

GUERNSEY BAR EXAMINATION

9.30AM, 20 MAY 2022

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 Companies (Guernsey) Law, 2008**
2. **The Security Interests (Guernsey) Law, 1993**
3. **The Banking Supervision (Bailiwick of Guernsey) Law, 1994**
4. **The Financial Services Commission (Bailiwick of Guernsey) Law, 1987**
5. **The Limited Liability Partnerships (Guernsey Law), 2013**
6. **The Foundations (Guernsey) Law, 2012**
7. **The Protection of Investors (Bailiwick of Guernsey) Law, 1987**
8. **The Companies (Standard Articles of Incorporation) Regulations, 2015**

QUESTION 1 (total 25 marks)

Grand Estates Limited (“**GEL**”) is a company registered in Guernsey and the successor to the domestic and international property development business which has been operated by Charles’ family for over 100 years.

Although Charles is approaching retirement, his children are minors. In 2018, Charles decided to appoint Alice and Bernard to the board of directors of GEL to enable Charles to spend more time with his family. Alice and Bernard are experienced property professionals.

The projects introduced to GEL by Alice and Bernard were so successful that Charles rewarded them with a new issue of shares in GEL. The effect of this was to dilute Charles’ shareholding to 50%, with the remaining 50% being held equally by Alice and Bernard. Charles ceased any active role in the day-to-day management of GEL.

In 2020, Charles made an unsecured loan to GEL at the request of Alice and Bernard to fund further projects.

Unbeknownst to Charles, the loan was diverted from GEL to acquire and fund a development undertaken by Alice and Bernard in partnership. The development involved land which had originally been offered to GEL and was extremely profitable. Alice and Bernard used the profit to undertake several even more profitable projects throughout 2021.

Having wondered why his loan had not been repaid, Charles inspected the company’s books and discovered GEL’s turnover had reduced significantly. Alice and Bernard apologised, blamed the ongoing pandemic, and promised to work to focus on maximising the profits of GEL.

Charles has now discovered the existence of the projects undertaken by Alice and Bernard in partnership.

Charles is committed to ensuring the continued growth of GEL and does not want to forcibly remove Alice or Bernard from GEL. Nevertheless, Charles wants:

- a) Alice and Bernard to be held accountable for the reduction in profits which GEL has suffered; and
- b) his shares in GEL to be managed (possibly by his cousins, who he trusts but who have limited experience in property) and protected for the benefit of his children.

1.1 Advise Charles.

[25 marks]

QUESTION 2 (total 25 marks)

Global Market ICC Limited and Local Market ICC Limited are registered in Guernsey. Global Market ICC Limited is authorised as a collective investment scheme under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and Local Market ICC Limited is licensed to carry on controlled investment business under the Protection of Investors (Bailiwick of Guernsey) Law, 2020. The ICCs have common directors.

The ICCs are part of a financial services group, which includes:

- Marketch Limited, a Guernsey registered company limited by shares which develops fund management software; and
- Shield Services Limited, a Guernsey registered company limited by shares which provides fiduciary and corporate services.

Advise the directors in relation to the following issues:

2.1 The directors want to convert each of Marketch and Shield Services into an incorporated cell company. The directors are unsure whether this can be achieved and, if so, how. **[5 marks]**

2.2 As only one director has extensive experience of the business in which Local Market ICC operates, the directors have proposed that he be the sole director of Local Market ICC with all other directors resigning and continuing as directors of Global Market ICC only. **[5 marks]**

2.3 To facilitate investment in an emerging, high-risk sector, a minority of directors have proposed incorporating a new cell of Global Market ICC to be named "Cryptocell".

As a cell of Global Market ICC, the directors have suggested Cryptocell could:

- a) be incorporated as an incorporated cell company; or
- b) be a member of one of the other incorporated cells of Global Market ICC.

