



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

Examination 20 November 2020

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 2020.

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).

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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. Where an officeholder delivers a document by electronic means and a hard copy of the document is requested by the recipient, when must the officeholder deliver the hard copy by?
- a) Within five business days of receipt of the request ☐
 - b) As soon as reasonably practicable ☐
 - c) Within 14 days of the date the request being made ☐
 - d) Within 7 days of the date the request being made ☐
2. Which of the following would not be an associate of Bob as defined by Section 435 of the Act. Is it?
- a) Bob's employee ☐
 - b) Bob's next-door neighbour ☐
 - c) The brother of Bob's civil partner ☐
 - d) The company in which Bob owns 50% of the voting shares ☐
3. When convening a physical meeting requested by the creditors under the 10/10/10 rule, at what time of day can the meeting be held. Is it?
- a) Between 10am and 4pm on a business day ☐
 - b) At the convenience of the chairman ☐
 - c) At the convenience of the creditors ☐
 - d) At the convenience of the nominated liquidator ☐
4. Which SIP provides guidance in respect of company voluntary arrangement ("CVA")?
- a) SIP 2 ☐
 - b) SIP 3.1 ☐
 - c) SIP 3.2 ☐
 - d) SIP 6 ☐
5. In a trust deed, if the funds within the debtor's estate are sufficient, the trustee must pay a first dividend out to creditors within what period?
- a) Within 6 weeks of the anniversary of the trust deed being granted ☐
 - b) Within 6 weeks of the anniversary of the trust deed becoming protected ☐
 - c) Within 6 weeks from 24 months beginning with the date on which the trust deed is granted ☐
 - d) At any time where there are sufficient funds ☐

6. Which one of the following is not required to be sent to a creditor who has opted out of receiving further communication in a creditors' voluntary liquidation ("CVL")?
- a) Notice of intended dividend ☐
 - b) Change in details of the office holder's address ☐
 - c) A progress report ☐
 - d) Notice of a block transfer of appointments ☐
7. A person who is required to submit a statement of affairs to the administrator under Schedule B1 of the Act must do so within what timescale?
- a) 7 days ☐
 - c) 10 days ☐
 - d) 11 days ☐
 - e) 21 days ☐
8. The debtor's interest in their family home ceases to be part of the sequestrated estate and re-vests in the debtor if the trustee does not take one of the steps outlined in Section 112(3) of the Act. At what point in time does the interest re-vest?
- a) The date the debtor receives their discharge from sequestration ☐
 - b) The anniversary of the sequestration ☐
 - c) Three years from the date of the sequestration ☐
 - d) Three years from the date of the trustee's initial correspondence ☐
9. Within what time limited must a supervisor of a CVA deliver their annual progress report on the CVA to the creditors. Is it?
- a) 14 days ☐
 - b) 28 days ☐
 - c) 1 month ☐
 - d) 2 months ☐
10. What section in the Act deals with unfair preference in an administration?
- a) Section 234 ☐
 - b) Section 235 ☐
 - c) Section 242 ☐
 - d) Section 243 ☐

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.** Where the directors of a company propose to appoint an administrator of a company, to whom must the written notice be given?

½ mark per point up to 2 marks

- 12.** In accordance with the relevant SIP, where it is a directors' proposal, an Insolvency Practitioner should be able to demonstrate that proper steps have been taken at all stages of the CVA by maintaining records. What particular matters should be documented?

½ mark per point up to 2 marks

- 13.** What happens to a creditors committee when an administration converts to a CVL?

1 mark per point up to 2 marks

- 14.** When and by whom may a provisional liquidator be appointed? And also who may be appointed and what are their functions?

½ mark per point up to 2 marks

- 15.** Who may be summoned by the trustee to appear before the court for a private examination and what are the consequences of non-compliance?

½ mark per point up to 2 marks

- 16. a)** In a members' voluntary liquidation how many directors are required to swear the statutory declaration?

½ mark per point up to 1 mark

- b)** What percentage of shareholders are required to pass the resolution to wind up the company and what type of resolution is it?

