



THE ICAEW CERTIFICATE IN INSOLVENCY SYLLABUS

JULY 2012 Edition

LEARNING OUTCOMES

Module aim

To ensure that students have a good grounding in the fundamentals of insolvency work to enable them to work effectively in an insolvency at a junior level and to provide a basis for further qualifications in this area.

On completion of this module, students will be able to:

- understand the legal and regulatory environment within which insolvency practitioners work in England and Wales
- understand the basic principles of the work of an insolvency practitioner and appreciate the impact of an insolvency appointment on the affected parties
- understand the detailed characteristics of the full range of insolvency possibilities open to individuals
- understand the detailed characteristics of the full range of types of corporate insolvency.

Specification grid

This grid shows the relative weightings of subjects within this module and should guide the relative study time spent on each. Over time the marks available in the assessment will equate to the weightings below, while slight variations may occur in individual assessments to enable suitable questions to be set.

| Syllabus area | Weighting (%) |
|---|---------------|
| 1 The legal and regulatory framework for insolvency | 15 |
| 2 Concepts and principles of insolvency | 25 |
| 3 Corporate insolvency | 40 |
| 4 Personal insolvency | 20 |
| Total | 100 |

1 The legal and regulatory framework for insolvency

Candidates will be able to describe the legal and regulatory environment within which insolvency practitioners work.

In the assessment, candidates may be required to:

- a. explain briefly the provisions of the laws and other rules relevant to insolvency, their purposes and the interactions between them:
 - Insolvency Act 1986 as amended
 - Insolvency Act 2000
 - Insolvency Rules 1986 as amended
 - Company Directors Disqualification Act 1986
 - Enterprise Act 2002
 - Law of Property Act 1925
 - Part 26 Companies Act 2006
- b. describe the role of the courts in insolvency
- c. describe the impact of EU regulation and cross-border issues upon the work of the insolvency practitioner
- d. describe the membership and the role of the Joint Insolvency Committee
- e. explain the purpose and contents of the Statements of Insolvency Practice (SIPs)
- f. state the names of the Recognised Professional Bodies relating to insolvency in England and Wales and how and by whom they become recognised

- g. state and describe the qualification and licensing requirements of a licensed insolvency practitioner
- h. state the key ethical and professional issues for an insolvency practitioner undertaking insolvency work and explain the reasons for the existence of ethical and professional rules relating to the undertaking of insolvency work
- i. state which government departments require information and returns from those undertaking insolvency work, and the nature of the information required.

2 Concepts and principles of insolvency

Candidates will be able to explain the fundamentals of the work of an insolvency practitioner and describe the impact of an insolvency appointment on the affected parties.

In the assessment, candidates may be required to:

- a. define insolvency according to the definitions in the Insolvency Act 1986 (s.123, s.268 and s.272) and explain the meaning of these definitions
- b. explain the effect of an unchallenged statutory demand
- c. state the different types of insolvency that can be entered into and their purposes, and describe the characteristics of each type
- d. describe and explain the roles of the following in the different types of insolvency:
 - the insolvency practitioner
 - the Official Receiver
 - the Law of Property Act receiver
 - the Insolvency Service
- e. in a given scenario, select the appropriate form of insolvency and give reasons for the selection

The insolvency practitioner

- f. explain the distinctions between an insolvency practitioner and other business professionals
- g. describe the processes involved in appointing an insolvency practitioner in an insolvency
- h. explain the actions to be taken by the insolvency practitioner immediately on appointment, in a given scenario
- i. explain the powers, rights and ongoing obligations of an insolvency practitioner in an insolvency
- j. describe the processes involved in concluding an insolvency

Impact of insolvency on affected parties

- k. describe the impact of an insolvency upon employees, creditors and other affected parties in a given scenario, with reference to:
 - employment law, Employment Rights Act and The Transfer of Undertakings (Protection of Employment) Regulations (TUPE)
 - the Sale of Goods Act 1979
 - the Landlord and Tenant Acts
- l. define 'retention of title' and explain how it can affect an insolvency and the parties affected by the insolvency

Assets and transactions

- m. state the classes of assets that arise in insolvencies and describe the characteristics of each
- n. calculate the value of individual assets or a group of assets in an insolvency, using information given, and explain how the value is arrived at
- o. state the general procedures to be taken in investigation and asset recovery
- p. explain the purpose of bonding and how the amount of the bond is calculated in an insolvency

- q. define security and quasi-security and explain the effect of fixed and floating charges
- r. explain the antecedent transaction rules and identify such transactions from information given

Statement of affairs, other reports and estate accounting

- s. calculate figures to be included in the:
 - statement of affairs
 - estimated outcome statement
 - deficiency account
 - receipts and payments account(including the quantum of the bond, dividends and distributions, insolvency practitioner remuneration and other fees) in a given scenario and using information given, taking account of:
 - the order of application of assets
 - priority
 - the prescribed part
- t. explain the circumstances when estate accounting and the insolvency service account (ISA) would be used by the insolvency practitioner.

