JOINT INSOLVENCY EXAMINATION BOARD

Joint Insolvency Examination

Tuesday 8 November 2016

ADMINISTRATIONS, COMPANY VOLUNTARY ARRANGEMENTS and RECEIVERSHIPS (3.5 hours)

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 2016. 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 Rules 1986 as amended.

References to Sections and Rules of other Acts, Regulations and Orders will mention the Act, Regulation or Order.

1. On 12 February 2016 you were appointed Administrator of Helvellyn Engineering Limited ("the Company") pursuant to paragraph 22 of Schedule B1 of the Act.

Immediately following your appointment you completed a going concern sale of the business and its assets (excluding its cash at bank, freehold property and debtors) for total consideration of £140,000.

No meeting of creditors was held and you made a statement pursuant to paragraph 52(1)(b).

Extracts from your Receipts and Payments account for the 6 months to 11 August 2016 showed the following:

Receipts	**£**	**Payments**	**£**
Plant and machinery	50,000	Legal fees	25,000
Office equipment	4,000	Agent fees	15,000
Debtors	35,000	Insurance	1,000
Stock	85,000	Administrator's remuneration	30,000
Customer contracts	1,000	Misc. disbursements	1,500
Cash at bank	55,000		
Totals	230,000		72,500
Net receipts			157,500
Represented by			
VAT receivable			14,300
Estate bank account			143,200
			157,500

Since your 6 monthly report the following events occurred:

1. Property; the Company owned a freehold property that was subject to a mortgage in favour of Pillar Bank plc ("the Bank"). This property was sold for £250,000 and the net proceeds were used to pay off part of the Bank's debt of £380,000. The costs of disposal included legal fees of £10,000 and agent's fees of 2% of the property value, both plus VAT. No VAT was charged on the sale.

2. Debtors; further debts of £30,000 were realised.

3. Corporation tax; you instructed, for an agreed fixed fee of £1,000 plus VAT, the Company's tax advisors to draft tax computations for the Administration period. These computations showed that tax of £10,000 will be payable in relation to the sale of the property.

Other relevant matters include;

1. Administrator's remuneration; it was agreed that the Administrator's remuneration would be on a time cost basis. To date in total you and your staff have spent 355 hours at an average rate of £180 per hour. Of this total, 55 hours related to the property sale. This remuneration is consistent with the original estimate provided.

2. Secured creditor; the Bank also holds a floating charge over all of the Company's assets and you have received legal advice confirming its validity.

3. Employee claims; these claims were reduced since the purchaser of the business agreed to pay the wages arrears of employees that transferred. You did however make two recently recruited employees redundant immediately following your appointment at which point they were owed:

Employee	**Salary**	**Wages outstanding**	**Holiday pay outstanding**
Mr Arnold	£18,000	2 weeks	2 days
Miss Beach	£28,600	3 weeks	1 day

4. You estimate that you will need to spend 50 hours finalising the Administration and an additional 60 hours dealing with claims and distributing funds to the unsecured, non-preferential creditors. Both of these activities are included within the original estimate of time expected to be spent on this case.

Requirements

(a) **Draft an expected final receipts and payments account for the Administration period. (15 marks)**

(b) **Assuming that you have completed your distribution, set out the key steps to finalise the Administration. (10 marks)**

Total: (25 marks)

Assumptions:

VAT rate 20%

2a. Lingmoor Furniture Limited ("the Company") is a manufacturer of budget flat pack office furniture which it sells to large distributors as well as direct to small business customers. Following a period of operational difficulties and a large bad debt, in June 2014 you were appointed Supervisor of a CVA.

The approved CVA provided for the Company to pay monthly fixed amounts of £20,000 for a period of 5 years and the Company is currently 2 payments behind. In addition to the monthly contributions, the Company was required to make the following payments to the Supervisor, and until such a time as they were paid the respective assets were to be held on trust for the benefit of creditors;

- repayment of a Director's loan account of £40,000. This has been paid in full; and

- sale of a spare machine valued at £50,000. This was to be sold during the term of the Arrangement but it has not yet been realised.

