



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN INSOLVENCY ENGLAND & WALES

Examination 30 November 2018

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 6th April 2017 including the new Insolvency (England & Wales) Rules 2016.

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 1986 (as amended).

References to SIPs are to Statements of Insolvency Practice.

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CANDIDATE NUMBER.....

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 recently been appointed trustee in bankruptcy ("TiB") by a decision process. Within what timescale should his appointment be advertised in the London Gazette?
- a) Within 7 days following the appointment ☐
 - b) Within 14 days following the appointment ☐
 - c) There is no requirement to advertise the appointment ☐
 - d) As soon as reasonably practicable ☐
2. Which of the following is a receiver an agent of?
- a) The company ☐
 - b) The creditors ☐
 - c) The directors ☐
 - d) The shareholders ☐
3. The redundancy payment cap per week was increased if an employee was made redundant after 6 April 2018. What is the revised cap?
- a) £489.00 ☐
 - b) £498.00 ☐
 - c) £508.00 ☐
 - d) £518.00 ☐
4. Which of the following may not make a proposal for a company voluntary arrangement ("CVA")?
- a) A director ☐
 - b) A creditor ☐
 - c) The administrator, where the company is in administration ☐
 - d) The liquidator, where the company is being wound up ☐
5. In a protocol Individual Voluntary Arrangement ("IVA") the supervisor has the discretion to admit claims without the need for additional verification. What is the value of such claims?
- a) £500 or less ☐
 - b) £1,000 or less ☐
 - c) £1,500 or less ☐
 - d) £2,000 or less ☐

6. Mr Jackson is seeking the approval of creditors to be appointed liquidator of Star Five Limited. He initially sought a decision on his appointment by deemed consent however the requisite number of creditors have objected to the deemed consent procedure being used. What decision process must he now use in order to obtain approval for his appointment as liquidator?
- a) Virtual meeting ☐
 - b) Physical meeting ☐
 - c) Decision by correspondence ☐
 - d) Whatever decision procedure he deems to be most convenient ☐
7. Which one of the following documents should be sworn?
- a) Statement of Trust ☐
 - b) Statutory Declaration of Solvency ☐
 - c) Statement of Affairs ☐
 - d) Directors SIP6 Report ☐
8. What is the time period within which a bankrupt must notify their TiB of an after acquired asset?
- a) Within 21 of receiving the asset ☐
 - b) Within 21 days of becoming aware of the asset's existence ☐
 - c) Within 21 days of discharge from bankruptcy ☐
 - d) Within 21 days of applying for discharge from bankruptcy ☐
9. There are three sets of circumstances upon which a partnership can be dissolved. Which circumstance is incorrect?
- a) By notice by any of the partners ☐
 - b) By the Registrar of companies ☐
 - c) By operation of law ☐
 - d) By court order ☐
10. For what period of time is a person to which Section 216 of the Act applies prevented from acting as a director of a company with a prohibited name?
- a) 12 months ☐
 - b) 2 years ☐
 - c) 3 years ☐
 - d) 5 years ☐

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. In a creditors' voluntary liquidation ("CVL") what information should be included within a notice of intention to declare a dividend to creditors?

½ mark per point up to 2 marks

12. Who can bring a claim for a transaction defrauding creditors under Section 423 of the Act?

½ mark per point up to 2 marks

13. What must be sent to creditors where the nominee convenes a virtual meeting to seek a decision from the debtor's creditors as to whether they approve the debtor's proposal for an IVA?

½ mark per point up to 2 marks

14. Who may attend and ask questions at a public examination of a bankrupt?

½ mark per point up to 2 marks

15. Your client submitted a claim in the liquidation of a company, but the liquidator has rejected the claim on the basis that there is no evidence of the debt in the company's books and records. Your client has advised that he has proof that the debt is owed, and has asked you what he can do.

1 mark per point up to 2 marks

16. When undertaking an anti-money laundering review for a new appointment, list eight practical matters which you should consider in assessing whether there has been a high risk of money laundering activity.

½ mark per point up to 4 marks

17. Your principle has been appointed liquidator of Fast Cars Limited ("Fast Cars"), which entered solvent liquidation three months ago. The directors' declaration of solvency stated that Fast Cars had no known creditors and a VAT refund due of £15,000. On 1 November 2018, you received a claim from Miss Maloney for the sum of £50,000 plus interest, in respect of an unpaid refund due on a faulty car which she bought 5 years ago. Your principle has met with the directors following receipt of the claim and concluded during this meeting that the debt is due but there are no available funds to settle this claim.

Requirement;

Outline what steps and actions your principle should take.

½ mark per point up to 4 marks

18. a) What percentage of creditors is required to request a meeting to replace an existing liquidator? Give two examples of the resolutions which should be passed at this meeting together with the percentage required to pass each of the resolutions.

½ mark per point up to 2 marks

- b) Detail what the process is and within what time frame, must the incumbent liquidator convene such a meeting assuming that the correct percentage of creditors has requisitioned it.

½ mark per point up to 2 marks

Total 4 marks

19. Ignoring formal personal insolvency procedures detail the main characteristics of the key options which might be available to a debtor.

½ mark per point up to 4 marks

20. A provisional liquidator only has those powers which are granted by the court order appointing him. What powers and functions would be usually applied for by a provisional liquidator?

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 TiB of Mr Wanchop ("the Bankrupt") on the 2 May 2018 following the making of a bankruptcy order on 2 April 2018 on a creditor's petition presented to the Court on the 1 December 2017.

