



## **INSOLVENCY PRACTITIONERS ASSOCIATION**

### **CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY ENGLAND & WALES**

**Examination 20 November 2020**

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**INSOLVENCY**

**(3 HOURS)**

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- 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 1<sup>st</sup> 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 Rules 1986 (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.**

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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. A debt relief order lasts for how long?
- a) Six months
  - b) Twelve months
  - c) Until the creditors are paid in full
  - d) Until the Official Receiver ("OR") releases the debtor
3. When convening a Section 379ZA(2) of the Act 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 individual voluntary arrangement ("IVA")?
- a) SIP 2
  - b) SIP 3.1
  - c) SIP 3.2
  - d) SIP 6
5. To be effective a notice under Section 307 of the Act, to claim after acquired assets must be served within how many days of the property in question having been to the knowledge of the trustee acquired by, or devolved upon, the bankrupt?
- a) Forthwith
  - b) 21 days
  - c) 42 days
  - d) 52 days

6. Your principal has just been appointed trustee in bankruptcy. The bankruptcy order was made 2 years ago and the bankrupt was discharged after 12 months of the making of the order. You note that the income and expenditure provided by the bankrupt to the OR showed surplus income of £275 per month. You are considering whether to apply for an Income Payments Order (“IPO”). Will this be possible?
- a) Yes, providing you apply for the IPO forthwith
  - b) No, as the surplus income is too low
  - c) No, as the bankrupt has been discharged
  - d) Yes, as the trustee can obtain an IPO at any time whilst in office
7. A bankrupt is required to submit a statement of affairs to the OR within how many days after being given notice to. Is it?
- a) 7 days
  - b) 10 days
  - c) 11 days
  - d) 21 days
8. The bankrupt’s interest in their matrimonial home ceases to be comprised in the bankruptcy estate and re-vests in the bankrupt if the trustee does not take one of the steps outlined in Section 283A(3) of the Act. At what point in time does the interest re-vest?
- a) The date the bankrupt receives their discharge from bankruptcy
  - b) The anniversary of the bankruptcy
  - c) Three years from the date of the bankruptcy order
  - d) Three years from the date of the trustee’s appointment
9. Within what time limited must a supervisor of an IVA deliver their annual progress report on the IVA 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 preference claims in a bankruptcy. Is it?
- a) Section 238
  - b) Section 239
  - c) Section 339
  - d) Section 340

## **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. Who pays into the Insolvency Service Account ("ISA") and what are the conditions?

**½ mark per point up to 2 marks**

12. When an Insolvency Practitioner is considering a debtor's proposal for an IVA, what key questions should he bear in mind at all times?

**½ mark per point up to 2 marks**

13. The Act provides a supervisor of an IVA with very limited powers and generally his powers will be set out in the arrangement. What are these limited powers under the Act?

**1 mark per point up to 2 marks**

14. In an IVA a well drafted proposal will have made it clear what will amount to failure of the arrangement and provide for the supervisor to present a petition. What grounds are set out in the Act?

**½ mark per point up to 2 marks**

15. Who may be summoned by the OR to appear before the court for a private examination?

**½ mark per point up to 2 marks**

16. What information should be included in a bankruptcy annual progress report?

**½ mark per point up to 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 which are excluded from a debt relief order.

**½ mark per point up to 2 marks**

**b)** Name the four pre-conditions which must be met for the Court to make an interim order prior to an IVA.

**½ mark per point up to 2 marks**

**Total 4 marks**

**19.** What information must be contained on a notice of disclaimer by a trustee in bankruptcy under Section 315 of the Act.

**½ mark per point up to 4 marks**

**20.** What are the main advantages of partners presenting interlocking rather than individual IVAs?

**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 Miss Fortune (“the Debtor”). The proposals were approved, without modification. One year on it has come to your attention that the Debtor may be in breach of the IVA proposals.

Due to your knowledge of the case, if it transpires that the Debtor is in breach and you do not expect that she will be able to remedy the breach to the satisfaction of the creditors, the IVA will need to be terminated.

#### **Requirement;**

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

- a)** The circumstances in which the Debtor will be regarded as in breach of the IVA, the steps the supervisor should take, and the effect the bankruptcy will have on the IVA.

**½ mark per point up to 6 marks**

- b)** The supervisor has decided to declare a first and final dividend of those monies held on trust to the voluntary arrangement creditors, and has asked you to draft a note on how long the supervisor has to declare a dividend to the creditors from the last date of proving, as stipulated in the “notice of the intention to make a distribution to creditors”, and also detail what information should be included on the Notice of Declaration as set out in the Rules.