Under the CVA terms the Supervisor is required to fail the CVA if the monthly contributions fall 3 months behind and such a situation is not rectified within 14 days of issuing a notice of breach.

In a recent telephone conversation with the Directors they informed you that, whilst the Company is profitable, its trading performance is significantly worse than forecast. The Directors have decided that they can no longer afford to continue with the CVA and they stated that they wished to appoint you as Administrator to the Company.

Requirements

i) Set out for the Directors how such situations can possibly be resolved without the need for the Company to enter Administration and provide an overview of the process that would typically be followed. (6 marks)

ii) Explain your key ethical considerations as to whether you could accept the appointment as Administrator. (4 marks)

(10 marks)

2b You are subsequently appointed Administrator and receive the following reservation of title claims:

1) Stickle (GB) Limited ("Stickle") visited the Company's premises 2 weeks ago to repair a compressor, solving the problem by replacing a faulty motor. The Company has paid half of Stickle's £3,500 invoice comprising £2,500 for the motor with the balance being labour costs. Stickle claims that it retains ownership of the motor and wishes to recover it.

2) Blencathra Ironmongery Limited ("Blencathra") supplied the Company with packets of fittings (screws, bolts, washers, etc.) required to assemble the furniture. The Company would specify to Blencathra the quantity and type of fittings required for each furniture model and Blencathra would supply the required number of sealed bags containing these items for inclusion in the kits. At the date of your appointment there were 10,000 packets in stock, each marked simply with a code identifying which piece of furniture it was for. In addition there were 6,000 sealed boxes containing complete furniture kits. Blencathra wishes to claim title over all of the packets including those contained in the complete furniture kits.

Requirements

Set out any additional information you would seek from the parties claiming ownership of the goods concerned. Based on the information provided, summarise the extent to which you think the suppliers will have a valid reservation of title claim and, assuming they do, how you would deal with the situation. (15 marks)

Total: (25 marks)

3. Walla Electro Limited ("the Company") operates out of leasehold premises, employing approximately 50 members of staff.

The Company is a long established provider of Nickel electroplating services for a range of industrial applications. Over the last 12 months it has experienced a decline in its core market share, believed to be a result of the loss of one of its sales managers to a local competitor.

Six months ago the Managing Director identified the medical sector as a potentially attractive new sector - Nickel has electromagnetic interference shielding properties and can therefore protect vital equipment from mobile and similar devices. As such, applications were focussed towards quality rather than cost it was anticipated that this would deliver enhanced margin and profitability.

One of the Company's remaining sales managers was tasked with developing this sector and had some early success securing a number of profitable contracts. These contracts have not been sufficient to support the losses of the remaining business and as a consequence cash flow has become tight.

Two days ago the ongoing discussions between the Company and its funder regarding additional funding support broke down as a result of irregularities identified during a routine audit. The audit identified a number of issues regarding the debt that secured the facilities, in particular:

- the funder did not fully appreciate the extent to which the trading was subject to long term contracts; and

- there was one particular debt for £35,000 owed by John Crinkle trading as Crinkle Engineering Services that was significantly older than it appeared, the balance having been subject to credit notes and re-invoicing on several occasions. According to the Managing Director, Crinkle is a sole trader and has been ignoring payment requests. The Company no longer has possession of any assets belonging to Mr Crinkle over which it could exercise a lien.

The Company purchases its core raw materials, Nickel and Boric acid, from Wetherlam Limited and Glaramara Chemicals Limited respectively. Whilst the Company has experimented in using other suppliers it has found that the service, price and quality of materials cannot be matched.

The Managing Director of the Company has refused to accept advice or assistance and it now appears likely that the funder will take the decision to appoint a partner in your firm as Administrator to take control of the situation. The funder believes that it should be possible for an Administrator to sell parts of the business as a going concern, but this will only be possible if the Company continues to trade.

Requirements

(a) Set out and explain the key concerns that the Administrator would have and the issues she would face trading the Company in Administration. (15 marks)

(b) Briefly explain the options available to the funder and/or Administrator in order to recover the debt from Mr Crinkle. (10 marks)

Total: (25 marks)

4. You are an insolvency manager and a partner from your firm has recently been appointed Administrator of Grisedale Products Limited ("the Company"). The appointment was made by Catbells Finance Limited ("the Bank") following concerns that the Company was insolvent and the Directors were not taking the situation seriously.

