

JOINT INSOLVENCY EXAMINATION BOARD

*Joint
Insolvency
Examination
Board*

Joint Insolvency Examination (Scotland)

Monday 4 November 2013

LIQUIDATIONS

(3.5 hours)

ANSWER ALL FOUR QUESTIONS

EACH QUESTION CARRIES TWENTY-FIVE MARKS

SUBMIT ALL WORKINGS

The Examiner will take account of the way material is presented. Candidates should answer the questions set - and marks will not be awarded for extraneous material.

Note: References to legislation are to that which was in force on 30 April 2013. References to 'the Act' are to the Insolvency Act 1986 as amended.

References to Sections, Schedules and Rules are to Sections and Schedules of the Act and to Rules of the Insolvency (Scotland) Rules 1986 as amended.

References to Sections and Rules of other Acts, Regulations and Orders will mention the Act, Regulation or Order.

Requirements

- 1a **State the fundamental principle of the Act that a Liquidator must follow when making a distribution of a company's property. (2 marks)**
- 1b You were appointed Liquidator of Troilus Limited ("the Company") on 2 October 2013 following meetings of members and creditors on that date. All of the assets of the Company were sold at auction last week and there is now £40,000 in the Liquidation bank account.

The creditors on 2 October 2013 were:

Secured	
Village Bank Plc	£ 18,000
Preferential	
Arrears of wages due to 30 employees	£ 14,000
Unsecured	
400 creditors	£200,000

Village Bank Plc has a floating charge over all of the assets and undertaking of the Company. The charge was created on 15 June 2009. The arrears of wages represents the September payroll, no employee was owed over £750.

The costs of the Liquidation to date that have not been paid, and which include Liquidator's remuneration, are £5,000. In addition, the costs of agreeing and paying the preferential creditors are estimated to be £1,000 and the costs of agreeing unsecured creditors' claims and distributing to those creditors is estimated to be £3,000.

Requirements

Assuming that the Liquidator agrees all of the creditors' claims, set out the total amount available to each class of creditor and specify the rate of dividend to be paid to each class of creditor. In the above circumstances, explain the problems and solutions that the Liquidator may identify before paying a dividend. (6 marks)

- 1c You were appointed Liquidator of Cressida Plc ("the Company") on 11 October 2012 following meetings of members and creditors on that date. You have sold all of the assets of the Company and, taking into account the further expenses of the Liquidation, there is £250,000 available for distribution to the creditors. Unsecured creditors, totalling £50,000, have been admitted for dividend.

You have the following information about the outstanding claims:

- The Liquidator has received a claim from Castor for £1,000. Castor has agreed with Pollux, who is a creditor of the Company, that it will act as surety for its debt with the Company. Pollux has submitted a statement of claim for £1,000 that the Liquidator has already admitted for dividend.
- The Company made the following employees redundant: Alf on 13 July 2012 and Bert on 11 October 2012. Neither was given any notice of redundancy and, with the help of their Trade Union applied for, and were granted, protective awards by Employment Tribunals on 3 October 2012 and on 30 December 2012 respectively. Alf was awarded £2,000 and Bert was awarded £3,500.

- The Trustees of the Company's final salary pension scheme ("the Scheme") wrote to the Liquidator in October 2012 stating that they estimated the shortfall to be £100,000. The Pension Protection Fund (PPF) assumed responsibility for the Scheme and the assessment period is coming to an end. The PPF has indicated that it is carrying out a revaluation of the Scheme.
- Dizzy, a director and 75% shareholder of the Company, has submitted a claim for £16,000. The claim comprises payments of £10,000 Dizzy made in June 2012 to a supplier of the Company and £6,000 for arrears of holiday pay.
- Floaty Limited, a Company whose sole director and shareholder is Dizzy, has submitted a claim for £12,000.
- Happy Limited had not initially received notification of the Liquidation and has submitted a late claim for £13,000. The claim is for services supplied to the Company on the following dates:

5 May 2006	£2,000
12 April 2008	£3,000
4 November 2011	£8,000

- Wishywashy Limited has submitted a claim for £20,000 for building work carried out for the Company during April 2012. Wishywashy Limited's contract with the Company states that Wishywashy Limited's entitlement to payment must be accompanied by an architect's certificate. No architectural inspection has been carried out.
- ABC Solicitors have written to the Liquidator on behalf of their client, Colin, who was employed by the Company from May 1980 to November 1990. Colin has recently been diagnosed with deafness due to exposure to loud noise. ABC Solicitors explain that Colin could only have been exposed to loud noise while operating heavy machinery working for the Company. Colin is claiming £400,000.

Requirements

For each of the items listed set out, with reasons, whether there is an admissible claim for dividend and, if so, in what amount. Where necessary, your answer should include the further steps that the Liquidator should take in ascertaining whether there is, or may be, a valid claim and, if so, in what amount. (17 marks)

(25 marks)

NOTE: Ignore VAT

2. Mr and Mrs Daffodil are shareholders and directors of Thorny Limited (“the Company”) and they wish to retire. They have come to you for advice on the best way to release the capital from the Company.

