

## Part One – Chartered Governance Qualifying Programme

# Corporate Governance

### Sample Marking Scheme

**Time allowed:** 3 hours (plus 15 minutes reading time)

**Do not open this examination paper until the proctor tells you to do so.**

**You must not take this paper out of the examination workspace.**

The examination paper contains **9** questions of which you must attempt **8**. You must attempt **all questions** in Section A and **3 questions** in Section B.

Section A contains 25 marks and Section B contains 75 marks. There are **100 marks** available in total for the paper.

**Note:** Unless otherwise specified, you should assume that an Act or an organisation referred to in the questions is a Malaysian Act, Code or organisation.

---

# Section A

## Compulsory questions

1. Explain the advantages of the 'apply and explain' approach to corporate governance compared to the 'comply or explain' approach.

(5 marks)

Question number	Answer
1	<p>The 'apply and explain' in a governance code approach means that the governance principles in a code must be applied and the company must explain how it has done so. (1)</p> <p>The 'comply or explain' approach is where a company must either comply with the specific governance provisions in a code or explain why it is appropriate for it not to do so. (1)</p> <p>The UK Corporate Governance Code is an example of the comply or explain approach: listed companies must either comply with each of the provisions in the Code or must provide an explanation in their annual report as to why they have not complied with specific provisions. (1)</p> <p>In contrast, the King IV Code in South Africa and the UK Wates Corporate Governance Principles for Large Private Companies operate on an 'apply and explain' approach because companies must apply each principle or outcome to their individual circumstances and explain in their annual report how they have done so. (1)</p> <p>Apply and explain gives greater flexibility for a company to apply principles based on its individual circumstances rather than having to comply with detailed provisions. (1)</p> <p>The greater ability to adjust for the company's individual circumstances under the 'apply and explain' approach may also make companies more likely to voluntarily follow the relevant code. (1)</p> <p>Comply or explain is sometimes criticised for creating a 'tick-box' approach to compliance. Apply and explain is intended to try to reduce this by requiring companies to apply the principles to their own circumstances rather than just ticking-off compliance with a list of provisions. (1)</p> <p><b>Reward other valid responses.</b></p>
	<b>Total: 5 marks</b>

2. Describe the issues to be considered when designing an effective induction programme for a new non-executive director of a company.

(5 marks)

Question number	Answer
2	<p><b>Award up to 5 marks from the following:</b></p> <p>The focus should be on the aim of the induction programme which is to make sure that the director can become effective as a director by building the director's understanding of the company, its business and markets and an understanding of their role as a director. (1)</p> <p>The Bursa Malaysia Corporate Governance Guide Pull-out I says that all non-executive directors should have a comprehensive, formal, and tailored induction. (1)</p> <p>The induction programme needs to be tailored to the individual director. (1)</p> <p>For example, if the person has not been a director of a listed company before, then they will need more guidance on the role of the director and the listing regime, or if the director has not had experience in the company's business sector, they will need more background information about the sector and the company's business. (1)</p> <p>It is helpful to consult with the new director before designing the programme for them, in order to assess the director's needs and knowledge. (1)</p> <p>The induction programme should be spread over time to avoid overloading the new director. (1)</p> <p>The type of company also needs to be taken into account. For example, if it is a listed company, it will be necessary for the induction to cover the requirements of the listing regime and the director's obligations under it. (1)</p> <p>The way the programme is delivered is important, for example it should include site visits and meetings with key people in the company. (1)</p> <p>The Bursa Malaysia Corporate Governance Guide Pull-out II provides useful guidance on best practice of director's induction programme. (1)</p> <p><b>Reward other valid responses.</b></p>
	<b>Total: 5 marks</b>

3. Explain why a company's external auditor may need to issue a modified audit report.

(5 marks)

