JOINT INSOLVENCY EXAMINATION BOARD

Joint Insolvency Examination

Tuesday 6 November 2012

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 2012. 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. Phelps Crisps Limited ("the Company") was formed in 2005 and operates as a wholesale distributor of crisps and snacks providing daily deliveries to small outlets such as corner shops and petrol forecourts.

Whilst its operations have historically been focussed on the area around Milton Keynes, during 2010 the Company acquired the trade and assets of a similar business based in Leeds. The vendor of the Leeds business, Lewis Snax Limited ("Lewis"), sold its trade and assets to the Company for £1 million on deferred terms. As at the date of administration Lewis was owed £500,000.

You were appointed as Administrator of the Company by its directors following a withdrawal of its fully utilised £275,000 overdraft facility provided by Innis Bank plc ("Innis").

Following your appointment you have been provided with the following information regarding the Company’s assets:

**Security**

There are 3 secured lenders to the Company:

- Innis holds a first ranking fixed and floating debenture;
- Lewis was granted a fixed and floating debenture, subject to an inter-creditor deed providing for Innis to have priority, at the time of the sale of the business; and
- Torres Bank ("Torres") holds a first ranking legal mortgage over the Company’s freehold property near Milton Keynes.

**Property**

The Company’s distribution warehouse in Leeds is held by it under a 25 year lease. The lease was assigned to the Company following the acquisition in 2010. Agents Werth & Co has valued the leasehold premises at £150,000 or £200,000 based upon a 3 or 6 month restricted marketing period respectively. This valuation assumes that there are no rent arrears and that a purchaser would take a full assignment of the lease. The annual rent is £50,000 and there are rent arrears at the date of appointment amounting to one quarter.

The head office and southern distribution centre occupies a freehold property on the outskirts of Milton Keynes. Torres provided finance for the property and at appointment was owed £1.5m. The property has been valued by Werth & Co at £1.8m. Torres has stated that it does not wish the Administrator to deal with this property and that it intends to appoint a Fixed Charge Receiver.

**Sale of the business**

Two offers have been received for the assets (excluding leasehold property) of the business based in Leeds:

- Lewis, the original vendor, has offered the sum of £300,000. This offer is conditional upon the proceeds being applied by the Administrators as £299,998 of fixed charge realisations and £1 each for the equipment and stock. Furthermore Lewis has stated that it will refuse consent to release its security should an Administrator seek to sell the assets to an alternative party.

- Liberg Limited, a competitor, has offered £200,000 to be allocated as the Administrator deems appropriate.
Both potential purchasers intend to vacate the Leeds premises upon completion.

Werth & Co have valued the tangible assets subject to the offers at £100,000 for the plant and machinery, £50,000 for the stock and £15,000 for the office equipment.

There has been no interest in the business operated from Milton Keynes and as such it has been closed. The plant and machinery and stock at Milton Keynes has been sold by your agents for £50,000 and £25,000 respectively.

Trade debtors

Whilst the majority of the Company’s customers paid cash upon delivery, there were two that were afforded trade credit:

<table>
<thead>
<tr>
<th>Customer</th>
<th>Amount outstanding</th>
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<tbody>
<tr>
<td>NatNews Limited</td>
<td>£20,000</td>
</tr>
<tr>
<td>MKFuel Limited</td>
<td>£18,000</td>
</tr>
</tbody>
</table>

The debt due from NatNews Limited will shortly become due for payment and the MK Fuel Limited debt is two months overdue.

Liabilities

A local garage is owed money for work undertaken on the Company’s fleet of vehicles prior to the Administration. The garage has in its possession and is claiming a lien over two vehicles stating that it will continue to charge £15 per vehicle per day until its debt is extinguished in full. These vehicles are the Company’s only owned vehicles and have been valued at £7,000 in total by your agents. The Company’s creditor listing shows that the garage is owed £12,000.

