

**INSOLVENCY PRACTITIONERS ASSOCIATION**  
**CERTIFICATE OF PROFICIENCY IN PERSONAL INSOLVENCY**

**Examination 6 December 2013**

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**INSOLVENCY**

**(3 HOURS)**

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- 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.**

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1. What is the relevant time for payment to an associated creditor of a bankrupt to be considered as a preference?
- a) 6 months pre bankruptcy order
  - b) 6 months pre bankruptcy petition
  - c) 2 years pre bankruptcy order
  - d) 2 years pre bankruptcy petition
2. What is the 'official exchange rate' 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. Where an undischarged bankrupt proposes an IVA, which one of the following does not need to be given notice of the application to court for an interim Order?
- a) Nominee
  - b) Official Receiver
  - c) Creditors
  - d) Trustee
4. How much does the registration with the Secretary of State of an approved IVA cost?
- a) £5
  - b) £15
  - c) £35
  - d) £50

5. Which one of the following is not an acceptable reason for a trustee in bankruptcy to resign from office?
- a) Intends to cease to practice as an IP
  - b) Ill health of the trustee
  - c) Conflict of interest which makes discharge of the trustee's duties impracticable
  - d) Lack of realisable assets in the estate
6. In a bankruptcy estate, if a spouse or civil partner at the date of bankruptcy has money owed to them, which is a bankruptcy debt, their claim is 'deferred'. If a dividend is payable from the estate, where does this deferred claim rank?
- a) After payment of preferential debts in full
  - b) After payment of preferential debts and unsecured debts in full
  - c) After payment of preferential debts, unsecured debts and statutory interest in full
  - d) No dividend is payable
7. If the chairman of a creditors' meeting in a bankruptcy wishes to suspend the meeting for any reason, are they able to do so?
- a) No – the meeting cannot be suspended and is deemed to have been held and completed
  - b) No – the meeting cannot be suspended, only adjourned
  - c) Yes – the meeting can be suspended for a period of up to one hour
  - d) Yes – the meeting can be suspended for any reasonable length of time as the Chair decides
8. A debtor is an un-discharged bankrupt but is proposing an IVA. He applies to Court for an Interim Order and has to serve notice of the hearing. Which one of the following does not need to be served with notice?
- e) Nominee
  - f) Official Receiver
  - g) Creditors
  - h) Trustee
9. In a creditors' meeting to approve an IVA a claim is received for an unliquidated amount. What value should the chairman place on the claim?
- a) The amount on the claim form
  - b) £0
  - c) £1 unless the chairman agrees a higher amount
  - d) £1

**10.** To be able to apply for a Debt Relief Order, what is the maximum amount of debt that an individual may owe?

- a) £5,000
- b) £10,000
- c) £15,000
- d) £20,000

**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. What are the criteria for a creditor to be eligible to be a member of a creditors' committee in a bankruptcy? **(2 marks)**
12. On what grounds may a Debt Relief Order be revoked? **(2 marks)**
13. What are the bases on which a trustee in bankruptcy's remuneration may be approved? **(2 marks)**
14. A Supervisor of a protocol compliant IVA can issue a completion certificate if (s)he believes that the debtor has substantially complied with the terms of the IVA. For the debtor to be able to obtain a completion certificate of 'substantial compliance' what must the debtor have done? **(2 marks)**
15. What are the main criteria that apply to a creditor's claim for the creditor to be able to present a bankruptcy petition at court? **(2 marks)**
16. A protocol compliant IVA will last to the end of the period as set out in the proposal (as modified). If an IVA does need to be extended, how do the Standard Conditions advise that this can be achieved? **(1 mark each to a maximum of 4 marks)**
17. What matters must be covered in a Trustee's report on an annulment application made under S282(1)(b) of the Act (payment in full)? **(1/2 mark each to a maximum of 4 marks)**
18. After the creditors' meeting to consider a debtor's IVA proposals, the Chairman of the meeting has to prepare a report to be sent to creditors and (where necessary) to the Court. What are the contents of the report as set out under Rule 5.27 of the Rules and what are the time limits for the notice to be sent? **(1/2 mark each to a maximum of 4 marks)**
19. Bob, a self-employed builder, has come to see you for advice on his personal financial position. He owes £4,750 on various store and credit cards. A review of his personal income and expenditure indicates that he can afford to contribute £150 per month towards paying off his debts. He owns his own property and estimates that there is £15,000 of equity available.
  - a) Would you advise Bob to enter into a DMP or an IVA? Give your reasons why. **(2 marks)**
  - b) Would your answer at a) differ if Bob's debt levels were actually £44,750? Give your reasons why. **(2 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. Your principal has just returned from a meeting with John Parker, a self-employed management consultant. Mr Parker is married with three young children aged 5, 7 and 10. Mrs Parker does not work but, because Mr Parker works very long hours and often works away from home for prolonged periods, she does his book-keeping for him and manages the family finances.

