



CANDIDATE NUMBER.....

INSOLVENCY PRACTITIONERS ASSOCIATION
CERTIFICATE OF PROFICIENCY IN INSOLVENCY

Examination 15 June 2012

INSOLVENCY

(3 HOURS)

Part A: All questions to be answered

Part B: All questions to be answered

Part C: 2 questions to be answered

The questions in Part A carry the marks as indicated

All questions in Part B and Part C carry 15 marks

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 Part B and Part C questions in the ICSA booklet(s) 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 2012.

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 the answer booklet(s) using the treasury tag provided.

Candidates should remain seated until the Invigilator has collected the tagged question paper and answer booklet(s). 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

CANDIDATE NUMBER.....

MULTIPLE CHOICE

THE CORRECT ANSWER TO EACH OF THE QUESTIONS IS TO BE INDICATED BY PLACING A CROSS IN THE APPROPRIATE BOX.

FOR QUESTIONS 1 TO 10 ONLY ONE ANSWER IS REQUIRED. THERE IS ONE MARK FOR EACH OF THOSE QUESTIONS.

FOR QUESTIONS 11 TO 20 EACH QUESTION CARRIES THE MARKS INDICATED

1. **What SIP deals with the presentation of financial information in insolvency proceedings?**
- a) SIP 1
 - b) SIP 7
 - c) SIP 10
 - d) SIP 13
2. **Within what period following the last day for proving should a Liquidator deal with every creditor's proof by admitting or rejecting it in whole or part?**
- a) 4 months
 - b) 14 days
 - c) 5 days
 - d) 2 months
3. **Where an Interim Order is in force, which one of the following statements is not true?**
- a) No bankruptcy petition may be presented against the debtor
 - b) No possession proceedings may be commenced against the debtor's property by a mortgagee
 - c) No execution or legal process may be commenced or continued without leave of Court
 - d) No landlord may exercise any right of forfeiture by peaceful re-entry without leave of Court



CANDIDATE NUMBER.....

4. **What is the 'relevant time' period for a transaction that may be challenged as a preference under S340 of the Act against an associate of the bankrupt?**
- a) 2 years immediately preceding a bankruptcy order
 - b) 2 years immediately preceding a bankruptcy petition
 - c) 6 months immediately preceding a bankruptcy order
 - d) 6 months immediately preceding a bankruptcy petition
5. **Within how many days are an Administrator's proposals deemed to have been accepted following the circulation of the statement of his proposals and where no creditors' meeting has been convened or such a request for a meeting has been received?**
- a) 7 days
 - b) 28 days
 - c) 8 business days
 - d) 5 business days
6. **Which one of the following are not entitled to view the proofs of debt lodged with a Trustee?**
- a) A creditor who has submitted a proof
 - b) A person acting on behalf of a creditor who has submitted a proof
 - c) The debtor
 - d) A creditor who has a claim but has not yet lodged a proof
7. **Which of these is not one of the objectives of Administration in accordance with Paragraph 3(1) of Schedule B1?**
- a) realising property in order to make a distribution to one more secured or preferential creditors
 - b) to enable a sale of the business as a going concern
 - c) rescuing the company as a going concern
 - d) achieving a better result for the company's creditors as whole than would be likely if the company were wound up



CANDIDATE NUMBER.....

8. Who is not entitled to propose a Company Voluntary Arrangement?

- a) The liquidator
- b) The administrator
- c) The directors
- d) The company

9. Which is a power of a Liquidator exercisable with sanction?

- a) To sell the Company's property by public auction
- b) To raise on the security of the assets of the company any money requisite
- c) To pay any class of creditors in full
- d) To do all such other things as may be necessary for winding up the company's affairs and distributing its assets

10. Where the Directors of a Company wish to obtain a Moratorium, they must supply information to the Nominee. The Nominee must then opine by submitting to the Directors a statement. Which of these are not included in the Nominee's statement?

- a) Meetings of the Company and its Creditors should be summoned to consider the proposed voluntary arrangement.
- b) The proposed voluntary arrangement has a reasonable prospect of being approved and implemented
- c) The Directors have made a full disclosure of the Company's affairs
- d) The Company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on business.



CANDIDATE NUMBER.....

11. SIP 2 dictates that an initial assessment of whether there could be any matters that might lead to recoveries for the estate should be undertaken in every insolvent Liquidation and Administration. What steps should be taken to reach a position to make this initial assessment?

(1/2 mark per point up to a maximum of 2 marks)

12. On what grounds may the Court annul a bankruptcy order under S282 of the Act?

(2 marks)



CANDIDATE NUMBER.....

13. When is an Administrator required to send a progress report to creditors?

(1/2 mark per point up to a maximum of 2 marks)

14. In a protocol compliant IVA what do the standard conditions state is the discretion given to the Supervisor with regard to the admission of claims in an Arrangement?

(2 marks)



CANDIDATE NUMBER.....

15. What authority does a liquidator require prior to issuing legal proceedings in respect of a preference, where there are floating charge realisations but it is expected there will be a shortfall to a floating charge creditor?

