

JOINT INSOLVENCY EXAMINATION

2009

Syllabus for the Examination

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 (e.g. 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 (e.g. 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 Business Enterprise and Regulatory Reform
 - 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 assetsand/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 Business Enterprise and Regulatory Reform
 - 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.