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## PROGRAMME IN SOUTH AFRICAN INSOLVENCY LAW AND PRACTICE 2022

Summative Assessment (Examination): Paper 2

Date: 29 - 30 November 2022

**Time limit: 24 hours (from 13:00 on 29 November to 13:00 on 30 November 2022)**

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### EXAMINERS

Dr Reghard Brits

### MODERATOR

Dr D Burdette

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It is imperative that all candidates read and take cognisance of the examination instructions on the next page.

All candidates are expected to comply with ALL the instructions.

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## INTRUCTIONS

1. This assessment paper will be made available at **13:00 (1 pm) SAST on Tuesday 29 November 2022** and must be returned / submitted by **13:00 (1 pm) SAST on Wednesday 30 November 2022**. Please note that assessments returned late will not be accepted.
2. All assessments must be submitted electronically in one of the following formats:
  - Microsoft Excel spreadsheet; or
  - Microsoft Word (with the use of tables); or
  - Hand-drafted, scanned and submitted.

As far as possible, please use the Avenir Next or Arial 11-point font when answering this assessment.

3. You must save the document containing your answer using the following format: **[studentID.Paper2Summative]**. An example would be something along the following lines: 202122-336.Paper2Summative. **Where possible, please also include the filename as a footer to each page of the answer to the assessment, or at the top of each page to the assessment.** Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
4. The assessment will be e-mailed directly to candidates on the course and must likewise be returned by e-mail to david.burdette@insol.org.
5. Due to the high incidence of load shedding currently taking place across South Africa, candidates are required to determine whether any load shedding is scheduled during the examination period and, if so, to make alternative arrangements to write elsewhere if at all possible.
6. Enquiries during the time that the assessment is written must be directed to David Burdette at david.burdette@insol.org or by WhatsApp on +44 7545 773890. Enquiries will only be responded to during UK office hours (which are 9 am to 5 pm GMT, or 11 am to 7 pm SAST).
7. While the assessments are open-book assessments, it is important to note that candidates **may not receive any assistance from any person** during the 24 hours that the assessment is written. When submitting the answers candidates will be asked to confirm that the work is their own and that they have worked independently. Please include a statement to this effect in your covering e-mail when returning the assessment.
8. If a candidate is unable to complete this summative assessment (examination), please note that a re-sit examination will only be given if there are exceptional circumstances that prevent a candidate from completing or submitting it (such as

illness). Feedback on the final assessment will be provided within four weeks of the paper having been written - please do not enquire about your marks before four weeks have elapsed.

10. This assessment consists of **10 pages**.

## QUESTION 1

In February 2012 Petrus Mavundla and his son Simon bought the farm "Paradise Valley" in the Nelspruit area in Mpumalanga Province. They intended to run the farm as a commercial enterprise, and to this end they registered a private company, **Paradise Valley Farm (Pty) Ltd**, with the Companies and Intellectual Property Commission (CIPC). Petrus and Simon Mavundla are the only shareholders, and both are directors of the company with Petrus taking the role of managing director. Paradise Valley Farm (Pty) Ltd farmed mainly with crops, although there was a small number of livestock on the farm as well. Due to the fact that the farm had been severely neglected for a number of years prior to the farm being taken over by Petrus and Simon Mavundla, they needed a large cash layout in order to get the business going. Initially Paradise Valley Farm (Pty) Ltd borrowed money from commercial banks in order to get their business started, securing the debt by means of two mortgage bonds over the farm. However, unfavourable weather conditions between 2012 and 2019 saw the farm posting huge losses every year.

In 2019, in a final act of desperation, Petrus and Simon approached the Land and Agricultural Development Bank of South Africa (the Land Bank) for a loan in order to continue trading. The Land Bank granted the loan and secured it by means of a mortgage bond over the farm Paradise Valley. When the mortgage bond was registered over the property in favour of the Land Bank, the two existing mortgage bonds were subordinated in order to provide the Land Bank with first priority. The money provided by the Land Bank did not last very long, although most of it was spent on improving the farming facilities and equipment which had the effect of increasing the value of the farm itself. Without proper cash flow, Paradise Valley Farm (Pty) Ltd was soon unable to pay its debts as they fell due, and fell further and further behind in its mortgage and other repayments to creditors. Fearing that their second subordinated mortgage bond over the farm would become valueless if Paradise Valley Farm (Pty) Ltd was allowed to continue farming operations, Agribank Ltd instructed its attorneys, YHA Attorneys in Nelspruit, to bring an application in the High Court to have the company, Paradise Valley Farm (Pty) Ltd, wound up. The application to wind up the company was filed with the Registrar of the High Court on 4 May 2022. The High Court granted a final order of liquidation on 7 May 2022.