Over the last two years, due to the recession, Mr Parker has had to cut his daily rate, which has had a significant impact on his income and he has been using his credit cards and loans to plug the gap. Over the last six months he has been unable to service the minimum payments to his creditors which are as follows:

XYZ Credit Card	£14,235
Southdown Bank Loan	£23,491
Storecard PLC	£3,519
Westgate Financial	£17,857
Bluedog loans	£15,266
Direct Collection Company	£18,512
Total	£92,880

Mr Parker has filed his VAT returns but owes HM Revenue & Customs (HMRC) £13,450 in respect of VAT, interest and penalties because he was unable to pay when he filed his last three returns. HMRC have recently written to him threatening to take action against him. He has, however, made both of his payments on account of income tax and is therefore up to date with that. Given the decrease in his daily rate and, therefore, his turnover he has now de-registered for VAT.

The matrimonial home is jointly owned and has recently been valued at £250,000, however, there is a mortgage of £220,000 outstanding with a monthly instalment of £812 per month. If the property were to be sold it is estimated that estate agents fees on the sale would be 1.5% of the value plus VAT and conveyance costs would be £750 + VAT.

Mr Parker also owns a five year old Saab, worth £4,000, which he uses for his business.

Mr Parker's minimum monthly payments in respect of his debts are £1,200 per month. Your principal has calculated that, after allowing for his ongoing tax obligations, Mr Parker has a disposable income of £3,400 per month. His outgoings, including the mortgage payment, are £3,000, all of which your principal is confident would be regarded as reasonable if Mr Parker were to go bankrupt and a trustee were to seek an income payments order, which are estimated at being at 75% of the surplus income. Your principal thinks solicitors' costs for acting for the trustee on an application for possession and sale would be £3,000 plus VAT.

The Nominee's fees will be six months' worth of IVA instalments and Supervisor's fees will be 20% of realisations excluding instalments used for the Nominee fee. The Trustee's fees are calculated on the scale rate as per Schedule 6 of the Insolvency Rules.

**Prepare an estimated outcome statement comparing the likely outcome in a bankruptcy with what you think could be achieved for creditors in an IVA (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)** Tim Rose trading as Summer Orchard Cider has prepared a proposal for an Individual Voluntary Arrangement (IVA) and has 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 an IVA and explain how the votes of associated creditors affect this. **(2 marks)**
  
  - f) If the IVA 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.** Your principal has been appointed trustee in bankruptcy of the estate of Andrew Dodge, a struck off solicitor. According to the Official Receiver's report to creditors, Mr Dodge has no assets and liabilities of £2 million. You have been consulted by some of his creditors who believe that Mr Dodge has disposed of assets to relatives and has salted money away. You explain to the creditors that a trustee in bankruptcy has extensive powers of investigation and you would be willing to act as trustee.

Taking into account the investigative powers of a trustee in the Act, set out the practical steps you would take to investigate the background to Mr Dodge's affairs and to identify possible assets which might be recoverable for the estate on behalf of creditors. You should also comment on the bankrupt's duties to you as trustee. **(15 marks)**

**24. a)** In accordance with the IVA Protocol, the debtor is to provide an expenditure statement to the Nominee. Certain items of expenditure require formal verification. What are these items and what verification is advised in the Protocol as adequate?

**(1/2 mark per item and 1/2 mark per verification to a maximum of 5 marks)**

**b)** Under a Protocol Compliant IVA the debtor's net worth in a property should be considered for realisation. What are the limits on a re-mortgage to release the net worth as set out in the Protocol? **(5 marks)**

**c)** Your principal is the Supervisor of a Protocol Compliant IVA and needs to consider the debtor's net worth in a property as the IVA is 54 months old. He has asked you to advise him on the following:

i) If the debtor is unable to obtain a re-mortgage, what discretion does the Supervisor have to accept alternative proposals from the debtor? **(2 marks)**

ii) What detail does he as Supervisor have to provide to the debtor regarding the potential net worth to be released under the Protocol? **(3 marks)**

**(Total 15 marks)**

**25. a)** Your principal has been appointed trustee in bankruptcy of an individual. Prepare a memo for your principal setting out:

- i) who he has to notify under section 283A of the Act of any interest he has as trustee in any family property disclosed in the Official Receiver's report to creditors,
- ii) what time limits apply for him to deal with his interest and what will happen if he does not deal with it in that time period, and
- iii) what his options are for dealing with his interest. **(5 marks)**

**b)** Your Principal is trustee in bankruptcy of Abigail Jones, a hairdresser, married to Tony Jones, an accountant and the major earner. Abigail works whilst their two children are at school to have her own income. They jointly own their home valued at £350,000 with a mortgage of £250,000 and a second charge of £25,000 to XYZ Bank plc to secure Abigail's business overdraft which she used to purchase a car and her styling equipment.

Calculate the likely value of the interest in the family home which falls into the estate based on the above. **(5 marks)**

**c)** List the initial steps to be taken when your principal has been appointed to a new bankruptcy where the main asset is an interest in a jointly owned family home. **(5 marks)**

**(Total 15 marks)**