The employees at the Milton Keynes site were made redundant and it is envisaged that all of the remaining employees would transfer to a purchaser of the Leeds operations under the Transfer of Undertakings (Protection of Employment) Regulations. You have calculated the liabilities of the redundant employees as follows:

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<table>
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<tbody>
<tr>
<td>Holiday pay</td>
<td>£25,000</td>
</tr>
<tr>
<td>Arrears of pay</td>
<td>£nil (all paid up to dismissal)</td>
</tr>
<tr>
<td>Redundancy</td>
<td>£140,000</td>
</tr>
</tbody>
</table>

Other creditors of the Company total £750,000 including amounts due to HMRC of £200,000 and MKFuel Limited for £7,000 relating to fuel supplied to the Company’s fleet of hire vehicles.

Requirements

(a) Set out in a file note to your manager the optimal strategy for dealing with the remaining assets of the Company. Include for each asset the Administrator’s initial considerations, further information required and how the asset may be realised. Detailed procedural steps are not required. (15 marks)

(b) Prepare an estimated outcome statement as at the date of your appointment. Make and state such reasonable assumptions that you consider necessary. (10 marks)

(25 marks)
2. You have been contacted by an overseas insolvency practitioner through your firm’s international network in relation to Cucharada S.A. (“the Company”). The Company is registered in Spain and at Companies House as a UK establishment. The Company is part of a larger group and its parent company currently resides in Madrid.

Six months ago the Company announced that it was to move its head office from Madrid to Cardiff and this exercise was completed approximately one month ago. The Company’s manufacturing capabilities remained unchanged with half of the production undertaken in Spain and the remainder in the UK. The Company supplies its products throughout the world.

A supplier based in Italy, Bettola S.p.A, has threatened to commence insolvency proceedings against the Company in Spain for a debt of €300,000 if payment is not received within seven days. This liability was incurred six months ago for goods supplied into the Spanish operations. In addition, due to unpaid VAT, HMRC are threatening to commence winding up proceedings in the UK.

Having attended a board meeting in Cardiff and discussed the overall position of the Company you have concluded that it would be appropriate to place the Company into Administration.

Requirements

(a) Outline the matters that may be relevant when determining where the Company’s Centre of Main Interests lies and what action may be taken to minimise the risks of a successful challenge. (10 marks)

(b) Explain the implications of Wales being recognised as the Company’s COMI and how this may affect an overseas practitioner should they be appointed in Secondary proceedings. (5 marks)

Subsequently the overseas practitioner contacts you for help to understand the role that creditors’ committees play in a UK Administration.

(c) Prepare a note outlining to the overseas practitioner the purpose of a creditors’ committee, who can be a member and the role, responsibilities and powers that it has in an Administration. (10 marks)

(25 marks)
3. Due to a breach of its overdraft facility you were appointed Joint Administrator to Patella Limited (“the Company”) this morning by Sacrum Bank plc (“the Bank”).

The Company is a manufacturer of electronic medical equipment, supplying its products to hospitals and health centres across the world. The Company manufactures and assembles a small range of products with the majority of its revenue being derived from its FeCalc product.

Whilst the Company has a strong order book, operates at maximum capacity and has recently achieved positive trading results, it has experienced cash flow difficulties. These difficulties have arisen primarily as a result of payments into its defined benefit pension scheme.

Immediately following your appointment you met with the directors of the Company to discuss the situation. During this meeting it was established that to maximise realisations it would be necessary to continue trading in Administration. In order to determine an appropriate strategy management has provided you with the following information:

(i) Order book

The Company sells its FeCalc product at a mark-up of 25% on cost and has the following orders for delivery:

- Week 1 – 14 units
- Week 2 – 18 units
- Week 3 – 9 units
- Week 4 – 5 units

Following discussions with the Company’s customers, management has established that the products are required and to provide support at this critical time customers are willing to pay upon despatch of the goods.

(ii) Stock

a. Components

Components, supplied by Thorax Limited (“Thorax”), and costing £50,000 are held in stock at the Company’s premises. Due to concerns over their debt of £25,000, Thorax visited the site prior to your appointment and labelled certain stock claiming ownership and stating that it should not be used. Following this visit the directors referred this matter to the Company’s solicitors and they confirmed that Thorax had a valid claim. There are no alternative suppliers for the goods supplied by Thorax and they are likely to require payment upon delivery.

b. Finished goods

The Company currently holds complete FeCalc stock with a book value of £96,000.
(iii) Production

The Company’s primary product, FeCalc, is produced in weekly batches and a maximum of 10 units are made each week. Each unit costs £12,000 to produce (materials and direct variable labour each account for 50% of this cost).