You are required to draft a **Liquidation and Distribution and / or Contribution Account** together with a **Bank Reconciliation Statement** in this estate, reflecting all the facts furnished hereunder. It is essential that you take note of the following important information when drafting this account:

- You need not prepare a liquidator's affidavit nor insert dates, addresses, voucher numbers and repetitive headings.
- All interest calculations in respect of a secured claim(s) must be shown and reflected in the relevant Encumbered Asset Account(s).

- In the event of you making assumptions, you are to clarify same by stating why you are of the opinion that insufficient facts have been given or, where in your opinion, the facts given are ambiguous.
- The expected date of confirmation of the account is **17 March 2023**. You are to assume that all final payments will be made on that date.
- The account may be drafted in any order that suits you.
- In the Distribution and / or Contribution Account you are to reflect at least the total claim and the secured, statutory preferent and concurrent portion of each claim separately. You need not provide for a shortfall (deficiency) column in respect of any of the claims and you need not add up unnecessary totals. The Distribution and / or Contribution Account must reflect awards to all classes of creditors, ie secured, preferent and, where applicable, concurrent creditors, as well as the amount upon which contribution is payable (if any) and the amount of contribution payable by each creditor, if applicable.
- **Paradise Valley Farm (Pty) Ltd** is registered as a vendor in terms of the Value-Added Tax Act. Your account must therefore make provision for Value-Added Tax (VAT). Provision must be made in the account for the allocation of VAT in which you show the estate's liability for VAT. You may include this calculation either in the body of the account or by way of a separate schedule.
- **The liquidator** is registered with the South African Revenue Service as a VAT vendor. His / her remuneration must be reflected in accordance with the *Spendiff* decision. These calculations may likewise be contained either in the body of the account or in a separate schedule.
- Where it is stated in the facts that an amount includes VAT, please accept that VAT is indeed included in such amount, even if you are of the opinion that, in practice, VAT would not have been included in such amount. Conversely, if it is stated that VAT is excluded you are to treat it as such and accept that no VAT is payable, even if you are of the opinion that, in practice, VAT would indeed be payable.
- Use only the amounts provided for in the given set of facts. It is unnecessary for you to make up your own amounts for the purposes of this question. You are, however, required to calculate and reflect the statutory fees due to the Master of the High Court and the liquidator's remuneration.
- Please note that some calculators may require that the amounts must be rounded off to the nearest cent. Minor errors made by students in this regard will not be penalised. Likewise, students will be given a leeway of two (2) days each way in regard to the number of days on which interest calculations are made.

[100 Marks]

## **1. ASSETS REALISED**

- 1.1 Proceeds of Portion 3 of the farm "Paradise Valley", Nelspruit, Mpumalanga, sold by public auction by Nelspruit Auctioneers on 6 August 2022, VAT inclusive ..... **R9,100,000.00**
- 1.2 Proceeds of the following assets sold by public auction by Nelspruit Auctioneers at an auction held on 2 September 2022:
- 1.2.1 Various specified farming implements, vehicles and other movable assets (these assets were kept separate from the other movable assets upon the instruction of the liquidator, as they were subject to a special notarial bond), VAT inclusive ..... **R1,050,000.00**
- 1.2.2 Livestock found on the farm "Paradise Valley", VAT inclusive ..... **R87,174.10**
- 1.2.3 Miscellaneous movable assets found at the farm "Paradise Valley", VAT inclusive ..... **R24,000.00**
- 1.3 Proceeds of book debts collected by the liquidator (no VAT payable) ... **R27,645.08**
- 1.4 Occupational rent paid on Portion 3 of the farm "Paradise Valley", paid to the liquidator (VAT inclusive)..... **R175,000.00**
- 1.5 Proceeds of book debts collected by attorneys Sithole & Partners at the request of the liquidator (no VAT payable)..... **R32,205.44**

