Joint
Insolvency
Examination
Board

Joint Insolvency Examination 2023

TUESDAY 14 NOVEMBER 2023

3.5 HOURS

CORPORATE INSOLVENCY (SCOTLAND)

This exam consists of **four** questions (100 marks).

Marks breakdown

Question 1	20 marks
Question 2	20 marks
Question 3	20 marks
Question 4	40 marks

References to legislation are to that which was in force on 30 April 2023. References to "the Act" are references to the Insolvency Act 1986 as amended.

References to Sections and Schedules are to Sections and Schedules of the Act and to Rules of the Insolvency (Scotland) Rules 2018.

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

Important Information

Please read this information carefully before you begin your exam.

Starting the exam

Click on the **right arrow** in the header to begin the exam. The exam timer will begin to count down.

Preparing your answers

Answer all questions.

Respond directly to the exam question requirements. Do not include any content of a personal nature, such as your name.

Only your answer in the word processing area will be marked. You must copy over any data for marking from the spreadsheet area to the word processing area.

Issues during the exam

If you encounter any issues during the exam you should tell the invigilator as they may be able to resolve the issue at the time. The invigilator cannot advise you on how to use the software.

Ending the exam

When the exam timer reaches zero, the exam will end. To end the exam earlier, go to the last question and click the right-hand arrow button, then click the **Submit** button to close the exam.

Question 1

You are an Authorised Insolvency Practitioner and Supervisor of a Company Voluntary Arrangement ("CVA") in relation to Reedus International Limited ("the Company").

A 5 year CVA was approved by the Company's creditors on 1 February 2021. This provides for the payment of monthly contributions (to be paid on the last working day of each month), of £30,000 for the first 12 months increasing to £50,000 per month for the second 12 months and £100,000 per month thereafter. In addition, the terms of the CVA require that within 3 months following each anniversary of the CVA, a further contribution is to be paid ("Additional Profit Contribution"). The amount of the Additional Profit Contribution is calculated as being 75% of the Company's profits for the year, less the amount of the monthly contributions paid during that year. Monthly contributions already paid are not repayable to the Company under any circumstances.

Whilst the Company has under-performed compared to the profit forecasts presented as part of the CVA proposals, it has been able to meet its CVA obligations up to and including the September 2023 monthly payment and it is up to date with payments to post CVA creditors.

Following the preparation of new forecasts, the Company is concerned that its future performance will not allow it to meet its obligations under the CVA as currently agreed and as a consequence it wishes to vary the CVA terms. In this respect the Company wishes to reduce its monthly contributions from February 2024 to £60,000 per month.

The original forecasts, actual trading results and revised forecasts are as set out below.

Trading results and forecasts

Year to 31 January	CVA Forecast profit £	Actual profit £	Revised forecast profit £
2022	600,000	500,000	n/a
2023	1,000,000	800,000	n/a
2024	2,000,000	n/a	1,000,000
2025	2,000,000	n/a	1,200,000
2026	2,000,000	n/a	1,200,000
2027	n/a	n/a	1,500,000

In order to compensate creditors, the Company is willing to extend the payments into the CVA by an additional year and include an Additional Profit Contribution for the year ended February 2027. For the period from October 2023 to January 2024, given the level of contributions made to date, the Company is able to make a one-off payment of £100,000 following approval of the proposed variation.

Under the original terms of the CVA, the Nominee's and Supervisor's remuneration was agreed at a fixed fee of £30,000 and £15,000 per annum respectively. For the proposed variation you intend to seek approval for an additional fee of £10,000. In addition, legal costs of £10,000 were incurred and paid out of the CVA funds and you expect further costs of £5,000 relating to the variation.

During the second year of the CVA preferential creditors amounting to £1,100,000 were paid in full and except for one creditor, Rooker Homes Limited, you have recently agreed the claims of non-preferential creditors at a total of £7,500,000, a level 25% higher than the estimate for all creditors contained in the original CVA proposal.

Rooker Homes Limited ("Rooker") has submitted a statement of claim, claiming the following amounts:

- £250,000 in relation to a disputed debt from 2014 in relation to a breach of contract claim. Rooker did not take any formal legal action in relation to this claim but up until the approval of the CVA sent letters threatening to do so.

