



*Empowering the credit profession*

## **Institute of Credit Management**

The Water Mill, Station Road, South Luffenham, Oakham,  
Leicestershire LE15 8NB.  
Tel: 01780 722901 (Bookshop)  
01780 722909 (Education)  
Fax: 01780 721333

# **SYLLABUS – ICM LEVEL 5 DIPLOMA IN CREDIT MANAGEMENT**

2009

© Institute of Credit Management  
Issue Date: September 2008



## ICM Level 5 Diploma in Credit Management

QCA accreditation no: 100/3402/X

### Overall aim

The ICM Level 5 Diploma in Credit Management is a specialised vocational qualification for managers working in the credit occupation. It aims to provide strategic and higher level technical skills.

### Overall objectives

To enable the candidate to:

1. develop and apply comprehensive and in depth knowledge of concepts, systems and techniques at the leading edge of credit management
2. be able to engage effectively with complex financial situations
3. develop specialised and in depth knowledge of those aspects of law which directly affect the credit management function and to develop a high degree of competency when dealing with legal proceedings or insolvency procedures
4. develop specialised knowledge of either trade, consumer or export credit
5. develop a wider understanding of the role of credit, the credit department and credit manager
6. develop strategic thinking and written communication skills
7. develop research, analytical and evaluative skills
8. manage a credit department more effectively.

### Structure

The Level 5 Diploma in Credit Management is composed of 4 separately assessed, compulsory units:

- |    |   |
|----|---|
| 01 | Advanced Credit Management  |
| 02 | Practical Credit Management ( <i>integrating project, to be undertaken last</i> ) |
| 03 | Credit Management Law   |
| 04 | Legal Proceedings and Insolvency.   |

### Progression

The ICM Diploma in Credit Management offers an accelerated route to Thames Valley University's:

- **Level 5 Foundation Degree in Credit Management** (FdA)
- **Level 6 BA (Hons) Degree in Business Studies with Credit Management**

Contact Sue Kirkman at Thames Valley University for a course booklet.

Tel: 01753 697640. Email: sue.kirkham@tvu.ac.uk

Alternatively, some Diploma students progress to a level 7 **Masters Degree in Business Administration** (MBA) either directly or indirectly via a level 6 Diploma in Management Studies, depending on experience.

There are many universities that offer part-time study options for this qualification. Please contact the Institute's Education and Membership Department for further advice. Tel 01780 722909.

### **Single unit awards**

All Diploma units can be taken as a single unit award. Many legal firms are particularly interested in the ICM Legal Proceedings and Insolvency qualification. If this is your preferred option please indicate that this is your requirement when registering with the Institute. You will receive a certificate for units passed in addition to a final award certificate on completion of the qualification. This enables you to design a qualification to fit your requirements. Students may bank any single unit to complete the full Diploma qualification at a later date.

### **ICM exemption policy**

The ICM accredits prior learning and students may apply for an exemption for one or more units if they have passed a relevant subject in an equivalent qualification. This must be at the same or a higher level.

A request for exemption should be made in writing, on registration with the ICM, and be supported by copies of certificates and official confirmation of the subjects or units passed. See the student registration form for further advice. It may also be necessary to provide syllabus details to enable the Institute to determine the degree of match between the qualifications being considered and its own units.

Exemptions will **not** be awarded for units where a candidate has previously sat and failed that unit in an ICM examination. Only the ICM can advise on eligibility for exemptions and these will not be valid until the relevant fees have been paid.

### **Hours of study**

While the Institute does not specify the number of hours of study required, since much depends on individual circumstances, it is usual for students to be required to attend, per unit, thirty 1.5 hour sessions of college evening classes, and allocate an additional equal amount of time to home study. A similar time commitment, of at least 90 hours per unit, would also be required from candidates opting for distance learning or supported distance learning.

### **Assessment**

Unit 5B requires candidates to complete a project that is submitted to an accredited teaching centre by Monday of examination week in either January or June. The specification for the Practical Credit Management Project unit explains this process in more detail.

Units 5A, 5C and 5D are assessed by external examination and the examination rubric varies according to the unit (see individual unit specifications). There are, however, several general principles that apply to Diploma examinations:

#### **1. Credit for levels of response**

Credit is awarded for relevant knowledge or understanding, analysis and evaluation.

#### **Qualities which could be rewarded**

##### **Analysis** (breaking down of ideas)

- Identification of cause, effect and interrelationships
- The appropriate use of theory or business cases/practice to investigate the question set

- Breaking the material down to show underlying problems or causes
- Use of appropriate techniques to analyse data.

### Evaluation

#### Bringing together of ideas

- Building the points/themes within the answer into a connected whole
- Logical sequencing of argument
- Clarity through summarising an argument.

### Judgement

- Judgement shown in weighing up the relative importance of different points or sides of an argument, in order to reach a conclusion
- Informed comment on the reliability of evidence
- Distinguishing between fact and opinion
- Judgement of the wider issues and implications
- Conclusions drawn from the evidence presented
- Selectivity, ensuring all material is relevant to the question.

## 2. Credit for quality of language and style of response

Additional marks are not awarded for the quality of language, however, candidates who express complex ideas clearly and fluently are more likely to gain marks for analytical and evaluative statements.

Effective report writing is assessed in the Advanced Credit Management unit. Assessment is made by means of the following marking criteria:

Section A, B & C <i>where applicable</i>	Candidate uses a report style that has a coherent structure	Candidate communicates effectively in report format making arguments easy to follow
	<i>1 mark</i>	<i>2 marks</i>
Section D <i>Case study</i>	Candidate uses a report style that has a coherent structure Relevant materials selected and presented appropriately	Candidate communicates effectively in report format making arguments easy to follow. Relevant materials selected, explained and presented appropriately
	<i>1 – 2 marks</i>	<i>3 - 4 marks</i>

Marks are awarded for presentation in the Practical Credit Management Project unit and this is explained in the unit specification.

### 3. Grading and certification

Each unit is graded 1 to 6. Grade 1 corresponds to a distinction, grade 2 to a credit and grade 3 to a pass. Grades 4 to 6 are fail grades. Fixed grade boundaries are applied as follows:

Grade 1	Distinction	75% and over
Grade 2	Credit	65 – 74%
Grade 3	Pass	50 – 64%
Grade 4	Fail	40 – 49%
Grade 5	Fail	25 – 39%
Grade 6	Fail	Under 25%

In the case of borderline candidates the following grade boundary criteria will be applied:

<b>Level 5 Diploma in Credit Management</b>		
<b>Pass</b>	<b>Credit</b>	<b>Distinction</b>
The candidate demonstrates a good understanding of the specialist concepts and systems covered by the syllabus and the ability to analyse and apply knowledge.	The candidate demonstrates in-depth, specialist understanding of a wide range of concepts and systems; is able to apply this understanding to familiar and unfamiliar situations, problems or issues, and evaluate evidence to articulate a very clear and well supported response.	The candidate demonstrates in-depth, specialist subject knowledge; is able to apply this understanding to familiar and unfamiliar situations, problems or issues, and evaluate effectively, consistently providing accurate, detailed and well supported responses in a wide range of contexts.

Candidates are notified of their percentage mark and grade in a result letter and pass grades are recorded on a unit certificate that is issued at the end of each examination series. Candidates also receive a final award certificate on completion of the qualification. There is no overall grade for the qualification.

#### **Do I need to register with the ICM?**

Yes, you will need to register with the ICM in order to take the Institute's examinations because teaching centres do not handle this process. All students register independently with the Institute. Fees are split into registration fees and examination entry fees and enable the ICM to provide additional student support and to effectively monitor the quality of provision at teaching centres. The Institute has an open entry policy and to register you just need to complete and return a student registration form with the appropriate fee. Contact the Education and Membership department for a student information pack (including registration form). Telephone 01780 722909.

