

GUERNSEY BAR EXAMINATION

09:30AM 17 MAY 2023

PAPER FIVE

CORPORATE AND FINANCIAL SERVICES LAW

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS. THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW.

- **QUESTION 1 – 25 MARKS**
- **QUESTION 2 – 25 MARKS**
- **QUESTION 3 – 25 MARKS**
- **QUESTION 4 – 25 MARKS**

MARKS WILL BE GIVEN FOR REFERENCES TO APPLICABLE LEGISLATION AND CASE LAW.

PLEASE ENSURE THAT THE FOLLOWING IS CLEARLY MARKED ON EACH PAGE OF YOUR ANSWER SCRIPT:

- **NAME OF PAPER**
- **CANDIDATE LETTER**
- **QUESTION NUMBER**
- **PART NUMBER OF QUESTIONS (if applicable)**

MATERIALS PROVIDED (all consolidated texts, where applicable):

- 1. The Partnership (Guernsey) Law, 1995**
- 2. The Companies (Guernsey) Law, 2008**
- 3. The Security Interests (Guernsey) Law, 1993**
- 4. The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002**
- 5. The Foundations (Guernsey) Law, 2012**
- 6. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020**

QUESTION 1 (25 Marks)

Chris is the sole director and shareholder of Devco Limited (“**Devco**”), whilst Sarah is the sole director and shareholder of Perform Limited (“**Perform**”). Devco and Perform are incorporated in Guernsey as companies limited by shares.

Devco carries on the business of developing software, whilst Perform offers project management services to public sector clients.

Devco and Perform agreed to trade in partnership using the firm name “Next-Gen” to develop and sell for a profit bespoke, subscription-based project management software. Following some initial sales, Devco and Perform are working on developing the software for a new client, the States of Guernsey. Although Chris knew Devco did not have the cash to fund the cost of developing the software, he assumed Sarah would agree the corresponding costs would be repaid from the income received on sale.

Following 18 months of development by Devco with input from Perform, the software was almost complete. By this time, Devco had incurred a debt in the region of £100,000 in respect of the costs of development, including £25,000 which is owed to Turnkey Limited (“**Turnkey**”) for the cost of database licensing. Prior to obtaining the database licences, Chris reassured the senior management team at Turnkey that the income from the first month’s subscription fees from the States would be enough to repay Turnkey in full.

Without telling Chris, Sarah demonstrated the software to the States. As it was incomplete, the States offered only a nominal, one-off payment for the exclusive use of the software for 12 months. Sarah agreed, and payment was made to Perform.

Devco has received a final demand for payment from Turnkey but has no cash whatsoever. Turnkey’s credit control team has threatened to pursue Chris for payment personally unless payment is made within 7 days.

Chris has discovered the details of the sale of the software to the States, and Sarah is ignoring Chris’ attempts to contact her.

Advise Chris.

QUESTION 2 (25 Marks)

Alex and Sam are the directors and founding shareholders of Allcover Insurance Limited (“**Allcover**”), a Guernsey company limited by shares which carries on the business of providing insurance advisory and brokerage services in Guernsey. Following an equity investment, the majority shareholder of Allcover is High Stakes PCC Limited (“**High Stakes**”) an investment fund registered in Guernsey.

Over the last 2 years, Alex has reduced her involvement in the day-to-day management of Allcover and focused on the development of property with her father.

Whilst searching for some misplaced paperwork in Alex’s office, Sam discovered an unsecured loan agreement between Allcover and Business Bank Limited, dated 18 months ago, as well as falsified cashflow projections and management accounts. It appears from Allcover’s bank statements that 50% of the loan was drawn down and immediately paid to a company connected to Alex.

Alex was recently arrested on suspicion of fraud in relation to her procurement of other loans and has been released on bail whilst investigations are on-going.

Allcover has now received a letter from Business Bank Limited giving notice that an event of default has occurred following Allcover’s failure to comply with the repayment terms of the loan.

Although Allcover has cash at bank, the intention was this would be used to repay a business loan which, 12 months ago, Allcover obtained from Capital Futures Limited which is secured over a bank account with Capital Futures Limited into which Allcover’s cash receipts are paid.

