



CANDIDATE NUMBER.....



INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN INSOLVENCY
(SCOTLAND)

Examination 15 June 2012

INSOLVENCY

(3 HOURS)

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 2012.

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.

References to SIPs are to Statements of Insolvency Practice.

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PART A

MULTIPLE CHOICE

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

1. **What SIP deals with the presentation of financial information in insolvency proceedings?**
 - a) SIP 1
 - b) SIP 7
 - c) SIP 10
 - d) SIP 13

2. **Within what period before the end of an accounting period should a creditor submit his claim to the Liquidator?**
 - a) 4 month
 - b) 14 days
 - c) 8 weeks
 - d) 2 months

3. **Where a Bankruptcy Restriction Order is in force, which one of the following statements is not true?**
 - a) You can act as the director of a limited company or take part in its formation, promotion or management without permission from the court
 - b) You must disclose to a credit provider that you are subject to bankruptcy restrictions if you, either alone or jointly with another person wish to get credit of more than £500
 - c) You cannot be a member of Parliament, a Justice of the Peace or a school governor in England & Wales
 - d) You must disclose to anyone you wish to do business with the name (or trading style) under which you were made bankrupt



4. **What is the ‘relevant time’ period for a transaction that may be challenged as a gratuitous alienation under s.34 of the Bankruptcy (Scotland) Act 1985 against an associate of the debtor?**
- a) 2 years immediately preceding the date of sequestration
 - b) 5 years immediately preceding the date of sequestration
 - c) 6 months immediately preceding the date of sequestration
 - d) 120 days immediately preceding the date of sequestration
5. **Within how many days are an Administrator’s proposals deemed to have been accepted following the circulation of the statement of his proposals and where no creditors’ meeting has been convened or such a request for a meeting has been received?**
- a) 7 days
 - b) 28 days
 - c) 8 business days
 - d) 5 business days
6. **Which one of the following are not entitled to view the claim forms lodged with a Trustee?**
- a) A creditor who has submitted a claim form
 - b) A person acting on behalf of a creditor who has submitted a claim form
 - c) The debtor
 - d) A creditor who has a claim but has not yet lodged it
7. **Which of these is not one of the objectives of Administration in accordance with Paragraph 3(1) of Schedule B1?**
- a) realising property in order to make a distribution to one or more secured or preferential creditors
 - b) to enable a sale of the business as a going concern
 - c) rescuing the company as a going concern
 - d) achieving a better result for the company’s creditors as a whole than would be likely if the company were wound up



8. Who is not entitled to propose a Company Voluntary Arrangement?

- a) The liquidator
- b) The administrator
- c) The directors
- d) The company

9. Which is a power of a Liquidator exercisable with sanction?

- a) To sell the Company's property by public auction
- b) To raise on the security of the assets of the company any money requisite
- c) To pay any class of creditors in full
- d) To do all such other things as may be necessary for winding up the company's affairs and distributing its assets

10. Where the Directors of a Company wish to obtain a Moratorium, they must supply information to the Nominee. The Nominee must then opine by submitting to the Directors a statement. Which of these are not included in the Nominee's statement?

- a) Meetings of the Company and its Creditors should be summoned to consider the proposed voluntary arrangement.
- b) The proposed voluntary arrangement has a reasonable prospect of being approved and implemented
- c) The Directors have made a full disclosure of the Company's affairs
- d) The Company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on business.



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11. SIP 2 dictates that an initial assessment of whether there could be any matters that might lead to recoveries for the estate should be undertaken in every insolvent Liquidation and Administration. What steps should be taken to reach a position to make this initial assessment?

(1/2 mark per point up to a maximum of 2 marks)

12. On what grounds may the Sheriff recall an Award of Sequestration under s.17 of the Bankruptcy (Scotland) Act 1985?

(2 marks)



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13. When is an Administrator required to send a progress report to creditors?

(1/2 mark per point up to a maximum of 2 marks)

14. Give a brief description of the term “diligence” and then list the various forms of diligence available

(2 marks)



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15. What authority does a liquidator require prior to issuing legal proceedings in respect of a preference, where there are floating charge realisations but it is expected there will be a shortfall to a floating charge creditor?

(2 marks)



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NOTE: 4 mark questions

- 16. What are the powers of the court on a successful application to challenge the decision of a meeting of creditors to approve a CVA?**

(4 marks)

- 17. Who can appoint a Receiver in Scotland and give details of the processes involved?**

(4 marks)



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18. What insolvency options are available for a creditor to pursue who has an unpaid debt due from a partnership business (not an LLP)?