(iv) Other costs

Other costs incurred by the Company comprise:

- Rent on the property: £50,000 per quarter payable in advance with the next quarter becoming due on 30 November 2012.
- Salaries: Because of the cash flow problems all management and direct staff are paid weekly. The non-direct salary costs amount to £30,000 per week.
- Pension: The Company contributes 10% of gross payroll costs to the defined benefit pension scheme.
- Distribution of the Company’s products is undertaken by a local haulier who is paid upon collection and charges 5% of the sales price of the goods.
- Utility costs: These typically amount to £5,000 per week and included within this cost is a critical supplier of IT cloud hosting; Clavicle Systems Limited (“Clavicle”). Clavicle is owed £6,000 and has cut off the Company’s system access until it receives payment of the outstanding fees. Without this system the Company cannot continue to trade.

Requirements

(a) Explain what difficulties, specific to these circumstances, you are likely to face when trading the Company in Administration and how you may deal with these challenges. (10 marks)

(b) Prepare a trading cash flow forecast for the next 4 weeks assuming that maximum production is maintained for this period and that the business is closed at the end of the period. (15 marks)

(25 marks)

Notes: Ignore VAT
Ignore PAYE and NI
During October 2012 you were appointed Joint Administrator of Lion (SW) Limited (“the Company”). Following a full review of the business you concluded that it was possible to achieve the purpose of rescuing the Company as a going concern through a Company Voluntary Arrangement.

Consequently you have convened meetings for the purpose of considering the Administrator’s proposals and the CVA. Prior to these meetings the following correspondence has been received:

(i) Bismarck Palm Oil Limited (“Bismarck”) has submitted a proof of debt for £120,000. Investigations reveal that the balance includes £40,000 for goods supplied during the Administration and as the creditor has made a bad debt relief claim, the remaining balance is stated Net of VAT.

(ii) Mr Hesper, a former employee of the Company, has submitted a proof of debt stating an “estimated value of £100,000”. You establish that Mr Hesper was made redundant without notice on 6 August 2012 and had been paid his accrued salary and holiday pay by the Company. The employment contract attached to his proof of debt also shows the following:

- Salary: £52,000 per annum
- Start date: 1 December 2005
- Notice: 12 weeks
- Date of birth: 12 January 1968
- Redundancy: Entitled to 12 months’ pay

You have also established that Mr Hesper has been paid his allowable claim from the National Insurance Fund and that during his notice period he was unable to find alternative employment.

(iii) Stewartia Inc has submitted a claim for $300,000 due at the date of Administration. As Stewartia is a vital supplier to the Company, the CVA provides for its debt to be paid in full.

(iv) Mega Decker Group Limited a holder of 40% of the A Ordinary shares in the Company has submitted proxies voting against the Administrators’ proposals and CVA.

(v) Baldcypress Limited is a supplier of hire purchase equipment valued at £150,000 by your agents. The contract with the Company provides for it to automatically terminate upon the Administration of the Company. A proof of debt form has been submitted for £270,000 calculated as follows:

- Payment arrears: £30,000
- Remaining payments: 24
- Monthly payments: £10,000
- Total remaining: £240,000
- Total claim: £270,000

The directors of the Company are negotiating with Baldcypress Limited to allow them to continue to use the machine on the basis that they pay the future amounts due under the agreement.
Requirements

(a) Outline the key differences in procedure and documentation of an Administrators’ CVA compared to a directors’ CVA. (5 marks)

(b) Explain how the Chairman of the meetings should deal with each of the above claims for voting purposes. (15 marks)

(c) Outline the procedure for ending an Administration following the acceptance of a CVA. (5 marks)

(25 marks)

Notes:  Weekly pay for NI = £430 per week
        Job seekers’ allowance = £71.00 per week
        Exchange rate at date of meeting $1.54 to £
        Exchange rate at date of Administration $1.65 to £