



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN INSOLVENCY ENGLAND & WALES

Examination 7 June 2019

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 2019.

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.

1. In an individual voluntary arrangement (“IVA”), who is legally responsible for the proposal to creditors?
- a) The nominee
 - b) The supervisor
 - c) The proposed insolvency practitioner
 - d) The debtor
2. In an administration what maximum sum is classified as a small debt including VAT. Is it?
- a) £250
 - b) £500
 - c) £750
 - d) £1,000
3. A director who without reasonable grounds swore the declaration of solvency in a members’ voluntary liquidation (“MVL”) was later found guilty of perjury. What are the possible consequences of this for the director?
- a) Imprisonment
 - b) Disqualification as a director
 - c) Fine
 - d) Imprisonment and/or fine
4. Which SIP provides guidance in respect of disposal of assets to connected parties in an insolvency process?
- a) SIP 11
 - b) SIP 13
 - c) SIP 15
 - d) SIP 16
5. What is the maximum period that an administration can be extended by creditors.
- a) Six months
 - b) Nine months
 - c) Twelve months
 - d) Eighteen months

6. A debtor entered into an IVA whereby they agreed to pay the monthly contribution of £500 for the period of five years. However, despite several chasing letters being sent from the supervisor the debtor stopped paying the contributions after the first six months giving no reason. What action should the supervisor take?
- a) Refer to the requirements set out in the Act
 - b) Refer to the terms of the debtor's proposals
 - c) Refer to the requirements set out in the Rules
 - d) Refer to SIP 3.1
7. If the trustee makes an application for an order for sale, possession or for a charging order 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?
- a) £500
 - b) £1,000
 - c) £2,500
 - d) £5,000
8. You have received an unsecured claim from a bankrupt's current spouse in the sum of £10,000. Where would this debt rank in priority?
- a) After any preferential claims but before the other unsecured claims
 - b) Together with all the other unsecured claims
 - c) After the other unsecured claims but before statutory interest payable
 - d) After statutory interest is payable
9. When the Official Receiver is appointed liquidator within what period from the making of the winding-up order must he decided whether or not to seek nominations for a liquidator by the creditors and contributories. Is it?
- a) At any time
 - b) No requirement unless creditors request (one quarter in value)
 - c) 8 weeks
 - d) 12 weeks
10. In a MVL the liquidator has submitted his final account to the registrar of companies. When is the company dissolved?
- a) Forthwith
 - b) After 8 weeks
 - c) After 3 months
 - d) On the date prescribed by the liquidator

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. Your remuneration has been approved on the basis of the scale laid down in Schedule 11 of the Rules. You have realised £100,000 and distributed £60,000. What would your remuneration be?

½ mark per point up to 2 marks

12. SIP14 provides guidance to a receiver in respect of their responsibility to preferential creditors. The potential amount available to the preferential creditors is also dependent upon the appropriate allocation of costs incurred in effecting realisations by the receiver. These categories of costs are?

1 mark per point up to 2 marks

13. Who should the supervisor of a company voluntary arrangement ("CVA") deliver his annual progress report to?

½ mark per point up to 2 marks

14. List the options available for insolvent partners?

½ mark per point up to 2 marks

15. What percentage of creditors are needed to determine if a decision for a CVA proposal is to be approved and what matters should the chair take into account?

½ mark per point up to 2 marks

16. Section 216 of the Act deals with the re-use of a company name and is designed to deal with the abuse of this.

- a) How is a 'prohibited name' defined?

½ mark per point up to 1 mark

- b) Should these provisions be breached what are the potential consequences for the director and also the individual making the breach.

½ mark per point up to 3 marks

Total 4 marks

17. Detail what information is required to be included within an administrator's proposals in respect of pre-appointment costs.

½ mark per point up to 4 marks

18. a) In an administration explain what is defined as a category one and category two disbursement.

1 mark per point up to 2 marks

b) Give two examples for each of the categories.

½ mark per point up to 2 marks

Total 4 marks

19. A trustee should provide a bankrupt with sufficient information at the appropriate times about the 'bankrupt's home' to enable them to understand the possible consequences of the bankruptcy, so that they can make an informed decision or seek advice. What information should be included?

½ mark per point up to 4 marks

20. The Act sets out requirements on utility suppliers and office-holders where there is a need for continued supplies after the 'effective date'. Explain what is meant by the 'effective date' and set-out the powers and obligations of the office-holder and such suppliers.

1 mark per point up to 4 marks

PART C

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

21. Your principal has a first meeting with a debtor who would like to discuss the possibility of an IVA having encountered recent financial difficulties. You have been asked to attend this meeting and to prepare a briefing note of the important matters to be discussed.

½ mark per point up to 15 marks

Total 15 marks

- 22.** Your principal was appointed administrator of Miss Feasance Limited (“the Company”) ten months ago. You have recently received legal advice which confirms that there is a strong case for a misfeasance action against the directors of the Company. The following assets have already been realised:

Motor vehicles - £6,000

Stock - £14,000

Book debts - £70,000

Cash at bank – £10,000

There is also a further book debt of £50,000 but due to the lack of supporting documentation it is unlikely that this will be realised.

Preferential creditors are owed £20,000, the qualifying floating charge holder is owed £300,000 and the unsecured creditors are owed £1.2 million.

