

# JOINT INSOLVENCY EXAMINATION BOARD

*Joint  
Insolvency  
Examination  
Board*

Joint Insolvency Examination

Monday 6 November 2017

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## LIQUIDATIONS (Scotland) (3.5 hours)

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**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 2017. 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.

1. You are an Authorised Insolvency Practitioner and have been contacted by Matthew, a 10% shareholder of Wainzgreen Limited (“the Company”), a classic car dealership. The Company had been placed into Members’ Voluntary Liquidation on 3 May 2017 and Mary was appointed as Liquidator. Mary had been recommended to the Company’s Board of Directors by the Chairman of the Company.

Matthew has brought the following matters to your attention:

- Per the statement of assets and liabilities attached to the declaration of insolvency, there was to be a members’ surplus of £200,000. An early cash distribution of £150,000 had been paid to members on 31 July 2017 and the final distribution was to have been paid on 31 October 2017.
- Last week, Matthew received an email from Mary stating that she had recently received a valid claim from Karbeca Limited for £300,000 in relation to a lease guarantee the Company had provided in 2012. There were now insufficient funds for the final distribution to be made.
- Mary blamed her failure to identify this claim on the Company’s Directors who had not included it in the statement of assets and liabilities. However when challenged, the Directors explained that Mary had prepared the statement and declaration of solvency for them and they had “just signed it”.
- In July 2017, Mary had sold one of the Company’s classic cars for £75,000. Last month, Matthew saw this car offered for sale for £150,000 in a classic car magazine. Mary had used a friend (who owns a few classic cars) to arrange the deal.
- Matthew recently attended the Company Chairman’s birthday party and it transpired that Mary is the Chairman’s sister-in-law.

### Requirements

- (a) **Set out the legal and practical steps Mary needs to take to move the Company into Creditors’ Voluntary Liquidation. (6 marks)**
- (b) **Assuming the Company is placed into Creditors’ Voluntary Liquidation, identify the consequences this will have for the Directors and the Shareholders of the Company. (6 marks)**
- (c) **Assuming you are appointed Liquidator in the Creditors’ Voluntary Liquidation:**
- i) **Making reference to the relevant provisions in the Insolvency Code of Ethics, state the ethical issues that you are likely to identify when conducting your investigations into Mary’s involvement with the company. Explain what duty you would have in relation to each of the issues you identify. (8 marks)**
  - ii) **Identify the actions you could take as Liquidator to recover assets for the creditors. (5 marks)**

**Total: (25 marks)**

2. You are an Authorised Insolvency Practitioner and have recently been introduced to the Directors of Hammingden Ltd ("the Company") which is an audit client of your firm. The Company owns 25 properties in Aberdeen. The properties are let out to a variety of tenants, some of which are in financial difficulty.

The Directors of the Company have requested a meeting with you to obtain your advice on the following matters:

- The Local Authority has demanded business rates on an unoccupied property covering the period 1 April 2017 to 31 March 2018. The property was leased to Stumblemead Limited ("Stumblemead") which went into Creditors' Voluntary Liquidation on 7 April 2017. The Company received a letter from the liquidator of Stumblemead dated 30 May 2017 advising that Stumblemead had vacated the property that day, together with a claim form. To date the Company has ignored the business rates demand but recently been threatened with legal action.
- An oil spillage occurred on 15 October 2017 at the property rented by Stumblemead. The Company has received a written warning from the Scottish Environment Protection Agency ("SEPA") that they believe an offence has been committed.
- The Company has been informed that a tenant, Boardill Limited ("Boardill"), has been served with a winding up petition. Boardill, which has not paid the last three months' rent, sublets the property
- The Company has received notice of a winding up order which was made against another tenant, Froxwell Limited ("Froxwell") on 31 October 2017, following a petition presented on 18 September 2017. Froxwell failed to pay rent on the last quarter day. The Directors of the Company are aware that Froxwell spent £30,000 upgrading its IT equipment in 2016.
- Due to an IT error, the Company failed to identify that Trymeade Limited ("Trymeade") hadn't paid any rent since 28 August 2016 under a lease with 11 more years to run. Further investigation has confirmed that Trymeade was placed into Administration on 25 November 2016. The Company ignored the emails sent to them by the Administrators and has now discovered that the Administrators have ceased to act and Trymeade was dissolved two days ago. The Company would like to re-let the property.
- The Company has received a request to consent to a debt payment programme from a money advisor who is advising Miss Deanland. The request is dated 1 November 2017. Miss Deanland rents one of the Company's flats and there are rental arrears outstanding. Per the terms of the proposed debt payment programme, the outstanding rental arrears represent 30% of Miss Deanland's creditors.