Study modes, resources, examinations, arrangements for candidates with special requirements and the Institute's customer service policy and complaints procedure are explained in the ICM Student Handbook. This is available free from the Education and Membership department or information can be downloaded from the Institute's website: [www.icm.org.uk](http://www.icm.org.uk).

**Unit 01 Advanced Credit Management**



## Advanced Credit Management

Accredited unit no: J/102/2589

### Aims

To develop the strategic and higher level technical skills appropriate for managers in the credit occupation. This unit builds on the understanding of systems and techniques covered in the Introductory Credit Management Syllabus, by introducing wider concepts; more complex issues and the key financial and managerial aspects which underpin the credit discipline.

### Objectives

To enable the candidate to:

1. develop comprehensive and in depth knowledge of the concepts and leading edge systems and techniques of credit management
2. be able to engage effectively with complex financial situations and choose the appropriate response from diverse alternatives; developing insight and judgement
3. develop a wider understanding of the role of credit, the credit department and credit manager
4. develop strategic thinking and written communication skills
5. manage a credit department more effectively.

### Assessment

The unit is assessed by external examination. Candidates sit a 3 hour examination and are required to answer **four** questions, **one** question from each section A, B, C and D. An additional 15 minutes reading time is allowed when no writing is permitted.

There are three separate sections that are similar where all questions carry 20 marks, one on trade credit (section A), one on consumer credit (section B) and one on export credit (section C). There is a choice of two questions in each section and candidates should answer **one** question from **each** section.

Section D contains three case study questions worth 40 marks each, one on trade credit, one on consumer credit and one on export credit. Candidates need to answer only **one** case study question and can choose which during the examination.

## **Module content**

### **1. Nature of credit (20%)**

- Cost of credit
- Credit as a product
- Credit policy

### **2. Managing a credit department (20%)**

- Structure and organisation
- Performance reporting
- Staffing and training
- Planning and forecasting
- Scheduling and control

### **3. Payment terms and methods (7½%)**

- Selection
- Export arrangements

### **4. Systems (7½%)**

- Systems
- Electronic trading

### **5. Accounts analysis (15%)**

- Financial appraisal
- Cash flow interpretation

### **6. Risk management (20%)**

- Assessment
- Control

### **7. Collections management (10%)**

- Practices
- Specialised cases

## **Learning Outcomes**

### **Module 1      The cost of credit**

At the end of the module the student should be able to:

- a)      calculate the cost of credit and its effect on profit and liquidity
- b)      explain how changes in the cost of all types of credit can have an impact upon borrowing and lending.

### **Module 2      Credit as a product**

At the end of the module the student should be able to:

- a)      describe how credit is often promoted and sold as a product to consumers in it's own right
- b)      explain marketing strategies available to those organisations who use credit as a product
- c)      determine in a variety of situations the strategies likely to be the most successful in increasing profitable sales
- d)      explain the differences between organisations in the field of consumer credit aiming to develop long-term profitable customer relationships and those aiming purely to support the sale of specific goods and services
- e)      describe the various ways in which credit can be used by an organisation to support or promote its sales efforts
- f)      explain the contribution of the credit department to developing customer relationships and achieving customer satisfaction.

### **Module 3      Credit policy**

At the end of the module the student should be able to:

- a)      explain how a company's credit policy affects profitability and how it may be affected by the economic, political or market environment
- b)      write a policy document defining credit management responsibility
- c)      write procedures for the main credit management functions including levels of authority
- d)      explain the reasons for the adoption of a credit policy or for changing an existing one
- e)      explain the different circumstances where it might be appropriate to override credit policy, e.g. selling obsolete stock, and how such policy exceptions might be controlled
- f)      set out the arguments for and against an organisation establishing an in-house credit department as opposed to using the services of a third party in trade, consumer and export credit.

#### **Module 4      Managing a credit department**

At the end of the module the student should be able to:

- a) outline the options for the establishment or restructuring of the credit management function
- b) detail the advantages and disadvantages of the credit department reporting to the managing director, the finance director or the sales director
- c) write a procedure to cover all areas of sales/credit liaison
- d) draft the format of regular reports to senior management to measure credit department performance and key debtor statistics
- e) explain how to manage a collections team to best effect
- f) explain the advantages and disadvantages of collection incentive schemes
- g) explain the importance of job descriptions and person specifications
- h) outline the main recruitment methods used for assessing job applicants
- i) describe how to conduct and prepare a staff appraisal within the credit department
- j) explain how to determine and meet the training and development needs of credit staff
- k) write an internal training programme for new credit staff
- l) discuss the importance of forecasting and targetting for a credit department, identify the main sources of data, and explain how they might be calculated
- m) outline the main sources of planning information and discuss their importance and relevance
- n) explain the limitations of basing projections on existing activities and past trends
- o) outline the main steps involved in organising and scheduling daily activities
- p) discuss the importance of effective management control in achieving objectives
- q) describe what constitutes best ethical practice within a credit department and determine the appropriate ethical approach in a range of business situations
- r) explain the merits and limitations of centralising or decentralising the credit management function.

#### **Module 5      Payment terms and methods**

At the end of the module the student should be able to:

- a) explain the importance of evaluating the most appropriate payment terms and mechanisms ensuring their acceptance
- b) describe how the following export payment arrangements operate:
  - forfaiting
  - counter-trade
  - leasing
  - export finance for more than 6 months
  - confirming/export houses

- factoring and invoice discounting
- c) describe the following types of export documents and explain their usage in payment terms:
- invoice
  - bills of lading
  - air waybill
  - CMR consignment note
  - insurance certificate
  - certificate of origin
  - packing list
  - shipment advise
  - inspection certificate
  - quality of warranty certificate
  - consular invoice
  - weight note
- d) describe the various types of letters of credit and the security that they give and explain how they operate in all their formats
- e) explain the function of and essential characteristics of advance payment bonds, performance bonds, guarantees and bid/tender bonds
- f) explain the essential characteristics and uses of sight and term bills of exchange.

#### **Module 6 Computerised systems**

At the end of the module the student should be able to:

- a) specify the requirements of a computerised system to cover the main stages of the credit cycle (from application processing to settlement or write-off)
- b) outline the key components of a computer report to identify and display receivable data in any required format for trade and export
- c) describe and illustrate with a simple diagram, the information flows in a computerised system
- d) describe the problems arising from, and the controls required for, electronic trading
- e) describe how systems can be most effectively used to underwrite credit and to prioritise collections activity.

#### **Module 7 Accounts analysis**

At the end of the module the student should be able to:

- a) illustrate the value of ratios and explain how they can assist in measuring the financial performance of a business
- b) appraise a company's financial performance, from specimen profit and loss and balance sheet data, calculating and using the appropriate ratios
- c) explain the circumstances in which ratio analysis is most effective and those where it is of limited value
- d) explain why ratios and performance data will vary from one type of business to another
- e) interpret a cash flow statement

- f) distinguish between profit and cash flow.

## **Module 8 Risk assessment**

At the end of the module the student should be able to:

- a) explain how non-financial factors may affect risk assessment
- b) explain overtrading and how it may be detected
- c) outline the main requirements of the credit industry's Guide to Credit Scoring
- d) set out the requirements for a fully automated credit scoring system in consumer credit and identify the advantages and disadvantages of such a system
- e) distinguish between credit scoring for a credit application and behavioural scoring
- f) explain the limitations placed on the use of credit data by legislation and industry agreement
- g) explain how a system of trade credit scoring could operate
- h) explain all major forms of trade and export risk assessment and how credit managers can use the information obtained
- i) evaluate an individual's credit worthiness from their income/expenditure details, credit bureau history and status.