The Company has traded for over thirty years selling second hand motorcycles from premises in Aberdeen and Dundee. Mr and Mrs Daffodil provide you with the following information:

The Company’s balance sheet at 31 October 2013 is:

Assets	£’000	£’000
Fixed assets		
Heritable property	2,500	
Leasehold property	250	
Plant, furniture and equipment	110	
Motor vehicles	<u>160</u>	3,020
Current assets		
Stock		
- used motorcycles	1,000	
- parts	170	
- clothing	30	
Debtors	700	
Petty cash	<u>2</u>	<u>1,902</u>
		<u>4,922</u>
Creditors – amounts due in less than one year		
Trade creditors less than one year	(400)	
Happy Motors Finance Plc	(20)	
Speedy Motorcycle Finance Plc	(100)	
VAT	(300)	
PAYE	(200)	
Mr Daffodil’s loan	(150)	
Bank overdraft	<u>(800)</u>	(1,970)
Creditors – amounts due in more than one year		
Happy Motors Finance Plc	<u>(60)</u>	<u>(60)</u>
		<u>2,892</u>
Share capital		
£1 ordinary shares	2	
5% preference shares	1,000	
Revaluation reserve	1,000	
Profit and loss account	<u>890</u>	<u>2,892</u>

- The heritable property is in Aberdeen and is included in the accounts at its current valuation. In June 2013 Mr Daffodil arranged for a valuation to be carried out. The property is in a fashionable part of Aberdeen and has increased over three times in value since its last valuation 10 years ago. The capital gains tax on the sale of the property is estimated to be approximately £400,000;
- The leasehold property is in Dundee. There are 5 years left on the lease that was assigned to the Company in 2007. The rent is £10,000 per annum and there is no value in the lease;
- The motor vehicles are two cars used by Mr and Mrs Daffodil. They were purchased on finance through Happy Motors Finance Plc and are expected to realise 50% of their book value;
- Apart from two paintings, the plant, furniture and equipment are not expected to realise more than 10% of their book value. The two paintings have a book value of £10,000 but Mrs Daffodil considers that they will realise £50,000 at auction. Mrs Daffodil would like to keep the paintings;

- Mr and Mrs Daffodil are concerned that the stock of second hand motorcycles is over-stated in the accounts and expect other dealers to pay 60% of the book value;
- Speedy Motorcycle Finance Limited has provided finance for some of the second hand motor cycles;
- The stocks of parts and clothing are expected to realise 70% of their book value;
- Mr and Mrs Daffodil estimate that all of the debts are collectable except for one debt of £40,000;
- The bank overdraft is secured by a standard security over the heritable property and by a floating charge over the Company's assets and undertaking. The charge was registered on 5 June 2004;
- The preference shares were issued to Mrs Daffodil in 2001. The 2013 dividend, which was due in September 2013 has not yet been paid;
- Mr and Mrs Daffodil each own 50% of the ordinary share capital;
- The Company is still trading: there are two employees at the Dundee branch who have both worked for the Company for less than one year. Their wages were paid on 31 October 2013.

Requirements

- (a) **Set out the approximate calculations to demonstrate that a Members' Voluntary Liquidation is an option for the Company. Draft a report to Mr and Mrs Daffodil that explains, in easy to understand terms, your calculations. The draft report should also explain the principal uncertainties that could change your view, the consequences for Mr and Mrs Daffodil of the Company entering a Members' Voluntary Liquidation and the cost effectiveness of the procedure. (12 marks)**
- (b) **Set out the other options for realising the capital in the Company (in addition to Members' Voluntary Liquidation) that are available to Mr and Mrs Daffodil, taking into account Mrs Daffodil's desire to keep the paintings. For each option, set out its advantages and disadvantages. (10 marks)**
- (c) **Assume that the Company enters Members' Voluntary Liquidation. Set out the points for the Liquidator to consider if the Company receives a claim, exceeding £3 million, from the insurer of a purchaser of a motorcycle who had received substantial injuries in a road accident (that occurred before the Liquidator's appointment) and claiming that the motorcycle was not roadworthy when it was sold. (3 marks)**

(25 marks)

NOTE: Ignore VAT

3 Timon Limited (“the Company”) arranges entertainment and hospitality events. Its sole director and shareholder, Tim, takes little interest in the Company’s finances. Tim’s wife, Hilda, works two days a week for the Company as a marketing manager. Tim was surprised to receive a letter stating that you have been appointed Interim Liquidator of the Company. The Company was wound up on 18 October 2013 following a petition presented to the Court on 16 August 2013.