Upon reviewing the handover documentation received from the Official Receiver you note that the Bankrupt is the sole proprietor of the property known as 5 Hawks Lodge ("the Property") where he currently lives with his wife and their three children.

Following your further enquiries you note from the Land Registry title that there are three charges registered against the Property. The primary charge is granted in favour of Grantchester Building Society ("Grantchester"). There is also a second charge in favour of the Bankrupt's cousin, Mr Wright for £250,000 and a third charge in favour of the Bankrupt's father ("the Father") for £65,000. Mr Wright's charge was registered on 30 November 2017 and the Father's charge was registered on the 9 December 2017.

You estimate that the value of the Property is circa. £425,000 and the Bankrupt has recently forwarded copies of his mortgage statements detailing that the sum outstanding to Grantchester is £108,000. No supporting documentation has been received in respect of the other two charges.

Prior to the presentation of the petition, the Bankrupt had proposed an IVA but this was rejected by his creditors on 1 November 2017. The IVA proposal did not disclose any secured creditors other than Grantchester.

Requirement;

- a)** The TiB would like to obtain a resolution from creditors to fix his remuneration on a time cost basis using a decision by correspondence procedure. Prepare a note setting out the practical and legal steps required to obtain creditors' agreement to the basis of his remuneration.

½ mark per point up to 7 marks

- b)** Set out in a separate note to your principle what key matters should be taken into account and initial steps should be undertaken in respect of the Bankrupt's interest in the Property, and also what actions should be considered in relation to the charges granted in favour of Mr Wright and the Father.

½ mark per point up to 8 marks

Total 15 marks

- 22. a)** During the creditors' (virtual) meeting to consider the CVA proposals of Survival Limited ("the Company") it was noted with concern that there were several dissenting creditors making allegations concerning the Company and its directors, including failure to disclose relevant matters.

Your principal, although appointed supervisor at this meeting, is anxious that the voluntary arrangement might be challenged at a later date, and has asked you to prepare a note detailing the following:

- The grounds upon which the arrangement could be challenged;
- By whom and within what timescales; and
- The potential outcome if the challenge is upheld.

½ mark per point up to 5 marks

- b)** A creditor of the Company has telephoned your office and provided some fairly damning information on the conduct of the directors in relation to the company and you now suspect that the arrangement will fail. With this in mind, the supervisor has asked you to prepare a note detailing the grounds on which the arrangement could fail, the potential consequences of that and the steps involved.

½ mark per point up to 10 marks

Total 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 acting as liquidator of Smart Pal Limited ("Smart") which entered compulsory liquidation on 18 April 2018 following a petition being presented by HM Revenue & Customs on 3 March 2018. As at the date of the winding-up order Smart had the following assets:

- A freehold property located at 11 Acacia Avenue ("the Property"), which had been repossessed by the mortgagee, Last Finance Bank ("the Bank"), as Smart had not been able to keep up with the payments due to the Bank
- A collection of rare artwork, which was gifted by one of the directors to Smart in consideration of his overdrawn director's loan account
- Shares in two companies listed on the London Stock Exchange

Following the appointment the Bank sold the Property for £200,000 which following the legal costs associated with the sale of £2,000 left a balance of £41,000 which has been paid across to the liquidator.

The shares in the listed companies were sold by the liquidator for £5,200, and the liquidator was charged a brokerage fee of £100. The artwork has not yet been sold.

Interest of £55 has been earned to date from the funds held in the Insolvency Services Account.

The deposit on the creditor's petition was £990.

The liquidator has paid £300 from the estate for the specific penalty bond.

Official Receiver's fees of £8,775 have also been charged to the estate.

Requirement:

- a)** Prepare a receipts & payments account (including any notes) to record the above transactions, following the principles in SIP 7. VAT should be ignored.

½ mark per point up to 7 marks

- b)** List the financial controls to ensure that estate monies are safeguarded as set out in SIP 11.

½ mark per point up to 4 marks

- c)** Explain what is meant by a "proxy" relating to a meeting held under the Act, and the difference between a specific and a continuing proxy.

1 mark per point up to 4 marks

Total 15 marks

24. Your principal has just been appointed administrator of Herbert UK Limited, and has asked you to prepare a note on the following points:

- a)** The steps he should take to announce and register his appointment;

½ mark per point up to 2 marks

- b)** Section 22(1) of the Act states that forthwith after appointment the administrator shall send a notice to one or more relevant persons to provide a statement of affairs of the company. Who are the “relevant persons” and what is the period of time within which such a person or persons has or have to deliver the statement of affairs?

1 mark per point up to 4 marks

- c)** In addition to the matters set out in Paragraph 49 of Schedule B1 of the Act, in accordance with the Rules, the content of the proposals to be sent to creditors should include what other information.

½ mark per point up to 9 marks

Total 15 marks

- 25.** An IVA proposal is a contractual arrangement between the debtor and his creditors. The terms of the arrangement are contained in the proposal which is approved by the creditors (with or without modifications). It is therefore fundamental that the content of the proposal is comprehensive and accurate as set out in Rule 8.3 and SIP 3.1.

Requirement;

- a)** Prepare a checklist of the main requirements of both the Rules and SIP 3.1 with regard to the content of a proposal.

½ mark per point up to 12 marks

- b)** If a debtor is complying with the terms of his / her IVA but due to a change of circumstances wishes to vary the terms of the arrangement, explain how this might be dealt with.

½ mark per point up to 3 marks

Total 15 marks