

GUERNSEY BAR EXAMINATION

09:30AM, WEDNESDAY 14 May 2025

PAPER FIVE

**CORPORATE LAW AND AN INTRODUCTION
TO 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 AWARDED FOR REFERENCES TO APPLICABLE LEGISLATION AND CASE LAW.

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

- **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 Limited Partnerships (Guernsey) Law, 1995**
- 3. The Trusts (Guernsey) Law, 2007**
- 4. The Companies (Guernsey) Law 2008**
- 5. The Foundations (Guernsey) Law 2012**
- 6. The Standard Articles of Incorporation of the Guernsey Register (last revised 2015)**
- 7. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020**

QUESTION 1 (25 Marks)

Anil and Bridget are both directors of Pasturetec Ltd, a Guernsey company limited by shares. Anil and Bridget each own 20% of the company's shares, with the remainder held by several investors in the company. The company has the standard articles of incorporation, other than an additional Article 33, which provides:

"The directors may not enter into any transaction or loan agreement with a value in excess of £100,000 unless this has been approved by the shareholders by the passing of an ordinary resolution".

Pasturetec Ltd is a company involved in the development of several products in the agricultural technology field. Anil and Bridget decided that the company does not have sufficient financial resources to develop one of its projects, so borrowed £300,000 from GlobalBank plc, without first seeking the approval of the Pasturetec Ltd's shareholders, to obtain the financial resources necessary to develop the project. GlobalBank plc required security for the loan, which was delivered by Pasturetec Ltd granting security over the shares that it owns in Watercleanse Ltd, a Guernsey company limited by shares which is a wholly owned subsidiary of Pasturetec Ltd. The share certificates for the shares in Watercleanse Ltd were never delivered to GlobalBank plc and they are still in the possession of Pasturetec Ltd.

Bridget was approached by one of Pasturetec Ltd's suppliers and was offered the opportunity for Pasturetec Ltd to become the exclusive distributor in the United Kingdom and the Channel Islands of a new robot that they have developed which helps farmers to monitor soil moisture and quality. Bridget thought that this was an excellent product but thought that Pasturetec could not afford to take the opportunity when it was offered. As such, she formed a new company, InvestGreen Ltd, wholly owned by Bridget and her husband, Charles, and InvestGreen Ltd acquired the exclusive distribution contract, which has so far earned Investgreen Ltd £400,000.

Anil and Bridget have now realised that Pasturetec Ltd is in financial difficulties. The project for which Pasturetec Ltd borrowed £300,000 from GlobalBank plc was not granted a patent when an application was made. The terms of the loan agreement between Pasturetec Ltd and GlobalBank plc state that the failure to obtain a patent for the project when applied for is an event of default and GlobalBank plc are now seeking repayment of the loan. Anil and Bridget are aware that Pasturetec Ltd does not have the means to repay GlobalBank plc at present but are keen to continue trading because they believe that the company may obtain a large order for one of its other products in 3 months' time and this will be sufficient to restore the company's financial position. In the meantime, Anil and Bridget resolved at a recent directors' meeting to repay a loan of £100,000 that Anil made to the company, and which was not due to be repaid until 2027.

Advise Anil and Bridget in relation to the following issues:

- i. The validity of the loan agreement and provision of security to GlobalBank plc and the way in which the security interest is likely to be enforced.
- ii. Their potential liabilities to Pasturetec Ltd for breach of directors' duties.
- iii. Their potential liabilities in relation to the potential insolvency of Pasturetec Ltd.

QUESTION 2 (25 marks)

Derek, Edric and Fiona are directors of HoldCo Ltd, a Guernsey company limited by shares. Derek and Edric each own 40% and Fiona owns 20% of the company's issued share capital. HoldCo Ltd is a holding company for the following businesses, all of which carry on the same core regulated fiduciary services business:

1. An ICC registered in Guernsey.
2. A PCC registered in Jersey.
3. A company limited by shares registered in the British Virgin Islands.

The board of HoldCo Ltd decided, with Derek and Edric voting in favour, that it would be sensible to reduce overheads and regulatory complexities by restructuring the group into one jurisdiction in Guernsey. The Board is aware that the British Virgin Islands company has been sanctioned several times for its failure to comply with the requirements of company law in the British Virgin Islands.

Fiona is doubtful that the restructuring strategy will be appropriate for HoldCo Ltd and voiced her opinion in the relevant board meetings. Derek and Edric were not happy that Fiona is not in support of the proposal and wrote a letter to Fiona, signed by them both, requesting her resignation as a director. Fiona is concerned because it is apparent that, since her removal, Derek and Edric have increased the remuneration paid to the company's directors and have significantly reduced the dividends paid by the company since she was removed as a director.