3 Corporate insolvency

Candidates will be able to describe and explain the detailed characteristics of the full range of types of corporate insolvency.

In the assessment, candidates may be required to:

General concepts for corporate insolvency

- a. compare the characteristics of the different types of corporate insolvency and explain the difference between solvent and insolvent liquidations
- b. explain the following aspects of corporate insolvency, their origins, characteristics and effects:
 - the winding-up resolution
 - the role of the liquidator
 - enforcing co-operation
 - antecedent recoveries
 - the role of the liquidation committee
 - undertakings to distraining creditors
 - conclusion of the winding up
- c. identify the potential civil and criminal liabilities of directors of insolvent companies in a given scenario
- d. explain how disqualification of company directors might arise and the processes involved in disqualification
- e. state the classes of creditors and their rights in corporate insolvency
- f. explain the advantages and disadvantages of trading on by the insolvency practitioner as compared with selling the business

Member's voluntary liquidations

- g. explain the processes involved in the commencement of a members' voluntary liquidation, including the declaration of solvency and other formalities
- h. describe the ongoing obligations upon the insolvency practitioner in a members' voluntary liquidation with regard to:
 - meetings
 - record keeping
 - reporting

- time limits
- i. state the criteria for closure of a members' voluntary liquidation and describe the processes of closure
- j. explain how distributions to shareholders are decided upon and made, and calculate distributions in a given scenario and from information provided
- k. describe the processes undergone to convert a members' voluntary liquidation into a creditors' voluntary liquidation

Creditors' voluntary liquidations

- l. explain the processes involved in the commencement of a creditors' voluntary liquidation, including meetings held under the provisions of s.98 Insolvency Act 1986 ('section 98 meetings')
- m. describe the ongoing obligations upon the insolvency practitioner in a creditors' voluntary liquidation with regard to:
 - meetings
 - record keeping
 - reporting
 - time limits
- n. state the criteria for closure of a creditors' voluntary liquidation and describe the processes of closure
- o. describe the powers of the liquidator in a creditors' voluntary liquidation
- p. describe how ongoing receiverships might affect a creditors' voluntary liquidation
- q. describe voidable transactions (including re-use of name under s.216 Insolvency Act), explain how they impact upon the insolvency, and describe the powers of the insolvency practitioner relating to them
- r. identify voidable transactions from information provided and in a given scenario

Compulsory liquidations

- s. explain the processes involved in the commencement of a compulsory liquidation, including:
 - the petition
 - petitioning creditors and substitution
 - the winding-up order
 - statutory advertisement
- t. describe the ongoing obligations upon the insolvency practitioner in a compulsory liquidation with regard to:
 - meetings
 - record keeping
 - reporting
 - time limits
- u. state the criteria for closure of a compulsory liquidation and describe the processes of closure
- v. explain the processes needed to appoint the following, their roles, and the effects of their appointment upon the liquidation:
 - provisional liquidator
 - special manager
 - liquidator
 - the liquidation committee
- w. compare the respective roles of liquidator and Official Receiver
- x. describe voidable transactions (including re-use of name under s.216 Insolvency Act), explain how they impact upon the insolvency, and describe the powers of the insolvency practitioner relating to them
- y. identify voidable transactions from information provided and in a given scenario
- z. explain the methods open to a liquidator to enforce co-operation from parties affected by the liquidation

Company voluntary arrangements (CVAs) and Part 26 Companies Act 2006 arrangements

- aa. describe the processes undergone in the creation of a company voluntary arrangement and an arrangement under Part 26 Companies Act 2006
- bb. state the contents of the CVA proposal and explain how the contents are prepared
- cc. explain the use and the effects of the moratorium procedure
- dd. describe the ongoing obligations upon the insolvency practitioner in a CVA with regard to:
 - meetings
 - record keeping
 - reporting
 - time limits
 - creditors
- ee. state the criteria for completion of a CVA and describe the processes of completion
- ff. explain the role of the insolvency practitioner as nominee and supervisor in a CVA
- gg. describe the circumstances that might bring about a failure of the arrangement, the impact that the failure has upon parties related to the arrangement and the procedures that should be followed by the insolvency practitioner on the failure of the arrangement

