



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN INSOLVENCY ENGLAND & WALES

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 Rules 2016 (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. In appropriate matters, 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. In a creditors voluntary liquidation ("CVL"), where there is no creditors committee, or the committee fails to determine the basis of the remuneration of the liquidator, how will a determination be made?
 - a) By 25% or more of the creditors in value, or 25% of the creditors in total ☐
 - b) By the Court ☐
 - c) By a decision of the creditors by a decision procedure ☐
 - d) At the first or next meeting of the creditors' committee ☐

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 individual voluntary arrangements. Is it?
 - a) SIP 2 ☐
 - b) SIP 3.1 ☐
 - c) SIP 3.2 ☐
 - d) SIP 9 ☐

5. What section in the Act deals with extortionate credit transactions. Is it?
 - a) Section 339 ☐
 - b) Section 234 ☐
 - c) Section 343 ☐
 - d) Section 432 ☐

6. An office holder can admit 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 a 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 in 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. If a trustee in bankruptcy makes an application for a charging order in respect of the bankrupt's residential property, and the level of the bankrupt's interest is below the prescribed amount then the Court will dismiss the application. What is the prescribed amount set at. Is it?
- a) £1,000 ☐
 - b) £2,000 ☐
 - c) £2,500 ☐
 - d) £5,000 ☐
10. Where a liquidator is disclaiming his interest in an onerous lease, how many days does he have to serve a copy of the notice of disclaimer on anyone who claims to have an interest in the lease. Is it?
- a) 5 business days ☐
 - b) 7 business days ☐
 - c) 10 business days ☐
 - d) As soon as 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.** Section 251 of the Act defines a director as “any person occupying the position of director, by whatever name called”. This definition includes what of other name called directors?

1 mark per point up to 2 marks

- 12.** When a trustee in bankruptcy vacates office by way of resignation, what duties does he have to undertake to a successor trustee, and when.

½ mark per point up to 2 marks

- 13.** Assuming that a charge-holder has a qualifying floating charge, and is wanting to make an out of the 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 effect, if any, does the appointment of an administrative receiver have on the directors of the company, and any other assets which are not covered by the appointers charge?

½ mark per point up to 2 marks

- 15.** Who is eligible to be a member of a creditors' committee?

½ mark per point up to 2 marks

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

½ mark per point up to 4 marks

17. Where a liquidator in a compulsory winding-up is intending to rely upon the Official Receiver's ("OR") realisation and distribution scales in respect of his remuneration, outline how the remuneration will be calculated.

½ mark per point up to 4 marks

18. a) The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium (England & Wales) Regulations 2020, came into effect on 4 May 2021.

For a debtor to be eligible to apply for respite under these regulations from his creditors what must he not be?

½ mark per point up to 2 marks

- b) During the period of a breathing space moratorium the debtor is to work with a debt advisor to find a solution to his current debt problems. What payments are excluded and must continue to be made as and when they fall due?

½ mark per point up to 2 marks

Total 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. Molly Hill has successfully paid all the required contributions into her IVA and has asked the supervisor how the IVA is brought to a conclusion.

Requirement;

What formalities can Molly expect her supervisor to adhere to in order to bring her IVA to a formal conclusion once costs and expenses have been settled, and the remaining funds have been distributed to her unsecured creditors, bringing the account to £nil.

½ mark per point up to 4 marks

PART C

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

- 21.a)** Your principal is acting as nominee for Mark Closebill who wishes to propose an individual voluntary arrangement ("IVA") to his creditors. The proposals have been drafted and you now need to convene a decision procedure for the creditors. Set out the different decision procedures which may be used to approve the IVA and state, with reasons, which one you think will be the best one to use.

½ mark per point up to 5 marks

- b)** A virtual meeting has been convened, and you have received the following proxies in advance of the meeting which is due to be held later today;
- A proxy in favour of the chair with instructions to vote for the arrangement with modifications from Loans R Us for a stated debt of £5,000. The proxy has stated that if the modifications are not accepted then the vote must be treated as a rejection.
 - A proxy in favour of the chair with instructions to vote for the arrangement without modification from Indi Loot, Mark's sister-in-law, in the sum of £20,000. The proxy gives the chair discretion to vote or abstain at their discretion in respect of any resolution for which no specific instruction is given.
 - A proxy in favour of the chair with instructions to reject the arrangement from Car Finance.com. The claim form submitted with the vote declares a total balance outstanding of £30,000 and states that they have a secured charge over the debtor's car which they have valued at £25,000
 - A proxy in favour of the chair with instructions to vote for the arrangement without modifications from Mark's former landlord, RentaRoom, for rent arrears amounting to £1,000 and dilapidations of £20,000. The dilapidations have not been itemised or agreed. The proxy gives the chair discretion to vote or abstain at their discretion in respect of any resolution for which no specific instruction is given.
 - A proxy in favour of the chair with no specific instructions from Overdraft.Com, in the sum of £20,000. The proxy gives the chair discretion to vote or abstain at their discretion in respect of any resolution for which no specific instruction is given.
 - A proxy in favour of your firm with instructions to vote for the arrangement without modifications, in the sum of £10,000 from Easy Lending. The proxy gives discretion to vote or abstain at their discretion in respect of any resolution for which no specific instruction is given.
 - Other creditors with debts totalling £30,000 have not voted.

Requirement;

Set out a voting schedule to illustrate the current voting position of the creditors and the likely acceptance or otherwise of the proposals. Explain your treatment of the different creditors.

$\frac{1}{2}$ mark per point up to 10 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 London restaurants.

Mr Sugar is in denial that the Company is in financial difficulties and is only attending the meeting as Mr Rice, the finance director has insisted that action must be take 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 instalments.

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 SHEET OF ANSWER PAPER

- 23.** You have been contacted by a creditor following the making of a winding-up order against a customer. The creditor wants to know who the liquidator will be.

Requirements;

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

½ mark per point up to 4 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 6 marks

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

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 their fixed charge.

The liquidators are holding sufficient funds to declare a first & final dividend to the preferential creditors from the surplus available under the fixed charge, 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 below, how would they go about doing this and what should they be mindful of.

½ mark per point up to 4 marks

- c)** The change in fee basis is subsequently approved, however a creditor of the company is dissatisfied with the level of remuneration and seeks further information.

Advise who can make this request for information, and the process.

½ mark per point up to 3 marks

Total 15 marks

- 25.** Florence Nightingale (“the Bankrupt”) was made bankrupt on 9 January 2022 by a creditor’s petition. To date she has not attended an interview with the OR, provided a statement of affairs or information she has been asked to provide concerning her assets vesting in the estate. Upon a review of information to date, the OR has concerns that the Bankrupt has concealed assets and has absconded.

Requirements;

- a)** Detail the obligations that the Bankrupt has to furnish certain information to the OR, and what powers does the OR have to obtain this information.

½ mark per point up to 8 points

- b)** Your principal has recently been appointed trustee in bankruptcy of Miss Nightingale. What are the duties of the trustee to the OR?

½ mark per point up to 2 marks

- c)** As trustee, your principal has the power to disclaim any onerous property even if they have taken possession of the property or exercised rights of ownership in relation to it.

Detail what property the trustee cannot disclaim without permission of the Court, the effect of the disclaimer, and also the procedure to disclaim.

½ mark per point up to 5 marks

Total 15 marks