

INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN CORPORATE INSOLVENCY

Examination 6 December 2013

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 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 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 Which one of the following is not a power of an Administrator or Administrative Receiver under Schedule 1 of the Act?
- a) Power to use the company seal
 - b) Power to carry on the business of the company
 - c) Power to present or defend a petition for the winding up of the company
 - d) Power to change the company's name
2. What is the 'official exchange rate' to be used when calculating claims in foreign currencies?
- a) The middle exchange rate on the London Foreign Exchange Market at close of business on the relevant day
 - b) The average exchange rate on the London Foreign Exchange Market at close of business on the date the debt became due
 - c) The lowest exchange rate on the London Foreign Exchange Market on the relevant day
 - d) The highest exchange rate on the London Foreign Exchange Market on the relevant day
3. Rule 11.2 of the Rules deals with notice of intended dividend. The notice shall specify the date by when proofs should be lodged which should be how many days after the date of the notice?
- a) 14 days
 - b) 21 days
 - c) 28 days
 - d) 1 month
4. Within what period must a liquidator file notice of his appointment with the Registrar of Companies in a compulsory winding-up?
- a) 7 days
 - b) Forthwith
 - c) 5 business days
 - d) As soon as reasonably practicable

5. How long before holding the final meeting pursuant to Sections 106 and 146 of the Act must a Liquidator send his draft report to the creditors?
- a) At least 1 month
 - b) At least 21 days
 - c) At least 8 weeks
 - d) At least 2 months
6. To whom does the Administrator not have to send his Proposals?
- a) The Registrar of Companies
 - b) The Court
 - c) Every Member of whose address he is aware
 - d) Every Creditor of whom he is aware
7. What is the minimum notice to be given to the Secretary of State for permission to act in any circumstances that would otherwise be prohibited by section 216 of the Act?
- a) 7 days
 - b) 14 days
 - c) 21 days
 - d) 1 month
8. When a company moves from administration to dissolution which one of the following does not need to be given notice that the company has no property which might enable a distribution to its creditors?
- a) Registrar of Companies
 - b) The directors
 - c) The Court
 - d) Each creditor whose claim and address the Administrator is aware of
9. Within what period must the liquidator fix his remuneration, in accordance with Rule 4.127(2) of the Rules, before it defaults to the Realisation Scale set out in Schedule 6 of the Rules?
- a) No limit
 - b) 3 months after issuing the first progress report
 - c) 12 months
 - d) 18 months

10. Which of the following office holders are not required to submit a report on the conduct of the directors to the Disqualification Unit?

- a) Liquidator in a creditors' voluntary liquidation
- b) Administrator
- c) Liquidator in a members' voluntary liquidation
- d) Administrative receiver

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. Section 6A of the Act concerns 'False Representations' made for the purpose of obtaining the approval of the members or creditors to a Proposal for a CVA. What is the penalty? **(2 marks)**
12. In accordance with the Act, the Court may make an Administration Order if what two criteria are met? **(2 marks)**
13. How is the Prescribed Part calculated? **(2 marks)**
14. In accordance with the Act, on what grounds is an unregistered company deemed to be insolvent? **(2 marks)**
15. A company which is proposing a CVA can apply for a moratorium if it satisfies two or more of the requirements for being a small company as defined by the Companies Act 2006. What are the qualifying conditions? **(2 marks)**
16. Name and briefly explain four of the fundamental principles of an IP set out in the Ethics Code **(4 marks)**
17. On what grounds is a company excluded from being eligible to file for a moratorium under schedule A1 of the Act? **(4 marks)**
18. What are the three tests which the court requires that a Nominee should apply before concluding that a meeting of creditors should or should not be held? What is the relevant leading legal case? **(4 marks)**
19. What are the specific duties of the directors under S99 of the Act and what should the statement of affairs show? **(1/2 mark each up to a maximum of 4 marks)**
20. What creditors' claims rank preferentially (limits not required)? **(4 marks)**

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

21. A Partner in your firm was appointed as Administrator of Calculator Limited five months ago. Value Bank hold a fixed and floating charge over the company's assets created on 17 August 2004. The company owns a freehold property over which Abacus Plc hold a legal charge which ranks in priority to Value Bank's security. Abacus Plc is owed £100,000 by the company and Value Bank are owed £600,000.

The property is shown in the company's accounts with a book value of £300,000 and your instructed agents anticipate that £400,000 may be achieved in a sale.

The following realisations have been made to date:

Plant and machinery (subject to floating charge)	£25,000
Book debts	£90,000

The book debt collection process was initially conducted 'in house' and £50,000 was realised before collection agents were instructed in respect of the remainder. The remaining debtor ledger reflects another £60,000 owed to the company. However your collection agents have advised that only 50% of this will be realised.