Your fee estimate has been approved in the sum of £20,000 but you have yet to draw any fees on account of this. Your disbursements are estimated at £4,000 and to date you have paid £2,000 in respect of these costs.

Requirement;

- a) Your principal has asked you to write a memorandum outlining what should matters should be considered prior to any misfeasance action being taken, any other options available and how such a claim could be taken forward.

½ mark per point up to 5 marks

- b) The administrator has asked you to extend the administration by consent and to also increase the fee estimate to £30,000. Draft an e-mail to a colleague explaining the following:

- i. who must consent to the extension and what information should be contained in the notice.

1 mark per point up to 5 marks

- ii. who must approve the revised fee estimate and what information required to be provided.

½ mark per point up to 5 marks

Total 15 marks

PART D

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

- 23. a)** Your principal was appointed liquidator of Magazines Direct Limited (“the Company”) on 6 June 2018 in a creditors’ voluntary liquidation (“CVL”).

Requirement;

Detail the liquidators’ duties to investigate the affairs of the company and the actions of the directors and in what SIP these can be found.

½ mark per point up to 4 marks

- b)** During your investigation it has come apparent that the sum of £50,000 was borrowed by the Company from the father of the director in July 2016 to assist with working capital.

There is no evidence that these monies were ever repaid by the Company, however on 2 December 2017, a charge was created in favour of the father, secured against all fixed and floating assets. This was registered at the Registrar of Companies on 20 December 2017.

At the same time as the charge was created, the father loaned a further £25,000 to the Company. There is also no evidence that these further monies were repaid. You are unable to find any formal loan agreement or contract in respect of the terms of the loans.

The assets of the Company all appear to floating charge assets only. The father has submitted a secured claim in the liquidation for £75,000.

Requirement;

Explain how you would assess and treat the father’s claim, detailing what information you intend to reply upon in making your decision and of the outcome.

½ mark per point up to 7 marks

- c)** Your investigations have also revealed that shortly before the director made the decision to place the Company into liquidation, the bank overdraft was cleared. The company’s records show that whilst no payments were made to any other creditors at this time, the overdraft facility was personally guaranteed by the director.

Requirement;

Explain what action the liquidator could take in respect of this and explain what would need to be shown for any such action to be successful.

½ mark per point up to 4 marks

Total 15 marks

24. Your principal has been approached by the directors of Wobbly Legs Construction Limited (“the Company”). Following some problems with one of their customers, the Company is having cash flow problems and is unable to continue in its present form.

Your principal thinks that administration with a pre-pack sale of the business and assets may result in a better outcome for creditors than liquidation and, following some interest in the Company through a marketing campaign, has asked you to prepare an estimated outcome statement comparing administration versus CVL.

Extracts from the Company’s latest statement of financial position are as follows:

	£
Plant and machinery	135,000
Furniture and equipment	40,000
Stock	35,000
Debtors	50,000
Cash at bank	10,500

An agent has valued the Company’s assets as follows:

- Plant and machinery estimated to realise £60,000 in an administration or £40,000 in a liquidation scenario.
- Furniture and equipment estimated to realise £20,000 in an administration or £5,000 in a liquidation.
- Stock estimated to realise £20,000 in an administration or £15,000 in a liquidation.
- Goodwill and intellectual property have been valued at £20,000 in an administration. No value would be expected to be achieved for goodwill or intellectual property in a liquidation.

The agent will charge a commission of 10% to sell the assets which they have valued.

A specialist debt collector has reviewed the debtor books, which lists total debtors at £50,000. The debt collector suggests a provision of 25% for uncollectable debts in an administration and 50% in a liquidation. The debt collector will assist in collecting in the debts for a fee of 8% of total book debts realised.

The Company banks with Pony Bank PLC (“the Bank”). On 1 April 2014 the Company gave a floating charge over all of its assets to the Bank. The Bank gave a loan to the Company in 2014, of which £15,000 is currently outstanding, along with an overdraft facility. The Company’s bank balance has fluctuated over the years, but it is currently overdrawn by £25,000.

The Company employs 10 members of staff including the directors. In the event that a pre-pack sale can be achieved, it is expected that all of the staff will transfer to the purchaser, which will assume responsibility for the employment contracts and all employee-related liabilities. If the Company goes into liquidation, the employees will be made redundant and will be owed an average of £200 each in respect of accrued holiday pay. There is also expected to be a liability totalling £60,000 for redundancy pay.

There is a corporation tax liability of £25,000 which is unpaid. Trade creditors are owed £175,000.

Your principal estimates that your firm’s fees for dealing with an administration of the Company will be £30,000. In a liquidation, your firm’s fees are estimated at £15,000.

Requirement;

Prepare an estimated outcome statement (including predicted dividend) to compare administration versus CVL for the Company.
Show your full workings.

Total 15 marks

25. Your principal is advising the directors of Boxco Limited in respect of their proposed CVA and has asked you to prepare a note on the following:

- a) In his capacity as nominee, the matters he must report upon to Court having received notice of the proposals and within what time period.

1 mark per point up to 3 marks

- b) What information and good practice matters should be included within the nominee's report?

½ mark per point up to 7 marks

- c) The nominee has decided that the decision procedure is to be by virtual meeting. Outline what should be included in the 'Notice to Creditors' of the Virtual Meeting.

½ mark per point up to 5 marks

Total 15 marks