matters should be included / covered in the director's Proposals? **(1/2 mark each, max10 marks)**
2. In the event that the Proposals are approved, what matters should be detailed in the Chairman's report following approval? **(1 mark each, max 5 marks)**

**24. Debt solutions**

James is a solicitor aged 27 and his wife Sally is a doctor aged 28. They have a problem in repaying their debts. Their creditors are unwilling to negotiate and there are significant arrears. You establish that they have 2 loans in joint names totalling £9,000. Sally also has various credit cards with outstanding balances totalling £9,450 and she owes £10,000 on a student loan taken out in 2007. James has various other credit cards and loans totalling £27,200.

You review their budget and after taking into account all their essential expenditure you establish that they have a joint surplus of £390 per month available for their creditors. Individually James would have £140 and Sally would have £250 but they tell you that they would prefer to manage their debts together. They live together in rented accommodation, Sally is expecting a significant promotion soon and James is hoping to be considered for partnership before he is 30.

**Requirement**

1. Send a letter to James and Sally summarising possible general debt solutions available, briefly explaining why some of the solutions would not be suitable for one or both of them, without duplicating your answer to part 2 below. **(4 marks)**
2. Explain how sequestration, trust deed, DAS or a debt management plan might resolve their debt problems providing reasons for and against each solution. **(9 marks)**
3. Provide a conclusion of the advice that you would give to them. **(2 marks)**



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**25. 15 mark question (SIP 16 and SIP 13)**

Your principal has been instructed to advise the board of directors of Wrapped Up Limited in relation to placing the company into Administration and completing a 'pre-packaged' sale to the directors' new company.

**Requirements:**

1. In accordance with SIP 13, what are your principal's duties whilst acting in an advisory capacity prior to his appointment as Administrator? **(5 marks)**
2. Your principal is appointed and a sale completes as planned. In accordance with SIP 16, what information concerning the sale should be disclosed to creditors? **(7 marks)**
3. Within what time frame should the above information be given and in what circumstances might the above information not be given? **(3 marks)**