



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN CORPORATE INSOLVENCY SCOTLAND

Examination 5 June 2015

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 April 2015.

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 (Scotland) Rules 1986 (as amended).

References to the '1985 Act' are to the Bankruptcy (Scotland) Act 1985 (as amended).

References to the PTD Regs are to the Protected Trust Deeds (Scotland) Regulations 2013.

References to SIPs are to Statements of Insolvency Practice (Scotland).

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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 If a creditor is dissatisfied with the liquidator's adjudication of his claim he may appeal to the Court. Within what time period must the application be made?
- a) 8 weeks before the end of the accounting period
 - b) Within 6 weeks of the end of the accounting period
 - c) 2 weeks before the end of the accounting period
 - d) Within 2 weeks of the end of the accounting period
2. Which of the following is not a fundamental principle as outlined in the Code of Ethics?
- a) Transparency
 - b) Integrity
 - c) Objectivity
 - d) Confidentiality
3. Under Paragraph 83 of Schedule B1 of the Act, where a company moves from administration to creditors' voluntary liquidation, the administrator is required to send notice to prescribed persons. To whom of the following is he not required to give notice?
- a) The Registrar of Companies
 - b) The director(s)
 - c) The Court
 - d) The creditors
4. At the meeting of creditors in a compulsory liquidation, creditors vote for an alternative liquidator to be appointed. Which of the following are not required to be notified?
- a) The Registrar of Companies
 - b) The accountant in bankruptcy
 - c) The Court
 - d) Creditors

5. Who cannot take part in the public examination of company officers?
- a) A creditor
 - b) The liquidator
 - c) A shareholder
 - d) The accountant in bankruptcy
6. On what date is a compulsory liquidation deemed to commence?
- a) The date of the presentation of the petition to wind up the company
 - b) The date the winding up order is made
 - c) The date an insolvency practitioner is appointed liquidator
 - d) The date the petitioning creditor debt was incurred
7. Which of the following office holders has no power to challenge a gratuitous alienation?
- a) An administrator
 - b) A liquidator in a creditors' voluntary liquidation
 - c) A liquidator in a compulsory liquidation
 - d) A receiver
 - e)
8. Within how many weeks of the company entering into administration must the administrator hold an initial meeting of the company's creditors?
- a) Within 4 weeks
 - b) Within 8 weeks
 - c) Within 10 weeks
 - d) Within 12 weeks
9. In a creditors' voluntary liquidation which of the following power can the liquidator exercise without sanction?
- a) Bring an action for wrongful trading
 - b) Carry on the business of the company in so far may be necessary for its beneficial winding up
 - c) Make compromise with creditors
 - d) Pay any class of creditors in full
10. Which of the following may not make a proposal for a company voluntary arrangement ("CVA")?
- a) Creditors
 - b) Directors
 - c) Liquidator (where the company is in liquidation)

d) Administrator (where the company is in administration)

□

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 partner has recently been appointed liquidator of Crystal Blue Limited at a meeting of creditors held in accordance to Section 98 of the Act.

The Statement of Affairs shows the following details:

	£
Secured assets	495,000
Secured creditor	(406,000)
Floating charge assets	331,000
Floating charge holder	(262,000)
Preferential creditors	(36,000)
Unsecured creditors	(307,000)

What amount should the liquidator bond for?

(2 marks)

12. To whom is a liquidator, in a members' voluntary liquidation, required to send annual progress report(s) to and within what time period must these reports be issued?

(2 marks)

13. In accordance with Section 435 of the Act a person is defined as an associate of another person if they are what?

(2 marks)

14. You are the administrator of Sweet Homes Limited and wish to sell a property over which First Clear Bank has a fixed charge. First Clear Bank has refused you permission to sell the property.

What steps can you take, if any, as administrator to overcome this and achieve a sale of the property?

(2 marks)

15. According to Paragraph 3(1) of Schedule B1 of the Act what are the statutory purposes an administration is required to meet?

(2 marks)

16. A meeting of creditors has been convened pursuant to Section 98 of the Act and is due to be held on the 10 June 2015 in relation to Abbotts Field Engineering Limited ("the Company"). You are assisting your partner with preparations for the forthcoming meeting and have been made aware that the directors of the Company have expressed a wish to make an offer for the assets of the Company.

