



Candidate Number \_\_\_\_\_



## INSOLVENCY PRACTITIONERS ASSOCIATION

### CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY

Examination 7 June 2013

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## INSOLVENCY

(3 HOURS)

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Part A: All questions to be answered  
Part B: All questions to be answered  
Part C: 2 questions to be answered

The questions in Part A carry the marks as indicated

All questions in Part B and Part C carry 15 marks

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 Part B and Part C questions in the ICSA booklet(s) 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 2013.

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 the answer booklet(s) using the treasury tag provided.

Candidates should remain seated until the Invigilator has collected the tagged question paper and answer booklet(s). 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 AND SHORT FORM QUESTIONS**

**THE CORRECT ANSWER TO EACH OF THE QUESTIONS IS TO BE INDICATED BY PLACING A CROSS IN THE APPROPRIATE BOX.**

**FOR QUESTIONS 1 TO 10 ONLY ONE ANSWER IS REQUIRED. THERE IS ONE MARK FOR EACH OF THOSE QUESTIONS.**

**FOR QUESTIONS 11 TO 20 EACH QUESTION CARRIES THE MARKS INDICATED.**

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- 1 Where the debtor provides a statement of affairs with his/her proposal for an Individual Voluntary Arrangement, the statement of affairs shall be made up to a date not earlier than how long before the date of the notice to the nominee?
- a) 5 days
  - b) 7 days
  - c) 2 weeks
  - d) 1 month
2. Which one of the following cannot act as chairman at a general meeting of creditors in bankruptcy proceedings?
- a) The trustee in bankruptcy
  - b) The bankrupt
  - c) An employee of the trustee or his firm who is experienced
  - d) The Official Receiver
3. Where a creditor claims that the trustee's remuneration is excessive (Rule 6.142(1) of the Rules), any secured or any unsecured creditor, with the concurrence of what % in value of the creditors including that creditor, may apply to court to challenge the level of remuneration?
- a) 5%
  - b) 10%
  - c) 25%
  - d) 50%
4. If a trustee does not have a local bank account, money received by him in the course of his duties must be paid into the Insolvency Services Account once every 14 days or forthwith if more than what amount?
- a) all sums
  - b) £1,000
  - c) £2,000
  - d) £5,000
-



5. What SIP deals with office holders' remuneration?
- a) SIP 7
  - b) SIP 8
  - c) SIP 9
  - d) SIP 10
6. If an individual is an undischarged bankrupt but proposes an IVA and applies for an Interim Order, which one of the following does not need to be given notice of the Interim Order hearing?
- a) Any trustee in bankruptcy appointed
  - b) The Official Receiver
  - c) Any creditors whose debts have arisen post-bankruptcy
  - d) The nominee
7. Which one of the following is not a non-provable debt in a bankruptcy?
- a) A fine imposed for any offence
  - b) An obligation to pay a lump sum arising under an Order in family proceedings
  - c) An obligation to make monthly payments under an Order in family proceedings
  - d) An obligation arising under a confiscation order made under the Drug Trafficking Offences Act 1986
8. For a successful application for a Debt Relief Order, the maximum allowable monthly surplus income that an individual may have must be less than what amount?
- a) £50
  - b) £100
  - c) £10
  - d) £0



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9. A Supervisor of a Protocol compliant IVA has discretion to vary the duration of an IVA in certain circumstances. What is the maximum total duration that an IVA can be extended to, without reference to creditors by the Supervisor?