### **Requirements**

**Write a file note to prepare for your meeting with the Directors. Set out, in relation to each matter, the key points that arise from the information that you have received and the advice that you propose to give.**

**Total: (25 marks)**

3. You are an Authorised Insolvency Practitioner and have been appointed Interim Liquidator of Rasaria Limited (“the Company”) by the Sheriff at Glasgow Sheriff Court on 10 March 2016, following a winding up petition presented on 19 January 2016 . Your appointment was subsequently confirmed at a meeting of creditors on 20 April 2016. Your case administrator has prepared the following Receipts & Payments account as at 31 October 2017.

**Receipts & Payments Account  
as at 31 October 2017**

<b>Receipts</b>	<b>£</b>
Book debts	82,500
Bank interest	800
Cash at bank	4,600
Plant and machinery	114,300
Motor vehicles	4,800
Shares and investments from sale of US subsidiary	50,000
	<hr/> 257,000
<b>Payments</b>	
Liquidator’s fees	56,193
Court Reporter fees	3,040
Legal fees	49,500
Agents fees	15,000
	<hr/> 123,733
<b>Represented by:</b>	
Cash at bank	133,267
	<hr/> 133,267

You are aware of the following:

- On 30 October 2016, you returned goods worth £7,500 to Kinubala Limited (“Kinubala”) in settlement of their retention of title claim. Kinubala had previously submitted a claim of £34,100 for outstanding invoices.
- You estimate you will recover 25% of the remaining debtors’ ledger of £135,000
- The Company granted a valid floating charge over all its assets to The Moneebank PLC, which is owed £750,000.
- Today you received an unexpected claim from Mr Beaufort who was employed by the Company for 17 years and who was 54 years old at the time he was made redundant. His claim consists of 3 weeks arrears of wages at £545 per week (he worked a 5 day week); 6 days outstanding holiday pay; 8 weeks’ of employer defined benefit pension contributions at 10% of wages, statutory notice pay and statutory redundancy pay. Mr Beaufort claimed Job Seeker’s Allowance of £73.10 per week during the period that he was entitled to notice pay.
- A tax demand has just arrived from the Internal Revenue Service for \$16,800 for the tax year ending 30 April 2014. The covering letter states that US tax monies due should be treated preferentially in accordance with Chapter 7 of Title 11 of the United States Code (Bankruptcy Code). Your case administrator has advised you of the following sterling/dollar exchange rates:

<b>Date</b>	<b>Exchange rate</b>
19 January 2016	\$1:£0.71
10 March 2016	\$1:£0.60
20 April 2016	\$1:£0.69

- The landlord of the Company's leasehold premises has just submitted a claim for £215,350, made up as follows:

	£
Arrears of rent (at £250 per day) pre-19 January 2016	6,750
Arrears of rent 20 January 2016 to 10 March 2016	12,750
Arrears of rent 11 March 2016 to 24 September 2017 (end of lease)	140,750
Interest on arrears at 8% (contractual clause)	14,600
Dilapidations	35,000
Legal fees incurred submitting claim	5,500

- Following a review of the Company's Statement of Affairs you have identified approximately £43,000 of creditors' claims which individually are each under £1,000. You estimate that the time and disbursement costs which will be incurred by issuing statement of claim forms, reviewing all statement of claim forms received and adjudicating on the claims will be approximately £8,000.
- The following creditor claims were agreed shortly after your appointment:

