

JOINT INSOLVENCY EXAMINATION

2008

Notes to Candidates

And

Syllabus for the Examination

NOTES TO CANDIDATES

1. Exam Eligibility

Candidates will be eligible to enter for the examination if:

- a. They are introduced by a professional body which is recognised under Section 391 and/or Section 389A of the Insolvency Act 1986 and meet the requirements of that body for entry to the examination; or
 - b. They are seeking an insolvency authorisation direct from the Secretary of State for Trade and Industry and meet any criteria for authorisation specified by the Secretary of State at the date on which they apply to sit the examination or can reasonably expect to do so within 2 years of that date.
 - c. They are seeking their insolvency authorisation direct from the Department of Economic Development in Northern Ireland and meet any criteria for authorisation specified by the Department of Economic Development at the date on which they apply to sit the examination or can reasonably expect to do so within 2 years of that date.
2. Candidates who have not yet passed any of the papers may opt to sit one, two or three of the papers at one sitting. They may normally only make five such attempts.
 3. Candidates who have passed a single paper at any sitting of the examination from 2007 onwards (but not before) will be allowed to carry forward that pass, but must pass the remaining two papers at the same sitting. They will have five years in which to pass the two papers.
 4. Candidates who have passed two papers at a single sitting will be allowed five years to pass the third.
 5. The Board retains discretion to vary the time limits set down in 2, 3 and 4 above in individual cases. Any candidate seeking concessionary treatment should write to the Secretary.
 6. The pass mark in each paper is determined by the Board but is no greater than 50%.

Assessment

7. The examination will consist of three papers each of three hours, with an additional 30 minutes reading time per session. The papers will be held in November each year (in 2008 the scheduled dates are 3, 4 and 5 November).
8. The subjects of the three papers will be

Liquidations

Administrations, Company Voluntary Arrangements and Receiverships

Personal Insolvency

9. The overall emphasis of the papers will be practical. There will be four compulsory questions on each paper, two questions attracting 20% of marks and two questions attracting 30% of marks.
10. The overall standard required will be such as to assess whether candidates have sufficient knowledge of insolvency law and practice to enable them to carry out the functions of an authorised insolvency practitioner. The standard will be broadly consistent with that required in the final qualifying examinations of the participating bodies.

Candidates are not required to have experience in insolvency practice but the examination is essentially practical and relevant experience is an advantage. Candidates will be expected to have the basic knowledge of taxation, accountancy and business law directly relevant to the performance of an office holder's duties in the practice of insolvency.

The ability to communicate is of particular importance for those practising insolvency; some marks will therefore be awarded for the demonstration of that ability. Candidates should have developed their communications skills so that, for example, they are proficient in drafting reports to banks and to the court and letters to the parties involved in insolvencies.

11. **Applications**

All applications must be submitted to the relevant authorising body (i.e. the recognised professional body of which the candidate is a member or student or the Secretary of State for Trade and Industry or the Department of Economic Development in Northern Ireland). Any enquiries about eligibility should be addressed to the relevant authorising body. The closing date for applications for the November 2008 session is Thursday 18 September 2008. Late entries will not be accepted for the examination. In their own interests, candidates are asked to submit application forms well in advance. No allowance will be made for any special circumstances nor for any error or omission by candidates, by any person acting on their behalf, or by the postal authorities.

12. **Entry to a Hall**

- a. Candidates may enter the examination halls up to half an hour after the start of a paper but must provide an explanation of their lateness, which together with their candidate number and time of arrival, will be reported to the Board. Such candidates will not be granted extra time but will have their performance and their reason for lateness considered by the Board when it comes to determine the results of the examination.
- b. Candidates who arrive more than half an hour after the start of a paper will not be admitted to the examination hall unless their lateness has been caused by exceptional circumstances beyond their control and only then when permission for entry has been given by the Chief Invigilator.

13. Examination Materials

- a. Candidates are provided with lined and analysis paper and booklets and tags for fastening their papers together.
- b. Candidates must bring their own pens.
- c. Candidates may only use the calculators provided by the JIEB in the examination hall (SHARP EL-240 Calculator).
- d. In the examination room candidates will be supplied with the 9th edition of the Butterworths *Insolvency Law Handbook*.
- e. Candidates may not take any book, paper or manuscript into the examination room. The copies of Butterworths *Insolvency Law Handbook* supplied by the Board must not be removed from the examination room.