Question number	Answer
3	<p><b>Award up to 5 marks from the following:</b></p> <p>Under the Companies Act 2016, the company's auditor must state in its audit report whether in the auditor's opinion the financial statements of the company set out in the annual report give a true and fair view of the financial position of the company. (1)</p> <p>The audit report must also state whether the financial statements comply with the relevant laws and accounting standards. (1)</p> <p>If an audit report is unmodified, it means that the auditor confirms that the financial statements present a true and fair view of the financial position of the company and that it complies with the relevant laws and standards. (1)</p> <p>If an audit report is modified, it means that the auditor has concerns about the financial statements, or that the auditor could not agree with the Board about the content of the financial statements, and is therefore unable to confirm in the audit report that the financial statements show a true and fair view. (1)</p> <p>The modified report may be a qualified audit report which states that the financial statements show a true and fair view with the exception of one specified matter. (1)</p> <p>Alternatively, it may be an adverse opinion which states that there are material mis-statements which are pervasive in the accounts. (1)</p> <p>Another alternative is a disclaimer of opinion, which is a modified audit report which states that the external auditor has been unable to obtain the information it needs to confirm that that the accounts give a true and fair view. (1)</p> <p>If an auditor issues a modified audit report, this is a serious matter because it suggests that the auditor has serious concerns about the company's financial statements or the financial condition of the company. (1)</p> <p><b>Reward other valid responses.</b></p>
	<b>Total: 5 marks</b>

4. Describe how a company can ensure that its Company Secretary is able to give independent advice to the Board.

(5 marks)

Question number	Answer
4	<p><b>Award up to 5 marks from the following:</b></p> <p>The Company Secretary should report to the Chair of the Board of directors in relation to their role as the Company Secretary. (1) This is because their independence could be compromised if they report to an executive director or manager in relation to their role as Company Secretary. (1)</p> <p>The Bursa Malaysia Corporate Governance Guide Pull-out I note on the duties of the Company Secretary emphasises the need for independence and set out best practice as regards the position and reporting lines of a Company Secretary. It recommends that the reporting line should be to the Chair. (1)</p> <p>If the Company Secretary also has another executive role for the company, such as acting as the company's in-house lawyer, then they can have a reporting line to an executive director or senior manager in relation to that role but should still report to the Chair in relation to their role as Company Secretary. (1)</p> <p>The Bursa Malaysia Corporate Governance Guide Pull-out I note also states that in order to preserve the Company Secretary's independence:</p> <ul style="list-style-type: none"><li>- They should be appointed and dismissed by the Board. (1)</li><li>- Their remuneration should be set by the Board. (1)</li></ul> <p>The evaluation of the Company Secretary's performance should be carried out as part of the annual board evaluation, or by members of the Board, rather than by management. (1)</p> <p><b>Reward other valid responses.</b></p>
	<b>Total: 5 marks</b>

5. Explain whether a company can provide an indemnity or insurance cover for its directors to protect them from liability in relation to their role as directors.

(5 marks)

Question number	Answer
5	<p><b>Award up to 5 marks from the following:</b></p> <p>The Companies Act 2016 (section 288) states that any provision that purports to exempt or indemnify a director from any liability for negligence, default, breach of duty or breach of trust in relation to the company is void. (1)</p> <p>A company is however allowed to indemnify its directors against liabilities to third parties, (known as qualifying third party indemnity provisions). (1)</p> <p>But the Act does not permit a company to indemnify a director:</p> <ul style="list-style-type: none"> <li>• against any liability incurred by the director to the company or to any associated company (1)</li> <li>• against payment of a criminal or regulatory penalty (1)</li> <li>• against any liability incurred by the director in defending criminal proceedings in which they are convicted (1)</li> <li>• against any liability incurred by the director in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against them (1)</li> <li>• in connection with an application for relief from liability under the Companies Act if the court refuses to grant relief. (1)</li> </ul> <p>Companies are permitted to take out an insurance policy (known as directors' and officers' insurance, or D&amp;O insurance) for the benefit of its directors, and pay the insurance premiums for the policy, to insure them against any potential liabilities incurred by them because of their role, including against liability to the company for breach of duty. (1) This would not cover them for criminal or regulatory penalties because it is not possible to get insurance cover for that. (1)</p> <p><b>Reward other valid responses.</b></p>
	<b>Total: 5 marks</b>

**TOTAL FOR SECTION A = 25 MARKS**

## Section B

Three out of four questions

6. Sinarjaya Properties Berhad (Sinarjaya) is a company whose shares are listed on the Main Market of the Bursa Malaysia. Its business is buying, letting and selling commercial properties.

Sinarjaya complies in full with the Malaysian Code on Corporate Governance (MCCG).

