

GUERNSEY BAR EXAMINATION

09:30am, TUESDAY 21 MAY 2024

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 AWARDED FOR REFERENCES TO APPLICABLE LEGISLATION AND CASE LAW.

PLEASE ENSURE THAT THE FOLLOWING IS CLEARLY MARKED ON EACH PAGE OF YOUR SCRIPT:

- **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. Limited Partnerships (Guernsey) Law, 1995**
- 3. The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002**
- 4. The Trusts (Guernsey) Law, 2007**
- 5. The Companies (Guernsey) Law, 2008**
- 6. The Foundations (Guernsey) Law, 2012**
- 7. Protection of Investors (Bailiwick of Guernsey) Law, 2020**

QUESTION 1 (25 Marks)

Ajay and Beatrice are directors of Speedstar Boat Services Ltd ("Speedstar"), a company registered in Guernsey and limited by shares.

Speedstar was incorporated in 2010 to carry on business relating to the sale, servicing and repair of boats in St Peter Port. Speedstar employs a full time health and safety manager and a full time ship engineer to advise Ajay and Beatrice on the running of the business.

It soon became apparent that the servicing part of the business had the potential for the greatest growth, so Ajay and Beatrice determined that Speedstar should incorporate a wholly-owned subsidiary, MarineServ Ltd ("MarineServ"). Ajay and Belinda are the sole directors of MarineServ. MarineServ entered into a contract to service the vessels of JersOil Ltd, a company based in Jersey with the business of supplying heating fuel oil throughout the Channel Islands. Whilst servicing one of JersOil's vessels, an error was made that led to the spillage of 500 gallons of fuel oil into the sea. This spillage led to significant environmental damage, as MarineServ did not have the correct equipment to manage an oil spill available at its premises.

In a separate incident, Carlos, an employee of MarineServ, was trapped under an engine that slipped from a hoist in MarineServ's workshop. The cause of the accident was determined to be inadequate maintenance of the hoist and an unsuitable health and safety regime being in place for its use. MarineServ is now insolvent and has a number of outstanding trade creditors, along with the possible liability for the circumstances outlined above.

Speedstar is also facing financial difficulties and Ajay and Beatrice are concerned that Speedstar is close to insolvency. In order for Speedstar to commence trading, Beatrice made a £500,000 loan to Speedstar. 3 months ago, Ajay and Beatrice decided that it would be appropriate for Speedstar to repay Beatrice's loan early. Ajay and Beatrice are now agreed on a rescue plan for Speedstar that they hope will allow the company to trade its way out of its current difficulties. They are aware that the plan is risky and there is the potential for Speedstar to suffer significant losses should the plan not succeed.

Advise Ajay and Beatrice in relation to the following issues:

- (a) Any potential liability of Speedstar to any party.
- (b) Any potential personal liability of Ajay and Beatrice to any party.

QUESTION 2 (25 marks)

Charles, David and Eleanor each own 10% of the shares in Insuretec Ltd ("Insuretec"), a company registered in Guernsey and limited by shares. The remaining shares are held by institutional investors. David and Eleanor are the directors of Insuretec. Insuretec is licensed to provide insurance advisory and brokerage services in Guernsey. Alongside its insurance business, Insuretec is developing a new online insurance brokerage platform with Felora, an IT developer.

In order to grow its business, Insuretec wished to enhance its marketing. Eleanor recommended that Insuretec should enter into a contract with Marketright Ltd ("Marketright") to deliver a physical and online marketing package. The contract agreed with Marketright had an initial value of £150,000 for two years of work. David agreed to this and Insuretec agreed the contract with Marketright 2 months ago. Charles discovered that Insuretec has concluded the contract with Marketright and contacted the directors to raise his concerns because he believes that the contract is not good value for money.

In order to facilitate the development of the online insurance brokerage platform, Insuretec has formed a limited partnership with Felora. Insuretec is the limited partner and has provided £200,000 of investment to support the development of the project. Felora is responsible for the day-to-day management of the partnership. The directors of Insuretec have raised a number of concerns about the state of the business of the partnership and have inspected the accounts of the partnership and have offered Felora advice on the running of the partnership, as they are concerned that development is proceeding slowly and insufficient effort is being made to attract clients to the platform. It is now apparent that the partnership is insolvent and a considerable sum is owed to trade creditors.

David recently resigned as a director of Insuretec due to ill health. Charles has discovered that Eleanor is the majority shareholder in Marketright Ltd. Eleanor is proposing to appoint Gethin, a recent graduate with little work experience, to replace David, but no appointment has yet been made.

