

# **GUERNSEY BAR EXAMINATION**

**9.30AM, 11 MAY 2021**

## **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)

Andrew and Belinda Major are directors of and equal shareholders in Major Developments Limited ('**Major**'), a company limited by shares.

Major was established in 1985 to carry on the business of property development on the island. Although each development is undertaken through an SPV, Major employs a full-time health and safety consultant, project manager and surveyor to advise Andrew and Belinda on each development.

18 months ago, Major purchased a site through its wholly owned subsidiary, Fly by Night Limited ('**FNL**'), of which Andrew and Belinda are the sole directors. FNL obtained permission to redevelop the site subject to an agreement with the States of Guernsey that FNL would fund the landscaping of an adjacent public park. The cost of the landscaping works was estimated to be £100,000. Following the grant of permission Andrew advised the States that Major could undertake the landscaping as a public relations exercise.

FNL completed the redevelopment of the site 6 months ago. During the carrying out of the works, a labourer, David, was injured when he fell from height. The accident was determined to have been caused by the inadequacy of his personal protective equipment. His injuries have prevented him from returning to work.

FNL has now sold the residential units which it developed on the site and no longer retains any assets. The proceeds of sale have been used to repay the majority of FNL's creditors, including repayment of an intergroup loan from Major. FNL has some residual trade creditors that have not been paid.

Major originally funded the intergroup loan by entering into a £1 million credit facility from Capital Lending Plc. ('**Capital**'). Capital took security for the facility over Major's shareholding in FNL, though Andrew made sure that no share certificates were ever issued by FNL. The events of default in the security agreement include the insolvency of FNL.

Andrew and Belinda have resolved to place FNL into voluntary winding up to avoid having to undertake the landscaping works for the States.

The States have written to Major demanding that it undertakes the landscaping works as a matter of urgency.

Advise Andrew and Belinda as to:

- 1.1 Any potential liability of Major to any party.
- 1.2 Any potential personal liability of Andrew and Belinda to any party.

## QUESTION 2 (total 25 marks)

For over 5 years, Caroline and Deborah have been the directors of Finance Limited, a company limited by shares which is licensed for deposit-taking business. Caroline and Deborah each hold 10% of the shares in Finance Limited, with the remainder held by institutional investors.

Nine months ago, Edward was appointed to the board of directors as a nominee of one of the institutional investors. He is the youngest son of the investors' majority shareholder and does not have any education or professional qualifications in financial matters. Despite this, Edward has been successful in developing the business of Finance Limited by taking the time to provide personalised forecasts showing attractive levels of returns on deposits made with Finance Limited to prospective customers.

Twelve weeks ago, Edward proposed to the board that Finance Limited enter a 5-year fixed term contract with Mayhem Limited for the provision by Mayhem Limited of internet referral services. Deborah and Edward voted in favour; however, Caroline abstained on the basis that she believed the fee per referral was significantly higher than market rate.

The most recent management accounts for Finance Limited indicate a downturn in profitability which Caroline believes to be a consequence of the reduced margin that Finance Limited is achieving on customers referred via Mayhem Limited. Caroline intends to propose that Finance Limited enter a new contract with Wetracks Limited, a start-up managed and owned by Caroline's son and his friends, for the provision of internet referral services, but is concerned there does not seem to be any termination provision in the contract with Mayhem Limited which allows termination prior to the expiry of the fixed term.

Deborah believes that the downturn in profitability is caused by the number of new customers closing accounts with the complaint that the financial returns achieved on their deposits were not consistent with the forecasts provided by Edward.

The institutional investors have called an extraordinary general meeting of shareholders to review the downturn in profitability. Meanwhile, Caroline and Deborah have this morning discovered that Edward is the majority shareholder of Mayhem Limited.

Advise Caroline and Deborah as to:

2.1 Whether Finance Limited is bound by the contract with Mayhem Limited.

*(continued over page)*

- 2.2 Any steps Caroline should take in relation to Wetracks Limited.
- 2.3 Any claims, liabilities, or regulatory sanctions to which Finance Limited or any of its directors may be exposed.

### QUESTION 3 (total 25 marks)

Eco Productions LLP carries on the business of manufacturing eco-friendly gardening products. Whilst the LLP members' agreement includes a clause that states *“The business of the LLP will not include the manufacturing of any product using non-recycled or non-recyclable materials to include but not be limited to all and any forms of plastic”*, it makes no reference to financial or managerial matters.

The LLP has seven members, of which five are the “designated members” who have historically carried on the management of the LLP. The remaining two members, Fiona and Graham, have not been involved in management, focusing instead on product design.

Three months ago, Fiona met a director of Plastics Limited and discovered that the profit margin of the products manufactured by the LLP could be increased by up to 50% if plastic was introduced to the manufacturing process. The designated members told Fiona, however, that under no circumstances would the LLP use plastic. Despite this, Fiona signed off on a contract with Plastics Limited for one year's supply of plastic to be delivered and invoiced quarterly.

One month ago, Graham discovered that his profit share from the LLP was 1/20<sup>th</sup> of the annual distributable profits and wrote to the designated members to insist on payment of an increased sum, and greater involvement in the management of the LLP.

Unbeknownst to Graham, before distributing the profits of the LLP the designated members have been first paying substantial sums into a foundation, founded by the designated members, and which has been placed on deposit with a Guernsey bank. Further sums have been invested in shares and other securities deposited with the Guernsey bank under a custody agreement. The designated members do not personally own assets of any significant value.

This morning:

- The LLP has received its first quarterly invoice from Plastics Limited, together with a supply of plastic stock. The designated members have contacted Plastics Limited to return the plastic stock, but Plastics Limited has refused to cancel the contract.
- The designated members have each received a letter from Graham who, having discovered the existence of the foundation, is threatening to commence a claim against the foundation for a share of its assets.

- Although unsure as to the merits of any claim, the designated members have met to discuss paying Graham a sum of money in instalments, secured on the foundation's deposit account or the shares and securities.

### 3.1 Advise the designated members.

#### **QUESTION 4 (total 25 marks)**

Community Futures PCC is authorised as a collective investment scheme under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and has invested in four defined asset classes, with each asset class being held in a cell. The cells were numbered 1 to 4.

Advise the directors of the PCC in relation to the following issues:

- 4.1 Cells 1 and 3 have invested in similar asset classes with an unsecured loan from the PCC's major shareholder, SIPP Ventures Limited, to the PCC. The assets were purchased by the PCC and it is unclear in what proportions the assets are attributable to the cells.
- 4.2 Cell 2 has been converted into a non-cellular company and is no longer part of the PCC. Prior to the conversion, the cell owed money to Capital Risk plc and was the subject of legal proceedings. The directors have to date ignored all correspondence from Capital Risk plc in relation to the debt and legal proceedings.
- 4.3 The managing director of SIPP Ventures Limited is threatening to pursue a claim against the cells if monies owed to SIPP Ventures Limited are not paid within 14 days.
- 4.4 A minority of directors are of the view that it may be sensible to amalgamate the assets of the cells and restructure as a single entity. The directors are, however, unsure as to how this could be achieved.

**END OF PAPER**