Alex has told Sam not to worry because, 4 months ago, she signed a contract for the sale of an investment property owned by Allcover to Propco Limited (“**Propco**”), a joint venture between Alex and her father. Although at a discount to market value, the proceeds of sale will be enough to repay the loans from Business Bank Limited and Capital Futures Limited in full. Sam was not aware of the transaction.

Concerned for his reputation, Sam has resigned from his position as director of Allcover.

Whilst High Stakes is able to invest further capital into Allcover to ensure Allcover’s liabilities are met, High Stakes would prefer not to do so.

Advise High Stakes in relation to:

- the effectiveness and impact of the security said to have been granted to Capital Futures Limited;
- whether Allcover is bound by the transaction with Propco;
- any cause of action which Allcover and/or High Stakes may have against Alex and/ or Sam; and
- any regulatory issues which may arise for Allcover.

QUESTION 3 (25 Marks)

William's family has owned real property in Guernsey for generations.

To ensure the real property remained in the family in the event of his death, William endowed the property, together with some shares in a Guernsey incorporated company ("**Guernseyco**") to a Guernsey registered foundation. The purpose of the foundation is to benefit William and his family, of which William and his only surviving family member, Mary, are the beneficiaries. William and his former partner, Rachel, were originally named as Councillors in the constitution. The constitution provides that there shall at all times be two Councillors.

Much of the real property is located in what was historically an industrial zone. William's intention was the rental income from the property would ensure his comfort and that of Mary. Consequently, the constitution states the foundation is not permitted to divest any real property.

To raise capital to begin a programme of refurbishing the foundation's real property and increase the rental income, Rachel is seeking to obtain a development loan secured against the foundation's shares in Guernseyco.

Whilst Rachel was away, the States of Guernsey began to construct the infrastructure necessary to promote the area in which much of the foundation's property is located as a new garden suburb. This caused local land prices to increase exponentially.

Wanting to obtain a personal windfall from the sale of the property, William sought to pressure Rachel to agree to dispose of the foundation's property without changing the foundation's constitution. Rachel refused and, ultimately, she gave notice of her resignation as Councillor.

William immediately took the opportunity to agree the sale by the foundation of a freehold development site to Prime Estates Limited ("**Prime**") at a discount to market value.

Mary recently returned to Guernsey from overseas and discovered Prime is marketing the site for development, whilst William owns a lavish property on another site developed by Prime. Mary suspects Prime contributed to the purchase price.

On questioning William, he advised he has instructed his legal representatives to wind the foundation up and make sure Mary does not receive a penny.

Advise Mary in relation to:

- whether the foundation is bound by the transaction with Prime;
- any liability to which Rachel and/or William may be exposed;
- the steps, if any, which Mary can take to avoid the foundation being wound up;
and
- the steps which must be satisfied in order for the foundation to give valid security over its shares in Guernseyco.

QUESTION 4 (25 Marks)

AB (BVI) Limited (“**AB BVI**”) is a BVI-registered company limited by shares. AB BVI is a wholly owned subsidiary of AB (Guernsey) Limited (“**AB Guernsey**”), a Guernsey-registered company limited by shares. AB BVI and AB Guernsey provide fiduciary, company and trust administration services.

Charles is the founder of AB BVI. Having sold his shareholding to AB Guernsey, he remains a director of AB BVI and has responsibility for the local operations of AB BVI in the BVI.

To reduce overheads and maximise returns to shareholders, Charles has proposed that AB BVI and AB Guernsey amalgamate, with AB Guernsey being the continuing (amalgamated) company and Charles being appointed as a director to the board of the amalgamated company.

A group of minority shareholders in AB Guernsey are concerned, however, that AB BVI is currently defending a class action brought by former clients of AB BVI who allege to have suffered loss due to Charles' incompetence and financial mismanagement of their affairs.

The minority shareholders in AB Guernsey are also aware the most recent management accounts for AB BVI state a significant sum is owed to the legal team instructed in relation to the class action and that the prospects of AB BVI successfully defending the claim are slim.

Advise the minority shareholders in AB Guernsey in relation to:

- whether the amalgamation is possible.
- if so:
 - the procedure involved in the proposed amalgamation.
 - any regulatory considerations which may be taken into account by the Guernsey Financial Services Commission in determining whether to grant the application; and
 - the impact on the class action and debts of AB BVI; and
- the steps, if any, which may be available to the minority shareholders to prevent the amalgamation.