GUERNSEY BAR EXAMINATION

9.30AM, 26 APRIL 2018

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 WRITE LEGIBLY AND ENSURE THAT YOU ANSWER EACH QUESTION ON A SEPARATE SHEET OF PAPER. PLEASE WRITE ON ONE SIDE OF THE PAPER ONLY AND LABEL EACH SHEET CLEARLY WITH:

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

MATERIALS PROVIDED (all consolidated texts, where applicable):

1. **The Security Interests (Guernsey) Law, 1993**
2. **The Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979**
3. **The Companies (Guernsey) Law, 2008**
4. **The Foundations (Guernsey) Law, 2012**
5. **The Limited Partnerships (Guernsey) Law, 1995**
6. **The Limited Liability Partnerships (Guernsey) Law, 2013**
7. **The Protection of Investors (Bailiwick of Guernsey) Law, 1987**
8. **The Trusts (Guernsey) Law, 2007**
9. **The Competition (Guernsey) Ordinance, 2012**
10. **The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012**

11. **The Competition (Calculation of Turnover) (Guernsey) Regulations, 2012**
12. **The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000**
13. **The Banking Supervision (Bailiwick of Guernsey) Law, 1994**
14. **The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008**
15. **Finance Sector – Code of Corporate Governance**
16. **The Investor Protection (Designated Countries and Territories) Regulations, 1989**
17. **The Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992**
18. **The Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015**
19. **The Investor Protection (Designated Countries and Territories) (Bailiwick of Guernsey) Regulations, 2017**
20. **AGB Code of Conduct for Deposit Advertisements**
21. **GFSC's Code of Practice for Banks, 2003**
22. **Prospectus Rules 2008**

QUESTION 1 (25 marks)

You are approached by a director of a Guernsey closed-ended collective investment scheme (the **Fund**) which owns a portfolio of real estate assets through four Guernsey companies (each a **Propco**), each of which has a Guernsey subsidiary (each a **Subsidiary**). The director explains that he sits on the board of the Fund and each of the Propcos and Subsidiaries. The Fund has determined to sell its portfolio by way of share sale of each Propco to a third party purchaser. As part of the share sale and purchase agreement, each Propco is required to repay its existing inter-company indebtedness to the Fund and to refinance using external bank facilities with Big Bank. Three Propcos will make a pre-sale dividend of their surplus income. One Propco and its Subsidiary is 'balance sheet insolvent'.

1.1 Provide initial advice to the director as to the potential legal and regulatory issues which the director should consider and how these might be addressed.

(**15 marks**)

The director calls back. He now has more details of the financing arrangements. He tells you that each of the Propcos will be borrowers and that, as part of the security package to support the bank facilities, Big Bank requires security over each bank account held by each Propco, security over the shares in each Subsidiary and each Propco and Subsidiary will cross-guarantee the other group entities.

1.2 Provide initial advice to the director about the proposed new facilities covering:

- The security to be provided by each Propco
- The security to be provided by each Subsidiary
- What the director needs to consider in relation to the proposed guarantee from each Propco and each Subsidiary.

(**10 marks**)

QUESTION 2 (25 marks)

You act for an overseas client (**Client**) which is looking to acquire a book of banking business in Guernsey (**Target Business**). The Target Business includes a large number of current accounts and deposit accounts. A minority of the accounts have had security granted over them, some of the accounts are dormant and one account you understand is the subject of a suspicious activity report to the Guernsey Financial Intelligence Service.

2.1 Provide initial advice as to possible structuring to acquire the Target Business including the advantages and disadvantages of each of those methods.

(**12 marks**)

You find out, as part of the due diligence involved, that the Target Business also provides investment advice.

2.2 What regulatory approvals may be required to acquire the Target Business and what is the procedure for obtaining these?

(**8 marks**)

2.3 Your Client makes his acquisition and is very pleased. A year later he calls up to say that he is looking to undertake a large marketing campaign in Guernsey to advertise his banking business. Provide initial legal advice to him.

(**5 marks**)

QUESTION 3 (25 marks)

You have a client which is seeking to acquire all of the assets owned by a cell of a Guernsey protected cell company which is a closed-ended collective investment scheme under the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

3.1 Provide initial advice on possible structuring options. Please also identify what further information you require.

(**15 marks**)

3.2 You are called by the in-house counsel of the client which is a FTSE 100 company based in London. Her finance director has asked her to make enquiries about establishing a 'captive' in Guernsey. Provide an explanation about what a captive is and its potential benefits.

(**2 marks**)

3.3 Your client calls back and says that they are keen to proceed but would like further advice on the differences between a PCC and an ICC. Provide initial advice comparing and contrasting ICCs and PCCs.

(**8 marks**)

QUESTION 4 (25 marks)

You are called up by a journalist asking about how to do business in Guernsey. Provide a response to each of the following questions posed:

4.1 What kind of things do you need to look out for, if you wish to offer shares in an English company listed on the London Stock Exchange to residents in the Bailiwick?

4.2 What are the key differences between a limited partnership and a limited liability partnership?

4.3 What is a PIF and what is a QIF?

4.4 What is a foundation?

4.5 What regulatory issues do I need to consider if I want to set up a private trust company?

(**25 marks**)

END OF PAPER