14. Departure from an Examination Hall

- a. After a paper has begun, candidates who leave an examination hall without permission or unescorted will not be allowed to return.
- b. Candidate who leave during a paper, not intending to return, must hand in their answers to the Chief Invigilator. Candidates may not leave a hall during the first or last half hour of any paper unless there are exceptional circumstances and only then when permission has been obtained from the Chief Invigilator.
- c. At the close of a paper, candidates must remain seated until they are advised by the Chief Invigilator that they may leave.

15. Illness and Special Circumstances

Candidates who wish to notify the Board of illness or other special circumstance that affects their examination performance should submit medical evidence or other documentation no later than 28 days after the examination.

16. Misconduct

- a. The Board will investigate any candidate suspected of having been involved in any irregularity or misconduct in connection with the examinations.
- b. It is the duty of the Chief Invigilator to report to the Board all cases of irregularity or misconduct in the examination hall. Chief Invigilators are empowered to stop the examination of candidates who conduct themselves improperly. Expulsion from the examination hall would be resorted to only when it is considered that such action is essential.
- c. Any unauthorised material introduced by candidates into an examination hall will be confiscated by the Chief Invigilator and may be retained for transmission to the Board if so required.

- d. Candidates may not pass any information from one to another during an examination unless expressly authorised to do so.
- e. The Board reserves the right to withhold publication of the results of an examination of candidates pending investigation of any irregularity or misconduct in connection with an examination.

17. End of Work

When a particular paper is declared to be over, candidates must stop writing immediately and put down their pens. They will be given a short time to assemble their answer folders and fasten their complete scripts using the tags provided. **Candidates are responsible for ensuring that all their answers are included.**

18. Results

Results will be despatched by first class post on or before Friday 6 March 2009. Each candidate will receive a results letter showing an overall result of Pass, Referred, Fail. Marks achieved will be provided for each individual paper.

The marking of papers and the results of such marking are final and binding for all candidates. Examination scripts will not be returned to candidates. The results will be published in a pass and referral list and on the R3 website (www.r3.org.uk) at a time to be announced.

19. Equal Opportunities

The Joint Insolvency Examination Board aims to provide an assessment of excellent quality for students whatever their background. In pursuit of this aim, the JIEB is committed to using its best endeavours to ensure that all of its activities are governed by principles of equality of opportunity. It is intended that all students should receive equal treatment irrespective of political belief, gender, sexual orientation, age, disability, marital status, race, nationality, ethnic origin, religion or social background.

THE SYLLABUS

Candidates must be able to demonstrate a thorough working knowledge of Insolvency Practice, including relevant law and guidance as described in this syllabus, sufficient to enable them to carry out the functions of an authorised insolvency practitioner. Insolvency Practice includes both non-formal and formal practice. Non-formal practice is defined as the provision of analysis and advice to stakeholders concerning an entity in financial difficulties. Formal practice is defined as acting as office holder, from appointment through all the stages of the relevant insolvency procedures to release from the office. The jurisdictions for the purposes of this syllabus are England and Wales; and Scotland. The offices and procedures described in this syllabus relate to both jurisdictions except to the extent that legislation applies differently between them. The relevant offices for the purposes of this syllabus are as follows: those described in the Insolvency Act 1986 and the Bankruptcy (Scotland) Act 1985; receiverships under the Law of Property Act 1925, the Agricultural Credits Act 1928 the Agricultural Credits (Scotland) Act 1929: court appointments; and offices held by virtue of EU Insolvency Regulation 1346/2000.

Relevant law and guidance comprises the legislation referred to above, the Company Directors' Disqualification Act 1986, the Insolvency Rules 1986, the Insolvency (Scotland) Rules 1986, all as from time to time amended, and any other primary legislation, secondary legislation, case law or other guidance that is directly relevant to the performance of an office holder's duties. Examination questions will be based on the relevant law and guidance in force on 30th April for the year of the examination. Questions will not require more recent case law, but demonstrating knowledge of any that is relevant may attract additional marks.

Candidates will also need to demonstrate knowledge of cross-border insolvency issues (including foreign entities located in the respective jurisdictions) but not of the insolvency legislation in foreign regimes. Candidates will need to be aware of industry licensing, environmental and other regulatory requirements, agency and other issues, and the civil and criminal risks arising from them, but will not need in-depth knowledge of industry-specific legislation.

Candidates will be assessed by means of three separate papers, all of which may include questions relating both to non-formal practice and to formal practice although the emphasis will be on the latter. The three papers are distinguished by the different types of entity and the different formal insolvency procedures to which they relate.

