



INSOLVENCY PRACTITIONERS ASSOCIATION

CERTIFICATE OF PROFICIENCY IN CORPORATE INSOLVENCY ENGLAND & WALES

Examination 8 June 2018

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 2018.

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. Following the making of a winding-up order what value of creditors is required to request a decision procedure to be instigated for the removal of the Official Receiver ("OR") as Liquidator?
- a) 10% of creditors' claims in value
- b) 25% of creditors' claims in value
- c) > 10 creditors, 10% of creditors in value or 10% in number of creditors
- d) None of the above
2. If in a Creditors' Voluntary Liquidation ("CVL"), a creditor has opted out of receiving further communication, which of the following documents need not be sent to them?
- a) Notice of intended dividend
- b) Change in details of the office holder's address
- c) A final progress report
- d) Notice of a block transfer order
3. Where a liquidator uploads documents onto a website, for how long must they remain available for?
- a) 2 months from the date that the documents were uploaded
- b) 2 months from the date of the liquidator's release from office
- c) 2 months from the date of the dissolution of the company
- d) 2 years from the date of the liquidator's release from office
4. A liquidator in a Compulsory Winding-Up ("CWU") is released from office following what?
- a) 8 weeks after the date of the final account has been filed and no objections have been raised
- b) The filing of the final account with the Secretary of State
- c) 14 days after the date of the final account
- d) Upon filing of the applicable notice in Court and Registrar of Companies
5. How far in advance of the decision date should all the information relating to the company's history and statement of affairs be made available to creditors pending a Section 100 the Act appointment of a liquidator?
- a) At least 1 business day
- b) At least 2 business days
- c) At least 5 business days
- d) At least 7 business days

6. What period of time must creditors be permitted to consider the draft final report of a CVL liquidator?
- a) 4 weeks
 - b) 6 weeks
 - c) 8 weeks
 - d) 12 weeks
7. A liquidator of a company in a CWU has realised an asset and received the sum of £6,400 after payment of the costs of realisation. Within what time period must they remit this sum to the Insolvency Services Account?
- a) Immediately
 - b) Within 7 days of receipt
 - c) Within 14 days of receipt
 - d) Within 25 days of receipt
8. Within how many days after a proposal for a Company Voluntary Arrangement (“CVA”) being rejected by creditors must a report of the outcome of the meeting be submitted to the Court?
- a) 2 business days
 - b) 4 business days
 - c) 6 business days
 - d) 7 business days
9. When must a liquidator submit his report on the conduct of the directors to the Secretary of State, following the liquidator forming the opinion that the company is unable to pay its debts in the case of a member’s voluntary liquidation (“MVL”) which has been converted to a CVL?
- a) Within one month
 - b) Within three months
 - c) Within six months
 - d) As soon as reasonably practical
10. Within what timeframe must a transaction have taken place to enable a liquidator to potentially bring a preference recovery action against a connected party pursuant to Section 239 the Act?
- a) 6 months
 - b) 12 months
 - c) 24 months
 - d) 36 months

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. In accordance with SIP 3.2, what matters should the insolvency practitioner comment on in their report on the proposed CVA?

1 mark per point up to 2 marks

12. Following the adjudication of the creditors' claims in a CVL your principal has asked you to reject specific claims. What should you do?

½ mark per point up to 2 marks

13. Upon what grounds can a creditor submit an application to Court to challenge the decision of a CVA?

1 mark per point up to 2 marks

14. Who may be summoned by the OR to appear before the Court for a public examination in a CWU?

½ mark per point up to 2 marks

15. Before the making of a winding-up order the petitioner may apply for the appointment of a provisional liquidator to preserve the assets and records of the company. Name two other duties of a provisional liquidator.

1 mark per point up to 2 marks

16. What information should be included in a winding-up petition (Form 4.2)?

½ mark per point up to 4 marks

17. During the administration of Relax Sofas Limited ("the Company") the administrators have realised various assets of the business as detailed below.

In accordance with SIP 7 and good practise, how should the following transactions be reported in your receipts and payments?

- i. The total sum of £16,500 has been paid to the landlord in respect of the Company's former trading premises. £12,250 relates to rent arrears and the balance is in respect of the rent due during the administrators' period of occupation.
- ii. Stock with a value of £32,650 was returned to suppliers who had valid retention of title claims, although you did also pay the sum of £2,500 to another supplier in order to secure title to the stock supplied by him.
- iii. Amounts totalling £5,330 were received and disbursed to the former employees under the Employment Protection Act. You received a fee of £250 plus VAT for your work as the employer's representative.
- iv. Fixtures and fittings were sold by your agents for the sum of £8,750 (including VAT). After deducting his charges of £3,875 (including VAT) the agent sent you via bank transfer the sum of £4,875.

½ mark per point up to 4 marks

- 18.** Detail what types of disbursements can be charged to an insolvency estate and what authorisation if any, is required prior to drawing them.

½ mark per point up to 4 marks

- 19.** What debts are specifically excluded as a provable debt in a liquidation?

1 mark per point up to 4 marks

- 20.** SIP 16 was introduced to counter concerns of creditors that pre-pack sales were not in their best interests. An insolvency practitioner involved in a pre-pack sale is to keep detailed records of the reasoning behind the decision to undertake a pre-pack sale.

As part of administrator's statement he is required to disclose specific information to the creditors in explanation of a pre-pack sale.

Requirement;

Excluding any details in relation to the transaction itself, what other information should be disclosed by the administrator?

