



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

Examination 20 June 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 (Scotland) Rules 1986 (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).

Copyright Notice

This examination paper and materials relating to it are copyright of the Insolvency Practitioners Association. No part may be reproduced in any material form except as may be authorised by law or with our consent in writing. All rights are reserved.

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. Your principal has been appointed liquidator of a company who holds a lease to occupy a premises owned by a private landlord. What course of action is not available to the liquidator?
- a) Adopt the lease ☐
 - b) Irritate the lease ☒
 - c) Abandon the lease ☐
 - d) Negotiate continued use for trading purposes ☐
2. Within what time period must a trustee send initial proposals for the debtor's contribution to the Accountant in Bankruptcy following an appointment via Court?
- a) Six weeks from the date of warrant to cite ☐
 - b) Twelve weeks from the date of the award of sequestration ☒
 - c) Within six months of the warrant to cite ☐
 - d) Within twelve months of the date of award ☐
3. As part of the nominee's report in a company voluntary arrangement ("CVA"), which of the following is the nominee not required to comment on. Is it?
- a) Whether the CVA is manifestly unfair ☐
 - b) Whether the company's financial position is materially different from that contained in the proposal, explaining the extent to which the information has been verified ☐
 - c) Whether the ongoing trading of the company will be profitable ☒
 - d) Whether the CVA has a reasonable prospect of being approved and implemented ☐
4. Which of the following is not a secondary preferential creditor in insolvency proceedings. Is it?
- a) Employer's national insurance contributions ☒
 - b) VAT ☐
 - c) PAYE on an employee's salary ☐
 - d) Deductions from an employee's salary on account of a student loan ☐
5. Within what time period must a general meeting of members be held following the directors swearing the declaration of solvency for a members' voluntary liquidation ("MVL"). Is it?
- a) 5 business days ☐
 - b) 14 days ☐
 - c) 28 days ☐
 - d) 5 weeks ☒

6. Which one of the following is not a valid reason for a liquidator to resign from office. Is it?
- a) A large unsecured creditor has written in stating that they are intending to seek the liquidator's removal ☐
 - b) The liquidator intends to cease to practise as an insolvency practitioner ☐
 - c) The liquidator is suffering with ill health ☐
 - d) It has come to light that the liquidators' firm has a conflict of interest ☐
7. There is a requirement to notify the redundancy payment office if more than 20, but less than 100, employees are being made redundant from one company, prior to an insolvency event. What is the minimum notification period?
- a) 15 days ☐
 - b) 20 days ☐
 - c) 25 days ☐
 - d) 30 days ☐
8. For how long after an officeholder has received their release from a particular insolvency proceeding, are documents to be made available on websites. Is it?
- a) Can be removed immediately ☐
 - b) 2 months ☐
 - c) 3 months ☐
 - d) 6 months ☐
9. How many creditors must be in attendance (in person or by proxy) at a meeting of creditors which is a qualifying decision procedure, in order for the meeting to be quorate?
- a) At least one creditor who is entitled to vote ☐
 - b) At least 25% of creditors who are entitled to vote ☐
 - c) At least 50% of creditors who are entitled to vote ☐
 - d) At least 50% of creditors who are entitled to vote, not taking into account any secured creditors ☐
10. To be eligible for the minimal asset process, what is the maximum value of assets that a debtor can hold. Is it?
- a) £1,000 ☐
 - b) £2,000 ☐
 - c) £3,500 ☐
 - d) £5,000 ☐

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. A creditor may choose to opt out of receiving documents in insolvency proceedings. However, there are certain notices which must be sent to all creditors regardless of their decision to opt out. What notices are these?

½ mark per point up to 2 marks

12. Following the appointment of a liquidator in a creditors' voluntary liquidation ("CVL"), what documentation should be filed at the Registrar of Companies and The Accountant in Bankruptcy?

½ mark per point up to 2 marks

13. When the directors of a company have obtained a moratorium for the purposes of proposing a CVA for that company, what protection is provided by the moratorium in relation to insolvency proceedings.

½ mark per point up to 2 marks

14. When advising and considering if a Trust Deed is a viable debt solution for a debtor what should the insolvency practitioner consider and document?