## **Module 9 Risk control**

At the end of the module the student should be able to:

- a) describe how the symptoms of potential business failure may be identified
- b) identify methods of monitoring payment performance and highlighting potential problems
- c) explain the methods of controlling trade or export credit using risk categories and credit limits
- d) explain the purpose and nature of customer counselling in both trade and consumer credit and the circumstances in which it is appropriate
- e) set out the advantages and disadvantages of a credit insurance policy for trade and/or export business and explain the principal types of policy available
- f) explain the concepts of factoring and invoice discounting and describe under what circumstances these services may or may not be beneficial
- g) explain foreign currency risk and the principal methods of protection against it
- h) explain the risks associated with the provision of bonds and guarantees in export contracts and tenders
- i) explain the forms of security that can be taken to minimise credit risk and discuss their merits and limitations.

## **Module 10 Collections**

At the end of the module the student should be able to:

- a) explain the courses of action available to a credit manager faced with an overdue account and determine which is the most appropriate in various circumstances
- b) explain how a collection programme could be structured in consumer, trade and export
- c) describe how the problem of absconding debtors may be tackled.



**Unit 02 Practical Credit Management Project**



## Practical Credit Management

Accredited unit no: A/102/2590

### Overall aim

The project provides an opportunity to consolidate the knowledge and skills covered in the Advanced Credit Management, Credit Management Law and Legal Proceedings and Insolvency units and to develop higher level technical skills appropriate for managers in the credit occupation.

### Objectives

To enable the candidate to:

1. apply in-depth knowledge and understanding of the concepts, systems and techniques used in the profession
2. integrate understanding of credit management systems with knowledge of the legal framework
3. take personal responsibility for the management and direction of an extended project
4. develop research, evaluative and analytical skills.

The project is an integrating unit and therefore candidates are advised to have passed *at least two* Diploma units, and be working towards the third unit, before commencing the project.

### Brief

Investigate one aspect of the credit function, analysing the effectiveness of the systems and processes used and recommending improvements to working practice.

As a guidance the project would probably be 5,000 – 10,000 words, excluding appendix, and presented in word-processed, report format. It is advised that the choice of subject matter be negotiated between the candidate and employer and/or project supervisor. The project may be a feasibility study or an investigation into a relevant topical issue, and the topic should both reflect the candidate's interests and be able to offer opportunity for personal development.

### Support

Candidates are encouraged to register with a teaching centre and project supervisor.

Teaching centres provide:

- a project workshop or teaching sessions to initiate and develop ideas, and to provide advice on each aspect of the project
- contact with a project supervisor at critical stages during your project. This will give you four opportunities to submit, by email.

## **Learning outcomes**

### **Knowledge**

At the end of the project candidates should have considered and demonstrated where appropriate:

1. comprehensive knowledge of relevant concepts, processes, systems and techniques used in and affecting credit management.
2. understanding of how to manage a credit department effectively by:
  - assessing the structure of the relevant credit management function
  - outlining the main steps that would be involved in organising and scheduling activities
  - determining training and development needs.
3. wider understanding of the role of credit, the credit department and the credit manager by setting the issue or problem being investigated in context and evaluating how recommendations would:
  - promote effective credit management
  - affect company profitability
  - affect other departments and the company credit policy
  - contribute to developing customer relationships and achieving customer satisfaction
  - contribute to best ethical practice
  - raise the profile of the credit department.
4. understanding of relevant aspects of law by developing working practices that are within the legal framework and applying, where appropriate, the principles of the:
  - Data Protection Act 1998
  - Consumer Credit Act 1974 and other relevant areas of consumer credit law
  - anti-discrimination legislation
  - provisions of the Administration of Justice Act 1970, Section 40
  - other relevant legislation.
5. understanding of legal proceedings and insolvency by considering and demonstrating, where appropriate, relevant working practices to include:
  - assessment as to when legal proceedings should be applied, and an explanation of the procedures that must be followed
  - assessment of the options available to the creditor when faced with customer insolvency
  - other relevant legislation.

### **Skills and competence**

At the end of the project the candidate should have demonstrated the ability to:

1. plan and organise work effectively to achieve deadlines
2. work independently
3. originate and develop ideas in response to a problem or issue
4. develop a strategy for the research and investigate, selecting a wide range of data
5. analyse data statistically, where appropriate, and use data critically
6. reach independent and well supported, balanced conclusions
7. evaluate research
8. present outcomes of work effectively in a clear and concise manner.

### **Assessment**

Projects are assessed in the following areas:

	% marks allocated
Rationale	15
Investigation stage 1: strategy and data collection	15
Investigation stage 2: data handling and results	10
Conclusion and analysis	20
Evaluation	10
Effort and achieving deadlines	10
Initiative	10
Presentation	10

## Assessment Criteria

The following assessment criteria provide guidance as to how marks will be allocated:

### A Rationale

<b>Pass</b> 6-8%	Identification of area under investigation with a brief explanation of the rationale for the project and some understanding of the issue
<b>Credit</b> 9-12%	Identification of the area under investigation with a good explanation of the rationale for the project and understanding of the issue
<b>Distinction</b> 13–15%	Clear identification of the area under investigation with a clear explanation of the rationale for the project; a thorough understanding of the issue, and identification of objectives

### Guidance

Candidates should demonstrate good subject knowledge and the ability to originate and develop ideas in response to a problem or issue.

---

### B Investigation stage 1: strategy and data collection

<b>Pass</b> 6-8%	Appropriate skills and methods of enquiry chosen, and a range of data selected
<b>Credit</b> 9-12%	Good explanation of the skills and methods of enquiry chosen, and a range of data collected methodically from recent sources
<b>Distinction</b> 13-15%	A range of skills and methods of enquiry carefully chosen and explained, demonstrating a flexible, methodical approach and providing up-to-date data and comprehensive coverage.

### Guidance

Candidates should demonstrate, where appropriate, the ability to:

1. select methods that are likely to provide the quality of outcomes required and explain their strategy.
2. select and use a variety of methods by, for example:
  - re-framing an issue, e.g. broadening the focus to assess wider impact, re-visualising the issue from different perspectives, reviewing changes over time and location
  - amplifying the issue by dividing it into sub-issues and discounting misleading information
  - making comparisons, for example by drawing on similar issues/problems or finding analogies with other situations.
3. research information from other sources, consulting appropriate people and reference material to establish the critical features of the issue, e.g. line manager, specialists, customers, or colleagues affected by the issue; reference texts, technical manuals, the internet, **clearly referenced**.

4. plan the investigation stage, taking into account factors that might affect plans, e.g. financial considerations, health and safety, resources, time-scale, attitudes to risk, level of own expertise
5. record information in forms that are useful for the next stage of work, e.g. flowchart, concept map, table.
6. keep a track of progress, to maintain momentum, and to spot and correct errors.
7. adapt strategy to overcome difficulties and produce the quality of outcome required.

### C Investigation stage 2: data handling and results

<b>Pass</b> 5-6%	Results presented in a clear and appropriate way
<b>Credit</b> 7-8%	Data used critically and presented effectively with some statistical analysis
<b>Distinction</b> 9-10%	Individual and perceptive presentation of results, closely related to the project rationale and strategy, including some statistical analysis, and demonstrating a critical understanding of the data

#### Guidance

Candidates should demonstrate the ability to:

1. use appropriate procedures to check results, e.g. to test, observe, measure, sample, inspect
2. present results of research and investigation in an appropriate and clear way, e.g. graphical display or graphics
3. analyse data statistically, where appropriate, and use data critically, e.g. fluency exercise, means-ends analysis, critical-path analysis, 2D and 3D models.

### D Analysis, conclusion & recommendations

<b>Pass</b> 10-13%	Clear analysis of results leading to balanced conclusions, demonstrating good subject knowledge
<b>Credit</b> 14-16%	Detailed analysis of results, leading to balanced conclusions based on very good subject knowledge and identification of a number of options
<b>Distinction</b> 17– 20%	Thorough analysis of data, using a variety of techniques to identify and negotiate a number of options, based on excellent subject knowledge, and leading to independent and well supported, balanced conclusions and recommendations

## Guidance

Candidates should ensure that they have addressed all the issues specified in the learning outcomes relating to knowledge assessment and have demonstrated the ability to:

1. identify options that have a chance of success, e.g. use a decision tree or risk analysis
2. compare the main features of any options, including risk factors, e.g. by carrying out a cost/benefit analysis
3. negotiate the options that might be taken forward, e.g. with line manager, tutor, people affected, where appropriate
4. reach independent and well supported conclusions.