(2 marks)



CANDIDATE NUMBER.....

NOTE: 4 mark questions

- 16. What are the powers of the court on a successful application to challenge the decision of a meeting of creditors to approve a CVA?**

(4 marks)

- 17. What must be included in the Notice of Appointment of an Administrative Receiver?**

(4 marks)



CANDIDATE NUMBER.....

18. What insolvency options are available for a creditor to pursue who has an unpaid debt due from a partnership business (not an LLP)?

(4 marks)

19. Provided a debtor is domiciled in England & Wales and is not an undischarged bankrupt or subject to any IVA or bankruptcy proceedings, name four other conditions to be met for a debtor to be granted a Debt Relief Order?

(4 marks)



CANDIDATE NUMBER.....

20. Who may not represent a member of a Creditors' Committee in an Administration?

(4 marks)



PART B

CANDIDATE NUMBER.....

BOTH QUESTIONS IN THIS SECTION ARE COMPULSORY

21. A partner John Smith, a sole trader, was made bankrupt on 3 January 2011 on the petition of the Commissioners of Revenue & Customs. You were appointed trustee in bankruptcy of the debtor's estate on 16 February 2011.

You have now progressed the bankruptcy to a position where it can be closed following a distribution to the creditors. The debtor did not submit to the proceedings and his wife defended the possession proceedings, albeit no costs were awarded against her.

The matrimonial home was sold for £187,800 and after paying the costs of sale of £5,600 and discharging the outstanding mortgage of £105,000 and a valid charging order of £7,800 against Mr Smith's share of the equity, the net proceeds were divided equally between the Trustee and the debtor's wife who was a joint owner. The trustee's net interest was paid into the Insolvency Service Account ('ISA').

Apart from the deposit on petition the only other realisations made by the trustee were a car for £7,000 and an insurance policy for £8,520. His tools of trade, valued at £1,000, were treated as falling within the provisions of S283(2) of the Insolvency Act 1986.

The non-VATable payments through the bankruptcy estate were the Official Receiver's costs of £1,715; Bond of £180; and Petitioning Creditor's Costs of £1,850. Payments for Statutory Advertising of £150, Agents' Charges of £1,200 and Legal Fees of £8,400 all included VAT.

Your outstanding time costs are £15,840 incurred over 103.25 hours at an average rate of £153.41 per hour. Your Category 2 disbursements are £135 for printing and photocopying and £85 for mileage.

At a meeting of creditors held on 15 May 2011 you sought to fix your remuneration in accordance with Rule 6.138(2)(b) of the Insolvency Rules 1986 on the basis of time costs with authority to draw Category 2 disbursements. The only creditor present or represented at that meeting approved the basis on time costs, but limited to a maximum of £12,000, excluding VAT. Category 2 disbursements were not approved.

You have received and admitted 16 claims totalling £94,020. This included one former employee who had no arrears of pay, but was entitled to two weeks' notice pay, two weeks' accrued holiday pay and three weeks' redundancy pay. His average wage was £7.50 per hour for a 40 hour week.

The debtor was not registered for Value Added Tax purposes.

Ignore ISA Banking Fees and Cheque Issue Fees.



CANDIDATE NUMBER.....

Requirement:

- a) Calculate the Ad Valorem Fee charged to the estate by the Secretary of State. Show your full workings. (5 marks)
- b) Calculate the dividend to Non Preferential Creditors. Show all workings. (4 marks)
- c) Prepare an Estimated Outcome Statement for presentation to the final meeting of creditors. (6 marks)

Total 15 marks



CANDIDATE NUMBER.....

22. Your partner has just returned from a meeting with the directors of Zep Music Limited who wish to place the Company into creditors' voluntary liquidation.
- a) Set out the sequence of statutory meetings required to place the Company into liquidation ahead of a meeting of creditors and the primary purpose of those meetings. (2 marks)
 - b) What are the requirements to give notice of a creditors' meeting? (4 marks)
 - c) What details should the notice to creditors contain? (5 marks)
 - d) What information are the directors required to lay before the creditors' meeting? (2 marks)
 - e) Under S99 of the Act a Company's statement of affairs must disclose what information? (2 marks)

Total 15 marks

**PART C****ONLY TWO QUESTIONS IN THIS SECTION ARE REQUIRED TO BE ANSWERED**

23. Rainbow Ltd

You are appointed Administrator in respect of Rainbow Limited. At the initial meeting to consider the Administrator's Proposals, a creditors' committee is formed comprising of 5 members.

Requirement:

- a) What are the Administrator's duties with regard to convening meetings of the committee? (4 marks)**

After the Proposals have been approved, the director of Rainbow Limited makes an offer for some of the assets of the company. His offer falls between the best case and worst case valuations that your professional advisers have indicated should be achievable and therefore you decide to seek formal approval to the sale from the Committee by way of a postal resolution.

