

INSOLVENCY PRACTITIONERS ASSOCIATION

**CERTIFICATE OF PROFICIENCY
IN PERSONAL INSOLVENCY**

Examination Tuesday 2 June 2009

PERSONAL 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 each

Part A answers to questions 1 – 10 are to be completed on the question paper provided. Part A questions 11 – 20 should be answered on a separate sheet of answer paper. For Parts B and C each question is to be answered on a separate sheet of answer paper.

The examiner will take account of the quality 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 31 December 2008

Candidates must ensure that their answers to all questions in parts A, B and C are fastened together with the treasury tags which are provided

References to the 'Act' and the 'Rules' are respectively to the Insolvency Act 1986 and Insolvency Rules 1986 as amended.

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.

1. Which one of the following is not required to be reported to the Secretary of State following the approval of an IVA?

- a) Date of approval by creditors ρ
- b) Name and address of Supervisor ρ
- c) Proposed duration of the IVA ρ
- d) The court in which the report of the meeting has been filed ρ

2. Within what period should the chairman of an IVA creditors' meeting file a copy of his report at court on the outcome of the meeting?

- a) 2 days ρ
- b) 4 days ρ
- c) 7 days ρ
- d) 14 days ρ

3 In accordance with S.284 of the Act, what is the relevant period for potential void dispositions of property by a person who is adjudged bankrupt?

- a) the period of 6 months immediately preceding the date of the presentation of a bankruptcy petition ρ
- b) the period of 6 months immediately preceding the date of a bankruptcy order ρ
- c) between the date of the presentation of a bankruptcy petition and the date of the bankruptcy order ρ
- d) between the date of the presentation of a bankruptcy petition and the date of the vesting of the bankruptcy estate in a trustee ρ

4 The supervisor of an IVA should present a progress report not less than once every 12 months to the following, apart from which one?

- a) all creditors bound by the arrangement ρ
- b) the Court ρ
- c) the Secretary of State ρ
- d) the debtor ρ

5 In accordance with the Rules what is the latest day on which a trustee can give notice to the bankrupt and spouse/ former spouse that a property falls within the provisions of S.283A ('Bankrupt's home')?

- a) 14 days prior to the expiry of the 3 year period under S.283A ρ
- b) 1 month prior to the expiry of the 3 year period under S.283A ρ
- c) 6 months prior to the expiry of the 3 year period under S.283A ρ
- d) There is no prescribed time limit ρ

6 When a bankruptcy order has been made, legal proceedings are generally stayed but there are some exceptions to that rule. The following creditors are able to commence or continue certain legal proceedings, apart from which one?

- a) A creditor with a provable debt ρ
- b) A creditor, other than a landlord, with a right to distrain ρ
- c) A secured creditor ρ
- d) A creditor for a fine imposed for an offence ρ

7. A trustee in bankruptcy requires sanction to exercise all of the following powers apart from which one?

- a) To bring legal proceedings to set aside a transaction at an undervalue ρ
- b) To sell property comprised in the bankrupt's estate including goodwill ρ
- c) To compromise creditor claims ρ
- d) To carry on the business of the bankrupt ρ

8. A trustee can claim 'after-acquired property' for a bankruptcy estate. How long does a trustee have to claim such property after becoming aware of it?

- a) 7 days ρ
- b) 42 days ρ
- c) 28 days ρ
- d) 14 days ρ

- 9. When a protocol compliant IVA ends and a debtor has fulfilled his/ her obligations under the arrangement, the supervisor will issue a certificate which is known as which one of the following?**
- a) a completion certificate ρ
 - b) a certificate of satisfaction ρ
 - c) a termination of arrangement certificate ρ
 - d) a certificate of due compliance ρ
- 10. In accordance with SIP 3, when preparing the nominee's comments on an IVA proposal, if not already disclosed in the proposal, the nominee should disclose all of the following, apart from which one?**
- a) the source of any referrals to the nominee in relation to the IVA ρ
 - b) any payments made to the source of referrals ρ
 - c) an estimate of the total fee to be paid to the supervisor ρ
 - d) the requisite majorities required to approve the proposals ρ

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. According to the IVA protocol standard conditions, what is meant by the term “after-acquired assets”? (2 marks)**
- 12. If a creditors’ committee is nominated to act in a bankruptcy matter, within what period should the first meeting be held? How much notice should be given? (2 marks)**
- 13. On what grounds may an appeal under S.262 of the Act be made against the outcome of a creditors’ meeting to approve a proposal for an IVA? (2 marks)**
- 14. In connection with the prosecution of delinquent debtors following the approval of an IVA, explain the whistle-blowing obligations of a nominee or supervisor. (2 marks)**
- 15. A trustee in bankruptcy may disclaim ‘onerous property’. Explain what is meant by ‘onerous property’ in this context. (2 marks)**

NOTE: 4 mark questions

- 16. What documents should be sent to creditors when convening a creditors’ meeting to consider a debtor’s proposals for an IVA? (4 marks)**
- 17. Set out the realisation and distribution scales for determining the remuneration of a trustee where being fixed by reference to these scales (2 marks each scale)**
- 18. Explain the requirements for giving notice of an intended dividend in bankruptcy proceedings including the timescale and contents of the notice (4 marks)**
- 19. Set out the ways in which a property interest has to be dealt with to avoid that interest re-vesting in the bankrupt in accordance with the provisions of S.283A of the Act. (4 marks)**
- 20. In accordance with the IVA protocol standard conditions, how and for how long may a supervisor extend a protocol compliant IVA without convening a creditors’ meeting? (4 marks)**

PART B

Both questions in this section are compulsory

21. Mike is employed as a legal executive by a local firm of solicitors on a salary of £20,000 per annum. His wife, Tracey, was until recently working as a human resources manager for a local business but gave up work following the birth of the couple's second child. They have been struggling to cope on Mike's salary and Mike has used credit cards and borrowed extensively to supplement his income. His total unsecured creditors now add up to £75,000. Tracey does not have any debts (apart from the mortgage) and is not jointly liable for any of the debts incurred by Mike.

