



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN PERSONAL 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. According to SIP 3.1 following completion or termination when should an individual voluntary arrangement ("IVA") be closed. Is it?
 - a) Promptly on completion or termination ☐
 - b) Within 7 days of completion or termination ☐
 - c) Within 2 weeks of completion or termination ☐
 - d) Within 1 month of completion or termination ☐

2. Where a trustee sells a bankrupt's investment property, which of the following types of tax is most likely to be payable from the bankrupt's estate as a result of the sale?
 - a) Income tax ☐
 - b) Corporation tax ☐
 - c) Capital gains tax ☐
 - d) Stamp duty land tax ☐

3. In a bankruptcy, 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 Bankruptcy Order ☐
 - c) The date of the appointment of the trustee ☐
 - d) The date of the proof of debt submitted ☐

4. Which SIP covers matters concerning payments to insolvency office holders and their associates from an estate. 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 in a bankruptcy. Is it?
 - a) Section 339 ☐
 - b) Section 340 ☐
 - c) Section 343 ☐
 - d) Section 423 ☐

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. The nominee must give notice of the result of a meeting to consider a debtor's IVA proposal to the creditors. Where no interim order was obtained, within what period must the notice be given?
- a) Within 4 business days of the meeting ☐
 - b) Within 7 days of the meeting ☐
 - c) Within 10 days of the meeting ☐
 - d) Within 14 days of the meeting ☐
8. Within what time limit must a bankrupt notify his trustee of an after acquired asset. Is it?
- a) Within 21 days of acquiring the asset ☐
 - b) Within 21 days of becoming aware of the acquisition of the asset ☐
 - c) Within 21 days of discharge from bankruptcy ☐
 - d) Within 21 days of applying for discharge from bankruptcy ☐
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 trustee 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. When an insolvency practitioner is making an assessment of a debtor who is considering an IVA, what does he need to be satisfied of, at each stage of the process.

½ 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. A creditor has chosen to sue a partnership, rather than the individual partners of the firm. What should the creditor bear in mind when considering this option.

½ mark per point up to 2 marks

14. In a partnership voluntary arrangement, the supervisor has what statutory powers available to him.

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 bankruptcy case. What final practical steps should you undertake?

½ mark per point up to 4 marks

17. Where a trustee in bankruptcy is intending to rely upon the OR's 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.** Outline what effect bankruptcy will have on an IVA which has been terminated.

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.

½ mark per point up to 10 marks

Total 15 marks

22. Pursuant to the relevant SIP, when acting as nominee for a proposed IVA, an insolvency practitioner is responsible for reporting on the proposed IVA, and should have certain procedures in place prior to and during the decision making process, whilst the supervisor of an IVA should have other certain procedures in place following approval.

- a)** In accordance with the relevant SIP, what are these procedures designed to ensure are undertaken in respect of both roles.

½ mark per point up to 9 marks

- b)** During discussions between the debtor and the proposed nominee, the question of whether an interim order is required has been raised. The debtor would like to understand the IVA procedure should they wish to obtain an interim order, which the nominee has asked you to outline.

½ mark per point up to 6 marks

Total 15 marks

PART D

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

- 23.** Steven Clark was declared bankrupt over eighteen months ago, following a creditor's petition being served. His trustee has realised all of the bankruptcy assets, and has now turned his attention to his share in the bankrupt's matrimonial home, which the bankrupt jointly owns with his wife.

The trustee has recently obtained a professional valuation of the freehold property valuing the property in the sum of £400,000.

He also understands that should the property be rented out, the rental income per annum would be £10,000.

The property is subject to a mortgage of £198,000 owed to Mountain Loans.

Following Steven being declared bankrupt he vacated the property, however his wife and two children still live in the property.

It is understood that since Steven vacated the property, his wife has continued to pay the monthly mortgage of £1,000 solely, together with any interest payments which fell due of £200 a month.

Six months ago Mrs Clark decided to add a conservatory to the property at her own cost of £28,000.

Following your review of the title obtained from Land Registry, you note that there is a second charge registered against the title in favour of Vans4You in the sum of £30,000 relating to a business loan obtained by Steven.

Mrs Clark recalls being made aware of the creation of the second charge and signing the relevant documentation but says it is nothing to do with her and that Steven used the money in his business.

Requirement;

- a) The trustee has asked you to prepare a schedule showing the equitable accounting in the property for both Mr and Mrs Clark as at 2 May 2023.

Your answer should be supported with the relevant calculations and any relevant assumptions made and explanations.

½ mark per point up to 6 marks

- b) During the trustee's investigation into Mr Clark's financial affairs, you note a number of unusual transactions to an overseas bank account. You have yet to discover the identity of the beneficiary of this bank account, but alarm bells are ringing, and despite your numerous requests to the debtor to explain these transactions, he has yet to respond.

Your principal, as trustee, is considering what steps could be taken to enforce the debtor's cooperation and to obtain information and any relevant documentation from him. He asks you to prepare a note setting out the possible options available which could be utilised to assist with these objectives.

½ mark per point up to 9 marks

Total 15 marks

- 24.** Scott Alldelt was declared bankrupt on 1 March 2022. To date the trustees have realised all the assets in the bankruptcy estate, and are holding sufficient funds to declare a first & final dividend to the preferential creditors.

No creditors committee has been appointed and the trustees 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 trustees' investigation into the financial affairs of Mr Alldelt, it is noted that there are several potential antecedent transactions that, if recovery was successful, would enable the trustees to also declare a dividend to the unsecured creditors.

The trustees 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 trustees 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