Requirement:

- b) Set out the necessary procedure which should be followed. (4 marks)**
- c) The assets are sold to the director and you decide to make a full disclosure in your next report to creditors. What matters should creditors be advised of in this regard? (4 marks)**
- d) A member of the committee subsequently resigns. What options are available to the Administrator? (3 marks)**

Total 15 marks



24. Gail has been working on a self-employed basis as a horse dealer but as a result of purchasing horses which then failed vet checks when she tried to arrange sales has run into financial difficulty. She has incurred a number of debts with suppliers of feedstuffs, equipment, her farrier and vet. She has also used a number of credit cards and personal loans to pay for the rent for the yard from which she trades, vehicle hire, fuel costs, competition entry fees and also to help fund cash payments for horses she intended to sell on. She has been struggling to make ends meet for a couple of years now and realised some time ago that she had little prospect of being able to pay all her debts and faced the prospect of bankruptcy. The saddler for her business obtained a county court judgment for £10,000 four months ago and is threatening further proceedings. HMRC has also been threatening bankruptcy proceedings in respect of unpaid VAT and PAYE/ NIC. She has therefore taken steps to arrange her affairs to protect herself in the event that she is made bankrupt.

Her house was jointly owned with her husband but he agreed to the property being transferred into his sole name and took sole responsibility for the £150,000 mortgage. The total equity in the property at the time of transfer about a year ago was in the region of £120,000. Gail was not paid for her share of the equity as this was a transaction between husband and wife.

Gail transferred ownership of six horses worth between £2,000 and £10,000 each to two creditors who she wanted to make sure were not owed money if she ended up being made bankrupt. One of these was her mother who had made a personal loan of £15,000 to Gail several years ago and the other was the saddler who had obtained judgment, who was previously a friend who had supplied her with saddles and other equipment and with whom Gail had built up a debt of over £10,000. She transferred ownership of three horses to her mother about a year ago and the other three to the saddler three months ago.

Gail was served with a bankruptcy petition by HMRC following which she formed a limited company and transferred her remaining business assets, a horse box, equipment and four horses, to that company (without any payment being made) to avoid them falling into the hands of a trustee in bankruptcy. The total estimated value of these assets was £30,000. Because she will be made bankrupt it was agreed that her husband would be the sole director and shareholder of the company. The company has become the trading vehicle for Gail's business and she is an employee. After the bankruptcy is over, Gail believes the shares could be transferred to her so she would have the benefit of the company assets.

Requirement:

- a) **At the hearing of the bankruptcy petition a bankruptcy order was made and your principal has now been appointed trustee. You are reviewing the handover documents received from the Official Receiver and have been asked to prepare a note for the trustee setting out what assets could be claimed for the bankruptcy estate. You should state what types of claims may be made in each of the circumstances set out above, commenting on relevant timescales and matters which would need to be demonstrated to bring successful claims. (13 marks)**
- b) **How might the claims be pursued in the absence of funds in the estate? (2 marks)**

Total 15 marks

**25. Ashton Controls (1995) Limited (A Proposed Voluntary Liquidation)**

You have accepted instructions to assist the directors of Ashton Controls (1995) Limited to wind up the company under a creditors' voluntary liquidation. The meeting of creditors has been fixed for 30 June 2012.

Part of your engagement is to produce the company's statement of affairs and ancillary documentation for presentation to the S98 meeting of creditors.

The directors have provided you with the following information relating to the company's financial position:

- The last audited accounts as at 31 July 2011, (from where the book values for assets derive), showed an excess of liabilities over assets of £167,300. No dividends have been paid to the shareholders in subsequent periods.
- The company has a bespoke computer system designed by Control Designs with a book value of £50,000. Your agents have valued this at £17,000.
- The goodwill of the business has a book value of £150,000 and the directors consider it to have a realisable value of £100,000.
- Trade debtors have a book value of £275,000 and for the purpose of the statement of affairs there needs to be a specific provision for bad debts of £65,000 and a general provision for doubtful debts of 15%.
- The fixtures and fittings have a book value of £55,450 and your agents value them at £35,000.
- Control Designs holds a fixed charge over the computer equipment dated 24 November 2010. The amount outstanding under the charge is £32,000.
- ABL Lenders Limited holds a fixed and floating charge debenture dated 30 September 2011 and the amount due to them is £24,600.
- Midwest Bank was granted a fixed and floating charge debenture over the company's assets on 17 June 2005. The Bank entered into a Deed of Priority with ABL lenders to afford the latter priority for their full lending. The sum due to Midwest Bank is £362,000.
- Your investigations reveal that all charges have been properly registered at Companies House.
- The creditors include HMRC for PAYE/NIC of £228,300 and VAT of £35,200; trade creditors of £263,500; Directors' loans of £95,350; subcontractors of £36,750 and 20 employees owed £19,825 - being all holiday pay.
- The paid up share capital is £25,000 being ordinary shares of £1 each.

Requirement:



CANDIDATE NUMBER.....

- a) Prepare a summary of the Company's Statement of Affairs for discussion purposes with the Directors. Show your full workings. (10 marks)
- b) Prepare an Estimated Deficiency Account. Show your full workings. (5 marks)

Total 15 marks