The Personal Insolvency paper may include questions relating to any of the following types of entity: individuals, partnerships (except Limited Liability Partnerships) and the estates of deceased individuals. Questions on formal practice will focus on the following procedures: Bankruptcy and Individual Voluntary Arrangements; Voluntary Trust Deeds and Sequestrations. However, questions may also test knowledge of Administrations, Liquidations and Receiverships as they relate to individuals (e.g., individuals in partnerships or individuals subject to Receivership).

The Liquidations paper may include questions relating to any of the following types of entity: all forms of registered and unregistered companies (whether or not in a group structure), including Limited Liability Partnerships (but excluding other partnerships). Questions on formal practice will be limited to the following procedures: Members' Voluntary Liquidations (including Section 110 schemes); Creditors' Voluntary Liquidations; Compulsory Liquidations; and the appointment of Provisional Liquidators or Special Managers.

Candidates will be expected to recognise that the following types of entity require special treatment, but they will not be required to deal with these entities in detail: Industrial Societies, Provident Societies, Friendly Societies, Commonhold Associations and Community Interest Companies.

The Administrations, Company Voluntary Arrangements and Receiverships paper may include questions on any of the same types of entity as for the Liquidations paper. Questions on formal practice will be limited to the following procedures: Company Voluntary Arrangements; Partnership Voluntary Arrangements; Administrations, Administrative Receiverships, Receiverships (Scotland), Court Appointed Receiverships and Receiverships under the Law of Property Act 1925.

NON-FORMAL INSOLVENCY PRACTICE

This section of the syllabus refers to engagements for the provision of analysis and advice about matters relating to entities that might already be, or that are at risk of becoming, insolvent. The potential clients for this advice include the entities, their representatives, their creditors, and any other stakeholders.

ENGAGEMENT

The following learning outcomes refer to the process of engagement for non-formal Insolvency Practice. They do not refer to the process of appointment to an office in a formal insolvency procedure, which is addressed later in the syllabus.

Candidates should be able to

1. identify legal, regulatory and ethical considerations affecting the engagement, and also practical considerations (eg staffing levels, relevant experience, and qualifications) to determine whether the engagement can be accepted.
2. set out and confirm the adviser's and the client's duties, responsibilities and obligations in connection with the engagement.

ANALYSIS AND ADVICE

The following learning outcomes refer to analyses of the entity's financial affairs, and to the provision of advice with regard to those affairs.

The analyses will be necessary to provide the basis for the advice, which is why the learning outcomes dealing with analyses are in this part of the syllabus. Similar analyses will be required for formal Insolvency Practice, which is addressed in the next section of the syllabus.

Candidates should be able to

3. assess an entity's overall financial state and solvency by
 - ascertaining the value of assets and the amount of liabilities, including contingent and prospective liabilities
 - considering the achievability of profit and loss, and cash flow forecasts.
4. establish whether an entity that appears to be insolvent should be made subject to a formal insolvency procedure or whether a non-formal insolvency procedure such as a turnaround or a debt management scheme might be appropriate. However, candidates are not required to be able to advise on the detailed techniques that may be used in any such non-formal insolvency procedures.

5. identify the most appropriate formal insolvency procedure and estimate the financial outcome of an entity's insolvency by
 - ascertaining the values of assets and the amounts of liabilities that would arise in the formal insolvency
 - comparing and contrasting the estimated outcomes from the available procedures, and from alternative strategies within the available procedures.
6. provide advice to the entity or its representatives with regard to
 - their duties, responsibilities and potential liabilities
 - any need to seek additional legal or other guidance
 - how best to proceed.
7. provide advice to others who are affected by the financial state of the entity with regard to protecting their interests.
8. adapt their advice to take account of new information and changing circumstances.

FORMAL INSOLVENCY PRACTICE

This section of the syllabus refers to appointments as office holder.

The different subsections refer in turn to case management, case strategy, and the operational requirements to make realisations, to deal with any misconduct, and to agree and pay claims.

Questions on formal Insolvency Practice may also include requirements to carry out the same sorts of analyses as are described above in the previous section of the syllabus on non-formal Insolvency Practice.

CASE MANAGEMENT

The following learning outcomes refer to any appointment as an office holder under relevant legislation.

Candidates should be able to

9. identify legal, regulatory and ethical considerations affecting the appointment as office holder, and also practical considerations (eg staffing levels, relevant experience, and qualifications) to determine whether the appointment can be accepted.

10. manage the statutory, regulatory and contractual procedures required to institute, progress and close the relevant insolvency procedure, including

- establishing and maintaining files, including Insolvency Practitioner Records
- appointment to the office
- obtaining bonding and insurance
- calling and holding statutory meetings of relevant participants as required, including initial, general and final meetings
- banking, managing and disbursing funds
- obtaining sanction for specific actions, as required from creditors (or the relevant committee/s), the court, or the Official Receiver
- ceasing to act and release from office.