Sinarjaya's business has been loss making over the last year and its major shareholders have been critical of the company's strategy. As a result, the company's CEO handed in his resignation two months ago and the Sales Director has been acting as interim CEO. The Nomination Committee has been leading the search for a new permanent CEO. After conducting interviews of the shortlisted candidates, the Committee has recommended that the Board appoints Lim Xiu Zhi who they think is the outstanding candidate. Lim is the highly regarded CEO of another property company, Bumiprima Real Estate Berhad (Bumiprima).

The Board has approved the appointment of Lim, subject to the Remuneration Committee agreeing a remuneration package with him. Lim has told the Nomination Committee that he will only accept the CEO role if he gets a guarantee that the share awards he will receive under Sinarjaya's long-term incentive plan (LTIP) will be similar to those he has been receiving at Bumiprima and if the total vesting and holding period for the Sinarjaya shares is reduced to three years to compensate him for losing his future share awards at Bumiprima.

The Sinarjaya Board has asked the management team to develop a new strategy for Sinarjaya to try to make the business profitable again. The outline of the proposed new strategy has been sent to the Board for approval at the next Board meeting. The proposal includes major changes to the company's property portfolio, which would mean the sale of a large number of its existing properties and the purchase of new properties. New bank loans would be required to finance the property purchases unless the company is successful in selling the existing properties quickly and at a good price. The Chair of the Audit Committee is concerned about the sale and purchase plans. In particular, he is concerned about whether the company will be able to negotiate a new loan agreement with its bank and impact of any new bank loan on the company's finances, particularly if interest rates increase over the next year. The Chair of the Audit Committee has therefore asked the Finance Director of Sinarjaya to provide the Board with a report setting out a risk assessment of the proposed new strategy so that it can be considered at the Board meeting.

- (a) Analyse the statutory, Bursa Malaysia Listing Requirements and MCCG practices that the Remuneration Committee will need to consider when agreeing the LTIP share awards for Lim as the proposed new CEO of Sinarjaya.

**(13 marks)**

- (b) Discuss how the risk assessment for the proposed new strategy should be carried out by the Finance Director and how the Board should take the assessment into account when considering whether to approve the proposed new strategy.

**(12 marks)**

**(Total: 25 marks)**

Question number	Indicative content
<p>6(a) 13 marks</p>	<p>Answers should demonstrate a good understanding of the statutory requirements for the approval of the directors' remuneration policy and the Malaysian Code on Corporate Governance (MCCG) practices relating to remuneration, and in particular long-term incentive plans, and how the statutory and MCCG practices impact on agreeing the remuneration for Lim as the proposed new CEO.</p> <p><b>Answers could include the following content:</b></p> <p><b>Companies Act restrictions – approval of directors' remuneration policy</b></p> <p>Under the Companies Act 2016 (the Act), listed companies must seek approval from shareholders for their directors' remuneration. The policy must be approved by shareholders at least once every three years. A listed company cannot make any payments to a director unless they are consistent with the latest policy approved by shareholders or the payment has been specifically approved by shareholders.</p> <p>Therefore, if a company wishes to change any aspect of the remuneration of its directors in a way which does not fall within the terms of its current remuneration policy, that is the policy last approved by shareholders, the company must revise its policy and obtain shareholder approval for the revised policy. The company must obtain the shareholder approval for the revised policy before it can make any payments which are not consistent with its current remuneration policy.</p> <p><b>Listing Rule requirement for approval of LTIPs</b></p> <p>In addition, the Listing Rules require companies with a premium listing to obtain shareholder approval for a long-term incentive plan (LTIP) which is for directors but not other employees. Therefore, any material change to an existing LTIP for directors needs to be approved in advance by shareholders in accordance with the Listing Rule requirements.</p> <p><b>Application to LTIP arrangements for new CEO</b></p> <p>This means that the starting point for the Remuneration Committee is to consider whether a remuneration package can be agreed with Lim, including the share awards under the company's LTIP, which falls within Sinarjaya's current directors' remuneration policy approved by shareholders. Normally, a remuneration policy and LTIP will have some flexibility, for example about the maximum level of salaries payable to directors and the size of the awards. But the policy is required to include details of the circumstances under which shares are awarded under the LTIP and any changes to the minimum holding periods for shares, or the circumstances in which the awards are payable, would mean a need to change the remuneration policy.</p> <p>If the Board wishes to change the remuneration policy in order to accommodate Lim's demands in relation to the LTIP, then the company would need to convene a general meeting to pass a resolution to give specific approval for Lim's remuneration package or to change the remuneration policy or would need to propose a resolution to change the policy at the next annual general meeting.</p>