## **2. EXPENSES PRESENTED TO THE LIQUIDATOR FOR PAYMENT:**

- 2.1 Nelspruit Bond Services, for bond of security premium (including provision for renewal of R26,000) (VAT inclusive)..... **R52,000.00**
- 2.2 Nelspruit Auctioneers, expenses incurred in respect of the auction held on 6 August 2022 (VAT inclusive)..... **R425,000.00**
- 2.3 The taxed Bill of Costs of YHA Attorneys, the attorneys who acted for the applicant creditor in the application for the winding-up of the company (VAT inclusive)..... **R18,631.93**
- 2.4 Nelspruit Auctioneers, expenses incurred in respect of the auction held on 2 September 2022 (VAT inclusive) ..... **R62,000.00**
- 2.5 Cost of advertising general (second) meeting of creditors (VAT inclusive).. **R370.00**
- 2.6 Provision for advertising inspection of account (VAT inclusive)..... **R50.00**
- 2.7 Provision for advertising confirmation of account (VAT inclusive)..... **R50.00**
- 2.8 Provision for advertising destruction of books and records (VAT inclusive) ... **R50.00**

- 2.9 Bank charges (including a provision of R150.00) (VAT inclusive)..... **R400.00**
- 2.10 Postage and petties allowed by the Master (VAT inclusive) ..... **R250.00**
- 2.11 Nelspruit Auctioneers, storage costs for the storage of the movable assets subject to a special notarial bond (item 1.2.1 above) (VAT inclusive).....**R13,091.45**
- 2.12 Sithole & Partners, professional fee for collecting book debts on behalf of the liquidator (VAT inclusive)..... **R6,914.10**
- 2.13 Nelspruit Auctioneers, storage costs of the movable assets referred to in 1.2.2 and 1.2.3 above (assets sold by public auction on 2 September 2022) (VAT inclusive).....  
..... **R5,118.19**

**3. CLAIMS PROVED AGAINST THE ESTATE:**

- 3.1 **Mpumalanga Bank Ltd**, for moneys lent and advanced ..... **R2,502,667.30**

This claim is secured by a first mortgage bond over Portion 3 of the farm 'Paradise Valley'. Interest on this claim is payable at the rate of 14% per annum from date of liquidation to date of payment. This creditor relied on its security.

**IMPORTANT NOTE:** After this mortgage and another (second mortgage) had been registered over the property, the Land Bank registered a mortgage bond over the property (see creditor 4 below). The effect of this was that this creditor's mortgage bond (and the second mortgage bond) were subordinated to rank below the mortgage bond of the Land Bank. This creditor agreed to its mortgage bond being subordinated at the time the Land Bank's mortgage bond was registered.

- 3.2 **Mpumalanga Bank Ltd**, for moneys lent and advanced by way of an overdraft facility ..... **R203,046.89**

This claim is secured by a cession of the book debts of Paradise Valley Farm (Pty) Ltd in favour of Mpumalanga Bank Ltd. Interest on this claim is payable at the rate of 17,25% per annum from date of liquidation to date of payment. This creditor did not rely on its security.

- 3.3 **Mpumalanga Cooperative**, for goods sold and delivered ..... **R17,410.61**

- 3.4 **Land and Agricultural Development Bank of South Africa**, for moneys lent and advanced ..... **R3,761,052.55**

Although the Land and Agricultural Development Bank of South Africa is not bound by the provisions of the Insolvency Act 1936 by virtue of section 90 of that Act, in this particular instance the Land Bank, for various practical reasons, decided to subject itself to the administration process being run by the liquidator and duly proved a claim in the estate. The Land Bank's claim is secured by a mortgage bond

over Portion 3 of the farm "Paradise Valley". At the time the mortgage bond was registered, there were two existing mortgage bonds registered over the property, namely a first mortgage in favour of Mpumalanga Bank Ltd (creditor number 1) and a second mortgage in favour of Agribank Ltd (creditor number 6). Both existing mortgage bondholders agreed to subordinate their mortgage bonds to that of the Land Bank, effectively giving the Land Bank's mortgage first priority. Interest on the Land Bank's claim is payable at a rate of 2% per annum from date of liquidation to date of payment. This creditor has not relied on its security.