- Amounts claimed for goods supplied to the Company, as follows:
    - £50,000 for a delivery made on 14 January 2021 and invoiced on 28 January 2021: and
    - £150,000 for a delivery made on 26 January 2021 and invoiced on 15 February 2021.

It is understood that on 14 March 2021 a £50,000 credit note was sent to the Company in relation to goods collected by Rooker on 16 February 2021, following a successful reservation of title claim.

Requirements

(a) Detail the key steps required to put forward the proposed variation to creditors.

(8 marks)

(b) Prepare a statement which sets out the current position and compare the estimated outcome for creditors under both the original and revised proposals. Clearly state any assumptions that you make.

(12 marks)

Total: (20 marks)

Note: Ignore Corporation Tax and VAT

Question 2

At a meeting of creditors held yesterday morning, you, an Authorised Insolvency Practitioner, were appointed as Liquidator of Lintz Engineering Limited ("the Company"). The resolution for your appointment was carried by the majority creditor who was dissatisfied with the members' choice of Liquidator.

Up until the meeting of creditors you had no contact with the Company and therefore you had not had the opportunity to establish a strategy for dealing with the liquidation. However, yesterday afternoon you met the Company's sole Director, and learned the following:

Assets

- There are funds of approximately £100,000 belonging to the Company being held in a Clients' Account at the members' choice of Liquidator.

- The Company has plant and machinery located at the Company's leasehold site. Most of these assets are subject to finance leases but there is one particular printing press that is owned by the Company. Formal valuations have been undertaken by a RICS registered firm showing that there is negative equity in relation to the financed machines and the owned press has a value of £100,000 net of removal and holding costs.

- The Company's debtor book amounts to £350,000 and the Director considers these balances to be fully collectable. Within this balance there is an invoice of £120,000 payable by the Porter Cancer Trust ("Porter") for a part delivery of a contract.

- The statement of affairs shows work in progress of £50,000 relating to work undertaken in relation to the remaining undelivered part of the Porter contract. The total contract value was for £250,000 plus VAT and the customer is expecting delivery of the remaining goods in 14 days' time. The status of the work was summarised as follows:

    - there is just enough time to complete the order. The Director believes that the work should be completed as it could not be sold in its current state;
    - the work in progress figure reflects the full paper cost plus the labour cost associated with the first stage of the production process. No further material costs need to be incurred;
    - completing the order would require the retention of six members of staff to operate the printing press over the next week. The average cost of employing one member of staff for this specialised work is £39,000 per annum;
    - once printed the goods are sent to an external party for over-printing. The cost of this service is 10% of the sales price;
    - the goods are then returned to the Company for cutting and packing. The machine used to cut the products is leased at a cost of £5,000 per week. Three members of staff who on average each cost £26,000 per annum. are needed for this work; and
    - the Company is responsible for arranging the various movements of goods and there is a cost of £1,000 for each delivery. Three deliveries are required.

Liabilities

- Total unsecured creditors amount to £400,000 and include:

    - an amount of £52,000 due to the landlord of the leasehold premises. The rent payable is at market rate and is £520,000 per annum. It is payable monthly;
    - non-domestic rates of £62,400. These have not been paid for the last 3 months; and
    - amounts due to utility companies totalling £80,000, being the equivalent of 8 weeks' charges. The cost of operating the machines to complete the work in progress would be 25% of the normal weekly cost.

- The finance lease creditors have already terminated the agreements and have commenced removal of their assets.

- The landlord wishes to take possession of the premises as soon as possible as they have a new tenant ready to move in.

Requirements

(a) Setting out a reasoned argument, decide whether or not the work in progress should be completed in the liquidation. Say what key further information you would require and explain how the receipt of this could affect your decision. Clearly state any assumptions that you make.

(15 marks)

The following day, whilst you are on site, you receive a notice from Porter saying that there is a major problem with the first batch of products already supplied and cancelling the remainder of the order. Hearing a rumour to this effect the landlord sends you an email irritating the lease and requiring you to vacate the premises by the end of the day.

(b) Prepare a list of practical matters to address whilst on site at the Company's premises.

(5 marks)

Total: (20 marks)

Question 3

You have been approached by all three Directors and Shareholders of Masterson Jets Limited ("the Company") to provide them with independent advice regarding the Company's situation.