---

## E Evaluation

<b>Pass</b> 5-6%	Clear evaluation of rationale, strategy, data collection, analysis and conclusions
<b>Credit</b> 7-8%	Detailed and thorough evaluation of all investigative processes and the quality of outcome
<b>Distinction</b> 9-10%	Comprehensive evaluation of the project, informed by feedback from others

## Guidance

Candidates should demonstrate the ability to:

1. evaluate research by assessing:
  - effectiveness of their chosen strategy and identifying factors that had an impact on the outcomes, e.g. resources, time, environment, level of own expertise
  - their personal skill in adapting strategy to overcome difficulties and produce a quality outcome, by noting choices made and judging their effectiveness, i.e. the impact on quality of work.
  - appropriateness of methods employed to investigate and present results
  - clarity and accuracy of data collected
  - quality of evidence to support conclusions
  - alternative methods and options and predicting if they would have been more effective
2. monitor and critically reflect on personal research skills and the quality of outcome by obtaining feedback from others, e.g. line manager, specialists, people affected by the issue
3. identify potential areas for further investigation.

## F Effort and achieving deadlines

<b>Pass</b> 5-6%	Most deadlines met and considerable effort displayed
<b>Credit</b> 7-8%	All deadlines met and substantial effort displayed
<b>Distinction</b> 9-10%	All deadlines met and consistent and significant effort demonstrated

### Guidance

Candidates should demonstrate the ability to:

1. plan and organise work effectively by prioritising tasks, and identifying resources and support needed from others
2. investigate thoroughly the chosen area of study
3. present own views and listen to the views of others to improve performance
4. set realistic targets, identifying factors that might affect plans, e.g. financial, health and safety, available opportunities and other commitments
5. achieve deadlines.

---

## G Initiative

<b>Pass</b> 5-6%	Some initiative demonstrated, with candidate working with some support
<b>Credit</b> 7-8%	Initiative demonstrated and the candidate worked well independently
<b>Distinction</b> 9-10%	Evidence of considerable initiative and independent working

### Guidance

Candidates should demonstrate the ability to:

1. work independently
2. identify action points, show initiative and pursue relevant lines of enquiry
3. seek and actively use feedback and support from relevant sources, e.g. tutor, trainer, colleagues, manuals, to help meet targets.

## H Presentation

<b>Pass</b> 5-6%	Logically organised and clearly presented and referenced
<b>Credit</b> 7-8%	Well organised project, good design and production, clearly referenced
<b>Distinction</b> 9-10%	Well organised project and excellent design and production with clear and detailed references

### Guidance

Candidates should demonstrate the ability to:

1. develop the structure for presenting work that is logical, well organised and clearly referenced
2. present information effectively, using a format and style to suit the purpose, subject and audience and to ensure that work is accurate and makes sense.

---

### Key Skills coverage

<b>Problem solving</b>		
PS4.1	Develop a strategy	✓
PS4.2	Monitor progress	✓
PS4.3	Evaluate strategy and present outcomes	✓
<b>Improving own learning and performance</b>		
LP4.1	Develop a strategy	✓
LP4.2	Monitor progress	✓
LP4.3	Evaluate strategy and present outcomes	✓
<b>Information technology</b>		
ITV4.1	Develop a strategy	✓
ITV4.2	Monitor progress	
ITV4.1	Evaluate strategy and present outcomes	✓

## Submitting a project

Candidates should indicate on the ICM assessment entry form their intention to submit a project to a teaching centre and its area of study. Entry forms are sent to registered students at the beginning of April for submission in June, and the middle of October for submission in January. The assessment entry form must be completed and returned to Examinations Administrator at the Institute with the appropriate assessment fee and details of the area of study before:

16 November for January submission  
1 May for June submission

Candidates will receive an acknowledgement followed by a project cover sheet (appendix E), approximately 10 days before the submission date. This should be attached to the project.

Candidates must complete and sign the authentication statement on the project cover sheets and gain statements from two persons who are able to confirm that the attached project is the authentic work of the candidate. One witness should be the candidate's project supervisor or employer. Projects will not be assessed unless the authentication statement has been completed.

Projects should be either posted by recorded delivery or handed in to the *reception of the teaching centre that has supervised the project*, which is detailed on the project cover sheet, on or before the closing date. Teaching centres retain projects after assessment for moderation purposes and so candidates are advised to keep their own copy for reference.

## Closing date for project submission

Monday of examination week:

Week 3 for January submission  
Week 24 for June submission

Unfortunately teaching centres are not able to accept projects submitted after the closing date.

## Results

Results are sent by post from the Institute in:  
March (week 13) for a January submission  
August (week 34) for a June submission

Results are not available over the telephone, but candidates may access their result from the education section of the ICM website. Candidates will require their student registration number and a unique password to access results from the web. Passwords, which will be issued to all candidates approximately ten days before submission deadline date, should be retained in a safe place, as it will not be possible to obtain passwords over the telephone from the ICM.

## Referral process

Candidates whose projects are received a referral grade may resubmit amended work on a maximum of **one** occasion on the following submission date. All resubmitted projects are moderated. Resubmitted projects that fail to achieve a pass grade are discussed at the Examination Board and candidates are either:

1. allowed to resubmit
2. must attend a project workshop at an accredited teaching centre before submitting again.

## Assessment guidance

### Grading criteria

<p>A project will be referred back to the candidate for resubmission:</p>	<p>To achieve a <b>pass</b> grade (50-64%) the evidence must show that the candidate is able to:</p>	<p>To achieve a <b>credit</b> grade (65-74%) the evidence in addition must show that the candidate is able to:</p>	<p>To achieve a <b>distinction</b> grade (over 75%) the evidence in addition must show that the candidate is able to:</p>
<p>Should the candidate fail to meet all the requirements defined in the assessment criteria for sections A – E of the project:</p> <ul style="list-style-type: none"> <li>• rationale</li> <li>• investigation stage 1: strategy and data collection</li> <li>• investigation stage 2: data handling and results</li> <li>• conclusion and analysis</li> <li>• evaluation.</li> </ul>	<p>demonstrate some initiative and personal responsibility and conduct a purposeful investigation that demonstrates the ability to apply specialist knowledge of concepts, systems and the law to an issue or problem relating to credit management and to draw meaningful conclusions based on a clear analysis of the results.</p>	<p>demonstrate initiative and personal responsibility for a clearly articulated and well organised project, leading to balanced conclusions that are based on in-depth subject knowledge and a thorough evaluation of the investigative process.</p>	<p>demonstrate considerable skill, initiative and personal responsibility to develop an individual and perceptive research project, that leads to independent and well supported conclusions, based on excellent subject knowledge.</p>

### **Unit 03 Credit Management Law**



## **Credit Management Law**

Accredited unit no: F/102/2591

### **Aims**

To develop in depth understanding of those aspects of company, consumer and individual law, which directly affect the credit management function. This unit aims to enable working practices to be viewed within the legal framework and to develop higher level of skills that would enable appropriate legal responses to credit management problems.

### **Objectives**

To enable the candidate to:

1. develop specialised and in depth knowledge of those aspects of company, consumer and individual law which directly affect the credit management function
2. know in what circumstances and to what extent, credit management law will affect the supplier customer relationship
3. support and develop working practices that are within the legal framework
4. apply the law appropriately.

### **Assessment**

The unit is assessed by external examination. Students sit a 3 hour examination and are required to answer 5 questions from the 8 set. Of the 8 questions, 2 are compulsory with one on company law and partnership and one on consumer credit law and data protection. Students therefore have a free choice of 3 from the remaining 6 questions. All questions carry equal marks.