3.5 **Nelspruit Farming Supplies CC**, for goods sold and delivered.....**R28,612.77**

3.6 **Agribank Ltd**, for moneys lent and advanced ..... **R873,398.12**

This claim is secured by a second mortgage bond over Portion 3 of the farm "Paradise Valley". Interest on this claim is payable at the rate of 13,5% per annum. This creditor relied on its security.

**IMPORTANT NOTE:** After this mortgage and another (first mortgage) had been registered over the property, the Land Bank registered a mortgage bond over the property (see creditor 4 above). The effect of this was that this creditor's mortgage bond (and the first mortgage bond) were subordinated to rank below the mortgage bond of the Land Bank. This creditor agreed to its mortgage bond being subordinated at the time the Land Bank's mortgage bond was registered.

3.7 **Agribank Ltd**, for moneys lent and advanced ..... **R561,055.34**

This claim is secured by a special notarial bond registered over specified assets in terms of section 1 of the Security by Means of Movable Property Act 57 of 1993 (see the assets mentioned in 1.2.1 above). You may accept that the assets mentioned in 1.2.1 above have all been specifically described and identified as being subject to the special notarial bond. Interest on this claim is payable at the rate of 16,5% per annum, from date of liquidation to date of payment. This creditor did not rely on its security.

3.8 **South African Revenue Service**, for arrear VAT and Income Tax owing by the company at date of liquidation.....**R27,186.64**

***This amount is made up as follows:***

Arrear VAT payments prior to liquidation	R 19,345.02
Arrear Income Tax payments prior to liquidation	R 7,841.62

3.9 **Hazyview Veterinary Services (Pty) Ltd**, for veterinary services rendered .....  
.....**R3,668.29**



- 3.10 **Jock Benson**, manager of Paradise Valley Farm (Pty) Ltd, for arrear salary and leave pay owing before date of liquidation..... **R86,000.00**

This creditor's claim is made up as follows:

**Salary for the months of:**

January 2022	R20,000.00
February 2022	R20,000.00
March 2022	R20,000.00
April 2022	R20,000.00

**Leave pay:**

Leave pay owing for 2021	R 6,000.00
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- 3.11 **Petrus Mavundla**, managing director of the company, for arrear salary owing at date of liquidation ..... **R100,000.00**

This creditor's claim is made up as follows:

**Salary for the months of:**

January 2022	R25,000.00
February 2022	R25,000.00
March 2022	R25,000.00
April 2022	R25,000.00

- 3.12 **Simon Mavundla**, managing director of the company, for arrear salary owing at date of liquidation ..... **R60,000.00**

This creditor's claim is made up as follows:

**Salary for the months of:**

January 2022	R15,000.00
February 2022	R15,000.00
March 2022	R15,000.00
April 2022	R15,000.00

- 3.13 **Constance Phosa**, an employee of the company, for arrear salary and leave pay owing at date of liquidation ..... **R22,000.00**

This creditor's claim is made up as follows:

**Salary for the months of:**

January 2022	R5,000.00
February 2022	R5,000.00
March 2022	R5,000.00
April 2022	R5,000.00

**Leave pay:**

Leave pay owing for 2021	R2,000.00
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3.14 **Stephanie Pieters**, an employee of the company, for arrear salary owing at date of liquidation.....**R12,000.00**

This creditor's claim is made up as follows:

**Salary for the months of:**

January 2022	R3,000.00
February 2022	R3,000.00
March 2022	R3,000.00
April 2022	R3,000.00

**4. BANK STATEMENTS**

The bank statements (of the estate banking account) in the hands of the liquidator reflect the following receipts and payments (for the purposes of this question please assume that no interest was earned on credit balances).

<b>ITEM NO</b>	<b>PAYMENTS</b>	<b>RECEIPTS</b>
1.1 & 2.2		8,675,000.00
1.2 & 2.4, 2.11, 2.13		1,080,964.46
1.3		27,645.08
1.5 & 2.12		25,291.34
2.1	26,000.00	
2.3	18,631.93	
2.5	370.00	
2.9	250.00	
2.10	250.00	

Bank balance as at date when accounts were made up: **R9,763,398.95**

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