The couple purchased their house in their joint names. It is now worth £150,000 and is subject to a mortgage of £110,000. One of Mike's creditors has obtained a final charging order to secure the sum of £7,000 on Mike's interest in the property. Mike ran up this debt in paying for the costs of supporting his premier league football team 'home and away' and is proud of the fact that he has been to every away match in Europe for the last two seasons. Tracey was unaware of this debt.

Tracey intends to return to work part-time to supplement the couple's income as a result of which Mike thinks he will be able to afford to make monthly payments from his earnings and is keen to enter into an IVA. You have calculated that he can pay £300 per month for the duration of the arrangement which is proposed to be 5 years. It is unlikely that any annual increases will be possible.

Mike's mother is very concerned and has advised that she will contribute £5,000 a year for the duration of the IVA if the creditors agree to the couple's property being excluded from the IVA. This money will not be forthcoming if the property is included in the IVA and would not be available in a bankruptcy.

The couple also have a joint savings bond which was a wedding gift and is now worth £3,400. In addition they own a Citroen Picasso car worth £3,000 (which they will need to get to work) and a joint life policy with a current surrender value of £6,000. You have explained and the couple have agreed that Mike's interest in these assets, with the exception of the car, should be included in his IVA proposals. In addition you have explained that Mike's interest in the house would be an asset in bankruptcy proceedings although you understand he is keen to exclude the house from his IVA proposals.

You wish to compare the outcome of bankruptcy proceedings with Mike's IVA proposals.

The following information will be relevant:

Mike will not be in a position to make income payment contributions if he is made bankrupt because he is likely to lose his job and/or it is unlikely that Tracey would return to work.

Your Nominee's fee will be £1,000 and Supervisor's fee £4,000.

The trustee's realisation fee would be based on the Official Receiver's scale rate and the distribution fee would be £750.

The bankruptcy deposit (debtor's own petition) will be £300.

The OR's administration fee will be £1,650 and the normal BERR fee on asset realisations will also be payable.

IVA disbursements are expected to total £200.

The anticipated disbursements of the trustee would be £1,800 including legal and other costs associated with realising his interest in the house.

Requirement

a) Prepare an Estimated Outcome Statement for Mike comparing the outcomes for creditors from both an IVA and a bankruptcy taking into account the information set out above. Please show workings and state any assumptions made. Ignore VAT. (12 marks)

b) For Mike's proposals for an IVA to be approved, what majority of creditors' votes will be required and how and at what date will these be calculated? (3 marks)

22. You are contacted by Mr B Wayne who is in monetary difficulty. A bankruptcy petition has been served on him and is due to be heard next week when it is likely a bankruptcy order will be made.

Mr Wayne, who jointly owns a property with modest equity, has spoken to his friend in the pub who has previously been declared bankrupt and was recently discharged. His friend told him that bankruptcy was the way to go as "you give the Official Receiver £1 for the property and they let you keep the rest".

Mr Wayne is unsure about his friend's advice and has come to you to for general advice on what constitutes an asset in a bankruptcy estate and what (if anything) he is allowed to keep.

Requirement

a) Draft a letter to Mr Wayne defining "the bankruptcy estate" and setting out what could be treated as assets during Mr Wayne's bankruptcy period as well as explaining what assets would not form part of the estate. (12)

b) What would be the position for Mr Wayne and his creditors if the bankruptcy followed on from a failed Individual Voluntary Arrangement? (3)

PART C

Only two questions in this section are required to be answered

- 23. a) Set out the contents of a proof of debt form to be issued to a creditor in bankruptcy proceedings who makes a request for such a form under R6.97 of the Rules (8 marks)**
- b) You are training a new member of staff who has been dealing with creditor claims on your behalf. They ask for your advice on the following points:**
- i) What is the process to formally reject a claim in the estate and what right of appeal does a creditor have against the trustee's decision? (4)**
 - ii) Who is able to inspect proofs of debt held by a trustee in bankruptcy? (3)**
- 24. a) The IVA protocol standard conditions set out the duties, functions and powers of the supervisor. Summarise these duties etc including the provisions on agreeing reductions in a debtor's contributions and reviewing a debtor's income and expenditure. (8 marks)**
- b) In accordance with the standard conditions how should a supervisor deal with claims which are lodged late and claims which are greater than the amount stated by the debtor in the proposal. (4 marks)**
- c) In accordance with the standard conditions how may a supervisor be removed from office and how would such a vacancy be filled? (3 marks)**
- 25. Lisa, age 26, works as a receptionist at a dental practice. She owns a flat in her sole name which currently has little equity and she has no other assets of any consequence. She has incurred credit card and personal loan liabilities of over £40,000 and is unable to cope with these debts. She has come to you for advice.**

Requirement

Draft a letter of advice to Lisa setting out the key advantages and disadvantages (for Lisa) of the following personal insolvency procedures:

- a) Bankruptcy (6 marks)**
- b) Individual Voluntary Arrangement (6 marks)**
- c) Debt Management Plan (3 marks)**