The Company manufactures and supplies Jet Washing equipment to the commercial market, supplying both incorporated and unincorporated businesses. Approximately 25% by value of its customers purchase the equipment on 2 year leases (which is also the product's warranty period) and the remaining 75% receive trade credit of up to 60 days.

The Company has one particularly significant customer that accounts for 40% of the total turnover. There are 2 years remaining of a 3 year supply contract with this customer, who has agreed to purchase 20 units per month, This customer contracted with the Company due to its exceptionally high quality products, produced by its longstanding workforce.

As it has experienced difficulties in the past, to reduce supply chain risk the Company holds relatively high levels of stock. This includes finished units, part completed units (work in progress) and components sourced from many different suppliers. Current stock is made up of 50 completed units, 30 units at various stages of completion and, with the exception of battery units, components sufficient to produce another 40 units.

The Company has recently discovered a fraud perpetrated by an employee in the finance team, which has placed extreme pressure on its cash position. The fraud relates to the misuse of an invoice discounting facility and it appears that a large proportion of the Company's debts are not collectable, exposing the invoice finance provider ("the Funder") to potentially significant losses. On learning of this, the Funder introduced a firm of insolvency practitioners who are reaching the end of their initial review of the situation.

From their initial discussions with the insolvency practitioners, the Directors are concerned that the Funder will seek to place the Company into Administration. As the Company's business is long established and, under normal circumstances, profitable, and with its employees being part of the Directors' family, the Directors are keen to keep control.

The Directors are confident that the business is viable and have prepared trading and cashflow forecasts showing that, although cashflow will be pressured, with the support of the Funder and other creditors the business can continue to trade and improve the position of creditors.

As the Company operates in a highly competitive market the Directors are also concerned about any adverse publicity and they have read that they could buy the business through a 'pre-pack' to avoid this.

The Directors have provided personal guarantees to the Funder and are concerned about their own personal financial positions in the event that Administrators are appointed.

In preparation for a discussion with the insolvency practitioners, the Directors have established that between themselves and a group of key employees they have sufficient funds to make an offer to purchase the Company's assets, excluding the debtor book, at just below their net book value.

Requirements

(a) Having regard to the circumstances described, set out the advantages and disadvantages for an Administrator of the Company of selling the business and

assets immediately after their appointment rather than continuing the Company's business with a view to a sale at a later date.

(7 marks)

(b) Prepare a briefing note for the Directors explaining:

i) the steps they must take (as potential purchasers) should an agreement be reached with the Administrator to purchase the business within 8 weeks of their appointment.

(7 marks)

ii) the actions that could be taken by the Funder in the event that debtor collections are insufficient to repay their indebtedness

(1 mark)

(c) Identify any alternatives to Administration that the Directors could consider to deal with the situation and allow the business to continue to trade. Explain briefly why each alternative could be considered.

(5 marks)

Total: (20 marks)

Question 4

You have recently been appointed Liquidator of Payton Air Products Limited ("the Company") following a meeting of creditors convened by the Company's Directors. Your appointment followed the failure of a Company Voluntary arrangement approved just over 2 years ago. The Company ceased to trade several weeks ago.

Following your appointment, you have been contacted by several creditors in relation to three issues relating to the Company, as follows:

Issue 1: Rhee Services Limited ("Rhee")

Rhee supplied cylinders used by the Company for the storage of gas products and wishes, due to non-payment of its debt, to collect those supplied. You have established the following:

- the Directors have informed you that once a batch of new cylinders is received a gas valve, costing £100, is screwed to each cylinder which is then pressure tested prior to use;
- the Company fills the cylinders supplied by Rhee with butane gas, supplies them to customers and, when empty, collects them for refilling. On average the customer is charged £200 following collection of each cylinder;
- there are 200 cylinders in the Company's yard, all bearing Rhee's company logo. The Directors have informed you that of these 150 are empty and 50 are full of butane. There are 100 additional cylinders, believed to be marked with Rhee's logo, out at customers;
- Rhee is a new supplier to the Company and claims to have supplied 400 cylinders in a single shipment last month.
- Rhee has provided a link to its online terms and conditions of sale which include the following terms:

  "Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of the Goods and of all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

  Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or of any third party where the Goods are stored and repossess the Goods."

