



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

Examination 2 June 2023

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 1st January 2023.

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 (Scotland) Rules 2018 (as amended).

References to the '1985 Act' are to the Bankruptcy (Scotland) Act 1985 (as amended).

References to the PTD Regs are to the Protected Trust Deeds (Scotland) Regulations 2013.
References to SIPs are to Statements of Insolvency Practice (Scotland).

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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. Within how many days must the SIP16 statement be sent to creditors. Is it?
- a) As soon as is reasonably practicable but within 7 days of the sale ☐
 - b) As soon as is reasonably practicable ☐
 - c) Within 5 business days of the sale ☐
 - d) It must be included within the next report to creditors ☐
2. Where a trustee sells a debtor's investment property, which of the following types of tax is most likely to be payable from the debtor's estate as a result of the sale?
- a) Income tax ☐
 - b) Corporation tax ☐
 - c) Capital gains tax ☐
 - d) Land & buildings transaction tax ☐
3. In a compulsory winding-up, what date should be used when converting a foreign currency claim to pounds sterling. Is it?
- a) The date of the petition ☐
 - b) The date of the winding-up order ☐
 - c) The date of the appointment of the liquidator ☐
 - d) The date of the proof of debt submitted ☐
4. Which SIP covers matters concerning trust deeds. Is it?
- a) SIP 2 ☐
 - b) SIP 3.2 ☐
 - c) SIP 3.3 ☐
 - d) SIP 9 ☐
5. What Section in the Bankruptcy (Scotland) Act 2016 deals with extortionate credit transactions?
- a) Section 209 ☐
 - b) Section 211 ☐
 - c) Section 215 ☐
 - d) Section 229 ☐

6. An office holder can rank a claim for dividend purposes without the need for the creditor to formally submit a proof of debt if it is regarded as a “small debt”. How much is a “small debt” defined as in statute?
- a) If it is for £1,000 or less ☐
 - b) If it is for £2,000 or less ☐
 - c) If it is for £5,000 or less ☐
 - d) The office-holder has discretion to forego proof of debt in some matters ☐
7. How many months after the filing of the liquidator’s final account at Companies House is a company dissolved. Is it?
- a) 1 month ☐
 - b) 2 months ☐
 - c) 3 months ☐
 - d) 4 months ☐
8. Section 234 of the Act deals with getting into the company’s property including books, papers and records. In which insolvency process does Section 234 not apply to. Is it?
- a) Compulsory liquidation ☐
 - b) Provisional liquidation ☐
 - c) Administration ☐
 - d) Company voluntary arrangements (“CVA”) ☐
9. What is the maximum time period for which a debtor contribution can be paid. Is it?
- a) 48 months beginning with the first payment ☐
 - b) Until discharge from sequestration ☐
 - c) Such period as agreed by the debtor and trustee ☐
 - d) 48 months from the date of sequestration ☐
10. How long does a creditor have to submit their claim once the trustee has issued notice inviting claims in a sequestration?
- a) 28 days ☐
 - b) 60 days ☐
 - c) 120 days ☐
 - d) As soon reasonably practicable ☐

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.** On what grounds may an application be made to the Court for a direction that specified information is omitted from the statement of affairs as delivered to the creditors?

1 mark per point up to 2 marks

- 12.** Who can apply for the sequestration of a deceased debtor?

½ mark per point up to 2 marks

- 13.** Assuming that a charge-holder has a qualifying floating charge and wants to make an out of Court appointment of an administrator under Paragraph 14 of Schedule B1 of the Act, what pre-conditions specified in the Act must be satisfied to enable the charge-holder to make the appointment?

½ mark per point up to 2 marks

- 14.** What are the functions of an appointed interim trustee in a sequestration?

½ mark per point up to 2 marks

- 15.** Who is eligible to be a committee member in a liquidation?

½ mark per point up to 2 marks

- 16.** Your principal has asked you to close a case. What final practical steps should you undertake?

½ mark per point up to 4 marks

- 17.** Explain the right a landlord holds in respect of hypothec and the sum that can be claimed by the landlord.

½ mark per point up to 4 marks

- 18.** In relation to an individual, explain what a moratorium is, how a debtor can apply, and in what circumstances it is applicable.

½ mark per point up to 4 marks

- 19.** Your principal has been appointed liquidator, what duties does he have in respect of a company's pension scheme if there is one?

½ mark per point up to 4 marks

- 20.** When a trustee in sequestration is replaced, what duties does the original trustee have to undertake, and when.

½ mark per point up to 4 marks

PART C

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

- 21.a)** Steven Clark was sequestered over eighteen months ago, following a creditor's petition. His trustee has realised all of the assets, and has now turned his attention to his share in the debtor's matrimonial home, which he jointly owns with his wife.