The company held a quantity of stock at the outset of the Administration with cost value of £100,000. The agents instructed to deal with the disposal of the stock advised that £10,000 of this was obsolete stock with no value and £10,000 worth of stock was returned to ROT creditors. The ROT claims have now all been settled and the agent anticipates that realisations in relation to the stock will be around 20% of the cost price.

The company held a motor vehicle on finance with Dear Asset Finance. The vehicle was sold for £11,000 and £6,000 was paid to the finance company.

The following costs have been agreed in relation to the sale of the freehold property:

Administrator's fees – fixed at 1.5% of the sale price
 Agent's fees – fixed at 2.5% of the sale price
 Legal fees on a time cost basis – anticipated to be £4,000.

In addition, insurance costs relating to the property are likely to total £2,000 and you have calculated that there will be tax payable as a result of the sale of £14,000.

The Administrator's fees for work not related to the freehold sale are estimated to be £20,000. The agents who have dealt with the collection of the book debts will be paid fees equal to 10% of recoveries. The agents who have dealt with the physical assets have agreed with you fees of

15% of gross realisations, although the settlement to the finance company is to be deducted before their fees are calculated.

A further £2,000 of insurance costs were paid in relation to these assets.

The company employed 25 staff, all of whom were owed in excess of £800 for wage arrears. Claims for redundancy and compensation for loss of notice are estimated to be around £80,000 and claims for unpaid holiday total £10,000. There are also unpaid employer and employee pension contributions relating to a period of three months prior to the Administration totaling £10,000.

You have instructed agents to assist with the winding up of the company's pension scheme and they have provided an estimated cost of £3,000 for dealing with this.

The company owes £40,000 of PAYE, £50,000 of VAT and other unsecured creditors total £150,000.

Prepare an Estimated Outcome Statement for Value Bank, to show what they can expect to receive from the Administration. (15 marks)

- 22. a)** Describe how the following transactions would be reflected in a receipts and payments account having regard to the good practice set down in SIP 7. (Note: You are not required to prepare a receipts and payments account detailing the transactions).
- i. Plant and machinery has been sold by your agents in the sum of £22,500 (including VAT). After deducting his charges of £2,140 (including VAT) the agent sent you a cheque for £20,360.
 - ii. Stock with a value (at cost) of £15,000 was returned to suppliers with valid ROT claims. You have also paid the sum of £6,370 to another supplier in order to secure title to the stock supplied by him.
 - iii. You have paid rent to the landlord of a property of which £8,000 was in respect of rent arrears and £4,000 was in respect of rent for the period of your occupation.
 - iv. The following amounts were realised on the sale of assets:

Freehold property	£125,000
Plant and machinery	£22,780
Stock and WIP	£14,500
Goodwill	£7,650
 - v. Amounts totalling £8,600 were received from the redundancy fund under the employment protection legislation and were distributed to former employees. You received a fee of £860 plus VAT for your work as the employer's representative. **(5 marks)**
- b)** An office holder is required to prepare and keep separate financial records for each appointment. For how long should these records be retained by him where he is not succeeded by another office holder? **(1 mark)**
- c)** What additional information is required to be provided regarding dividend payments? **(1 mark)**
- d)** The directors of Summer Orchard Cider Limited have prepared a proposal for a Creditors' Voluntary Arrangement (CVA) and have given written notice of the proposal to your principal, the intended Nominee, who has agreed to act. A date has been set for the creditors' meeting to consider the proposal and you have been asked to advise the Nominee on the adjudication for voting purposes of the following proxies/creditors' claims;
- i. A company officer attends the meeting in person on behalf of his company without lodging a proxy. The company has previously lodged a valid proof of debt. He wishes to vote in favour of the arrangement.
 - ii. A proxy in favour of the chairman directing the chairman to vote for the resolution, supported by a proof of debt disclosing that the creditor holds security (valued by him) in respect of part of the debt.
 - iii. A creditor, who is a sole trader, attends the meeting in person without lodging a proxy. He has previously lodged a valid proof of debt. He wishes to vote against the arrangement.
 - iv. A properly completed faxed proxy in favour of the chairman is received by the deadline for the meeting from a creditor. The original proxy has not been received. The proxy directs the chairman to vote for the arrangement.

- v. A proxy in favour of the chairman supported by a proof of debt for an estimated sum but the value of the claim has yet to be ascertained. The proxy directs the chairman to vote in favour of the arrangement. **(5 marks)**
- e) Explain the rule for requisite majority in obtaining approval for a CVA and explain how the votes of connected creditors affect this. **(2 marks)**
- f) If the CVA is approved, which creditors are bound by the arrangement? **(1 mark)**

(Total 15 marks)

PART D**TWO OF THE THREE 15 MARK QUESTIONS TO BE ANSWERED**

23. You have recently (November 2013) been approached by Mr Palmer, the Managing Director of Duncan Ltd. Duncan Ltd has been experiencing cash flow problems for some time, but Mr Palmer is very confident that he is on the brink of signing a substantial new contract, which will restore the company to profitability.