½ mark per point up to 2 marks

15. What conditions must be satisfied for a creditor to present a petition to the Court for the sequestration of an individual?

½ mark per point up to 2 marks

16. In advance of a deemed consent or decision procedure for the purposes of appointing a liquidator in a CVL, what information should be made available by an insolvency practitioner in advance, and when.

½ mark per point up to 4 marks

17. Section 216 of the Act provides exceptions for a director or shadow director of a company in the 12 months ending with the day before it went into insolvent liquidation, to re-use a similar name of the company that has entered liquidation. What are these exceptions to the Rule?

½ mark per point up to 4 marks

18. You are now at the stage where you can commence the closure process of a sequestration you have been working on. Whilst working through your firm's case closure checklist you ascertain that a dividend cheque, issued to an unsecured creditor, has not been presented at their bank, and is now over 6 months old.

Explain what practical steps should be taken in regard to this unclaimed dividend.

½ mark per point up to 4 marks

19. Explain the difference between category 1 and category 2 expenses, and what approval is required to pay them.

½ mark per point up to 4 marks

20. What is the role of a commissioner in a sequestration, how are they elected, removed and how are they able to resign?

1 mark per point up to 4 marks

PART C

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

21. The board of directors of Monkeystore Limited ("Monkeystore") has instructed your firm to assist it in winding up the company through a CVL. Your principal has asked you to prepare the statement of affairs that will be sent to creditors in advance of the decision procedure to appoint a liquidator.

Monkeystore sold branded novelty products to department stores and also directly to the public via its website and other online channels. However, it has seen a drop in demand for its products alongside increased competition from overseas retailers, and the directors have concluded that they can no longer continue to trade. The directors have instructed an agent to value Monkeystore's assets.

The agent intends to charge commission of 10% on the sale price of assets sold by the liquidator. Your principal has estimated that liquidator's fees will be £10,000 plus VAT.

The directors have provided you with the following information.

Monkeystore has share capital of £1,000 which is equally held between the two directors.

Monkeystore's balance sheet records goodwill of £10,000 as a result of previously purchasing a business called Chimpz. However, the agent has advised that both the purchased goodwill and the internally-generated goodwill is not expected to have any realisable value.

There is stock in the warehouse which has been recorded at a cost price of £45,000. The agent believes the stock can be sold in bulk to a competitor and is likely to achieve £20,000.

There are fixtures and fittings in the warehouse and in the office area with a book value of £65,000. The agent anticipates proceeds of £10,000 at auction.

The directors each have use of a company car which the Company has obtained on lease hire terms. Both cars are part way through the lease term but the most recent payments have not been made. The cars are thought to be worth £10,000 each if sold second hand. The leasing company wishes to collect the cars as soon as possible following breach of the contract. A total of £6,000 is owed to the leasing company.

There is a debt of £50,000 owed to Monkeystore by one of the department stores which is itself in a CVA. The CVA proposal anticipated a return to ordinary unsecured creditors of 40p in the £.

Monkeystore granted a bond and floating charge to White Horse Bank in 2017. White Horse Bank is currently owed £115,000 for a business loan and £22,000 in respect of an arranged overdraft.

Monkeystore has 10 employees excluding the directors, who are owed holiday pay at an average of £500 each. The two directors are also employees and have unpaid holiday pay totalling £1,800 each.

The total cost of redundancy and pay in lieu of notice is expected to be £45,000.

HM Revenue & Customs are owed the following:

- PAYE of £10,000
- Employer's NIC of £4,000
- Employees' NIC of £5,000
- VAT of £3,000

Other creditors comprise six suppliers of goods and the landlord, who are owed a total of £76,000 between them.

Requirements;

- a)** Prepare Monkeystore's statement of affairs. Show your full workings.

½ mark per point up to 12 marks

A virtual meeting of creditors is subsequently held, at which your principal is appointed by the creditors as liquidator of Monkeystore and a liquidation committee is elected.

- b)** Detail what should be included in the record of the decision procedure.