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 has just been appointed administrator of Herbert UK Limited, and has asked you to prepare a note detailing the following;

a) The steps he should take to notify and advise his appointment as administrator.

½ mark per point up to 2 marks

b) Section 47 of the Act states that as soon as reasonably practical after appointment the administrator shall send a notice to one of more relevant persons to provide a statement of affairs of the company.

Requirement;

Who are such “relevant persons” and what is the period of time in which such a person shall deliver the statement of affairs?

1 mark per point up to 4 marks

c) In addition to the matters set out in paragraph 49 of Schedule B1 to the Act, what other information should be included in the proposal to be sent creditors.

½ mark per point up to 9 marks

Total 15 marks

22. a) Mrs Hope Full is a director of Every Cloud Silver Lining Limited (“Every Cloud”). She has recently visited your offices because she is concerned that she will not have sufficient funds available to pay the staff at the end of the month.

Every Cloud is a family run business and was set up by Mrs Full’s mother over 50 years ago. Recently the company won a lucrative contract with Good Sleep Limited, a national chain of 36 hotels. The contract is due to commence on 1 July 2018, and involves replacing all of the curtains at each of the hotels. Under the terms of the contract one hotel needs to be upgraded every month for the period of 3 years.

The total contract price is £576,000 with payments of £16,000 to be made monthly in arrears. Mrs Full confirms that monthly sales to other customers have recently declined and are now about £2,000 per month.

The company trades from rented premises and is currently paying rent of £12,000 per annum while business rates are £500 per month, and has been paid up until 31 May 2018.

Sewing machines and stock have been valued at £10,000.

Every Cloud employs 3 staff. Mrs Full is not considered an employee. All staff are paid monthly and the total gross salaries are £4,000 per month.

If the business were to close on 30 June 2018, staff would be owed the following:

Staff member	Arrears of wages - £	Holiday Pay - £
Mrs Empty	1,000	100
Miss Cold	1,000	NIL
Miss Happy	1,000	100

In order to fulfil all the orders Mrs Full believes that materials will cost £8,000 per month with other overheads totalling £800 per month.

The company currently has the following other liabilities:

	Amount (£)
Suppliers	34,000
HM Revenue & Customs	30,000
Mrs Full	10,000
Utilities	1,400
Stitch Bank - Loan	20,000

Mrs Full has advised that she has provided a personal guarantee to Stitch Bank in respect of the loan, and is currently paying monthly repayments of £500.

Mrs Full is very keen that the business does not close and has agreed that should the creditors agree to the CVA she would waive her right to a dividend.

Requirement;

Your principal has asked you to produce an estimated outcome statement comparing the likely return to creditors in a CVA and a CVL, assuming that both procedures commence on 1 July 2017. Show all workings and assumptions made. Advise what, if any, additional information is needed from Mrs Full.

In preparing the comparison, you should assume the following;

CVA expenses

- Nominee's fee is £4,000
- Supervisor's annual fee is £2,000
- Other costs including advertising and bond total £500

CVL expenses

- Statement of affairs fee is £6,500
- Liquidator's fees is £10,000
- Agent's fees are expected to be 10% of any proceeds
- Other costs including bond, insurance and advertising total £750

VAT should be ignored.

10 marks

- b)** As part of your conversations with Mrs Full she has advised that if creditors decide to rejected her proposal for a CVA she will have no other alternative but to place the company into liquidation, and that she would be inclined to set-up a new company with a similar name in the hope to secure the future contract with Good Sleep Limited.

Requirement;

Advise Mrs Full of the provisions as set-out pursuant to Section 216 and 217 the Act, and the restrictions applicable in potentially re-using a company name which is similar to Every Cloud, and also what steps she should take if she wants to use a similar name.

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.** Your principal has recently agreed to assist the directors of COBRA Limited (“the Company”) in placing the Company into CVL pursuant to Section 100 of the Act, and has asked you to set out in a memorandum the following;
- a)** The procedure to be followed to appoint a liquidator;
 - b)** Information to be provided to creditors prior to the creditors making a decision on the appointment of the liquidator; and
 - c)** The options available to creditors if they disagree with the decision process chosen by the directors.

½ mark per point up to 15 marks

Total 15 marks

- 24.** Your principal was appointed out of Court by the directors, as administrator of Go Green Plants Limited (“the Company”) on 25 June 2017.

You are aware that the anniversary of the administration is due shortly, and your principal has asked you to prepare a memorandum outlining the different options available for bringing an administration to a close, detailing briefly the circumstances in which each option would be most relevant.

½ mark per point up to 15 marks

Total 15 marks

25. a) The directors of Clothes Direct Limited (“the Company”) have approached your principal for some advice. The Company currently has a number of high street retail outlets throughout the UK and also a warehouse located just outside Cardiff. All of the premises are leased.

The Company has been experiencing cash-flow problems for a number of months mainly due to current market conditions within the retail sector, and also unforeseen delays and costs incurred during a recent expansion plan in opening a new retail outlet in Birmingham.

The directors are confident that once the new retail outlet is up and running in the next four months, that the Company will swiftly return to profitability. However with landlords and various other unsecured creditors threatening to take action, the directors would like to propose a CVA whereby the creditors will be paid in full.

Requirement;

Consider and detail the potential advantages and disadvantages of a CVA.

½ mark per point up to 7 marks

b) The directors having considered their various options decide to proceed with a CVA, and your principal has agreed to be the nominee.

Having recently received a copy of their proposal your principal has asked you to set out what matters he is required to comment on as part of his nominee’s report, and by when.

½ mark per point up to 8 marks

Total 15 marks