**½ mark per point up to 4 marks**

- c)** The IVA has now been implemented fully by the supervisor who should conclude his administration as expeditiously as possible. What matters should the supervisor deal with to complete his administration?

**1 mark per point up to 5 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 bankruptcy and is particularly worried about losing her home. Her father has offered to make a contribution of £30,000 if this would allow her to avoid bankruptcy. Your principal thinks that an individual voluntary arrangement (“IVA”) may be a viable solution and has asked you to compare the outcome in an IVA with that if Miss Strapped were to make an application for her own bankruptcy.

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 have calculated that she could contribute around £200 per month, either into an IVA or via an Income Payments Agreement, if she were to be adjudicated bankrupt.

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 £500 when her business was struggling. The aunt has agreed to write off the debt if the IVA is approved, but would want to claim as a creditor if Miss Strapped was made bankrupt.

Your principal estimates that your firm’s fees for dealing with the IVA will be £3,000 per year plus expenses totalling £500. In the event that Miss Strapped is adjudicated bankrupt 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) around £5,000. You already know that the bankruptcy deposit required is £550 and the Official Receiver’s total costs will be £7,990.

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

- The flat, car and jewellery would all be excluded from the IVA
- Miss Strapped’s father makes the suggested one off contribution to the IVA. He would not be willing to make any contribution to the bankruptcy estate.

**Requirement;**

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

**Total 15 marks**

## **PART D**

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

- 23.** SIP 9 notes “the particular nature of an insolvency office holder’s position renders transparency and fairness of primary importance in all their dealings. Creditors and other interested parties with a financial interest in the level of payments from an insolvent estate should be confident that the rules relating to approval and disclosure of fees and expenses have been properly complied with.”

#### **Requirement;**

In respect of bankruptcy, provide details of the following;

- a)** the principles of an office-holder’s remuneration and of the provision of related information;
- b)** the different bases of remuneration which may be requested by the officeholder;
- c)** information to be provided by the officeholder prior to the basis of remuneration being determined; and
- d)** factors to which those determining the officeholder’s remuneration must have regard.

**½ mark per point up to 15 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 3.1 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. Your principal has been appointed trustee in bankruptcy of Mrs Law (“the Bankrupt”) on the 1 July 2019 following the making of a bankruptcy order on 25 June 2019 on a petition presented to the Court on the 1 January 2019 by HM Revenue & Customs (“HMRC”).

The Bankrupt is the sole owner of 44 Dale Mews in Oxtou (“the Property”) and the Property is registered at HM Land Registry. The Bankrupt was a self-employed long distance HGV driver but stopped trading on Christmas Eve 2018. She lives at the Property by herself and runs a dog walking service from time to time to help her family and friends.

The Bankrupt had always kept up to date with her tax affairs but in the last few years she found it difficult to pay her personal tax liabilities as she putting more of her money into her ISA in anticipation of her retirement. She was keeping the ISA money as an informal private pension as she was worried the state pension would not provide enough income when she did eventually retire. As a result of increasing her savings pot for her ‘pension’ she did not have enough money to pay her tax bills as and when they fell due.

HMRC served a bankruptcy petition on the Bankrupt in respect of a debt of £50,000 for unpaid tax. On receipt of the petition the Bankrupt immediately went to her bank and transferred to HMRC’s solicitors £25,000 from her ISA balance of £50,000, she also made a payment at the same time to her mortgage company to clear the arrears of £10,000 and withdrew £3,000 to pay for living costs. The Bankrupt had intended to pay the balance of the £25,000 to HMRC the following week but had forgotten to do so as she had got busy walking dogs.

Aside from the tax debt the Bankrupt owed £500 to a credit card, £5,000 to her bank for a business overdraft, £15,000 to the Student Loans Company for a student loan and £20,000 to Loans R Us for a loan she had taken to pay for a cruise she and her husband went on in 2016. She had also given a personal guarantee to Wild West Loans in respect of a loan that her nephew took to buy a jet ski, and as far as she knows he is making payments to Wild West Loans but does not know if the account is up to date.

The Property is valued at £200,000 and the secured mortgage outstanding to Long Road Mortgages is £180,000. The bankrupt has provided a recent mortgage statement.

**Requirement;**

- a) Set out in a note to the trustee identifying any issues around the payments made by the Bankrupt.
  
- b) Set out in a separate note to the trustee giving your comments on an initial review of the creditor claims prior to adjudicating for dividend purposes.

**½ mark per point up to 5 marks**

**Total 15 marks**