## **Module content**

### **1. Credit aspects of company law (35%)**

- Principles of corporate personality and limited liability
- Memorandum and articles of association
- Private and public companies
- Borrowing powers and debentures
- Directors and their powers.

### **2. Partnership (10%)**

- Nature of partnership
- Authority of partners as agents for the partnership
- Liability of partners
- Profit /loss distribution
- Limited liability partnership.

### **3. The law governing consumer credit (40%)**

- Scope of the Consumer Credit Act 1974
- Credit advertising and seeking business
- The making of agreements
- Withdrawal and cancellation
- Creditor's responsibilities arising from sections 56 and 75
- Default, termination and repossession
- Judicial control
- Rebates for early settlement
- Licensing
- Ancillary credit business
- Position of purchasers of motor vehicles under Hire Purchase Act 1964
- "Refinancing" hire purchase transactions
- Block discounting
- Relationship between finance houses and dealer.

### **4. Data protection (10%)**

- Data Protection Act 1998.

### **5. Miscellaneous legislative items (5%)**

- Anti-discrimination legislation
- The Administration of Justice Act 1970, section 40, harassment of debtors.

## Learning outcomes

### Module 1 Credit aspects of company law

At the end of the module the student should be able to:

- a) demonstrate a full conceptual understanding of the meaning and effects of incorporation and identify the exceptions to the veil of incorporation both at common law and by statute
- b) state the reasons for the importance and limitations on the choice of the company name
- c) describe the legal effect of pre-incorporation contracts and analyse to what extent such contracts may become binding upon companies and outsiders
- d) distinguish between the contents and legal significance of the memorandum and the articles of association of a company, and assess their importance to the company and outsiders in their contractual dealings
- e) describe the compulsory clauses of the memorandum, assess to what degree the Companies Acts have altered the ultra vires doctrine and outline the contents of table A of the companies legislation, and the legal effect of the articles
- f) distinguish between public and private limited companies, state the exemptions for small and medium-sized companies in relation to the publicity of accounts, and outline the nature of companies limited by guarantee and their legal status
- g) describe the procedures which must be followed in order to achieve registration of a limited company
- h) describe and evaluate the powers of a company to borrow money in the form of a debenture
- i) state the power of a debenture-holder and describe and apply their remedies in the event of breach of contract by the company
- j) describe and apply the rules relating to the taking of charges over the assets of a company
- k) compare and contrast the nature of fixed and floating charges and analyse their respective advantages and disadvantages from both the creditor's and debtor's point of view
- l) describe the procedural requirements for registration and protection of charges and the consequences of failure to follow such procedures
- m) describe the method of appointment of directors, their duties and powers and the consequence of invalid appointments
- n) describe the extent of the powers of directors, by applying the rule in *Royal British Bank v Turquand*, and the effects of directors exceeding their powers
- o) explain the statutory duties of good faith and care owed by a director and the fiduciary position of a director and apply the law relating to alleged breaches of duty
- p) Identify and describe the legal controls over the directors' management of company and shareholders' rights (including minority protection)

- q) identify and describe the statutory relations governing a director's dealing in shares and share options, the taking of loans by a director and property transactions involving directors and apply the consequences of breach of such regulations
- r) state the grounds and procedures for dismissal of a director
- s) describe the method of appointment and the duties of a company secretary for companies retaining the role.
- t) describe the types of general meetings that can be called, contrast the different types of resolutions that can be passed, and outline the different types of voting rights that shareholders may possess
- u) discuss the separation of powers between shareholders and directors.

## **Module 2 Partnership**

At the end of the module the student should be able to:

- a) describe the essential characteristics of a partnership and distinguish its features from those of a limited liability company
- b) describe how a partnership is created, the usual contents of a partnership agreement and the legal position where there is no partnership agreement
- c) describe and distinguish between the different types of authority of partners contained in sections 5 – 8 of the Partnership Act 1890 and assess the extent to which the firm will be bound by the conduct of a partner (or partners) purporting to act on behalf of the firm as a whole
- d) briefly describe the liability of partners to their fellow partners for breach of the partnership agreement, their express duties to each other and those implied by the Partnership Act
- e) outline how the profit/losses of a partnership may be apportioned
- f) describe the liability of partners for debts owing to creditors, including civil contribution legislation and joint and several liability
- g) apply the rules relating to the retirement of a partner (in particular how the retiring partner may be freed from liability for debts incurred both after and before retirement)
- h) describe the characteristics of a limited liability partnership under the Limited Liability Partnership Act 2000 and outline the legal position of partners and the extent of their liability.

## **Module 3 The law governing consumer credit**

At the end of the module the student should be able to:

- a) explain the scope of the Consumer Credit Act 1974 and its key definitions as amended by the Consumer Credit Act 2006.
- b) assess accurately and in detail whether a proposed credit advertisement is lawful, the information to go in a credit advertisement, restricted statements, the "together as a whole" rule and prominence
- c) outline the criminal sanctions for breach of the advertisement regulations and for false or misleading advertisements and who may be liable to them

- d) describe the other provisions in the Consumer Credit Act affecting seeking business – canvassing, credit tokens and circulars to minors
- e) explain the principles behind the calculation of the APR, the constituent parts of the total charge for credit, items not included in it, the principles behind the formulae used and the main assumptions to be made
- f) explain the precautions needed to ensure that a regulated agreement is properly executed, in particular as to signature and the need to include all the terms of the agreement
- g) apply the requirements of the Consumer Credit (Agreements) Regulations as to form and content of agreements
- h) describe the Consumer Credit Act's requirements in relation written pre-contract disclosure of information and to copies of agreements
- i) distinguish between cancellable and non-cancellable agreements and describe the customer's rights where entering into a cancellable agreement
- j) analyse the consequences of an agreement being improperly executed and explain what types of improper execution will render an agreement totally unenforceable
- k) evaluate the consequences for credit grantors under sections 56 and 75 of the Consumer Credit Act where problems arise in respect of the statutory agency of a supplier of goods or services financed under a debtor-creditor-supplier agreement or any misrepresentation or breach of contract by such a supplier
- l) describe the rights of termination which the Act gives to debtors or hirers under regulated hire purchase, conditional sale and hire agreements
- m) explain in detail the procedures which the Consumer Credit Act requires to be followed with regard to termination of agreements, money claims, guarantees and repossession of goods following default by a debtor or hirer, the procedures governing default notices and when a court order will be needed before repossessing goods, the number of days notice to be shown on a default notice is now 14 days (Consumer Credit Act 2006)

Note: Those Sections of the Consumer Credit Act 2006 which prescribe the giving of periodic statements of account and arrears notices, notices of default sums or notices of the charging of post-judgment interest do not come into force until October 2008 and therefore are not covered by this update of the syllabus

- n) explain the requirements of the Consumer Credit Act 1974 relating to guarantees and indemnities in respect of regulated agreements and the consequences of failing to follow those requirements
- o) describe the special rules which the Consumer Credit Act provides for court procedures in respect of regulated agreements and concerning extortionate credit bargains. The latter have been replaced by the wider concept of "unfair relationship" (in force since April 2007 for new agreements and due to come into force in April 2008 for pre-existing agreements). Note also that automatic unenforceability of certain types of improperly executed regulated has been removed, leaving the matter to the court's discretion
- p) explain the rules governing the early settlement of regulated agreements (both the actuarial rule and the rule of 78) and outline the basis of calculation
- q) explain the licensing system under the Consumer Credit Act, describe the types of business needing a licence, identify the types of conduct which could lead to loss of a

licence and outline the procedures which are followed when the Director General of Fair Trading is minded to refuse or revoke a licence . A strengthening of the Office of Fair Trading's licensing powers takes effect on 6 April 2008 together with other amendments to the licensing procedure (including the holding of appeals)

- r) analyse problems affecting title to motor vehicles under the Hire Purchase Act 1964
- s) discuss the legal position where an attempt is made to levy execution or distress for rent on goods subject to hire purchase, conditional sale or leasing agreements
- t) outline the risks inherent in 'refinancing' hire purchase transactions
- u) distinguish between the two principal methods of block discounting
- v) describe the commercial and legal aspects of the relationship between a finance house and a dealer or supplier from whom it takes its business.