(4 marks)

19. Provided a debtor is habitually resident in Scotland and is not an undischarged bankrupt, or subject to a Protected Trust Deed which has not failed, name 4 other conditions to be met for a debtor to have a DPP approved under the Debt Arrangement Scheme?

(4 marks)



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20. Who may not represent a member of a Creditors' Committee in an Administration?

(4 marks)

**PART B****BOTH QUESTIONS IN THIS SECTION ARE COMPULSORY**

21. An Award of Sequestration was granted against John Smith on 16 February 2011 following a petition presented by HM Revenue & Customs, the date of sequestration for creditors' claims in 3 January 2011 and you were appointed as Trustee. No commissioners have been elected.

You have now progressed the sequestration to a position where it can be closed following a distribution to creditors. The debtor did not co-operate and his wife defended the action to sell the jointly owned matrimonial home, albeit no costs were awarded against her.

The house was sold for £187,500 and after paying the costs of sale of £5,600 and discharging the outstanding mortgage of £105,000 and a valid second security of £7,800 against Mr Smith's share of the equity; the net proceeds were divided equally between the Trustee and the debtor's wife as joint owner.

The other realisations made by the Trustee were a car for £7,000 and an insurance policy for £8,520. His tools of trade, valued at £1,000 were treated as falling within the provisions of Part 3 and Schedule 2 of the Debt Arrangement and Attachment (Scotland) Act 2002.

The non-VATable payment through the sequestration was the Bordereau of £180. Payments for statutory advertising of £150 and legal fees of £8,400 all included VAT. The petitioning creditor's costs were £1,850.

Your outstanding time costs are £10,111.50 incurred over 90 hours at an average rate of £112.35 per hour. Your Category 2 disbursements are £125 for printing and photocopying and £85 for mileage.

You have received and agreed 16 claims totalling £94,020. This included one former employee who had no arrears of pay, but was entitled to two weeks' notice pay; two weeks accrued holiday pay and three weeks' redundancy pay. His average wage was £7.50 per hour for a 40 hour week.

The debtor was not registered for VAT.



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Requirement:

- a) **Calculate the Fee payable to the Accountant in Bankruptcy. Show your full workings (5 marks)**

- b) **Prepare your Receipts & Payments Account for submission to the Accountant in Bankruptcy (4 marks)**

- c) **Prepare a Scheme of Division to be submitted with your Receipts & Payment Account and showing the dividend payable to each class of creditor. Show your full workings (6 marks)**

Total 15 marks



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22. Your partner has just returned from a meeting with the directors of Zep Music Limited who wish to place the Company into creditors' voluntary liquidation.
- a) Set out the sequence of statutory meetings required to place the Company into liquidation ahead of a meeting of creditors and the primary purpose of those meetings. (2 marks)
 - b) What are the requirements to give notice of a creditors' meeting? (4 marks)
 - c) What details should the notice to creditors contain? (5 marks)
 - d) What information are the directors required to lay before the creditors' meeting? (2 marks)
 - e) Under S99 of the Act a Company's statement of affairs must disclose what information? (2 marks)

Total 15 marks

**PART C****ONLY TWO QUESTIONS IN THIS SECTION ARE REQUIRED TO BE ANSWERED**

23. Rainbow Ltd

You are appointed Administrator in respect of Rainbow Limited. At the initial meeting to consider the Administrator's Proposals, a creditors' committee is formed comprising of 5 members.

Requirement:

- a) What are the Administrator's duties with regard to convening meetings of the committee? (4 marks)**

After the Proposals have been approved, the director of Rainbow Limited makes an offer for some of the assets of the company. His offer falls between the best case and worst case valuations that your professional advisers have indicated should be achievable and therefore you decide to seek formal approval to the sale from the Committee by way of a postal resolution.

Requirement:

- b) Set out the necessary procedure which should be followed. (4 marks)**
- c) The assets are sold to the director and you decide to make a full disclosure in your next report to creditors. What matters should creditors be advised of in this regard? (4 marks)**
- d) A member of the committee subsequently resigns. What options are available to the Administrator? (3 marks)**

Total 15 marks



24 Gail has been working on a self-employed basis as a horse dealer but as a result of purchasing horses which then failed vet checks when she tried to arrange sales has run into financial difficulty. She has incurred a number of debts with suppliers of feedstuffs, equipment, her farrier and vet. She has also used a number of credit cards and personal loans to pay for the rent for the yard from which she trades, vehicle hire, fuel costs, competition entry fees and also to help fund cash payments for horses she intended to sell on. She has been struggling to make ends meet for a couple of years now and realised some time ago that she had little prospect of being able to pay all her debts and faced the prospect of bankruptcy. The saddler for her business obtained a decree for £10,000 four months ago and is threatening further proceedings. HMRC has also been threatening bankruptcy proceedings in respect of unpaid VAT and PAYE/NIC. She has therefore taken steps to arrange her affairs to protect herself in the event that she is declared bankrupt.

