GUERNSEY BAR EXAMINATION

9.30AM, 27 APRIL 2017

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**

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 Security Interests (Guernsey) Law, 1993**
2. **The Law of Property (Miscellaneous Provisions) (Guernsey) Law 1979**
3. **The Companies (Guernsey) Law, 2008**
4. **The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012**
5. **The Foundations (Guernsey) Law, 2012**
6. **The Limited Liability Partnerships (Guernsey) Law, 2013**
7. **The Limited Partnerships (Guernsey) Law, 1995**
8. **The Trusts (Guernsey) Law, 2007**
9. **The Protection of Investors (Bailiwick of Guernsey) Law, 1987**
10. **The Competition (Guernsey) Ordinance, 2012**
11. **The Competition (Calculation of Turnover) (Guernsey) Regulations, 2012**
12. **The Companies (Beneficial Ownership) Regulations, 2008**
13. **The Regulation of Fiduciaries, Administration Businesses and Company Directors, (Bailiwick of Guernsey Law) 2000**
14. **Finance Sector Code of Corporate Governance 2016**

QUESTION 1 **(total - 25 marks)**

You act for Big Bank which is seeking advice from you regarding a £10 million term loan which they are proposing to provide to a new customer which is a family run local printing business trading through a Guernsey registered company (**Company**). As Big Bank has no previous course of dealings with the Company, they are looking for the best possible security for their loan. On further enquiry, Big Bank advises that the business is run by Mr and Mrs Le Page and their daughter, but the Company is owned in equal shares between each of them and their son, Andre, who is currently travelling and rarely in contact.

Big Bank advises you that the following assets might be available by way of security to the lending:

(a) bank account – it is unclear at this stage whether the Company holds this with Big Bank;
(b) the Company's subsidiary in Guernsey;
(c) stock-in-trade;
(d) insurance policies; and
(e) personal guarantees from the shareholders.

Advise Big Bank on how to take the security and document it and to obtain the guarantees above. **(15 marks)**

How would your advice differ if the Company's subsidiary in (b) above was an Alderney company? **(2 marks)**

The deal completes and the security in (a) to (e) is taken and the loan is made. Two years later Big Bank calls you. They have heard rumours that the business is not doing well and that Big Bank would like to be in a position to "move quickly" if the business defaults on its loan. Provide initial advice on the options available to Big Bank. **(8 marks)**

QUESTION 2 **(total - 25 marks)**

You act for a high net worth international family which wishes to establish a Guernsey structure to hold their wealth. Because members of their family have been subject to kidnap threats in the past they are particularly keen to understand what information about the structure, and their interests, in it might be made publicly available and under what circumstances. They are interested in a company, a foundation or a trust. Compare and contrast the key features of each structure, including what information would be publicly available.

(15 marks)

A year later, a member of the family contacts you. He has made a large investment as a limited partner in a Guernsey limited partnership. The investment is going well, but as he has made one of the largest capital contributions he would like to take more of an active role in the management of the limited partnership. What would you advise him? **(8 marks)**

What might a Guernsey limited liability partnership be used for? **(2 marks)**

QUESTION 3 **(total - 25 marks)**

You are asked to advise a large Jersey-based trust and fund administration company which is looking to expand into Guernsey. It is proposing to do this by acquiring one of the leading fiduciary and administration businesses in Guernsey (**Target**). They tell you that Target used to be listed on The International Stock Exchange (formerly the Channel Islands Securities Exchange) and so has a wider than expected investor base, some of whom Target has lost contact with.

Provide initial advice on the proposal to include possible methods to acquire 100 per cent of Target including likely timescales, key documents and advantages/disadvantages of each of those methods. **(15 marks)**

What regulatory approvals may be required and what is the procedure for obtaining these? **(10 marks)**

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

You are approached by an individual (**Mr Ned**) who has accepted an appointment to the board of directors of an investment fund structured as a protected cell company (**PCC**) six months ago. He says that overall the PCC is doing well, but there is very poor performance with one cell (**Cell Z**). He has asked about this, but has been told not to worry because there are plenty of assets in the other cells. He is also concerned that no-one on the board has any experience with the assets into which Cell Z invests and is reliant on the investment manager's expertise.

Provide initial advice to Mr Ned, including his duties as a non-executive director of a PCC. **(10 marks)**

Two weeks later Mr Ned calls back. He has looked into the financial position of Cell Z and is concerned that Cell Z may not be solvent. Advise Mr Ned about what steps he should be taking and any additional duties to those set out above. **(8 marks)**

Six months later Mr Ned calls back. The financial position of Cell Z has improved so that it is now solvent. However, the board has decided in any event to "get rid" of Cell Z because they are fed up with shareholders complaining about its poor performance. How might this be effected and what other considerations should Mr Ned take into account? **(7 marks)**