- The total shipment of 400 cylinders was invoiced at £300,000 plus VAT and Rhee is currently owed £250,000. Rhee has stated that following collection of the 400 cylinders it will raise a credit note for the outstanding debt.

Issue 2: Stout Land plc ("Stout")

In August 2023, Stout obtained a decree against the Company for £15,000. Due to non-payment it sought to enforce the decree and Sheriff Officers attended the Company's yard on 10 November 2023. The Sheriff Officers executed an attachment order over a van, valued at £9,000, and this is due to uplifted and sold at auction shortly.

Issue 3: Hershel Valves Limited ("Hershel")

Hershel has expressed concerns regarding events that led up to your appointment and thinks that something untoward has occurred. They have highlighted the following points:

- Hershel has identified that a sister of one of the Directors registered a company under the name Payton Gas Limited on 2 July 2023. A website has been set up for this company;
- Hershel has heard from a former employee that some of the Company's assets were moved to a new site, located close by. The former employee informed Hershel that she had been offered a job by one of the Directors in a new business; and
- Hershel has been told by a business contact that the Directors had been telling certain customers that the business is continuing as normal but has been rebranded.

Requirements

(a) Set out what additional actions you would take as a consequence of the Company having previously been subject to a Company Voluntary Arrangement

(5 marks)

(b) Explain how you would approach the three issues raised with you by the creditors.

Mark allocation:
Issue 1: Rhee (6 marks)
Issue 2: Stout (2 marks)
Issue 3: Hershel (7 marks)

(15 marks)

Following your appointment, you establish the following additional information:

Assets

- The Company has fixed assets with a net book value of £1,000,000 as follows:
  - Leasehold improvements of £100,000. The landlord has taken back possession of the yard and offices and is owed £80,000 of rent for the post CVA period, representing 6 months' rent. There are 2 years remaining of the lease and your agents have confirmed that there is no value in the lease.
  - Operating assets comprise 1,200 gas cylinders with a net book value of £900,000. Your agents anticipate that these assets, when empty, could be sold for approximately 60% of their book value.
- It will cost £30,000 to recover the 400 cylinders that are out at customers' premises, assuming that they are collected when empty. These can be recovered over the next 2 weeks.
- The cost of removing gas from the cylinders located on site is £25,000.

- The Company's debtor ledger shows a balance of £500,000 due for payment. Generally, the debtors are expected to be collectable: however, historically they have been slow to pay, have raised disputes and sought additional information prior to making payment. The Directors estimate that, if there is no one from within the Company available to assist with debt collection, only 50% will be recoverable compared to 80% if there is assistance available.

Employees

- The Directors have spoken to the former employees and has suggested that 3 members of staff would be needed for a period of 1 month to assist with debt collection, invoicing and co-ordinating the collection of cylinders.

- Initial indications suggest that they would be willing to assist given that they think it unlikely that they will get another job for several months. However before agreeing they wish to understand how much they will be paid and by whom in relation to their outstanding debt and any future work.

- Relevant information for these employees is as follows:

	Joe	**Sam**	**Adele**
Start of employment	1 July 2015	1 September 2020	1 August 2022
End of employment	31 October 2023	31 October 2023	31 October 2023
Age	33	42	25
Annual salary	£30,000	£54,000	£26,000
Date last paid up to	30 September 2023	30 September 2023	17 October 2023
Contract notice period	1 month	3 months	4 weeks
Annual holiday entitlement	24 Days	30 days	24 days
Holiday taken	25 days	18 days	15 days

The holiday year commences on 1 January each year. The Company operates a standard workplace pension scheme.

Claims for all of the Company's former 30 employees comprise £40,000 in relation to arrears of pay, £20,000 for holiday pay and all other claims total £200,000.

Liabilities

- CVA creditors are owed £1,000,000 after all remaining funds have been discharged in the CVA. The Company has post CVA trade creditors of £500,000.

- The Bank is owed £50,000 and has a registered Bond & Floating Charge dated 28 February 2000 over the Company's assets.

Requirements

(c) Set out for each of the 3 employees their claim in the estate together with information as to who would be responsible for payment.

(8 marks)

(d) Prepare an outcome statement showing the return to creditors both with and without the assistance of the employees.

(12 marks)

(Total: 40 marks)