Her house was jointly owned with her husband but he agreed to the property being transferred into his sole name and took sole responsibility for the £150,000 mortgage. The total equity in the property at the time of transfer about a year ago was in the region of £120,000. Gail was not paid for her share of the equity as this was a transaction between husband and wife.

Gail transferred ownership of six horses worth between £2,000 and £10,000 each to two creditors who she wanted to make sure were not owed money if she ended up being made bankrupt. One of these was her mother who had made a personal loan of £15,000 to Gail several years ago and the other was the saddler who had obtained decree who was previously a friend who had supplied her with saddles and other equipment and with whom Gail had built up a debt of £10,000. She transferred ownership of three horses to her mother about a year ago and the other three to the saddler three months ago.

Gail was served with a petition for sequestration by HMRC following which she formed a limited company and transferred her remaining business assets, a horse box, equipment and four horses, to that company (without any payment being made) to avoid them falling into the hands of a Trustee. The total estimated value of these assets was £30,000. Because she was going to be sequestrated, it was agreed that her husband would be the sole director and shareholder of the company. The company became the trading vehicle for Gail's business and she is now an employee. After the sequestration is over, Gail believes the shares could be transferred to her so she would have the benefit of the company assets.



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Requirement:

- a) Your principal has been appointed trustee, prepare a note setting out how each potential asset should be dealt with and give your reasons (i.e. quote the relevant legislation) (8 marks)

- b) What arguments could you expect to be raised by the parties who received assets from Gail (5 marks)

- c) Calculate the potential amount to be claimed from Gail's husband in connection with the transfer of ownership of the matrimonial home. What could her husband claim to mitigate the amount payable? (2 marks)

Total 15 marks

**25. Ashton Controls (1995) Limited (A Proposed Voluntary Liquidation)**

You have accepted instructions to assist the directors of Ashton Controls (1995) Limited to wind up the company under a creditors' voluntary liquidation. The meeting of creditors has been fixed for 30 June 2012.

Part of your engagement is to produce the company's statement of affairs and ancillary documentation for presentation to the S98 meeting of creditors.

The directors have provided you with the following information relating to the company's financial position:

- The last audited accounts as at 31 July 2011, (from where the book values for assets derive), showed an excess of liabilities over assets of £167,300. No dividends have been paid to the shareholders in subsequent periods.
- The company has a bespoke computer system designed by Control Designs with a book value of £50,000. Your agents have valued this at £17,000.
- The goodwill of the business has a book value of £150,000 and the directors consider it to have a realisable value of £100,000.
- Trade debtors have a book value of £275,000 and for the purpose of the statement of affairs there needs to be a specific provision for bad debts of £65,000 and a general provision for doubtful debts of 15%.
- The fixtures and fittings have a book value of £55,450 and your agents value them at £35,000.
- Control Designs holds a fixed charge over the computer equipment dated 24 November 2010. The amount outstanding under the charge is £32,000.
- ABL Lenders Limited holds a fixed and floating charge debenture dated 30 September 2011 and the amount due to them is £24,600.
- Midwest Bank was granted a fixed and floating charge debenture over the company's assets on 17 June 2005. The Bank entered into a Deed of Priority with ABL lenders to afford the latter priority for their full lending. The sum due to Midwest Bank is £362,000.
- Your investigations reveal that all charges have been properly registered at Companies House.
- The creditors include HMRC for PAYE/NIC of £228,300 and VAT of £35,200; trade creditors of £263,500; Directors' loans of £95,350; subcontractors of £36,750 and 20 employees owed £19,825 - being all holiday pay.
- The paid up share capital is £25,000 being ordinary shares of £1 each.



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Requirement:

- a) Prepare a summary of the Company's Statement of Affairs for discussion purposes with the Directors. Show your full workings. (10 marks)
- b) Prepare an Estimated Deficiency Account. Show your full workings. (5 marks)

Total 15 marks