#### **Module 4      Data Protection**

At the end of the module the student should be able to:

- a) explain and apply the principal definitions of the Data Protection Act 1998
- b) apply the Data Protection Principles to the conduct of a business
- c) analyse the requirements concerning the consent of the data subject and how this should be obtained
- d) analyse the impact of the legislation on credit assessment and credit referencing
- e) explain the rights of individual data subjects in respect of subject access, correction of errors and compensation
- f) explain the requirements in respect of notification to the Information Commissioner
- g) outline the duties and powers of the Information Commissioner under the Act
- h) explain the criminal offences involving unlawful obtaining or disclosure of personal data.

#### **Module 5      Miscellaneous legislative items**

At the end of the module the student should be able to:

- a) describe how the provisions of the anti-discrimination legislation affect the evaluation of applications for credit
- b) apply the provisions of the Administration of Justice Act 1970, section 40, to the activities of an organisation's collection department
- c) describe the main requirements of the present legislation to prevent money laundering and the penalties for non-compliance.

## **Unit 04 Legal Proceedings & Insolvency**



## **Legal Proceedings and Insolvency**

Accredited unit no: J/102/2592

### **Aims**

To enable the credit manager to have a high degree of competency when dealing with any aspect of legal proceedings or insolvency procedures. This unit deals with detailed and complex legal procedures and aims to develop a high level of skill, insight and judgement, in addition to detailed, specialised knowledge.

### **Objectives**

To enable the candidate to:

1. develop comprehensive and in depth knowledge of the legal proceedings and formal insolvency procedures that are relevant to credit management.
2. apply the law to practical situations, to evaluate and analyse the different methods of debt recovery
3. judge when legal proceedings are appropriate; to determine the processes which must be followed when proceedings are undertaken and the options available to a creditor when faced with a customer's insolvency
4. engage in complex legal situations, to advise and communicate effectively with the courts, solicitors and insolvency professionals.

### **Assessment**

The unit is assessed by external examination. Students sit a 3 hour examination and are required to answer 5 questions from the 8 set. Two questions are compulsory, one on Legal Proceedings and one on Insolvency. All questions carry equal marks.

## **Module content**

### **1. Court jurisdiction and procedures (20%)**

- Debt payment process and recovery through the courts
- Decision as to choice of court
- Steps and procedures relating to court action

### **2. The continuation of actions (10%)**

- Termination of actions and default
- Summary judgment
- Injunctions
- Transfer of proceedings
- Defences and counterclaims

### **3. Enforcement of judgments (10%)**

- Judgments and different ways to enforce them
- Transfer of action for execution

### **4. Insolvency law (10%)**

- Insolvency Act 1986: its broad provisions
- General principles of law relating to insolvency
- Licensing of insolvency practitioners Priorities of creditors
- Transactions at under value, preferences and extortionate credit bargains
- Remuneration of office holders

### **5. Personal insolvency (15%)**

#### Voluntary arrangements

- Individual voluntary arrangements and deeds of arrangement
- Appropriateness and procedures
- Rights of creditors
- Bankruptcy
- Petitions, the trustee, debtor assets, proceedings affecting the estate, discharge

### **6. Corporate and partnership insolvency (35%)**

#### Liquidation

- Types, appropriateness and procedures
- Powers and duties of liquidators
- Position of creditors
- Disqualification of directors

#### Other procedures

- Company voluntary arrangement
- Administration order
- Administrative receivership

#### **English and Scottish law**

The English law learning outcomes have been modified for Scottish law. Candidates are offered the option of a Scottish law version of the English paper.

## English Law

### Learning outcomes

#### Module 1 Court jurisdiction and procedures

At the end of the module the student should be able to:

- a) describe the circumstances under which debt recovery action through the courts would be contemplated
- b) describe the actions of the creditor and creditor's legal representative prior to commencing a court action
- c) state the monetary limits applicable to commencement of proceedings in the county courts and the High Court (small claims track, fast track and multi-track)
- d) determine the court of first instance for given debt recovery situations
- e) outline the basic steps (claim form, allocation, statement of case, case management conference, disclosure, exchange of witness statements and reports, directions, pre trial review and hearing) relating to multi-track actions in accordance with civil procedures rules
- f) outline the basic steps (claim form, allocation, statement of case, disclosure, exchange of witness statements and reports, directions, listing questionnaire and hearing) relating to fast track actions in accordance with civil procedures rules
- g) outline the basic steps in the small claims track within the county court
- h) state the current levels of interest, fees and court costs and indicate when these are applicable
- i) outline the basis on which fixed costs are assessed and applied in debt recovery cases
- j) demonstrate an ability to apply relevant legal terminology to given debt recovery situations.

#### Module 2 The continuation of actions

At the end of the module the student should be able to:

- a) outline the circumstances under which actions can be terminated without a hearing under fast track and multi-track
- b) describe how basic court procedures are amended in the light of default of service of claim, payments in court, discontinuance or want of prosecution
- c) outline the circumstances under which it is possible to apply for summary judgment
- d) describe the impact of summary judgment on the claimant and defendant
- e) apply the matters in (a) and (d) above to given debt action cases
- f) outline the procedures adopted in respect of injunctions related to debt recovery actions
- g) explain the circumstances when application for an injunction is appropriate

- h) describe the effect of injunction on the debt recovery action
- i) apply the principles relating to injunctions to given debt action cases
- j) outline the circumstances under which and the procedures adopted when cases are transferred between High and County courts (in either direction)
- k) discuss the nature of evidence required by the claimant to answer a debtor defence or counterclaim
- l) explain how common debtor defences and counterclaims can arise
- m) apply the principles relating to dealing with defences and counterclaims to given debt action cases.

### **Module 3 Enforcement of judgments**

At the end of the module the student should be able to:

- a) describe the various methods of enforcement applicable to the High Court
- b) describe the various methods of enforcement applicable to the county courts
- c) outline the purpose of and procedure relating to an order for the examination of a judgment debtor (formerly oral examination)
- d) evaluate the appropriateness of particular enforcement methods for given debt recovery situations
- e) analyse the advantages and disadvantages of the various enforcement methods available to the judgment creditor
- f) outline the circumstances under which actions can be transferred between courts for execution of judgment

### **Module 4 Insolvency law**

At the end of the module the student should be able to:

- a) state the legal definition of the term “insolvent”
- b) discuss the general nature of changes to insolvency law brought about by the Insolvency Act 1986 and subsequent amending legislation
- c) demonstrate an ability to apply relevant terminology to given insolvency situations
- d) outline the jurisdiction of the courts in insolvency matters
- e) outline the law and practice relating to the granting of licences to Insolvency Practitioners
- f) describe the various duties and roles of the Official Receiver
- g) describe the bases on which office holders in insolvency matters are remunerated
- h) outline the law relating to transactions at an undervalue, preference and extortionate credit bargains
- i) apply the principles outlined in (h) to given insolvency situations

- j) outline the law and practice relating to the priority of payment of various classes of creditor in insolvency
- k) apply the principles outlined in (j) to given insolvency situations
- l) demonstrate the ability to determine dividends for different classes of creditor in given insolvency situations.

#### **Module 5      Personal insolvency – voluntary arrangements**

At the end of the module the student should be able to:

- a) distinguish between IVAs, deeds of arrangement and bankruptcies
- b) outline the formal steps taken in an IVA
- c) describe the circumstances under which a debtor may enter into an IVA
- d) evaluate the appropriateness of an IVA in given insolvency situations
- e) describe the effect of the various steps in the IVA procedure (proposal, interim order, nominee's report, meeting of creditors) on the debtor and the creditors
- f) analyse the advantages and disadvantages of IVAs for both debtors and creditors
- g) outline the rights of creditors in respect of proof of debt, meeting of creditors and appeals
- h) describe the general effects of default by the debtor and the courses of action open to the supervisor
- i) describe the general effects of full implementation of the IVA proposal on both creditors and debtors.