Mr Palmer provides you with the following information:

Assets	Book value (£)	Forced sale value (£)
Property	250,000	300,000
Debtors	140,000	100,000
Machinery	80,000	40,000
Stock	60,000	15,000
Vehicles	15,000	5,000
Liabilities		
Pay in lieu		30,000
Redundancy		35,000
Trade and expense creditors		600,000

Mr Palmer is keen for Duncan Ltd to avoid liquidation and enter into a Company Voluntary Arrangement (CVA). He proposes that Duncan Ltd will make contributions from profits of £5,000 a month into a CVA for four years.

Additionally, Mr Palmer states that his father is prepared to make a contribution of £100,000 from an endowment policy, which matures in three years.

He states that if a voluntary arrangement is approved, Mogal Ltd, a company which he also controls, will subordinate its unsecured claim of £150,000 to those of other unsecured creditors.

The following information is also relevant:

Your partner estimates that if the company is placed into liquidation, Liquidator's remuneration would be £25,000, in addition to a fee of £5,000 for convening meetings of members and creditors to place the company into liquidation. Under a CVA, Nominee's fees would be £3,000 and Supervisor's fees would be £3,000 a year.

Estate agents' fee of 1.5% would be incurred on disposing of the property, which would also give rise to a tax charge of £15,000, together with legal fees of £5,000. Chattel agents' fees would be 5% of realisations on machinery, stock and vehicles. Debt collection fees would be 10% of recoveries.

- a) **Prepare an outcome statement comparing the estimated outcome in a creditors' voluntary liquidation with that in a CVA. (5 marks)**

During your initial discussions with Mr Palmer, the following matters are disclosed:

- i. In August 2013, the company repaid a loan to Lend Bank plc for £30,000. The loan was unsecured and was personally guaranteed by Mr Palmer.
- ii. On 5 April 2012, the company sold a property to Fisher Limited, a company in which Mr Palmer has a 75% shareholding, for £200,000. The property had been professionally valued at the time at £300,000.
- iii. In March 2013, the company repaid an unsecured loan of £60,000, by way of a lump sum for the full amount, to Slick Finance Ltd, a company unconnected with Duncan Ltd. The loan was originally advanced in 2005.
- iv. In January 2013, the company granted a floating charge to High Street Bank plc. The existing bank overdraft on that date was £25,000 and it has now been repaid in full.
- v. In January 2011, the company transferred a freehold property into the ownership of Mrs Palmer, Mr Palmer's former wife, as part of a divorce settlement. No consideration passed to the company.

b) Outline the possible causes of action available in respect of the above matters, and how they might influence the creditors when considering Mr Palmer's proposal for a CVA. (10 marks)

(Total 15 marks)

24. a) Describe the main fiduciary duties of the directors in the period immediately prior to the commencement of a Creditors' Voluntary Liquidation. **(3 marks)**
- b) ABC (Southern) Limited ("the Company") recently went into Creditors' Voluntary Liquidation and your Partner was appointed liquidator. During the Section 98 meeting several of the creditors made various allegations about the directors' conduct leading up to the date of the meeting. During your investigations into the Company's affairs it was established that the directors had conducted themselves in an unfit manner. What should you do and to what extent? **(4 marks)**
- c) If the Disqualification Unit decides to pursue matters further following your D1 Report being submitted what, if any, further information or assistance may be required and in what format? **(2 marks)**
- d) The directors of XYZ Company Limited ("the Company"), which is to enter into Creditors' Voluntary Liquidation, have indicated to your Partner prior to the Section 98 meeting that they intend to make an offer to purchase the business and assets of the Company. In accordance with SIP 13 detail what information should be disclosed to the creditors of the Company regarding any sale of the business and assets to its directors? **(4 marks)**
- e) Your Partner has requested you to prepare a letter to the directors of the Company outlining their legal obligation(s) and possible risk(s) they expose themselves to should their purchase of the business and assets of the Company prior to the Section 98 meeting be proceeded with. **(2 marks)**

(Total 15 marks)

25. You have been asked by your principal to attend a meeting in two hours' time with the directors of a company who are considering placing the company into Administration. Your partner has asked you to prepare a note summarising:
- a) key matters to be taken into account when considering placing the company into administration. **(10 marks)**
- b) the processes by which an Administration may be terminated. **(5 marks)**

(Total 15 marks)