What are the duties of your partner at the Section 98 meeting in relation to the directors' intention to make an offer and what SIP deals with this?

(4 marks)

17. With regards to a CVA in accordance with SIP 3.2 what matters must a nominee comment upon in his report to the Court?

(4 marks)

18. What is the definition of an unfair preference as defined by Section 243 of the Act?

(4 marks)

19. At a meeting of creditors held in accordance to Section 98 of the Act, six creditors have asked to be members of the liquidation committee. What action would the Chairman take in order to decide who should be a committee member as recommended by SIP 8?

(4 marks)

20. Where a company enters into insolvent liquidation the directors are prohibited by Section 216 of the Act from re-using the company name. Explain what the exception is to this rule where a sale of the insolvent business takes place?

(4 marks)

PART C

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

- 21.** Your partner is the liquidator of Raymond Fine Foods Limited and he has asked you to assist with the closing of the case.

Requirement;

Prepare a memorandum to your partner setting out:

- i. The statutory formalities to be followed when closing a creditors' voluntary liquidation.

(9 marks)

- ii. Prior to formally closing the case what practical steps you should consider undertaking to ensure that the case is ready for closure.

(6 marks)

Total 15 marks

- 22.** One of the partners of your firm was appointed interim liquidator, on the 16 March 2015, of A Little Bit Too Late Limited ("the Company") following the presentation of a winding up petition by a major creditor on 23 February 2015.

He was later appointed liquidator at the meeting of creditors on 23 April 2015. You are now dealing with the case and following discussions with the office holder and a file review you note the following:

- 1) Nutfield Bank Plc. ("the Bank") is owed £350,000 and has a fixed charge security over the property situated at Brigstock Road which has an estimated value of £280,000.
- 2) Listed are two motor vehicles; a Ford Transit van which is subject to a hire purchase agreement which is thought to have potentially £4,000 equitable value; and a BMW 5 series. The sole director of the Company is claiming that he requires the BMW vehicle as tools of trade and for work although it is estimated that the value of the vehicle is £15,000.

- 3) There are eight flats; three are currently rented for the sum of £750 per week, three rented for £800 per week and the remainder rented for £850 per week. No rent was received in the weeks from the presentation of the petition until the appointment of the interim liquidator.
- 4) The sale of the flats is due to complete on 8th June 2015.
- 5) The Company is not VAT registered.
- 6) The total value of the flats is £960,000.
- 7) The petitioning creditor's costs associated with the petition are £1,500 plus VAT.
- 8) It is estimated that the agent's and solicitor's fees relating to the sale of each of the flats will be £1,000 and £2,500 excluding VAT respectively.
- 9) The Company has trade creditors of £1,075,000. The fee for acting as interim liquidator is £6,500. There was no creditors' committee appointed at the meeting of creditors.
- 10) The liquidator's estimate of fees is £25,000.
- 11) The liquidator's disbursements consist of insurance of £10,500 and the bond of £235.
- 12) The issued and paid up share capital was 100 Ordinary shares of £10 each.

Requirement;

Prepare a statement showing the outcome to the unsecured creditors and potential dividend available including full workings. You do not need to show the Insolvency Service Account banking fees.

Total 15 marks

PART D

TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED ON A SEPARATE PIECE OF PAPER.

23. James Foale, the director of Larcombe Engineering Limited (“the Company”) has come to you for advice. The Company’s main customer entered into administration six months’ ago owing the Company a substantial sum of money. Whilst he is confident that new customers can be sourced to make up the lost turnover, in the short term the loss of the main customer has had a significant detrimental effect on the Company’s cash flow and he advised that they will not be able to settle the Company’s corporation tax bill which is due to be paid shortly.

You have reviewed the Company’s cash flow and trading forecasts and have recommended a CVA. A proposal has been drawn up and you are acting as nominee.

The proposal is based upon the continued trading of the Company and contributions from profits over a five year period. The projected dividend to unsecured creditors is 37p in £ compared to 5p in £ were the company to be placed into liquidation.