Advise Insuretec in relation to the following issues:

- (a) Whether Insuretec is bound by the contract with Marketright Ltd.
- (b) Any cause of action which Insuretec may have against David and/or Eleanor.
- (c) Any possible liability that Insuretec might face in relation to its partnership with Felora.
- (d) Any regulatory issues that may arise for Insuretec.

Advise Charles in relation to the following issue:

- (e) Whether, if the board of Insuretec is unable or unwilling to pursue any cause of action against David and/or Eleanor, he may be able to do so.

QUESTION 3 (25 Marks)

Hermione is a successful businesswoman based in Guernsey. She owns 60 % of the shares in and is managing director of Hotelux Ltd ("Hotelux"), a Guernsey registered company limited by shares. Hotelux has a wholly owned subsidiary, Chanhotel Ltd ("Chanhotel"). Hotelux was offered the opportunity to buy two additional hotels in Guernsey to add to its portfolio and in order to make the purchase, Hotelux borrowed £2 million from BigBank, secured on its shares in Chanhotel. The share certificates for Chanhotel's shares were not delivered to BigBank because they were ruined in a flood in Hotelux's document storage room.

Hermione is concerned to ensure financial security for herself and her children, Imogen and Jacob, aged 10 and 12 respectively. As such, she has decided to transfer her ownership of 30% of her shares in Hotelux and six investment properties that she owns on Guernsey to a Guernsey registered foundation ("Foundation A"). The purpose of the foundation is to benefit Hermione and her children. Hermione is currently undergoing treatment for a serious illness, so is keen to ensure that the foundation is governed without significant input from her, though she is keen to protect the interests of herself and her children. Hermione's brother, Kevin, and sister-in-law, Laura, have agreed to be Councillors for the Foundation, but are concerned because they have little business experience.

Hermione also owns shares in Glitzy Ltd, a company that runs pubs and bars in Guernsey. She would like to ensure that these shares are managed by Kevin and Laura for the benefit of her two sisters.

Hermione is the beneficiary of another Guernsey registered foundation ("Foundation B"), set up by her former father-in-law, Martin, for the benefit of Hermione, Imogen and Jacob and her ex-husband, Nigel. Martin (who is now deceased) appointed Nigel and Oscar (Nigel's brother) to be Councillors. The foundation property consists of 2 office buildings and several rental properties on the island. The constitution of the foundation states that the foundation is not permitted to divest any real property.

Hermione has discovered that Nigel and Oscar have arranged to sell one of the foundation's office buildings to Devcom Ltd, a property development company. Hermione is unsure of the price that has been agreed, but thinks it likely that the price does not reflect the true market value of the building. When Hermione questioned Nigel about the transaction, he became very angry and told Hermione that his intention was to wind the foundation up and that she and the children would not receive another penny from the foundation.

Advise Hermione in relation to the following issues:

- (a) Whether or not the security given by Hotelux to Bigbank is likely to be valid.
- (b) The major considerations that should inform the creation of Foundation A and the support that may be available for Kevin and Laura in their management of Foundation A's affairs.
- (c) The appropriate way for Hermione to achieve her objectives in respect of the shares in Glitzy Ltd.
- (d) Whether Foundation B is bound by the transaction with Devcom Ltd.
- (e) Any liability to which Nigel and/or Oscar may be exposed.
- (f) Any steps that Hermione might take to avoid Foundation B being wound up.

QUESTION 4 (25 Marks)

Futureinvest PCC ("Futureinvest") is authorised as a collective investment scheme under the Protection of Investors (Bailiwick of Guernsey) Law, 2020. Futureinvest has invested in six defined asset classes, with each asset class being held in a cell. The cells are numbered 1 to 6.

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

- (a) Cells 3 and 6 have invested in similar asset classes using the investment funds that they have received. The assets were purchased by the PCC and it is not clear in what proportions the assets are attributable to the individual cells.
- (b) The PCC borrowed from one of its shareholders, Channel Investments Ltd, in order to purchase assets for cells 2 and 4. The assets are in different classes and are clearly attributable to the individual cells. Channel Investments Ltd is now demanding repayment of the loan and is threatening to sue the cells if monies owed are not repaid within 21 days.
- (c) Cell 5 has been converted into a non-cellular company and is no longer part of the PCC. Prior to its conversion, the cell owed a substantial sum to AngryBank Plc and was the subject of legal proceedings. The directors of the PCC have ignored all correspondence from AngryBank Plc in relation to the debt and legal proceedings.
- (d) The directors of the company have taken the view that it may be advantageous to amalgamate the assets of the cells and restructure the company as a single entity. The directors would like advice on how this might be achieved.