Administrations

- hh. explain the purposes and effects of administration
- ii. explain the processes involved in the commencement of an administration
- jj. describe the ongoing obligations upon the insolvency practitioner in an administration with regard to:
 - meetings
 - record keeping
 - reporting
 - time limits
- kk. describe and explain the following aspects of administration:
 - the moratorium
 - the role and remuneration of the administrator
 - notice and advertising requirements
 - proposals
 - meetings
- ll. describe how an individual ceases to be an administrator, through discharge, release or other exit routes
- mm. define 'pre-packs' and explain the relative requirements of SIP 16

Receiverships

- nn. explain the effect of the Law of Property Act 1925 and its relation to fixed charge receiverships
- oo. explain the effect of the Enterprise Act 2002 in relation to administrative receivership
- pp. explain the purposes and effects of administrative receivership
- qq. state the different types of receiver and describe their roles
- rr. in relation to the appointment of an administrative receiver, describe:
 - who has the power to appoint the receiver and the source of that power
 - the indemnities possessed by the appointer of the receiver and by the eventual liquidator
- ss. describe the ongoing obligations upon the insolvency practitioner in an administrative receivership with regard to:
 - meetings
 - record keeping
 - reporting
 - time limits

- tt. state the criteria for completion of an administrative receivership and describe the processes of completion

Business turnaround and restructuring

- uu. explain the ways in which companies are legally able to try to avoid formal insolvency
vv. explain the work of turnaround specialists and the methods that they might employ
ww. explain how stakeholders in a business turnaround or restructuring are identified and managed by the turnaround specialist
xx. describe briefly how companies may reorganise their businesses and legal structure.

4 Personal insolvency

Candidates will be able to describe and explain the detailed characteristics of the full range of insolvency possibilities open to individuals.

In the assessment, candidates may be required to:

General concepts for personal insolvency

- a. compare the characteristics of the different types of personal insolvency, including statutory and non-statutory types
b. state the classes of creditors and their rights in personal insolvency
c. describe who controls the progress of a personal insolvency and how this is achieved
d. describe the powers, rights and duties of the insolvency practitioner in a personal insolvency

Individual voluntary arrangements (IVAs)

- e. describe the processes undergone in the creation of an individual voluntary arrangement
f. state the contents of the IVA proposal and explain how the contents are prepared
g. describe the processes undergone in order to obtain an interim order
h. describe the ongoing obligations upon the insolvency practitioner in an IVA with regard to:
 - meetings
 - record keeping
 - reporting
 - time limits
 - creditors
i. state the criteria for completion of an IVA and describe the processes of completion
j. describe the characteristics of a trading IVA and a consumer IVA, and compare the two types of arrangement
k. explain the role of the insolvency practitioner as nominee and supervisor in an IVA
l. describe the obligations of debtors in an IVA and explain the effects of the default of a debtor
m. describe the circumstances that might bring about a failure of the arrangement, the impact that the failure has upon parties related to the arrangement and the procedures that should be followed by the insolvency practitioner on the failure of the arrangement

Insolvent partnerships

- n. describe briefly the characteristics of a partnership voluntary arrangement
o. describe the processes undergone in the creation of a partnership voluntary arrangement and compare these with the processes followed in the creation of an IVA
p. state the other types of partnership insolvency procedure

Bankruptcy

- q. explain the processes involved in the creation of a bankruptcy order, including the grounds for debtors' and creditors' bankruptcy petitions
- r. state the effects of the bankruptcy order
- s. state the roles of the trustee in bankruptcy and the Official Receiver
- t. state the position of creditors in bankruptcy and the role of the creditors' committee
- u. describe the consequences of bankruptcy for the bankrupt, including:
 - impact on employment or business
 - income payments agreements and orders
 - bankruptcy restrictions orders
 - bankruptcy offences
 - the bankrupt's estate
 - impact on the bankrupt's (and family's) right to occupy the family home
 - antecedent recoveries
- v. describe the ongoing obligations upon the insolvency practitioner in a bankruptcy with regard to:
 - meetings
 - record keeping
 - reporting
 - time limits
- w. describe the grounds for annulment of the bankruptcy order and the processes involved in annulment
- x. describe the processes involved in discharge from bankruptcy
- y. describe the reasons for suspension of discharge and the processes involved in suspension

Other solutions to personal insolvency problems

- z. describe the characteristics of statutory solutions:
 - debt relief orders
 - County Court administration orders
- aa. describe the characteristics of non-statutory solutions:
 - informal arrangements with creditors
 - debt management plans, including consolidation and re-scheduling
 - mortgage and re-mortgage.