	£
Preferential claims	8,150
Trade creditors	155,450
HMRC – PAYE & NIC	25,375
Unsecured employee claims	72,165

- You have unpaid legal fees of £3,500 and expect to incur a further £1,500 prior to ceasing to act
- You requested a time costs fee basis which was agreed by the creditors at a creditors meeting held shortly after your appointment. You have had fees approved by the Court of £56,193 and this has been drawn. You have unbilled WIP of £20,000 and anticipate incurring a further £15,000 (including the £8,000 estimate to deal with claims of less than £1,000 each) to close the case.

### Requirements

- You would like to recover your time costs in full. Explain how you would obtain the necessary fee approval. (3 marks)**
- Assuming you are successful in obtaining approval to recover your time costs in full, prepare an Estimated Outcome Statement for the Company as at 31 October 2017. You should calculate the estimated dividend for each class of creditor. (15 marks)**
- Set out the steps that will be required to close the case following the declaration of the dividend. (7 marks)**

**NOTE: state any reasonable assumptions and ignore VAT and corporation tax**

**Total: (25 marks)**

4. You are the sole Authorised Insolvency Practitioner in your firm and have identified there could be potential recoveries to creditors from the following claims in 5 of your cases:
- Tiddleton Limited (In Creditors' Voluntary Liquidation) ("Tiddleton") traded as a village hairdressers and was sold an interest rate hedging product ("IRHP") by Bramber Bank PLC ("Bramber"). The Directors of Tiddleton believe the IRHP was mis-sold because it was not appropriate to their type of business, and consider that the unwarranted costs arising from the IRHP caused Tiddleton to be placed into Liquidation. Your firm is on Bramber's panel of approved Insolvency Practitioners for all forms of corporate insolvency work.
  - You have reviewed the books and records of Swiftome Limited (In Liquidation) ("Swiftome") and think you would have grounds for a fraudulent trading case against the Directors. The Pension Protection Fund is the largest creditor of Swiftome.
  - Trayston Limited (In Creditors' Voluntary Liquidation) ("Trayston") traded as a travel agency. You have reviewed evidence that suggests a misfeasance claim against the sole Director. The Creditors Committee (which represents 35% of the creditor body) opposes any action being taken against the Director due to personal relationships they have with the him.
  - Hidor Limited ("Hidor") was placed in Liquidation as the Company was operating a VAT fraud. You have established that Simon, the Director of Hidor, was acting on the directions of Thomas, his brother, who at the relevant time was an undischarged bankrupt. Simon's social media profile suggest that he lives a lavish lifestyle in Panama.
  - You believe you have a strong unfair preference claim for £250,000 under s243 of the Act in relation to Samhote Limited (In Creditors Voluntary Liquidation) ("Samhote"). The party against which you would take proceedings has indicated they would be interested in settling the claim out of court for £75,000. You estimate that, if you take legal action, your litigation expenses will be in the region of £80,000. Samhote currently has £35,000 of floating charge assets, no fixed charge assets, £233,000 of unsecured creditors and the floating charge creditor has an estimated shortfall of £100,000.

In each case your lawyers have advised that the claim has strong prospects of success: however, there are currently insufficient funds in any of the cases to bring any action and there is a large shortfall to creditors in all five cases. Your firm's Risk Partner (who has no insolvency background) is concerned that pursuing in any of these claims could leave the firm exposed financially, and in the case of Tiddleton damage the firm's relationship with Bramber.

## Requirements

**Draft a briefing note for the Risk Partner explain:**

- (a) the considerations you should take into account in each individual case when deciding whether to pursue the possible action identified. Make references to relevant case law. (14 marks)**
- (b) what sources of funding could be available to realise value from the potential claims. (3 marks)**
- (c) the steps that would need to be taken to protect you from litigation risk. (3 marks)**
- (d) what an Insolvency Practitioner's bond is and how a claim is made against it. (5 marks)**

**Total: (25 marks)**



