



INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN INSOLVENCY
ENGLAND & WALES

Examination 17 November 2022

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 2022.

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 a members' voluntary liquidation ("MVL") within how many days must the liquidator file the statutory declaration with the Registrar of Companies.
- a) Within 15 days of the swearing of the statutory declaration
- b) Within 15 days of the resolution to wind-up the company
- c) Within 14 days of the swearing of the statutory declaration
- d) Within 14 days of the resolution to wind-up the company
2. In a creditors voluntary liquidation ("CVL"), after serving a Rule 1.50 of the Rules notice, (use of website to deliver documents), what is the liquidator not obliged to send by post to a creditor?
- a) A final progress report
- b) Notice of intended dividend
- c) Request for increase in fees
- d) Change in details of the office-holder
3. Which paragraph of Schedule B1 of the Act deals with the appointment of an administrator, out of Court by directors of the company. Is it?
- a) Paragraph 12
- b) Paragraph 14
- c) Paragraph 22
- d) Paragraph 24
4. Which SIP covers matters concerning the deemed consent and decision procedures in insolvency proceedings.
- a) SIP 1
- b) SIP 6
- c) SIP 7
- d) SIP 11
5. An administrator may require the director of a company to submit a statement of affairs. Within what period of receipt of the request must the director submit the statement of affairs?
- a) 11 days
- b) 11 business days
- c) 14 days
- d) 21 days

6. To whom should an application for a debt relief order be made?
- a) The Official Receiver
 - b) The Court
 - c) The trustee in bankruptcy
 - d) The debtor's creditors
7. Which of the following expenses are considered to be an overhead and therefore not permitted to be recovered as an expense of the estate, even where the drawing of category 2 expenses has been approved. Is it?
- a) Pre-appointment anti-money laundering costs
 - b) Case file storage costs
 - c) Postage costs
 - d) Cost of hiring an internal meeting room to host a physical meeting
8. Following the approval of a debtor's proposals for an individual voluntary arrangement ("IVA"), a creditor may apply to court to challenge the creditors' decision. Within how many days of the lodging of the report on the outcome of the meeting at court must this be done by. Is it?
- a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 28 days
9. What type of resolution, if any, is to be passed by members to authorise a Section 110 of the Act, Scheme of Arrangement. Is it?
- a) No resolution is required
 - b) General resolution
 - c) Extraordinary resolution
 - d) Special resolution
10. Payments must be made (without deduction) immediately into the Insolvency Service Account if the payment is more than what sum?
- a) £3,000
 - b) £5,000
 - c) £7,000
 - d) £10,000

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. Explain the difference between the postal delivery rules of sending a document by first class versus sending a document by second class.

1 mark per point up to 2 marks

12. At the end of the period of three years beginning with the date of bankruptcy, the interest in the bankrupt's principal residence which formed part of the bankruptcy estate will re-vest in the bankrupt. What actions can the trustee take during the three year period to avoid the interest re-vesting?

½ mark per point up to 2 marks

13. Where a supervisor gives notice that a company voluntary arrangement ("CVA") has been terminated, what must be included in the accompanying report?

½ mark per point up to 2 marks

14. Following case law as adopted in best practice guidance, an IP should exercise his professional judgement in considering a debtor's proposals for an IVA. What key principles should be taken into account?

½ mark per point up to 2 marks

15. The Court may make an order for the winding up of a company on just and equitable grounds in what circumstances?

½ mark per point up to 2 marks

16. Paragraph 3(1) of Schedule B1 of the Act sets out the purposes of an administration. What are these and the associated key criteria that apply?

½ mark per point up to 4 marks

17. Your principal has been appointed liquidator of a CVL and a creditor of the company has demanded that a physical meeting of creditors be convened, instead of a deemed consent procedure. In order that your principal can respond to the creditor you have been asked to prepare a note detailing the process of convening and holding a physical meeting, including details as to any relevant time periods.

½ mark per point up to 4 marks

18. What information should be contained within a proof of debt which a creditor submits to the office-holder under the relevant Rule in administration, winding up or bankruptcy proceedings?

½ mark per point up to 4 marks

19. A creditor may apply to the Court for the appointment of an interim receiver if there is a risk that the debtor's asset position may change, and it is necessary to protect these assets.

Requirement;

Set out the functions and powers of the interim receiver.

1 mark per point up to 4 marks

20. Your principal is concerned that, although recently appointed supervisor, that the CVA may be challenged at a later date. You have been asked to prepare a note setting out;
- (i) on what grounds can the CVA be challenged;
 - (ii) who could challenge the CVA; and
 - (iii) in what timeframe.