- a) 60 months
- b) 72 months
- c) 63 months
- d) 66 months

10. An approved IVA binds the following categories except for which one:

- a) all creditors who were entitled to vote at the meeting
- b) all creditors who would have been entitled to vote if had received notice
- c) the debtor
- d) all creditors incurred since approval





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13. Describe the extent to which the Supervisor of a Protocol IVA may exercise discretion in connection with claims admission without referring back to creditors. **(2 marks)**

14. Realisations of £10,000 have been made and of this £2,000 is available for distribution. Calculate the Trustee's remuneration using Schedule 6 to the Rules. **(2 marks)**



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15. In IVA proceedings what is meant by a Concertina Order? **(2 marks)**



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**NOTE: 4 mark questions**

16. Schedule 5 to the Act sets out the powers of a Trustee in Bankruptcy. Name four powers which are set out in this Schedule under the category of General Powers. **(4 marks)**





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17. For how long may a Bankruptcy Restriction Order be made, what are the main effects on a bankrupt and what are the consequences for breaching an Order? **(4 marks)**



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18. Where a debtor is subject to a Protocol compliant IVA, what steps should he take in accordance with the Protocol if he is made redundant? **(4 marks)**



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19. State and briefly explain four of the threats to the fundamental principles in the Code of Ethics.  
(4 marks)



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20. What are the required contents of a proof of debt form to be lodged by a creditor in bankruptcy proceedings in accordance with the Rules? **(4 marks)**

**PART B****Both questions in this section are compulsory**

21. You are assisting your manager with a first meeting of creditors to consider a Debtor's Proposal for a Protocol Compliant IVA. The Estimated Outcome Statement issued in the Nominee's Report by the IP at your firm is as follows:

Nominee's comparison of estimated outcomes				
		Bankruptcy		IVA
		£	£	£
<b>Assets specifically pledged</b>				
	Freehold property: 121 Overborrow Road	235,000		
	less: bank A (mortgage)	<u>220,000</u>		
			15,000	
<b>Assets not specifically pledged</b>				
	Income Payments Order (36 months at £150)		5,400	
	Voluntary contributions (60 months at £350)			21,000
	Third party lump sum			10,000
	Mis-sold PPI claims		<u>uncertain</u>	<u>uncertain</u>
<b>Estimated total assets available</b>			20,400	31,000
<b>Costs of administration</b>				
	Costs of bankruptcy		<u>12,450</u>	
	Nominee's fees and disbursements			2,500
	Supervisor's fee			6,250
	Supervisor's disbursements			500
	Bond			150
	Registration fee			<u>15</u>
				<u>9,415</u>
<b>Assets available for creditors</b>			7,950	21,585
<b>Unsecured creditors</b>				
	Credit card Co A	9,750		9,750
	Credit card Co B	12,950		12,950
	Credit card Co C	13,500		13,500
	Credit card Co D	7,200		7,200
	Payday loan 1	375		375
	Payday loan 2	450		450
	Connected person 1	<u>5,000</u>		<u>5,000</u>
			<u>49,225</u>	<u>49,225</u>
<b>Estimated shortfall to creditors</b>			<u>41,275</u>	<u>27,640</u>
<b>Estimated dividend to creditors (p in £)</b>			16.15	43.85



As at the date of the Meeting you have received the following:

- 1) Letter from Bank A confirming that it will be relying on its security;
- 2) A letter from Credit Card Company A that it successfully obtained a Charging Order over the Freehold Property at 121 Overborrow Road one week ago in respect of the total amount outstanding to it. The letter confirms that it will be relying on its security;
- 3) A letter from the debtor's employer that it will pay £10,000 into the IVA within 10 days of its approval;
- 4) A letter from the debtor confirming that he will submit any monies received from mis-sold PPI claims to the Supervisor;

Proofs of Debt & Proxy Forms:

<b>Creditor</b>	<b>Proof of debt £</b>	<b>Proxy</b>	<b>Instruction</b>
Credit Card Company B	12,950	Chairman	Approve
Credit Card Company C	13,500	Chairman	Approve
Credit Card Company D	7,200	Chairman	Reject
Payday Loan 1	375	Chairman	Reject
Payday Loan 2	450	Chairman	Reject
Connected person 1	5,000	Chairman	Approve

Credit Card Companies B & C are represented by a creditor agent who has tabled a number of modifications but only three of them were not already included in the debtor's proposal, namely:

- 1) That the Nominee's fee be restricted to the first five months contributions;
- 2) That the Supervisor's fee be restricted to 15% of realisations;
- 3) That the debtor's monthly contribution be increased by £50 per month.

