

GUERNSEY BAR EXAMINATION

9.30AM, 29 APRIL 2016

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. ALL QUESTIONS DO NOT CARRY EQUAL MARKS.

- Question 1 – 25 MARKS
- Question 2 – 25 MARKS
- Question 3 – 25 MARKS (Q3A – 12.5 MARKS, Q3B – 12.5 MARKS)
- Question 4 – 25 MARKS

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)

MATERIAL PROVIDED:

- 1. The Banking Supervision (Bailiwick of Guernsey) Law, 1994 (consolidated text)**
- 2. The Companies (Guernsey) Law, 2008 (As Amended) (Consolidated Text)**
- 3. The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012**
- 4. The Foundations (Guernsey) Law, 2012**
- 5. The Insurance Business (Bailiwick of Guernsey) Law, 2002**
- 6. The Limited Liability Partnerships (Guernsey) Law, 2013**
- 7. The Limited Partnerships (Guernsey) Law, 1995**
- 8. The Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008**
- 9. The Security Interests (Guernsey) Law, 1993**
- 10. The Trusts (Guernsey) Law, 2007**
- 11. The Protection of Investors (Bailiwick of Guernsey) Law, 1987**
- 12. The Licensees (Capital Adequacy Rules) 2010**
- 13. The Licensees (Conduct of Business) Rules 2014**
- 14. Guidance Note – Promotion of Investments under the Protection of Investors (Bailiwick of Guernsey) Law, 1987**
- 15. Protection of Investors (Bailiwick of Guernsey) Law, 1987 Promotional Activities – Policy Guidance**
- 16. Competition (Guernsey) Ordinance, 2012**
- 17. The Competition (Calculation of Turnover) (Guernsey) Regulations, 2012**

QUESTION 1**(25 marks)**

MegaBank Guernsey Limited ('MBG') seeks your advice in respect of a loan agreement it proposes to enter into with InGroup Guernsey Limited ('IGG'). IGG is an existing customer of MBG and holds a portfolio of international securities with MBG pursuant to a Guernsey law custody agreement.

MBG requires a charge over the portfolio together with a charge over shares in a Guernsey company ('GCO') which MBG holds as nominee for IGG.

In a related transaction IGG's parent, InGroup USA Inc ('IGUSA'), is borrowing from MBG's parent, MegaBank USA Inc ('MBUSA').

In support of the borrowing IGUSA is required to give security and has offered (i) a charge over its shares in IGG and (ii) a charge over its interest in a Guernsey limited partnership ('GLP') which makes private equity investments (the GLP is still within its investment period and is only partially drawn down). IGUSA has also offered a charge over the shares in its Guernsey property company, IG Property Limited ('IGP'). However IGUSA is adamant that the governing law of that charge must be the laws of its own jurisdiction.

MBG and IGG are incorporated and transacting in Guernsey. IGUSA and MBUSA are incorporated and transacting outside of Guernsey.

MegaBank has not instructed lawyers outside of Guernsey and seeks your initial comments and advice on the above proposals.

QUESTION 2**(25 marks)**

Invest SRL ('Invest'), incorporated in Moldova, has agreed with Billy Le Page that he will publish a number of items on social media endorsing their services, which include the sale of unlisted shares in companies incorporated outside of Guernsey (selected and recommended by Invest specifically for private investors). Invest's sister company, Loans SRL ('Loans'), also incorporated in Moldova, make unsecured loans to high net worth individuals. Loans have reached a similar agreement with Billy.

Billy is a well-known local commentator on finance and economics and will conduct all of his endorsement activities from Guernsey. Simultaneously Invest and Loan will conduct a global media campaign, which will include special offers for residents of a limited number of jurisdictions.

Invest and Loans seek your advice on any aspects of Guernsey law or regulation, which may impact upon Billy or Invest and Loans arising out of the arrangement.

QUESTION 3**(25 marks)**

(a) You are contacted by a Mr. Arnold ('Mr. A'), who owns a property management company in the UK, which buys and then lets residential properties. In order to expand its business, he would like to establish a new structure into which UK investors could invest. He is also considering setting up a vehicle, with some of his colleagues, to manage the new structure's properties in a similar manner ('Manager'). He has been told to use Guernsey for both and is keen to understand the benefits of Guernsey and the process for establishing the structure and the Manager. He would also like to know what kind of structures he should use and how soon he could accept money from investors. You are requested to provide initial advice to Mr. A on his proposal.

(12.5 marks)

(b) Ultimately Mr. A decides on a corporate structure for both the investment vehicle and the Manager, of which he is a shareholder. He sits on both boards, so he can provide them with the benefit of his property management experience. The other members of each of the boards are Guernsey resident directors. A number of years after their establishment, Mr. A calls you. The investment vehicle has been performing poorly for some time and Mr. A had agreed not to invoice the management fees until things improve. It appears that the only thing now keeping the investment vehicle afloat is the Manager not invoicing. However, the other shareholders of the Manager are insisting that it seeks payment. The Guernsey resident directors of the investment vehicle are equally insistent that Mr. A has a duty not to press for payment on the Manager's behalf. Mr. A has also heard that the banks who lent to the investment vehicle would foreclose if they were aware of the situation. Mr. A asks you to advise the investment vehicle, the Manager and him personally what to do.

(12.5 marks)

QUESTION 4**(25 marks)**

Your client is seeking to effect a merger between two companies which are closely held within the same group and which are registered and licensed in Jersey and Guernsey respectively to undertake insurance business, with the intention of transferring the insurance business undertaken in Guernsey to the Jersey entity.

Please provide initial advice as to how this may be effected from a Guernsey legal and regulatory perspective. Please also identify where further information is required.