11. prepare and file the relevant notices, reports and returns required by the office, including to

- the insolvent entity
- creditors
- members
- HM Revenue and Customs
- the Secretary of State for Trade and Industry
- Companies House
- the London Gazette
- the relevant court
- the Serious Organised Crime Agency
- the office holder's authorising body
- the Pension Protection Fund, the Pensions Regulator, and the trustees or managers of the pension scheme.

CASE STRATEGY

The following learning outcomes refer to the overall strategies, which will guide the office holder's actions to optimise the result.

Candidates should be able to

12. identify whether the optimum result is more likely to be achieved by

- a formal procedure that involves disposals of assets

and/or

- a formal procedure not involving disposals but which may include, for example, voluntary contributions, debt rescheduling and/or debt restructuring.

13. identify, where appropriate, the overall strategy that is likely to optimise realisations by means of disposals, which strategy may include
 - continued tradingand/or
 - the sale of assets (either as a whole or piecemeal).
14. take into account, when determining the most appropriate strategy,
 - the taxation implications of the different possible strategies
 - the possible effects of interactions between concurrent and/or consecutive procedures.
15. identify steps that might properly be taken to mitigate liabilities (including any liabilities arising from the strategy itself).
16. adapt their strategies to take account of new information and changing circumstances.

REALISATIONS

The following learning outcomes provide a general list of the activities which candidates should be able to carry out to achieve realisations by disposals of the entity's assets and by other means as appropriate.

Candidates should be able to

17. identify, seek out, establish ownership, take control of and protect the entity's assets and records, including by means of
 - investigation
 - physical and practical controls
 - legal proceedings
 - insurance
 - banking arrangements and investment of funds.
18. manage the continuation and/or cessation of an entity's business having proper regard to the rights of all affected parties, including dealing with
 - finances, using cash flow forecasts and trading budgets
 - employees, taking account of their rights (including Transfer of Undertakings and pension rights) and of the office holder's duties
 - management of operations
 - tax including VAT compliance

- compliance with industry licensing, environmental and other regulatory requirements, including for personnel and premises
- business assets, including
 - freehold and leasehold premises
 - fixtures and fittings
 - plant and equipment
 - motor vehicles
 - stock and work in progress
 - contracts
 - intellectual property, including goodwill.

19. realise value from the entity by executing

- sales of the business as a going concern, either as a whole or in part/s, making use of hive-down companies if appropriate

and/or

- sales of assets, either as a whole or piecemeal, including, where relevant and appropriate, dealing with assets that are subject to
 - security
 - execution, attachment or distress
 - lien
 - reservation of title
 - special legal requirements
 - onerous provisions.

20. achieve realisations from sources other than asset disposals, including from

- actions that may only be available to the office holder, including those in respect of misconduct, or voidable transactions
- amounts that may be recoverable by the entity in its own name
- contributions from net income
- contributions from third parties.

21. identify circumstances that give rise to potential recovery actions, the creditors who might benefit from pursuing them, how such actions might be funded, and whether they should be pursued.

DEALING WITH MISCONDUCT

The following learning outcomes refer to the duties of the office holder to assess and report on conduct.

Candidates should be able to

22. identify and, where appropriate, investigate misconduct relating to the insolvency, including such matters as are identified in the Insolvency Act 1986 and in the Company Directors' Disqualification Act 1986.
23. prepare and submit reports as required in cases of misconduct, including to the
 - Official Receiver
 - Secretary of State for Trade and Industry
 - Serious Organised Crime Agency.

AGREEING AND PAYING CLAIMS

The following learning outcomes provide a general list of the activities by which candidates should be able to agree and pay claims in an insolvency procedure. Not all of them will apply in every case.

Candidates should be able to

24. determine the validity of charges and the charge holders' rights, and to compute the amounts payable.
25. determine the validity and quantum of preferential claims and compute the amounts payable.
26. evaluate and resolve claims in special categories, including
 - retention of title
 - lien
 - hire purchase and leasing
 - execution and distress.
27. determine the validity and quantum of unsecured claims and compute the amounts payable.
28. rank all of the valid claims, and duly pay them in the statutory order having taken into account, as appropriate, interest, set off, the Prescribed Part, subrogation and marshalling.
29. determine the amounts and entitlements to any surplus after the payment of relevant creditors and the procedures for passing it across.