INSTRUCTIONS TO CANDIDATES

1. This examination paper contains ONE (1) question and comprises THREE (3) printed pages inclusive of this cover page.

2. This is an OPEN BOOK examination.
Your client Wolfgang Amadeus is a non-executive independent director of Canis Major Developments Ltd, a company incorporated in Singapore. Canis Major is merely a holding company for its operating subsidiaries Sirius Pte Ltd (incorporated in Singapore), PT Alhabor Mining Enterprises (incorporated in Indonesia) and Canicula Properties plc (incorporated in the Channel Islands). All three are wholly-owned by Canis Major.

The CEO of Canis Major is Renard Leloup, who is also the major shareholder; he and his family collectively hold 49% of the company. They are resident in Luxembourg. Your client represents the interests of the second major shareholder, the Lupus family, who collectively own 30% through their private holding company in Switzerland. The third shareholder is the Volpone family of Messina, Sicily. They are sleeping partners and do not participate actively in the business. However, they provide assistance in financial matters for the company when needed.

The board of directors of Canis Major consists of five directors: two from the Leloup family, one from the Lupus family, one from the Volpone family and Wolfgang Amadeus, who is not a member of any family but is an independent director appointed by the Lupus family. In theory he is supposed to be neutral, but he understands that his primary role is to ensure that the interests of the Lupus family are protected. Renard Leloup is not a director. Despite this, it is clear that he is the dominant personality in Canis Major. The Board defers to his judgment in business matters. Board meetings are held infrequently, matters being dealt with by circulation. The last formal board meeting was held in 2010.

Your client also sits on the boards of PT Alhabor Mining Enterprises and Canicula Properties plc together with Renard Leloup. He has no executive responsibilities in either, his role being that of nominal director. Sirius Pte Ltd has its own board, with Wolfgang Amadeus as the only director. However, the group is run as an integrated business. Decisions on strategy for the group are taken by Renard Leloup and endorsed by the board of Canis Major. Relations among the controlling families are harmonious and board decisions generally pass by consensus.

In June 2005 Renard Leloup acting as President-Director of Alhabor obtained a licence to exploit mineral deposits in West Papua through his contacts with certain Indonesian politicians. In August 2011 an executive order was issued rescinding the licence and ordering that all profits made thus far should be frozen pending an inquiry with a view to confiscation. Alhabor was compulsorily taken over by a company close to certain other Indonesian legislators. Leloup instructed Alhabor’s bankers in Jakarta to immediately transfer all Alhabor’s money to the account of Sirius at the Singapore branch of the Bonnie Bank of Loch Lomond plc. Wolfgang
Amadeus was asked to countersign the instructions to the Indonesian bank, which he did without objection (he felt it was unjust of the Indonesians to expropriate Alhabor and attempt to confiscate the profits of the business). The Indonesian authorities have now instituted criminal proceedings in Jayapura, West Papua, alleging that Leloup and Wolfgang Amadeus are guilty of embezzlement.

Alhabor’s money is still in the bank account of Sirius Pte Ltd in Singapore. Leloup wants to have it transferred out of Singapore as soon as possible to avoid any suit by the Indonesians. The Volpones will assist in receiving the funds through Canicula in the Channel Islands and will ensure that they are suitably dispersed so that they cannot be traced. Furthermore, to ensure that any judgment against Sirius is nugatory, all of Sirius’s assets are to be “sold” to Canis Major for a nominal $1. The board of Canis Major has agreed to this. The resolution sanctioning the various transactions is in Wolfgang Amadeus’s hands for his signature. The Lupus family has instructed him to sign.

Wolfgang Amadeus has now gotten cold feet. He is worried about his personal liability. He has come to your firm for advice on what his liabilities are and what he should do to protect himself. Your senior partner has passed the file to you. He wants to know what client’s legal position is, what further information is needed and whether any steps should be taken to safeguard client’s interests.