Knowing that the Company had a significant amount of finished goods stock you initially decided that the business should continue to trade for a period of time whilst you investigated its financial position.

Following 2 weeks of trading the Administrator decided that it was appropriate to cease trading, close the site and realise the assets on a break up basis. You are currently reviewing the case and wish to establish the outcome to creditors.

A summary balance sheet of the Company as at the end of October 2016 is shown below.

	Notes	**Oct 16 £'000**
Tangible fixed assets	*1*	6,500
Current assets		
Stock	*2*	3,000
Trade debtors	*3*	6,600
Other debtors	*4*	200
Cash at bank		25
Total current assets		9,825
Current liabilities		
Bank loans and overdrafts	*5*	6,600
Trade creditors	*6*	8,000
Tax and Social Security	*6*	1,300
Other creditors	*6*	600
Total current liabilities		16,500
Net current liabilities		(6,675)
Long term liabilities		
Bank loans	*5*	4,900
Pension scheme	*7*	8,000
Total long term liabilities		12,900
Net liabilities		(13,075)

Notes:

1. Your agents estimate that they will realise £3.5 million for the plant and £2.5 million for the Company's freehold property. The book value of the freehold property is £1.5 million and your tax colleagues estimate the net taxable gain after consideration of all available reliefs will be £500,000.

2. Stock with a cost of £2.6 million was sold during the trading period at an average gross margin of 35%. The direct costs incurred during the trading period, excluding the stock cost, amounted to £1 million. The stock not sold during the trading period was later sold at 60p in the £. In relation to trading and the sale of stock your tax colleagues have established that, taking into consideration other costs and losses, tax will be payable on any profit above £140,000.

3. The Company's trade debtors are subject to an assignment in favour of the Bank. Debt collection agents have been instructed to realise the debtor balances and it is considered likely that this will result in an average collection rate of 80%. The debt collector's remuneration as agreed by you and the Bank is directly related to collections on a stepped basis as follows;

   First £3 million – 1%
   Next £2 million – 3%
   Thereafter – 5%

4. Other debtors include irrecoverable prepayments and a Director's loan account of £25,000.

5. At appointment the Bank was owed;

	£ million
Invoice finance	6.0
Bank loan	5.5

   The Bank's debt is also secured by a chattel mortgage over approximately 90% of the Company's plant and machinery and by a floating charge over its remaining assets. The floating charge was created on 3 April 2012.

6. Creditors exclude balances due to the employees. You have received the following claims for the 300 employees:

	£
Arrears of wages	75,000
Holiday pay	20,000
Redundancy pay	280,000
Notice pay	150,000
Occupational pension scheme contributions	10,000
Protective award for insufficient consultation	150,000

7. The Company operated a defined benefit pension scheme and the balance shown in the accounts was based upon a recent valuation of the scheme. You have received advice that suggests that the debt due under Section 75 of the Pensions Act 1995 is likely to be double that shown in the financial statements.

The following total costs have been or are expected to be incurred:

	Agent	Solicitor	Administrator
Costs of the Bank in relation to the appointment	n/a	£10,000	n/a
Pre-administration costs (Rule 2.33(2A))	n/a	£2,000	£8,000
Sale of plant and machinery	6% of realisations plus £20,000 valuation fee	n/a	£10,000
Sale of property	2% of sale proceeds plus £15,000 valuation fee	£18,000	£15,000
Other activities	n/a	£30,000	£150,000

The Administrator's remuneration and pre-administration costs have been approved by the relevant party.

You expect that the only other costs to be provided for include £30,000 of Administrator's costs to bring the matter to a close as well as payment of £3,000 to a firm of accountants that assisted the Directors in preparing their Statement of Affairs.

Requirements

Draft an Administration estimated outcome statement, clearly showing the priority of payment.

Total: (25 marks)

Assumptions:

Corporation tax rate 19%
VAT rate 20%