You have the following further information about the Company:

- 1) Since Tim and Hilda’s return from their annual holiday on 9 September, the Company had held an event for a client, Apa Limited. Apa Limited had paid £6,000 deposit in May 2013 but had not paid the balance due of £20,000.
- 2) The Company had two bank accounts and it had not granted any charges to either bank. Its main account was with Village Bank that had been overdrawn at around £40,000 for the past six months. The second account, with Tiny Bank, had had a credit balance of £8,000 for the past six months: this account was rarely used. During September, in order to complete the contract with Apa Limited, the Company had paid various suppliers £15,000 from its account at Village Bank including a cheque for £7,000 paid to Unhappy Caterers which had been returned by Village Bank as clearing it would have exceeded the Company’s overdraft limit of £40,000. On the same day that the cheque had been returned, Tim wrote another cheque for £7,000 to Unhappy Caterers from the Company’s account at Tiny Bank.
- 3) On Wednesday 25 September 2013, Village Bank stopped the Company’s various direct debits and standing orders which were paid on the last Friday of each month: the direct debits were £900 to Ensath Finance Plc and £40 to the Organisation of Hospitality Providers. The Company paid EnergyCo Plc by standing order; the last payment was £300 in August.
- 4) Tim and Hilda have not been paid their salaries for September or October (they are usually paid on the last Friday of each month). Tim’s monthly gross salary is £2,000 and Hilda’s is £400 per month.
- 5) The Company used two storage facilities, where Attachment Orders have been executed, and remain in place, on the Company’s equipment:
 - an outhouse in Tim’s garden was used for storing a bouncy castle and other play equipment that was used for children’s hospitality events. This equipment was worth £10,000. On 1 August 2013 sheriff officers executed the Attachment;
 - Tim’s father’s garage was used as a store for sound and lighting equipment, including a mobile disco used for hospitality events. This equipment was worth about £20,000. On 27 September 2013 sheriff officers executed the Attachment.
- 6) On 15 October the landlord, who was owed a quarter’s rent of £30,000, had entered the Company’s offices and changed the locks. The Company’s property in the offices comprised furniture and computer equipment with a book value of £20,000.
- 7) On 7 October 2013 agents, acting on behalf of Ensath Finance Plc, seized and took away the Company car. On 6 October, £21,000 was owed to Ensath Finance Plc; this sum included the arrears and future sums due under the contract. The car was subject to a charge to Ensath Finance Plc. The car was estimated to be worth £15,000 at auction.
- 8) Tim estimates that the Company’s creditors are approximately 800 in number and total £700,000. Apart from Ensath Finance Plc all of the creditors are unsecured.
- 9) Tim also estimates that there are uncollected debts of £60,000 (including £20,000 due from Apa Limited). Also included in debtors is £15,000 for work that had been booked by clients in July 2013 for events to take place in November and January 2013, these clients had not paid any deposits.

Requirements

- (i) Assuming that the Interim Liquidator is appointed Liquidator to the Company (and the necessary formalities following appointment have been completed) write a file note setting out the legal and practical implications arising from the specific circumstances of the Company. Your note should set out, with reasons, what steps, if any, the Liquidator should take and any realistic assumptions made. (19 marks)
 - (ii) Set out how the Liquidator of this Company should obtain authorisation for the basis of the Interim Liquidator and Liquidator's remuneration. (6 marks)
- (25 marks)

PLEASE TURN OVER FOR THE FINAL QUESTION

4. Ann and Barbara are Authorised Insolvency Practitioners and partners in Barbann Partnership (“the Practice”), specialising in Liquidations. The Practice employs a manager to assist in the general day to day case work.

At 31 October 2013 the number of outstanding cases was:

Liquidator(s):	Type		
	Members’ Voluntary Liquidation	Creditors’ Voluntary Liquidation	Compulsory Liquidation
Ann	5	10	15
Barbara	10	20	15
Ann and Barbara	5	30	25

Ann has not been at work for the last six months due to illness, but she has been available to sign essential paperwork if necessary: she wishes to retire due to ill health.

Barbara concentrates on obtaining work and marketing the Practice while Ann, with the assistance of the manager, concentrates on progressing the insolvency cases. The manager, who is not an Authorised Insolvency Practitioner and has been struggling to keep up with the workload due to Ann’s absence, resigned this morning.

The manager’s resignation was prompted by a number of issues:

- Last week, when Barbara was out of the office hosting an event at the races for various contacts, the manager assisted a director to chair a meeting of creditors called pursuant to section 98. At the same time and date, the manager was diarised to chair two final meetings of members in two separate Members’ Voluntary Liquidations;
- A firm of accountants often introduced distressed companies to the Practice; it then usually assisted the directors in preparing statements of affairs for the subsequent section 98 meetings of creditors. The fees paid for this service were much higher than the Practice charged when it prepared similar statements of affairs;
- Barbara had omitted some creditors from the list of creditors circulated when calling another section 98 meeting, as she believed that they would vote for a Liquidator from another firm;
- Correspondence on several cases had not been answered for months;
- Several progress reports had not been sent out on time;
- Several filings at Companies House have been late;
- The Practice client account cash book did not reconcile with the bank statement; and
- A creditor of one case has contacted Barbara’s recognised professional body complaining that a dividend has been not been paid despite funds apparently being available.

Requirements

- (a) **Taking into account current practice and guidance, set out the legal and ethical issues that have arisen in the Practice and set out what may be done to resolve them; (15 marks)**
- (b) **Set out the steps that Ann should take in respect of the cases in which she is Liquidator before she retires from the Practice on the grounds of ill health. (10 marks)** **(25 marks)**