½ mark per point up to 4 marks

PART C

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

- 21.a)** May Beshort has approached your firm for advice about her debts and, from initial discussions, it is likely that an IVA will be a suitable option for her. What are the main considerations as to whether a protocol consumer IVA would be appropriate?

½ mark per point up to 2 marks

- b)** Following the initial meeting with May Beshort, who lives on her own in a mortgaged property, it is agreed that a protocol consumer IVA is indeed the most appropriate course of action. Your principal has asked you to set out the various options for dealing with any equity in the property and how it is calculated.

½ mark per point up to 8 marks

- c)** According to SIP 3.1 what information should be included in the debtor's proposal.

½ mark per point up to 5 marks

Total 15 marks

- 22.** In accordance with the relevant SIP, what information should be disclosed as part of the administrator's explanation to the creditors regarding a pre-packaged sale, as far the administrator is aware after making the appropriate enquiries.

½ mark per point up to 15 marks

PART D

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

23. Your principal is the liquidator of West-East Smiles Limited (“West-East”), having been appointed by creditors around nine months ago. The realisations from book debts were higher than anticipated in the statement of affairs and you have been asked to review the case.

On reviewing the file, you note that West-East granted a floating charge to North-South Bank Plc on 1 December 2017. The charge is secured over West-East’s assets, comprising of machinery and book debts. At the date of liquidation, the sum due to North-South Bank Plc was £150,000.

Claims have been received from West-East’s former employees as follows:

- Mr Pink earned £450 per week and is owed two weeks’ wages and one week’s holiday.
- Mr Yellow earned £350 per week and is owed two weeks’ wages and two weeks’ holiday.
- Ms Blue, one of the directors of West-East, earned £650 per week and is owed four weeks’ wages and three weeks’ holiday.

The costs and expenses of the liquidation have been paid, but no distribution has yet been declared to any class of creditor.

You have obtained a copy of the receipts and payments account as detailed below:

West-east Smiles Limited - in liquidation

Receipts and payments account to 17 November 2022

	£	£
<u>Asset realisations</u>		
Machinery	60,000	
Book debts	<u>120,000</u>	
		180,000
<u>Costs of realisation</u>		
Liquidator’s fees	20,000	
Debt collection costs	12,000	
Agent’s costs	3,000	
Liquidator’s disbursements	<u>500</u>	
		(35,500)
		<u>144,500</u>
<u>Represented by</u>		
North-south Bank		<u>144,500</u>

Requirements;

- a)** Prepare a calculation to determine the level of specific penalty sum required for this case. Show your workings.

½ mark per point up to 7 marks

- b)** Prepare a memorandum for your principal setting out the process for obtaining and adjudicating creditor claims in order to declare a dividend.

½ mark per point up to 8 marks

Total 15 marks

- 24.** Jay McFee and Tom Fenton are joint directors and 50:50 members of TV Plus Limited (“the Company”) and they wish to place the Company into MVL. For them to do so both directors are required to swear the declaration of solvency in front of a solicitor.

Requirements;

- a) By signing the declaration of solvency what are the directors declaring?

½ mark per point up to 2 marks

- b) When must the declaration of solvency be sworn, and by when must it be filed with the Registrar of Companies following the passing of the resolution to wind-up?

½ mark per point up to 1 mark

- c) What must the declaration of solvency include?

½ mark per point up to 7 marks

- d) Set out the advantages and/or disadvantages of a MVL versus dissolution.

½ mark per point up to 5 marks

Total 15 marks

- 25.** Your principal has been appointed as joint liquidator of Fluffy Dog Limited (“the Company”) on 1 September 2022.

Following your appointment, you have been contacted by one of the creditors who has noticed that the directors have started up a new poodle parlour, with a similar name in the same area, offering the same services and some of the old staff are also employed there.

They also advise that some of the Company’s old clients have already been contacted with special offers.

This is of concern as the Company’s business had ceased trading prior to being approached by the directors to assist with placing the Company into liquidation and the only remaining assets according to the directors were some grooming tables, clippers, brushes and baths. Agents have been instructed to sell these assets.

As part of your investigation into the financial affairs of the Company it is also apparent that the directors had transferred £50,000 to themselves prior to liquidation in settlement of their directors’ loan accounts. Also, as a result of a search with the DVLA it is apparent that the Company owned three vehicles that were unencumbered and that were not included on the statement of affairs.

Requirements;

- a)** What sections of the Act deal with the restriction on the re-use of company names.

½ mark per point up to 1 mark

- b)** Set-out in detail this legislation including any exceptions.

½ mark per point up to 7 marks

- c)** What action do you consider the liquidator should take now that this information has come to light?

½ mark per point up to 7 marks

Total 15 marks