

GUERNSEY BAR EXAMINATION

9.30AM, 14 MAY 2020

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 Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979**
4. **The Foundations (Guernsey) Law, 2012**
5. **The Partnership (Guernsey) Law, 1995**
6. **The Trusts (Guernsey) Law, 2007**
7. **The Companies (Standard Articles of Incorporation) (Amendment) Regulations, 2015**

- 8. The Financial Services Commission (Bailiwick of Guernsey) Law, 1987**
- 9. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000**
- 10. The Protection of Investors (Bailiwick of Guernsey) Law, 1987**

QUESTION 1 (total 25 marks)

Andrew is the Managing Director of Industrial Limited, a Guernsey registered company limited by shares. Beatrice and Ceri are directors and shareholders, each holding one-third of the shares in the company. The remaining shares are held by Andrew's predecessor.

The company adopts the Standard Articles of Incorporation, with the exception of a new Article 33 which states that:

"The Company may not borrow any sum in excess of £50,000 unless the transaction has been approved by a resolution of the shareholders of the Company".

Without Beatrice and Ceri's knowledge, in Q2 2018 Andrew obtained a loan of £100,000 from Capital Bank Limited for the purpose of increasing the production capacity of Industrial Limited's factory. The loan was secured over the bank account which Industrial Limited holds with Capital Bank Limited and into which its cash receipts are paid. A loan agreement and a security interest agreement were entered into to document the arrangements.

Andrew did not obtain the approval of the shareholders for the loan and nor was a copy of any resolution requested by Capital Bank Limited.

Instead of using the loan from Capital Bank Limited for its intended purpose, Andrew drew down on the £100,000 from time to time to support the cashflow of the company and to ensure his own salary was paid.

At a board meeting in Q4 2019, it was agreed that it was necessary to obtain an overdraft facility of £75,000 to ensure Industrial Limited's cashflow requirements were met. Capital Bank Limited agreed to provide an overdraft on the current account of the company, providing that personal guarantees were provided by the directors.

A resolution of the shareholders was passed and Beatrice and Ceri gave personal guarantees to Capital Bank Limited.

The company has now ceased trading. The balance due on the loan from Capital Bank Limited is £85,000 and the current account is overdrawn by £50,000. The cash receipts account is in credit with a balance of £75,000.

Beatrice and Ceri have discovered that Andrew never gave a personal guarantee to Capital Bank Limited.

Advise Beatrice and Ceri as to:

- 1.1 The ability of Capital Bank Limited to enforce its security over the cash receipts account and the steps it would take to achieve that.
- 1.2 Any potential personal liability of Beatrice and Ceri to any party; and
- 1.3 Any potential remedy which may be sought from Andrew.

QUESTION 2 (total 25 marks)

In 2015, Derek endowed a foundation with capital of £10 million. The beneficiaries of the foundation are Derek's grandchildren. There are two councillors, Emma and Frank. The constitution provides that decisions of the Council are to be made jointly.

In 2018 and without Emma's knowledge, Frank invested £1 million from the foundation into a property development scheme in which his son was a partner. Frank's expectation was that the scheme would be a success and the return on investment would be in the region of 25%.

Concerned as to the lack of cash available for investment, Emma has recently reviewed the financial position of the foundation and, in particular, the efficiency of the structuring of its corporate group, which comprises:

- a) An ICC registered in Guernsey.
- b) A PCC registered in Jersey.
- c) A holding company with two wholly owned subsidiaries, all of which are registered in the Cayman Islands. The foundation owns 51% of the issued share capital of the holding company.

As each entity carries on the same core regulated fiduciary services business, Emma has decided that it would make sense to reduce overheads by restructuring the group within one jurisdiction, Guernsey, which is where the foundation is registered.

Following her review of the financial position of the foundation, Emma has also discovered Frank's investment in the property development scheme. The scheme has been unsuccessful, though Emma understands that the sum of £500,000 will be refunded to the foundation shortly.

Advise Emma as to:

- 2.1 The restructuring options which are available to the foundation and the legal and regulatory procedures involved; and
- 2.2 Any potential remedy which may be sought in respect of Frank's failed investment.

QUESTION 3 (total 25 marks)

For 5 years, Gary and Helen carried on business in partnership in Guernsey; each taking an equal share in management and profit. There was no partnership agreement. The partnership provided investment advisory services to individuals and SMEs in Guernsey. The partnership was under capitalised. To ensure its viability but without Gary's knowledge, Helen borrowed £50,000 in the name of the partnership from Capital Bank Plc.

In 2017, Gary and Helen incorporated Investment Matters Limited, which adopts the Standard Articles of Incorporation. Each held 50% of the shares in issue and was registered as a director. The business of the partnership was sold into the company with Gary and Helen each receiving a loan note of £100,000.

Helen's son, Ian, turned 18 in 2019. Gary and Helen each gifted 7.5% of the total issued share capital in Investment Matters Limited to Ian, who began to become involved in the management of the company.

Gary is unhappy that over the last 12 months:

- a) Helen and Ian have been holding weekly "management" meetings to which Gary has not been invited.
- b) Although the business has grown significantly, Gary has not received any increased profit share though believes both Helen and Ian have.

Ian recently told Gary that although he was grateful for the shares, he did not see that Gary had a future at the company. Gary was furious because Ian has not even got around to telling the Guernsey Financial Services Commission of his interests in the company.

Today, Gary has received a demand for payment from Capital Bank Plc. It seems as though the partnership failed to repay the loan and a balance is now due for payment. This is the last straw for Gary. He wants to end his relationship with Helen and Ian and continue to provide investment advisory services as a sole trader.

Advise Gary as to:

- 3.1 The options which are available to him to achieve his objectives; and
- 3.2 Any liabilities or regulatory sanctions to which he may be exposed.

QUESTION 4 (total 25 marks)

Michael is the sole director and shareholder of iClad Limited, a company incorporated in Guernsey in 2010. Michael is independently wealthy, but nevertheless only invested an initial £100 into the company, relying on the completion of construction projects which were self-funding.

Over the last 5 years, Michael has increasingly relied on the advice and input of Pauline with regards to the management of the company. Pauline was crucial in a decision to diversify from providing subcontracted building services to land development. The company purchased two development sites with the intention of building residential properties for sale. The purchases were funded in part by a loan from Pauline.

Six months ago, Michael discovered that iClad Limited did not have the cash to continue work on either site. Michael decided the company's creditors could not be repaid unless the developments were finished and the properties sold. On that basis, Michael caused the company to enter into a series of small term, unsecured loans at high rates of interest whilst continuing to order building materials

The loan to Pauline was repaid from the proceeds of sale of some of the company's machinery just over 3 months ago. Nevertheless, the debts of iClad Limited increased by 40% over the last 6 months.

The company has now entered compulsory winding up and Gareth has been appointed by the Court as liquidator. Gareth is suitably qualified. The realisable value of the development sites will not be sufficient to discharge the company's debts.

4.1 Advise Gareth.

END OF PAPER