The debtor has provided you with written confirmation that:

- 1) he will give up smoking and that, as a result, he will be able to afford the additional £50 per month;
- 2) he is in agreement with the amounts stated on the proofs of debt;
- 3) he did receive some post from Credit Card Company A in respect of a Charging Order but that he threw it away as he did not understand it;
- 4) he will submit any monies received from mis-sold PPI claims to the Supervisor; he has just received a cheque for £1,800 from Credit Card Company C in respect of a mis-sold claim.



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**Requirement:**

- a) Prepare a proxy schedule and determine whether or not the debtor's proposal has been approved; **(5 marks)**
  
- b) It will be necessary to issue an amended Estimated Outcome Statement with your Chairman's Report on the Outcome of the Meeting of Creditors. Prepare a draft statement taking into account all of the information that has come to light since the Nominee's Report was issued.  
N.B. Assume that the estimates of the costs of bankruptcy, Supervisor's Disbursements, Bond & Registration Fee remain unchanged for the purposes of your statement. **(10 marks)**



## 22. Bankruptcy outcome

- A) Your principal has been appointed Trustee of a bankruptcy estate. The bankruptcy order was made on 30 April 2012 on a petition presented to Court on 31 January 2012. The appointment of your principal as Trustee was made on 31 October 2012 by the Secretary of State.

The only asset available for the bankruptcy estate was the bankrupt's half interest in the matrimonial home. This has been valued at £400,000 and is subject to a single charge for £220,000. The mortgage is up-to-date and there are no plans by the mortgagee to commence legal proceedings for possession. The non-bankrupt spouse has made no claims for an increased share of the equity.

There are limited creditors of the bankruptcy estate. Three creditors have lodged valid proofs of debt which total £25,000. There are expected to be claims lodged in the estate for the following creditors: Eleco for £1,000, Natclays Bank for £9,000 and O3 phones for £250. No other creditor claims are expected.

The debtor and joint owner of the property cannot introduce funds to purchase the property interest which vests in the bankruptcy estate. They have agreed to sell the property on the open market with agents who will charge 1.5% of the sale price + VAT. The agents are advising that a sale at £500,000 is achievable and a sale should be concluded by 31 October 2013.

The conveyance for the sale will be carried out by solicitors for £2,000 + VAT.

The debtor and joint owner have enquired as to whether the sale of the property will pay the bankruptcy in full and have asked your principal to provide them with a calculation so that they can see if there will be sufficient funds to clear the bankruptcy so that the debtor can consider an annulment on the conclusion of a property sale.

The bankruptcy fees and expenses accrued to date are the Official Receiver's fee which is £1,715, petition costs of £2,000, agents fees for the property valuation of £100 + VAT. The case has been bonded with a bond fee of £210 and insurance has been obtained by your principal over his interest in the property at the sum of £200.

Trustees' remuneration has been agreed on a time costs basis and the current outstanding work-in-progress is £5,500 with an estimated sum of £2,000 required to finalise the bankruptcy. The Trustee has accrued an advert disbursement of £100 + VAT.

There are quarterly banking fees in respect of the ISA of £88 to date and a further 2 quarterly fees of £22 each are expected to be charged. The Secretary of State fee has been calculated at £10,300 to pay. The deposit on the petition of £700 has been paid.

The debtor is in PAYE employment and is not VAT registered.

There have been no asset realisations to date.





**Requirement**

Compile an estimated payment-in-full calculation for the debtor and indicate whether the estimated equity vesting in the estate will be sufficient to pay the bankruptcy debts and costs in full. (Ignore cheque fees) **(10 marks)**

- B)** The spouse is not happy about the Secretary of State fees. She wants to know what scale is used to calculate “such a large amount”.

**Requirement**

Set out the scale that is used to calculate the Secretary of State fees for realisations for a bankruptcy estate and state what, if any, limit there is for this fee. **(2 marks)**

- C)** The sale completes and the debtor has made an application to annul the bankruptcy order and notice of the annulment application has been received by your principal. He is aware that he has to file a report regarding the annulment and wants to know who he serves with his report and when he needs to serve these parties prior to the hearing.