Advise HoldCo Ltd in relation to the following issues:

- I. The restructuring options that are available to the company and the legal procedures involved.
- II. The potential regulatory procedures involved with the restructuring as it is proposed.

Advise Fiona in relation to the following issue:

- III. Whether she has any potential action against Holdco Ltd and/or Derek and Edric in relation to her removal as a director of the company and the subsequent events outlined above.

QUESTION 3 (25 Marks)

Helena is a successful businesswoman who has made a great deal of money in the banking industry. She owns shares in a number of successful companies along with several properties in Guernsey and is keen to place the ownership of these assets into a Guernsey foundation ("Foundation 1") that will allow the income from them to be used for the benefit of herself and her four grandchildren, all of whom are currently under the age of 10. Helena wants to retire from all work and is presently receiving treatment for ill-health, so she would like her friends, Imogen and James, to be councillors of the foundation, though she is concerned that they have little experience in business.

Helena owns a house known as "Cobo View" that she would like Imogen and James to manage for the benefit of her brother, Kevin.

Helena is the beneficiary of another Guernsey registered foundation ("Foundation 2"), set up by her ex-husband, Lionel, for the benefit of Helena and their children. Lionel serves as a guardian of Foundation 2 and then his friends, Michelle and Pierre are councillors. The foundation's assets include several holdings of land in Guernsey and in the United Kingdom, along with rental properties and shares in various companies.

Helena has discovered that Michelle and Pierre have recently entered into a transaction to sell a valuable piece of land in London that forms part of Foundation 2's assets. She is astonished to discover that the sale is at a price substantially below the market value of the land and the purchaser is a company, LandDev Ltd, that is owned by Michelle and her daughter. Helena contacted Lionel to inform him of this situation and neither Helena nor Lionel, despite numerous requests, have been able to get any information about the running of Foundation 2 or its current financial position from Michelle and Pierre.

Advise Helena in relation to the following issues:

- I. The major considerations that should inform the creation of Foundation 1 and the support that may be available for Imogen and James in their management of Foundation 1's affairs.
- II. The appropriate way for Helena to achieve her objectives in respect of the management of "Cobo View".
- III. Whether Foundation 2 is bound by the transaction with LandDev Ltd.
- IV. Any liability to which the officials of Foundation 2 may be exposed.
- V. Any steps that Helena and/or Lionel may be able to take in order to gain information about the running of Foundation 2 and its current position.

QUESTION 4 (25 Marks)

Queenie, Ronald and Sally are directors of PowerTech Ltd, a company involved in the design, manufacture and supply of solar panels and associated technologies. Queenie and Ronald each own 40% and Sally owns 10% of the company's issued share capital, with the remaining shares held by other shareholders.

At a recent directors' meeting, Queenie and Ronald recommended that PowerTech Ltd should enter into a contract with SiliconSupplies Ltd to provide some of the raw materials that the company needs for its manufacturing. Sally did not wish to upset Queenie and Ronald, so agreed to their recommendation, even though she felt that the prices agreed to as part of the contract were rather high. Sally has since discovered that the prices in the contract are around 15 – 20% above the market rate.

Sally's daughter, Tiana, owns a company involved in the development of computer aided design software. Sally believes that PowerTech Ltd would benefit if its design team started to use the software developed by her daughter's company and wishes to propose this to the board of PowerTech Ltd.

6 weeks ago, Sally discovered that SiliconSupplies Ltd is owned by Queenie and Ronald and their children. Queenie and Ronald have refused to allow discussion of the contract with SiliconSupplies Ltd at board meetings and have also indicated that they believe it will be in the best interests of PowerTech Ltd to continue with the contract.

PowerTech Ltd is the limited partner in a Guernsey limited partnership which has the business of developing solar water heaters. It has recently become concerned about the lack of progress with the project and so requested financial information and offered some advice to the general partners on the best way to proceed with the development of the project. It is now apparent that the limited partnership is facing insolvency and there are substantial unpaid debts owing to trade creditors.

Advise PowerTech Ltd in relation to the following issues:

- I. The potential of any of its directors to be liable for breach of duties or statutory obligations, including the remedies which PowerTech Ltd may be able to claim.
- II. Whether or not it may be able to avoid the contract with SiliconSupplies Ltd.
- III. Its potential liabilities in respect of the limited partnership in which it has been involved.

Advise Sally in relation to the following issues:

- IV. The steps that she should take in relation to the introduction of the software to the board of PowerTech.
- V. The steps that she might take in relation to any breach of duty by Queenie and Ronald.