The trustee has recently obtained a professional valuation of the heritable property valuing it in the sum of £400,000.

The property is subject to a mortgage of £198,000 owed to Mountain Loans.

Following Steven being sequestered he vacated the property, however his wife and two children still live in the property.

Mrs. Clark has contacted your office following a letter received from the Trustee. She advised that she has been doing research and understands the property will revest in the Debtor if the property is not dealt with by the Trustee due to it being classed as a family home.

Requirement;

- a)** The trustee has asked you to prepare a note, outlining the equity position and an explanation as to what steps should be taken to ensure the property does not revest in the debtor.

½ mark per point up to 6 marks

- b)** During the trustee's investigation into Mr. Clark's financial affairs, you note a number of unusual transactions to an overseas bank account. You have yet to discover the identity of the beneficiary of this bank account, but alarm bells are ringing, and despite your numerous requests to Mr. Clark to explain these transactions, he has yet to respond, and it appears that he may have moved abroad.

The trustee is now considering making an application for a bankruptcy restriction order ("BRO").

Your principal has asked you to prepare a note explaining the effect of the BRO, and also the grounds upon which a BRO can be applied for.

½ mark per point up to 9 marks

Total 15 marks

22. Last week you and your principal met with Mr. Sugar, a director of Kale Me Crazy Limited ("the Company") which operates a chain of Scottish restaurants.

Mr. Sugar is in denial that the Company is in financial difficulty and is only attending the meeting as Mr. Rice, the finance director has insisted that action must be taken prior to 1 December 2023.

When your principal initially spoke with Mr. Rice he advised that the Company has recently received two letters before action from trade suppliers. In addition to this, he advised that the Company has insufficient funds to pay the Company's monthly pension contributions, and very much doubts the Company will have sufficient funds to meet its monthly standing orders come December 2023. These include employee wages, rent and the monthly hire purchase payments in relation to two pieces of kitchen equipment.

The financial director also advised that the monthly hire purchase payments are already three months in arrears.

During the meeting, Mr. Sugar also advises that weekly sales are currently around £8,000, when compared with the pre-pandemic levels of £25,000 per week.

Mr. Sugar is of the opinion that everything will be fine as weekly sales are on the increase now that everything has returned to normal. However, the financial director's forecast proves that this increase will not be sufficient to enable the Company to address the historic debts it has accrued.

As of 1 December 2023, the Company has secured a five-year catering contract with an events company, which will guarantee an additional £3,000 in sales for the Company on a weekly basis.

All staff are paid monthly, and total gross salaries are £11,000 per month.

The Company has three premises from which it operates, with the terms of the lease the sum of £5,000 is payable per month per premises.

The Company's other liabilities include the following:

Creditor	Amount owed (£)
HM Revenue & Customs – Corporation Tax	750
HM Revenue & Customs – VAT	240,000
Mrs Sugar (Mr Sugar's wife)	20,000
National Banking Corp. - Loan	100,000
Utilities	25,000
Hire Purchase Equipment	3,000
Suppliers	75,000
Mr Rice	60,000

Mrs. Sugar personally guaranteed the loan owing to the Company when she was formally a director of the Company, with £300 per month being payable per the loan agreement.

The Company also owes a European supplier €5,000, which is not included in the table above.

Mr. Sugar has an outstanding overdrawn director's loan account of £40,000.

The Company also has a debtor ledger of £70,000, and it is expected that 40% of this would be recoverable should the Company be placed into liquidation. This asset would be excluded in any CVA.

If the Company was to cease trading at the end of November 2023, then employees would be owed the following:

Employee	Wage Arrears (£)	Holiday Pay (£)
Mr Curry	1,500	350
Mrs Berry	800	200
Mrs Plum	2,200	100
Mr Sugar	350	-
Mr Bacon	5,000	400

Mr. Curry and Mr. Bacon would also be owed £5,000 and £4,500 respectively, in relation to pay in lieu of notice, as a result of being made redundant at the start of December 2023, as part of a cost-cutting exercise.

There is also a pension liability of £900, which is outstanding from the previous month.

Mr. Sugar is classed as both a director and an employee of the Company.

Like Mr. Sugar, Mr. Rice is keen for the business to continue and wants to avoid having to place the company into CVL, and therefore a three-year CVA should be considered. As a result of their determination to succeed long term, all connected creditors have agreed that should the CVA be approved by creditors, then connected creditors will waive their rights to a dividend in the CVA process.

Stock is valued at £800, with equipment valued at £8,000. It is understood that £100 of the trade supplies is subject to a retention of title claim. Mr. Sugar has advised that the stock in question is clearly identifiable and can be easily reconciled back to the supplier's invoices.

The Company's business rates are £300 per month per premises.