**Requirement**

Provide a short memo to your principal advising who his annulment report is to be sent to and how many days before the annulment hearing he needs to ensure the report is sent to these parties. **(3 marks)**

**PART C**

**Only two questions in this section are required to be answered**

**23. Trustee in Bankruptcy**

- A.** Your principal has received her first appointment as trustee of a bankruptcy estate and asked for your advice on the assets in the estate. She was appointed as trustee with effect from 1 May 2013 and the debtor was adjudged bankrupt on 1 March 2013 pursuant to a creditor's petition presented to Court on 1 December 2012.

The assets comprise the bankrupt's solely owned property which is his and his family's main residence and an interest in a property on the Norfolk Broads which the bankrupt owns jointly with his wife and which they use as a holiday home. Both properties are subject to mortgages.

**Requirement:**

Your principal has asked for a memo outlining how:

- 1) Her interest in the properties as trustee should be protected;
- 2) The process for establishing the value of her interest in the properties;
- 3) Whether there are any time-limits she should be aware of in realising her interest in both properties and how she should avoid any interest re-vesting in the bankrupt; **(10 marks)**

- B.** A letter is received from the spouse about the properties. The spouse says that she agrees the bankrupt has a 50% interest in the holiday home and that she wishes to buy that interest from the Trustee.

However she believes that the residential property was put in the bankrupt's sole name in error. She alleges that it has always been agreed by the couple that she has an interest and in view of the fact that she paid the entire deposit for the purchase, she thinks her share is at least 75% and wants your principal to confirm this is accepted. Your principal is concerned that the spouse is correct about this property even though HM Land Registry shows that the title of the property is in the sole name of the bankrupt.

**Requirement:**

Your principal has asked for a memo with some thoughts on the main residence and whether the spouse can claim an interest. What information should she obtain or ask for and from what sources? Who is responsible for producing evidencing in support of the spouse's claim?

**(5 marks)**

**24. Debt solutions**

James is a solicitor aged 27 and his wife Sally is a doctor aged 28. They have a problem in repaying their debts. Their creditors are unwilling to negotiate and there are significant arrears. You establish that they have 2 loans in joint names totalling £9,000. Sally also has various credit cards with outstanding balances totalling £9,450 and she owes £10,000 on a student loan taken out in 2007. James has various other credit cards and loans totalling £27,200.

You review their budget and after taking into account all their essential expenditure you establish that they have a joint surplus of £390 per month available for their creditors. Individually James would have £140 and Sally would have £250 but they tell you that they would prefer to manage their debts together. They live together in rented accommodation, Sally is expecting a significant promotion soon and James is hoping to be considered for partnership before he is 30.

**Requirement**

- 1) Send a letter to James and Sally summarising possible general debt solutions available, briefly explaining why some of the solutions would not be suitable for one or both of them, without duplicating your answer to part 2 below. **(4 marks)**
- 2) Explain how bankruptcy, individual voluntary arrangements and debt management plans might resolve their debt problems providing reasons for and against each solution. **(9 marks)**
- 3) Provide a conclusion of the advice that you would give to them. **(2 marks)**

**25. Self-employed debtor**

A debtor by the name of Sam Wilkes has been referred to you for a first meeting on whether he should propose an IVA to his creditors. You are aware of the following basic information from an initial telephone conversation:

- 1) Sam works for himself as a farrier and has no employees
- 2) He is married and jointly owns a house with his wife which is also where he trades from; they have two children
- 3) He is a keen amateur rugby player and spends significant time away from home with the associated costs
- 4) He has suffered a number of bad debts in the down turn as a result of which his business has been loss making, although he thinks the worst is behind him and he expects to be profitable next year
- 5) His tax affairs are in arrears and HMRC are pursuing him
- 6) He has a number of credit card and other finance creditors.

**Requirement:**

At the first meeting what matters should be dealt with, taking into account the above information, in considering whether Sam may be suited to entering into an IVA? **(15 marks)**