½ mark per point up to 1 mark

- c) What percentage of shareholders are required to pass the resolution to appoint a liquidator and what type of resolution is it?

½ mark per point up to 1 mark

- d) What percentage of shareholders are required to agree to holding of the shareholders meeting at short notice?

½ mark per point up to 1 mark

Total 4 marks

17. An insolvency practitioner must hold security for the purposes of carrying out his functions. This includes a specific penalty sum in respect of each case where the insolvency practitioner acts. Explain how the specific penalty sum is calculated.

1 mark per point up to 4 marks

18. a) List the types of unsecured debts that a debtor is not discharged from in a sequestration.

½ mark per point up to 2 marks

- b) Name the parties who can appeal the decision in respect of a debtor's discharge and who is the appeal made to?

½ mark per point up to 2 marks

Total 4 marks

19. Who approves an administrator's remuneration and outlays and what documents should be provided to the approving party?

½ mark per point up to 4 marks

20. What are the general effects of a trust deed becoming protected and the effect this has on the rights of unsecured and secured creditors?

½ mark per point up to 4 marks

PART C

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

21. Your principal was appointed supervisor of Future Cleaning Services Limited ("FCS"). The proposals were approved, without modification. One year on it has come to your attention that FCS may be in breach of the CVA proposals.

Due to your knowledge of the case, if it transpires that FCS are in breach then you do not expect that they will be able to remedy the breach to the satisfaction of the creditors, and the CVA will need to be terminated.

Requirement;

Prepare a note for your principal, clearly setting out the following:

- a) Describe the circumstances in which FCS will be regarded as in breach of the CVA and set out the steps your principal should take should FCS be in breach.

½ mark per point up to 6 marks

- b) On the assumption that a breach is not remedied, and the creditors decide for the CVA to be terminated, what steps should the supervisor take.

½ mark per point up to 5 marks

- c) Advise what final practical steps your principal should undertake following the closure of the CVA.

½ mark per point up to 4 marks

Total 15 marks

- 22.** Miss Strapped has contacted your principal as she is experiencing financial distress and is unable to pay all of her debts. She lost a tribunal case a few months ago which was brought by one of the employees of her former consulting business. Following this, she stopped trading as a sole trader and has taken on paid employment.

She is keen to avoid sequestration and is particularly worried about losing her home. Her father has offered to make a contribution of £20,000 if this would allow her to avoid sequestration. Your principal thinks that a trust deed ("TD") may be a viable solution and has asked you to compare the outcome in a TD with that of sequestration.

Miss Strapped owns her flat at 7 Garden Mews. A recent valuation has valued the flat at £150,000, and there is a mortgage to Mews Bank PLC of £125,000.

Prior to the difficulties in her business, Miss Strapped splashed out on a new car. She does not need the car to get to work but enjoys taking a drive to the country at weekends to de-stress. You have carried out an online valuation of the vehicle and believe it to be worth around £10,000.

Miss Strapped recently inherited some jewellery from her grandmother which has sentimental value, but also was valued for probate purposes at £3,000.

You have received details of Miss Strapped's income and expenditure and assessed her using the common financial tool and have calculated that she could contribute around £200 per month.

The tribunal award given in favour of the employee was for £18,000 and is fully unsecured. In addition, Miss Strapped still owes creditors from her former business a total of £20,000.

She has received her self assessment tax bill from HM Revenue & Customs of £22,000, which she has not been able to pay.

Miss Strapped received a loan from her aunt of £1,000 when her business was struggling. The aunt has agreed to write off the debt if the TD is approved, but would want to claim as a creditor if Miss Strapped was sequestrated.

Your principal estimates that your firm's fees for dealing with the TD will be £2,500 and 20% of realisations, plus expenses totalling £1,100. In the event that Miss Strapped is sequestrated and a trustee is appointed from a firm like yours, the trustee's fees are likely to be around £20,000 and expenses (including legal and agents' costs) are around £10,000. Expenses include all costs due to the Accountant in Bankruptcy.