#### **Module 6      Personal insolvency – bankruptcy**

At the end of the module the student should be able to:

- a) outline the formal steps taken in bankruptcy
- b) describe the circumstances under which a creditor, debtor or supervisor of a failed voluntary arrangement may petition for bankruptcy
- c) evaluate the appropriateness of a bankruptcy petition in given insolvency situations
- d) describe the effect of the petition and subsequent bankruptcy order on the debtor
- e) outline the penalties and restrictions faced by the undischarged bankrupt
- f) describe the circumstances under which a public examination of the bankrupt can be sought
- g) explain the legal position of the trustee in bankruptcy
- h) discuss the law relating to proof of debt in a bankruptcy
- i) describe the meaning and impact of a creditors' meeting in bankruptcy
- j) list the assets of the debtor available to the estate

- k) indicate how the matrimonial home, as an asset, is treated in bankruptcy
- l) explain how a trustee can improve dividend prospects for creditors with reference to preferences, transactions at an undervalue, after acquired property and income payments orders
- m) distinguish between bankruptcy and summary administration
- n) outline the rules relating to discharge from bankruptcy
- o) explain the procedure for discharge and the effect of discharge on both creditors and debtors
- p) explain the circumstances under which a bankruptcy order can be annulled.

### **Module 7 Corporate and partnership insolvency – liquidation**

At the end of the module the student should be able to:

- a) distinguish between compulsory, creditors' voluntary and members' voluntary winding up
- b) state the grounds upon which a creditor may petition for the compulsory winding up of a company or partnership
- c) state the grounds upon which the court may order the winding up of a company or partnership
- d) describe the circumstances under which a creditors' or members' voluntary winding up is appropriate including the transition from members' to creditors' regime where applicable
- e) outline the formal procedures adopted in each type of winding up
- f) outline the powers and duties of a liquidator in each type of winding up
- g) describe the impact on the debtor company or partnership of the petition, winding up order and appointment of a liquidator
- h) outline the circumstances under which the appointment of a special manager is indicated
- i) outline the duties of the official receiver in respect of a compulsory winding up
- j) explain how a liquidator can improve dividend prospects for creditors with reference to preferences, transactions at an undervalue and avoidance of some floating charges
- k) explain how creditors may act to improve their own position with reference to retention of title, floating charges and execution of judgments
- l) outline the law relating to disqualification of directors
- m) explain the circumstances under which directors of insolvent companies may be disqualified from holding office and/or made personally liable for company debts
- n) apply the principles in (l) and (m) above to given insolvency situations
- o) explain how the personal assets of partners may be used in the settlement of partnership debts

- p) analyse the advantages and disadvantages of each type of winding up procedure
- q) describe the meaning and possible outcomes of creditors' meetings, the rules governing voting and proxies, and the rights and duties of creditors' committees
- r) explain the meaning and impact of dissolution.

### **Module 8 Corporate and partnership insolvency – 'other' procedures**

At the end of the module the student should be able to:

- a) distinguish between company voluntary arrangement (CVA), administration order (AO) and administrative receivership (AR)
- b) describe the circumstances under which CVA, AO or AR are appropriate
- c) list the circumstances under which the court will grant an application for a CVA or an AO
- d) outline the formal procedures adopted in each type of 'rescue' procedure
- e) outline the powers and duties of the supervisor in a CVA, administrator in an AO and administrative receiver in an AR
- f) describe the impact on the debtor company or partnership of the appointment of a supervisor (CVA) or administrator (AO)
- g) analyse the advantages and disadvantages to both creditors and debtor company or partnership of a CVA or AO
- h) describe the meaning and possible outcomes of creditors' meetings and the rights and duties of creditors' committees in CVA and AR procedures
- i) distinguish between the treatment of small and larger companies under CVA legislation.

## **Legal Proceedings and Insolvency Syllabus Scots Law**

### **Learning outcomes**

#### **Module 1 Court jurisdiction and procedures**

At the end of the module the student should be able to:

- a) describe the circumstances under which debt recovery action through the courts would be contemplated
- b) outline the roles, responsibilities and accountabilities of each of the parties and their respective representatives once formal steps have been initiated
- c) identify the appropriate court to determine a debt cause and pronounce a valid and enforceable decree by reference to:
  - i) the monetary limits applicable to the commencement of proceedings
  - ii) the subject matter of the cause
  - iii) the remedy sought
  - iv) the persons convened as defenders, or the property in respect of which the remedy is sought
- d) define the respective jurisdictions of the sheriff court and court of session in relation to debt and insolvency actions
- e) identify the appropriate type of sheriff court action with respect to the debt involved
- f) outline the basic rules in relation to jurisdiction as prescribed by the Civil Jurisdiction and Judgements Act 1982 including the definition of a consumer contract, prorogation of jurisdiction, exclusive jurisdiction
- g) identify the period of prescription in Scots law for debts and related obligations
- h) outline the availability of recompense as a remedy in the absence of a contract
- i) distinguish between contractual interest, the judicial rate of interest and statutory interest
- j) outline the procedure and availability of commercial causes
- k) outline the circumstances in which cases may be remitted from a higher court to a lower court and vice versa and the circumstances in which a case may be remitted from one jurisdiction to another.

#### **Module 2 Types of court action**

At the end of the module the student should be able to:

- a) outline the basic steps in ordinary cause payment action in the sheriff court and be able to describe:
  - i) the importance of the form and structure of the pursuer's initial writ, warrant to cite, main methods of citation and period of notice
  - ii) defended cause, notice of intention to defend, reponing and counterclaim

- iii) lodging of defences, adjustment of pleadings, lodging of record, sisting of proceedings, preliminary pleas, options hearing, continued options hearing including the role of the sheriff, additional procedure, proof, proof before answer and debate
  - iv) preparation for proof including production of documents and recovery of documents
  - v) decree, extract, appeals and expenses
  - vi) time to pay directions
  - vii) the evidential requirements imposed on the pursuer in response to defences and/or counterclaim
  - viii) motion for summary decree.
- b) outline the basic steps in sheriff court summary cause actions and the relevance of:
- i) the summary cause summons including statement of claim, service, book of summary causes and period of notice
  - ii) time to pay directions
  - iii) defended cause, return date, calling date, proof, decree, recall of decree and counterclaim
  - iv) assessment of expenses
  - v) appeal to sheriff principal and court of session.
- c) outline the basic steps in small claims payment actions in the sheriff court and the importance of:
- i) the financial limits, book of small claims, service of summons and period of notice
  - ii) defenders range of responses, including time to pay directions; preliminary hearing and full hearing including interest and expenses, the limited form of appeal
  - iii) evidential requirements.

### **Module 3      Enforcement of judgments – Scots law of diligence**

At the end of the module the student should be able to:

- a) identify the various diligences as the legal means by which creditors may attach debtor's assets in payment or security for payment of their debts
- b) distinguish between diligence upon the dependence and diligence in execution
- c) describe the provisions relating to time to pay orders
- d) describe the importance of apparent insolvency, the date of sequestration in personal bankruptcy and the date of commencement of liquidation, in the equalisation of diligence
- e) explain the rules in relation to the equalisation of diligence
- f) explain the treatment of all creditors as pari passu as at the date of bankruptcy

- g) explain the impact of diligence as it applies in the context of administration, company voluntary arrangement, section 425 arrangement, liquidation, receivership, sequestration, trust deeds and the debt arrangement scheme
- h) identify those circumstances where diligence is unaffected by formal personal bankruptcy or corporate insolvency proceedings
- i) analyse as credit managers the advantages and disadvantages of the various types of diligence as a means of attaching the debtor's assets, or as security for payment of those debts.