Additionally, the Company rents a small van to use for catering jobs for £600 per annum, which is paid in 12 equal monthly installments.

The Company's cleaners work for the business on a contract basis and are not classed as employees. The cost of this is £250 per month.

To enable future trade to continue smoothly Mr. Sugar is of the opinion that supplies will be required at a cost of £5,000 per month, with additional overheads of £2,500 per month.

Requirement;

Your principal has asked you to produce an estimated outcome statement comparing the likely return to creditors in a CVA when compared with a CVL. Your answer should show the projected return to preferential, secondary preferential and unsecured creditors for both scenarios, with the outcome statement is to be based on the assumption that both the CVA and CVL commence on 1 December 2023.

Your answer should include details of any additional information that is needed from the directors of the Company, which would assist in making the estimated outcome statement more accurate. All workings and assumptions should be shown in your answer.

You should assume the following:

CVA expenses

- Nominee's fee - £10,000
- Supervisor's fee - £10,000 per annum
- Other Costs - category one expenses, including advertising and bond, total £1,200
- VAT should be ignored.

CVL expenses

- Statement of affairs fee - £7,000
- Liquidator's fees - £45,000
- Other Costs - category one expenses, include:
 - advertising - £250
 - bond - £200
 - storage - £150
- Category two expenses - £100
- Agent's fees are expected to be 11% of any proceeds
- Legal fees - £1,550
- VAT should be ignored.

Total 15 marks

PART D

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

- 23.** You have been contacted by a creditor following the making of a winding-up order against a customer, a competitor has been appointed as interim liquidator. The creditor wants to know who the liquidator will be and whether your principal can be appointed as liquidator.

Requirements;

- a)** Explain how a liquidator is appointed in a compulsory liquidation.

½ mark per point up to 5 marks

- b)** Your principal has now been appointed as liquidator of the company.

Prepare a note for your principal to explain the steps that should be taken in the days following the appointment.

½ mark per point up to 5 marks

- c)** The director of the company fails to co-operate with the liquidator, having also failed to provide any information to the Interim liquidator.

Prepare a note to explain how the director may be examined by the Court in public or in private including who may make an application in each case.

½ mark per point up to 5 marks

Total 15 marks

- 24.** Freestone Limited (“Freestone”) was placed into CVL on 1 March 2022. To date, the liquidators have realised all the assets of Freestone and have settled all sums due to the secured creditor under the security.

The liquidators are holding sufficient funds to declare a first & final dividend to the preferential creditors from the surplus available under the security, and also from the uncharged assets. No creditors committee has been appointed and the liquidators have fee approval on the basis by reference to the time properly given by the office-holder and their staff in attending to matters arising, at a meeting of creditors held on 5 July 2022.

As part of the liquidators’ investigation into the financial affairs of Freestone, it is noted that there are several potential antecedent transactions that, if recovery was successful, would enable the liquidators to also declare a dividend to the unsecured creditors.

The liquidators have therefore decided to change the basis of their fees from time-cost to a percentage of realisations for any future realisations made pursuing and recovering any monies relating to these antecedent transactions.

Requirements;

- a)** Detail what information should be provided to creditors when initially seeking fee approval, the basis upon which fees can be fixed, and how this is determined.

½ mark per point up to 8 marks

- b)** Should the liquidators wish to change the basis of their fee approval as detailed above, how would they go about doing this and what should they be mindful of?

½ mark per point up to 4 marks

- c)** Explain the difference between category 1 and category 2 outlays and provide an example for each.

½ mark per point up to 3 marks

Total 15 marks

- 25.** Florence Nightingale (“the Debtor”) was sequestered on 9 January 2023 by a creditor’s petition. To date, she has not attended an interview with the trustee or provided any information concerning her assets and liabilities. Upon a review of

information to date, the trustee has concerns that the Debtor has concealed assets. Following investigations, the debtor has been traced to a property in Edinburgh.

Requirements;

- a) Detail the obligations that the Debtor has to furnish certain information to the trustee, and what powers the trustee has to obtain this information.

½ mark per point up to 6 points

- b) The creditor who petitioned for the sequestration of the Debtor has contacted your office to enquire about how the trustee's investigations are progressing. In the call, the creditor advised the following;

- 1) The debtor owned a property that was sold in March 2020 to her sister.
- 2) From social media posts made by the debtor, it would appear that her father passed away in February 2023, it was noted that her father had a large property portfolio, including properties abroad.
- 3) The creditor has also advised that the debtor recently started a new job at a senior level.
- 4) Again, from social media posts, the debtor has been pictured driving a high-end motor vehicle with a private registration.

In response to the above points, prepare a strategy note for the trustee outlining the investigations that will be required and what remedies are available to the trustee in order to make realisations.

½ mark per point up to 9 marks

Total 15 marks