The directors are keen to avoid involving the members of Global Market ICC if possible. **[5 marks]**

2.4 Carecell is an incorporated cell of Local Market ICC. Carecell is currently defending a contractual claim brought by a third party. The directors have discussed transferring Carecell to Global Market ICC and want to understand the process involved and the impact on the contractual claim. **[5 marks]**

- 2.5** An activist investor has threatened a claim against the directors for having allowed the assets of two incorporated cells of Global Market ICC to be collectively invested. **[5 marks]**

QUESTION 3 (total 25 marks)

Lucy, Martin, Nancy and Olivia set up business as a limited partnership registered in Guernsey. Having provided the initial working capital for the limited partnership by way of £1,000 in capital contribution, Martin was the sole limited partner, with Lucy, Nancy and Olivia each appointed as a general partner.

In 2018, Martin made a loan to the limited partnership. As the agreed repayments were rarely made on time, Martin repeatedly attended the office of the limited partnership to review the accounts and question Lucy, Nancy and Olivia on the financial position.

By the end of 2021, the limited partnership owed significant sums to its creditors.

In 2022, Lucy, Martin, Nancy and Olivia incorporated Aspire Limited, a Guernsey registered company which adopts an amended form of the Standard Articles of Incorporation. Each held 25% of the shares in issue and Lucy, Nancy and Olivia were each registered as a director. This was consistent with Article 14A of the Articles of Incorporation, which states:

“A holder of 10% or more of the issued share capital of the Company is entitled to appointment as director on request”.

The solvent parts of the business of the limited partnership were sold into Aspire Limited and further working capital was provided to the company by a loan from Business Bank Limited. To prioritise repayment of the loan, Article 15A of the Articles of Incorporation states:

“No remuneration will be paid to the directors until such time as the loan from Business Bank Limited has been repaid”.

The financing agreements provide that Business Bank Limited has security over all shares in Aspire Limited. The shares certificates were, however, destroyed in a fire and never replaced.

As he is approaching retirement, Martin decided not to be appointed as a director of Aspire Limited on incorporation. However, Martin has now changed his mind and wants to become involved in the day-to-day management of Aspire Limited.

Lucy, Nancy and Olivia have rejected Martin’s request to be appointed as a director and advised him that:

- a) At the next general meeting, Aspire Limited will resolve to amend Article 14A by replacing ‘10% or more’ with ‘25% or more’.
- b) Aspire Limited has not been repaying the loan to Business Bank Limited because the Bank does not have security.
- c) The directors will each now receive a bonus and monthly salary and there is no prospect of a distribution to shareholders for the foreseeable future.

- d) The limited partnership has insufficient assets to repay its debts and therefore Martin is liable to do so.

3.1 Advise Martin.

[25 marks]

QUESTION 4 (total 25 marks)

Sarah is the Managing Director of Allcover Limited (“**Allcover**”), a Guernsey registered company which carries on business selling on-line customised cushions. Tom and Terry are directors.

Sarah, Tom and Terry each hold one-third of the shares in Allcover, all of which are fully paid up.

Eighteen months ago Allcover obtained a loan of £100,000 from Big Bank Limited to assist with capital growth. The loan was secured over the bank account which Allcover holds with Big Bank Limited and into which its cash receipts are paid. A loan agreement and a security interest agreement were entered into.

Twelve months ago the loan from Big Bank Limited was used in part to repay Sarah’s director’s loan in full.

Allcover’s trade debt began to increase significantly and, 6 months ago, the board resolved it was necessary to obtain an overdraft facility of £75,000. Big Bank Limited agreed to provide an overdraft on the current account of the company, on condition that personal guarantees were provided for the overdraft by the directors.

Each director gave a personal guarantee to Big Bank Limited.

Three months ago Sarah discovered that Allcover could not continue to meet its overheads. Hoping for an upturn in business, Sarah persuaded Tom and Terry to carry on as normal and promised to invest capital to reduce the overdraft and repay the loan.

Sarah left Guernsey without warning and her whereabouts are unknown. Allcover has ceased trading and Big Bank Limited has demanded payment of the loan and overdraft under the personal guarantees. The balance due on the loan is £85,000 and the current account is overdrawn by £50,000. Allcover owes a further £125,000 to trade creditors. The cash receipts account is in credit with a balance of £25,000.

Allcover is unlikely to avoid insolvent liquidation.

4.1 Advise Tom and Terry.

[25 marks]

END OF PAPER