## **Module 4      Personal insolvency – voluntary arrangements in Scotland**

At the end of the module the student should be able to:

### Debt Management Scheme

- a) explain the nature of the debt arrangement scheme
- b) state who may apply for approval of a debt payment programme
- c) state the time limits applicable to a debt payment programme and the circumstances in which they may be extended
- d) state the monetary limits applying to a debt payment programme
- e) describe the procedural steps involved in obtaining approval of a debt payment programme
- f) describe the role of the money adviser in relation to a debt payment programme
- g) state the types of debt which may be included in a debt payment programme
- h) explain the calculation of sums available for distribution under a debt payment programme
- i) describe the provisions for securing payments under a debt payment programme
- j) describe the role of the payments distributor
- k) describe the priority of payment of debts within a debt payment programme
- l) describe the requirements for consent of creditors to a debt payment programme and the circumstances in which such consent may be dispensed with
- m) describe the effect of approval of a debt payment programme on the debtor and the creditors
- n) explain the importance of registration of a debt payment programme
- o) describe the circumstances in which a debt payment programme may be varied and the procedure for variation
- p) explain the effect of the debtor's default
- q) explain the circumstances in which a debt payment programme will or may be brought to an end
- r) explain the inter-relationship between debt payment programmes, trust deeds for creditors and sequestration

### Trust Deeds for Creditors

- a) state the legal definition and nature of a trust deed for creditors
- b) describe the circumstances in which a debtor would enter into a trust deed for creditors
- c) define the essential elements of any trust deed for creditors
- d) outline the effect on the debtor of granting a trust deed
- e) explain the effect of the conveyance to the trustee of all or only some of the debtor's assets
- f) outline the role and responsibilities of the trustee
- g) describe the various procedural stages in effecting a trust deed for creditors.
- h) explain the process and importance of registration of the trust deed in:
  - i) the books of council and session
  - ii) register of inhibitions and adjudications
- i) state the requirements for the constitution of a 'protected' trust deed
- j) outline the benefits of the constitution of a 'protected' trust deed for the debtor
- k) outline the implications of the constitution of a 'protected' trust deed for creditors
- l) describe and briefly discuss the procedure to close down a 'protected' and 'non-protected' trust deed
- m) describe the procedure for discharge of the:
  - i) trustee
  - ii) debtor.

## **Module 5      Non-corporate insolvency – formal procedure leading to sequestration**

At the end of the module the student should be able to:

- a) state the meaning of the term apparent insolvency introduced by the Bankruptcy (Scotland) Act 1985
- b) demonstrate an awareness of the relevant terminology as applied in bankruptcy procedures
- c) define the jurisdiction of the sheriff court and court of session in relation to personal insolvency
- d) outline the role of the accountant in bankruptcy including the regulation and control of trustees
- e) describe the circumstances in which a credit manager might determine it appropriate to invoke sequestration proceedings in Scotland
- f) identify the circumstances when a petition for sequestration might be sought in the sheriff court by:
  - i) a debtor with or without a qualifying creditor
  - ii) a qualified creditor
  - iii) a trustee under a trust deed granted by the debtor
  - iv) the executor of a deceased debtors estate
  - v) a trust estate
  - vi) the partners in a partnership or limited partnership
  - vii) bodies corporate and unincorporated, other than companies registered under the companies acts
- g) outline the steps taken in the granting of a petition for sequestration:
  - i) to a qualified creditor
  - ii) to a living debtor with a concurring creditor
- h) outline the steps leading up to the appointment of a permanent trustee, including reference to the appointment of an interim trustee, statutory meetings of creditors, appointment of commissioners
- i) describe the effect of the granting of an award of sequestration on a debtor's property, both moveable and heritable and in particular on the family home
- j) explain who may be appointed permanent trustee and their role, responsibilities and duties in the sequestration
- k) explain the meaning of:
  - i) gratuitous alienations
  - ii) unfair preferences

- iii) extortionate credit transactions
  - iv) challengeable orders on divorce
  - v) excessive pension contributions
  - vi) acquirenda
- l) explain the effect of an award of sequestration with respect to gratuitous alienations, unfair preferences, certain orders on divorce, excessive pension contributions, extortionate credit transactions and acquirenda
  - m) outline the rights, duties and potential offences of debtors once an award of sequestration has been made
  - n) explain how the personal assets of partners may be used in the settlement of partnership debts
  - o) explain the circumstances and rules whereby a debtor is discharged from sequestration and the consequences of this
  - p) outline the circumstances and rules whereby interim and permanent trustees are discharged and the consequences of this
  - q) explain the circumstances in which sequestration may be recalled
  - r) explain the criteria for and procedural steps associated with an application for summary administration
  - s) explain the way in which the duties of the permanent trustee are modified under summary administration procedure
  - t) explain the law and practice in Scotland for settling claims of creditors and the priorities accorded to them.

## **Module 6      Corporate insolvency – liquidation**

At the end of the module the student should be able to:

- a) distinguish between the terms absolute and practical insolvency
- b) define insolvency for the purposes of the Insolvency Act 1986
- c) discuss the background and changes brought about in the procedures for dealing with insolvent company debtors in Scotland by the Insolvency Act 1986
- d) define the jurisdictions of the sheriff court and court of session as regards company insolvency
- e) outline the procedure for the regulation, remuneration, qualification and control of insolvency practitioners
- f) distinguish between compulsory, creditors' voluntary and members' voluntary winding up
- g) state the grounds upon which a creditor may petition for the compulsory winding up of a company

- h) describe the circumstances under which a creditors' or members' voluntary winding up is appropriate including the transition from members' to creditors' regime where applicable
- i) outline the formal procedures adopted in each type of winding up
- j) outline the powers and duties of a liquidator in each type of winding up
- k) describe the impact on the debtor company of the petition, winding up order and appointment of a liquidator
- l) outline the circumstances under which the appointment of a provisional liquidator is indicated
- m) explain the meaning of:
  - i) gratuitous alienations
  - ii) unfair preferences
  - iii) extortionate credit transactions
  - iv) challengeable floating charges
- n) explain how a liquidator can improve dividend prospects for creditors with reference to gratuitous alienations, unfair preferences and extortionate credit transactions
- o) explain how creditors may act to improve their own position with reference to retention of title, floating charges and enforcement of judgments
- p) outline the law relating to disqualification of directors
- q) explain the circumstances under which directors of insolvent companies may be disqualified from holding office and/or be made personally liable for company debts
- r) apply the principles in (p) and (q) to a given insolvency situation
- s) analyse the advantages and disadvantages of each type of winding up procedure
- t) describe the meaning and possible outcomes of creditors' meetings, the rules governing voting and proxies and the rights and duties of creditors' committees
- u) explain the meaning and impact of dissolution.

## **Module 7      Corporate Insolvency – Other Procedures**

At the end of the module the student should be able to:

- a) distinguish between company voluntary arrangements (CVA), administration order (AO) and receivership (R) and describe the circumstances in which each may arise
- b) list the circumstances under which the court will grant an application for an administration order or company voluntary arrangement
- c) outline the formal procedures adopted in each type of 'rescue' procedure
- d) outline the formal powers and duties of the administrator in an administration order, receiver in a receivership and supervisor in a company voluntary arrangement

- e) describe the impact on the debtor company of the appointment of an administrator (AO) or of a supervisor (CVA)
- f) describe the impact on the debtor company of the appointment of a receiver
- g) analyse the advantages and disadvantages to both creditors and debtor companies of an AO or CVA
- h) analyse the advantages and disadvantages to both creditors and debtor companies of a receiver
- i) describe the meaning and possible outcomes of creditors' meetings and the rights and duties of creditors' committees in receivership and CVA procedures.
- j) distinguish between the treatment of small and larger companies under CVA legislation.