Your principal suggests a TD lasting five years may provide a better solution both for Miss Strapped and for her creditors. The TD would be on the basis that:

- The flat is excluded;
- Miss Strapped's father makes the suggested one off contribution to the TD which will purchase the car and the jewellery at market value with the remaining balance being a voluntary contribution. He would not be willing to make any contribution to the sequestrated estate.

Requirement;

Prepare an estimated outcome statement (including predicted dividend) to compare a trust deed with a sequestration for Miss Strapped. Ignore bank interest and VAT. Show your full workings.

Total 15 marks

PART D

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

- 23.** The board of Bodge it and Scarper Limited, has decided to wind up the business. It has settled all liabilities and sold the last of its assets. All that is left is the cash at bank of £30,000, the business has ceased trading, having paid staff all their entitlements and vacated trade premises without any outstanding liabilities.

They have approached an Insolvency Practitioner, to put the company into solvent liquidation.

There is however, an upcoming legal action by a former customer, Fence Direct Limited, who has claimed £45,000 for poor quality work and damages resulting from substandard workmanship. The directors say that the money is not due, that their work was performed to the required standard, and therefore the company is solvent.

- a)** What warning should the Insolvency Practitioner give to the directors and what are the implications of proceeding with an MVL if the legal action proceeds and Fence Direct Limited is successful?

½ mark per point up to 7 marks

- b)** The Insolvency Practitioner recommended that the company is instead placed into insolvent liquidation, and notices of a deemed consent process are sent to Fence Direct Limited as a contingent creditor.

On what basis can Fence Direct Limited request a creditors' meeting on physical basis, what is the process and what time periods are relevant for convening and holding the physical meeting?

½ mark per point up to 5 marks

- c)** What value should be placed on Fence Direct Limited's claim for voting purposes and why?

1 mark per point up to 3 marks

Total 15 marks

- 24.** Max Edoute has approached your firm for advice in respect of his personal finances. Having recently been made redundant, he was out of work for some time during which he started to use his credit cards and short-term loans to cover his living expenses. Max's debts now amount to circa £80,000. Max is married and has three children, one of whom is severely disabled.

Max and his wife own the family home which is subject to a mortgage and has been heavily adapted for the disabled child's needs. Despite the adaptations, Max estimates that there is approximately £100,000 equity in the property. Max has found stable employment and believes that he has a surplus income of circa £400 per month.

Requirement;

SIP 3.3 states that advice given to a debtor should take account of their personal circumstances. With this in mind your principal has asked you to prepare a memo outlining the options which are available to Max.

½ mark per point up to 15 marks

Total 15 marks

25. - PART I

You are assisting in drafting a set of administrator's proposals and have been asked what information should be included under the following headings;

- a) A statement of affairs has not been provided by the directors.

1 mark per point up to 2 marks

- b) There is likely to be prescribed part dividend to creditors.

1 mark per point up to 2 marks

- c) The particulars of the list of creditors

½ mark per point up to 2 marks

- d) The list of creditors includes employees and pre-paid consumer creditors – does this affect the information to be given in part (c) above?

1 mark per point up to 2 marks

- e) It is likely that a CVL will be the exit route.

1 mark per point up to 2 marks

PART II

Your Principal has been appointed as administrator of a manufacturing company. You have been marketing the company for sale and five offers have been received as detailed below:

Offer	Basis
1.	12 monthly instalments of £5,000 for the assets only.
2.	£20,000 on completion and 10% of total profits after 24 months for the business and assets.
3.	£50,000 on completion for the assets only.
4.	£40,000 on completion for the business and assets.
5.	£5,000 on completion and £5,000 per month for the next 11 months for the business and assets

Preferential creditors amount to £20,000. If an offer includes the purchase of the business then any amounts owed to the preferential creditors will be paid by NewCo. The net position at present is that there are outstanding costs of £30,000 before the preferential creditors can be paid. Future costs are likely to increase by £2,000 every month. None of the assets are secured.

Requirement;

Advise which offer should be accepted and why.

½ mark per point up to 5 marks

Total 15 marks