½ mark per point up to 3 marks

Total 15 marks

22. Sidney Overbill ("the Debtor") was sequestrated and initially a debtor contribution order of £750 was set.

- Following the first annual review of the Debtor's income and expenditure, monthly contributions were increased to £850.
- The second anniversary is fast approaching and you have asked Debtor to provide you with an up to date income and expenditure however, despite leaving repeated messages for him, you have not had any response. You have also noted that Debtor is two months behind on his monthly contributions.

Requirements;

- a)** Upon speaking to Debtor he has requested a payment break due to unforeseen expenses arising. Prepare a memorandum to your principal, explaining the issues, what information you would request as evidence and outline the process for the payment break.

½ mark per point up to 6 marks

- b)** At a meeting with Debtor he advises that following recent increases in his cost of living he can now only afford to pay £565 per month for his contribution order. Bearing this in mind explain what are the options available for the trustee and Debtor.

½ mark per point up to 4 marks

- c)** Despite the reduction in Debtor's debtor contribution order, there is still sufficient funds to pay a dividend. Outline the process of paying a first and final dividend to creditors in a sequestration.

½ mark per point up to 5 marks

Total 15 marks

PART D

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

- 23.** Yellow Rose Limited (“the Company”) approached your principal on 9 January 2022 as the Company was experiencing financial problems and could not meet its liabilities as they fell due.

Upon meeting with the director of the Company it was established that there are creditors who are suggesting they have retention of title (“ROT”) against stock held by the Company. There have also been suggestions by unsecured creditors they will commence winding up proceedings against the Company for unpaid invoices.

The director is uncertain at this stage if any proceedings have commenced against the Company. Your principal has determined that an administration is the best route for the Company. There are no qualifying floating charges registered against the Company.

Requirements;

- a)** Outline what pre-conditions must be met which would mean that an application for an administration order cannot be made by the Company under Paragraph 22 of Schedule B1 of the Act, and via the out of Court route.

½ mark per point up to 3 marks

- b)** After a subsequent meeting with the director, it is established that no formal proceedings have been commenced by the unsecured creditors of the Company. Outline the procedure for the Company to enter administration via the out of Court route.

½ mark per point up to 5 marks

- c)** What are the impacts on the unsecured creditors who claim they have ROT, and how would they go about enforcing their rights whilst the Company is in administration.

½ mark per point up to 7 marks

Total 15 marks

- 24.** Your principal has recently met with the directors of Pete's Ultimate Movers Limited ("the Company"), in order to provide them with some advice. The Company specialises in residential removals and has been experiencing cash-flow problems for the last four months due to a change in market conditions. The directors are confident that with summer around the corner, in addition to work already in the pipeline, that the Company will be able to return to profitability. However, as a number of creditors are threatening to take action, the directors are considering proposing a CVA to the Company's creditors.

Requirements;

- a)** Your principal has asked that you prepare a list, for his review, of the potential advantages and disadvantages of doing a CVA.

½ mark per point up to 7 marks

Should the directors of the Company decide to propose a CVA to its creditors then your principal is expected to be appointed nominee. It is also expected that this will subsequently lead to his appointment as supervisor. This is the first appointment your principal will be taking as nominee/supervisor. Accordingly, in anticipation of the appointment, you have been asked to prepare a file note setting out the following:

- b)** What duties your principal will be required to carry out once appointed nominee.

½ mark per point up to 4 marks

- c)** What duties your principal will be required to carry out once appointed supervisor.

½ mark per point up to 4 marks

Total 15 marks

- 25.** A petition for Mr Warren's sequestration was presented on 20 April 2022, following which your principal was appointed trustee on 3 June 2022.

Mr Warren has recently contacted your firm's office, and has indicated his intention to apply for a recall of his sequestration and has asked on what grounds he can apply for a recall, the effect of this, and also how he would go about applying for recall of the sequestration.

Requirements;

- a)** Prepare a letter to Mr Warren addressing the three queries raised above.

½ mark per point up to 12 marks

- b)** The Accountant in Bankruptcy maintains a register of insolvencies, explain what this is and what information does it contain?

½ mark per point up to 3 marks

Total 15 marks