

GUERNSEY BAR EXAMINATION

9.30AM, 23 MAY 2019

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 Companies (Guernsey) Law, 2008**
2. **The Security Interests (Guernsey) Law, 1993**
3. **The Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979**
4. **The Foundations (Guernsey) Law, 2012**
5. **The Partnership (Guernsey) Law, 1995**

6. The Limited Liability Partnerships (Guernsey) Law, 2013
7. The Limited Partnerships (Guernsey) Law, 1995
8. The Trusts (Guernsey) Law, 2007
9. The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002
10. The Companies (Standard Articles of Incorporation) (Amendment) Regulations, 2015
11. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008
12. The Financial Services Commission (Bailiwick of Guernsey) Law, 1987
13. The Insurance Business (Bailiwick of Guernsey) Law, 2002
14. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000

QUESTION 1 (total 25 marks)

Alice, Brian and Charlie are the directors of ABC Limited, a company limited by shares. Alice, Brian and Charlie each hold one-third of the shares in the company.

The company adopts the Standard Articles of Incorporation, save that:

- (a) The objects clause in the company's Memorandum of Incorporation states that it shall carry on the business of manufacturing network servers; and
- (b) The Articles of Incorporation include a provision that if any shareholder wishes to sell his shares, he must first offer them to the other shareholders.

In Q1 2018, Brian and Charlie decided the company needed to diversify and borrowed money from Capital Bank Limited to invest in the development of proprietary streaming software for the consumer market. Alice was opposed to the investment, and maintained that the company needed to stabilise its cashflow before proceeding. The relationship between the directors began to deteriorate.

The streaming software was launched in Q4 2018 and, although the venture has yet to make a profit (in fact it is losing money), it developed a large user base so quickly that whilst Alice was on holiday, Brian and Charlie were approached by XYZ Limited which offered to buy Brian and Charlie's shares at a generous price. Brian and Charlie agreed to sell their shares to XYZ Limited and, at a hastily convened board meeting in Alice's absence, Brian and Charlie resolved to register the transfer of their shares to XYZ Limited following completion of the documentation necessary to effect the share transfer.

When Alice returned from holiday at the end of last week, she discovered the documentation which has been prepared by Brian and Charlie's lawyer, together with a resolution purportedly passed at an extraordinary general meeting to alter the Articles of Incorporation such that in the event a shareholder ceases to be a director, he shall offer his shares for sale to the other shareholders at a price to be determined by the company's directors.

The proposed share transfer has now come to the attention of Capital Bank Limited, which has demanded repayment of the balance due on its loan in circumstances where the loan documentation provides a change in beneficial ownership of ABC Limited will constitute an event of default. Having received notice of the demand by post, Alice is concerned that the company is not able to afford to do so.

To make matters worse, Alice received an e-mail from Brian and Charlie this morning requesting that she attend the company's offices to discuss "irregularities" in her company director expenses.

1.1 Advise Alice.

QUESTION 2 (total 25 marks)

Michael is the sole director and shareholder of Ins. PCC Limited, a Guernsey registered protected cell company. The company adopts the Standard Articles of Incorporation (with suitable language for a PCC).

Over the past 2 years, Michael has brokered policies of critical illness and life insurance in Guernsey both in his own name and through the company. As he does not maintain an office in Guernsey and until recently lived on mainland France, neither he nor Ins. PCC Limited has a regulatory licence.

The capital requirements of the company were originally met by way of a loan from Opportunistic Bank Limited, pursuant to which the bank took security over shares in a Guernsey company, which Michael had inherited from his aunt and transferred into the name of Ins. PCC Limited to improve its asset value. Michael never provided Opportunistic Bank Limited with the share certificates.

Although the business was initially successful, Michael felt it important to maintain the impression of a lavish lifestyle on social media. In addition to receiving a salary from the company, Michael drew heavily on his director's loan. Over time, the cashflow position of the company became so strained that Michael convinced an acquaintance, Reginald, to lend the company more money. Although the agreement was not documented, Michael agreed to guarantee the loan personally.

As it became increasingly clear that Ins. PCC Limited was not financially viable, Michael decided to repay his director's loan and retire to a remote rented cottage on the island.

The company has now entered liquidation and owes money not only to Opportunistic Bank Limited and Reginald, but a variety of trade creditors. In the last 24 hours, Michael has received, and ignored, calls from the Guernsey Financial Services Commission ("**GFSC**"), the Liquidator, Opportunistic Bank Limited and Reginald.

2.1 Advise Opportunistic Bank Limited. **(15 marks)**

2.2 What actions might the GFSC take? **(10 marks)**

QUESTION 3 (total 25 marks)

Anthony is the Managing Director of Industrial Limited, a Guernsey registered company limited by shares. Although appointed as Finance Director, Anthony's wife, Bella, has never attended a board meeting of the company. A number of Bella's relatives work in the factory. Anthony and Bella own 40% of the shares in the company, and the remainder are held by Colin, Anthony's retired uncle.

In Q2 2017, the company's market share began to fall and it made a loss for the first time in its history. Anthony commissioned an analyst's report which recommended closing the company's factory on the island and transferring production of the company's products overseas. As the closure of the factory would involve redundancies, Anthony decided to keep the factory open whilst he explored opportunities overseas.

By Q2 2018, the company had been operating at loss for 12 months as a consequence of the ever increasing cost of maintaining the factory and at that time Colin expressed his concerns as to the financial position of the company to Anthony and Bella at a family function. Anthony assured Colin that steps were being taken to improve the company's fortunes. In fact, Anthony had by now entered into a joint venture with an overseas producer of equivalent products and begun importing into the local market in Q4 2018. Bella has been focusing on her recent investment in the development of a product through an SPV with a friend which the inventor had previously sent to Anthony as a possible stock line for the company.

Concerned that the company is now facing insolvency, Colin wrote to Anthony to request his agreement that Colin be appointed to the board as Director Emeritus, but has received no response.

Colin has the means to invest in the company to pay off its creditors, but is worried he may not be fully informed as to the extent of the company's losses.

Advise Colin as to:

3.1 The conduct of Anthony and Bella. (17.5 marks)

3.2 The methods by which he may structure any further investment in Industrial Limited to ensure its security. (7.5 marks)

QUESTION 4 (total 25 marks)

Arthur has enjoyed a lifetime of success in the banking sector and amassed significant wealth; the source of which is primarily his majority or whole beneficial ownership of:

- (a) A company limited by shares and registered in Guernsey;
- (b) A segregated portfolio company registered in the British Virgin Islands;
- (c) An ICC registered in Jersey.

For efficiency and simplicity, Arthur wants to consolidate his corporate holdings, ideally within the sole jurisdiction of Guernsey where he is now resident, and ensure that the resultant structure is protected for the benefit of his grandchildren. Given his advancing age, Arthur would prefer to relinquish day-to-day control to his childhood friends, Barry and Carlos, if possible. Arthur appreciates Barry and Carlos may require the input of professionals.

Arthur will also need to secure his exit from a Guernsey registered limited partnership in which he invested 2 years ago. In recent months he has been concerned by the manner in which the business of the limited partnership has been managed and as such has taken an active role in its management. Unfortunately, the limited partnership has made heavy losses during that time.

- 4.1 Advise Arthur as to the options which are available to him, and the legal and regulatory procedures to be followed in order to achieve his objectives.

END OF PAPER