In advance of the creditors’ meeting to consider the proposals convened for 2 June 2015 you receive the following claims:

Creditor	£	Voting instructions	Modifications	Proxy
HM Revenue & Customs	70,000	For with modification	Dividends to be paid within two months of each anniversary	Chairman
JF Engineering Limited	140,000	For	None	Chairman (via fax)
Outsize Bank Plc.	250,000	For	None	Chairman (via email)
Heavy Haulage Limited	12,000	For	None	Chairman
S T Power Tools Limited	40,000	Against	None	Chairman
Extra Limited	10,000	For	None	Chairman
Spare Parts Limited	5,200	For with modification	Cap supervisor’s fees at £6,000	Chairman
Hydro Oils Limited	8,400	No proxy	-	-
Potters Limited	7,200	Against	None	Mr Evans

The following additional information is available:

- HM Revenue & Customs’ claim includes assessment for VAT of £50,000, but the director has provided figures for the outstanding VAT return showing VAT due of only £10,000.
- JF Engineering Limited has the same sole shareholder as the Company.
- The debt to Outsize Bank Plc is secured by a charge over the Company’s trading premises (estimated value of the security £140,000).

- The director states that the claim received from Heavy Haulage Limited does not take into consideration a payment of £2,000 made by him personally on the day before the meeting.
- S T Power Tools Limited are claiming retention of title on goods on site with invoice value totalling £10,000.
- The proxy from Extra Limited was received two days before the meeting, but the creditor representative only provided a statement of claim when he turned up for the meeting.

Requirement;

- i. Set out how you would treat each claim for voting purposes, giving your reasons.

(11 marks)

- ii. What is the requisite majority required for approving the CVA proposal?

(2 marks)

- iii. Where there are voting creditors who are connected to the Company, in what circumstances would a vote approving the proposal be rendered invalid, pursuant to Rule 1.16A(4) of the Act?

(2 marks)

Total 15 marks

- 24.** Your partner has been appointed as administrator by the directors of Wonder Steam Clean Limited, (“the Company”) a company which manufactures steam cleaners for the domestic market. The administrator is intending to continue trading the Company whilst the business is marketed and a buyer is sought. The objective of the administration is to rescue the Company as a going concern and you expect, should a sale be achieved as planned, that a dividend will be paid to the unsecured creditors of the Company.

Requirement;

- i. On what basis may the administrator’s remuneration be fixed?

(4 marks)

- ii. Who will be required to approve the basis of remuneration?

(1 mark)

- iii. In the event that there are insufficient funds available to pay a distribution to the unsecured creditors, but assuming that a dividend payment will be paid to the secured and preferential creditors, how, if at all, would your answer to part ii. above, differ?

(3 marks)

- iv. What matters should those approving the basis of the administrator’s remuneration have regard to?

(4 marks)

- v. If approval is sought to remuneration being calculated on a time costs basis SIP 9 provides that an office holder should provide certain information to creditors as a minimum. What information should be provided?

(3 marks)

Total 15 marks

- 25.** Your firm was instructed by the directors of Tools Direct International Limited (“the Company”) to assist them in placing the Company into creditors’ voluntary liquidation. The meetings of members and creditors were convened on 1 October 2013 and subsequently your partner was appointed as liquidator.

The liquidator wishes to declare a first and final dividend to the unsecured creditors as soon as possible however, prior to declaring a dividend a number of claims need to be adjudicated.

- i. A Spanish creditor has submitted a claim for 14,000 Euros. Relevant exchange rates are as follows:
 - The date of the purchase of the goods supplied £1 = 1.20 Euros
 - The date of the liquidation £1 = 1.25 Euros
 - Today’s date £1 = 1.40 Euros
- ii. Hammers and Drills Limited (“Hammers”) made supplies to the Company in August 2006 and although the directors have always disputed the claim and no proceedings have commenced, Hammers have submitted a claim for £2,300.
- iii. A supplier has submitted a claim for £2,200 including VAT. The supplier has also claimed VAT bad debt relief.
- iv. A claim has been submitted by a supplier owed £85,000. The supplier had creditor insurance and received £78,000 from the insurance company following the liquidation. The insurance company have also submitted a claim for £85,000.
- v. The Australian treasury department have submitted a claim for tax due in the sum of £4,500.
- vi. Nuts R We Limited has submitted a claim totalling £32,000 subject to a trade discount of 5% on invoices due for payment on 3 November 2013. A further discount of 2.5% is available should payment be received by 25 September 2013.

Requirement;

Prepare a memorandum to the liquidator setting out what decision should be made in respect of each of the above claims and why.

Total 15 marks