The company could seek approval for the new remuneration package from shareholders via a special general meeting before Lim starts, but (as this would mean the company announcing the proposal to appoint Lim) it would mean Lim having to tell his current employer that he wants to take the role at Sinarjaya before he has got an agreed remuneration package with Sinarjaya. The alternative is for Lim to agree a remuneration package with Sinarjaya that falls within the current remuneration policy, but with an agreement that Sinarjaya will put a new policy to shareholders at the next annual general meeting. Robert could then get an improved package which is implemented when shareholder approval is obtained for the revised policy. But Sinarjaya would not be able to guarantee that shareholder approval would be obtained and therefore whether the new remuneration policy could be put in place.

### **Proposing a revised remuneration policy to shareholders**

The directors' remuneration policy is required to form a separate part of its directors' remuneration report if the company intends to move a resolution to approve a new policy or renew the existing policy at the next accounts meeting.

When proposing a revised remuneration policy, the Act and the Accounts Regulations specify the details that must be included. This includes how the policy supports the company's short and long-term strategic objectives; the maximum potential value of each component; a description of any relevant performance measures and targets and why they were chosen; and the relative weighting of each performance measure. When revising a policy, the details must include the reasons for any changes to the components proposed in the new policy. There must also be an explanation of any differences between the directors' remuneration policy and the policy for employees generally.

### **MCCG Principles and Practices on the approach to remuneration.**

The overarching Principle of the MCCG relating to remuneration is Principle A (III) which requires executive remuneration to be aligned to company purpose and values and to be clearly linked to the successful delivery of the company's long-term strategy.

There are then a series of Practices in the MCCG about how the remuneration committee should approach the remuneration of executive directors, and so the Remuneration Committee will need to take these into account when agreeing the package for the new CEO. Practices 7.1 of the MCCG sets out a general list of factors which the Remuneration Committee should take into account when determining executive directors' remuneration, including clarity, simplicity and risk and predictability.

### **Application of MCCG to Sinarjaya's LTIP arrangements for the new CEO**

The Remuneration Committee must take Principle A (III) of the MCCG into account when considering Lim's remuneration. Even though the Committee thinks that Lim is the outstanding candidate, the company currently does not have a permanent CEO and it is in financial difficulty, this does not override the Principles and Practices in the MCCG. It might mean that the Committee can justify higher, or different, awards for Lim, but the Committee should only agree awards that it considers are necessary for the delivery of the company's long-term strategy and must ensure that the practices in the MCCG are complied with.

In relation to LTIPs, the MCCG does not provide specific guidelines on share awards. However, Practice 7.1 suggests that the remuneration committee should consider various factors such as the company's demands, complexities, and performance, as well as the skills and experience required. Additionally, the remuneration policies and practices should adequately reflect the varying roles and responsibilities of non-executive directors, executive directors, and senior management.

Therefore, the suggestion by Lim that his awards should have a 3 year vesting period would not necessarily violate the MCCG practices. However, it is essential to note that the Remuneration Committee should assess Lim's proposal's appropriateness and ensure that it aligns with the company's goals, objectives, and values. If the Remuneration Committee determines that the proposal is reasonable, it can recommend the proposed changes to the shareholders for approval. It is worth noting that the shareholders must ultimately decide whether to approve the suggested changes.

#### **Use of discretion – Code provisions and application to new CEO**

While considering the malus and clawback practices for LTIP, remuneration schemes shall enable the use of discretion to override formulaic outcomes and shall allow recovery or withholding of sums when appropriate.

So, Sinarjaya Remuneration Committee shall ensure that it continues to have flexibility in relation to awards under the LTIP scheme so that it can reduce awards in appropriate circumstances. The Committee shall therefore not amend the LTIP scheme to meet Lim's demands for a 'guaranteed' value of share awards in any way that prevents them from continuing to exercise discretion or from applying malus and clawback provisions to the LTIP awards.

#### **Review the policy and procedures**

Under Practice 7.1, the Remuneration Committee is obligated to review the company's remuneration policies and procedures periodically, and these policies should be made available on the company's website. Therefore, if the company plans to revise the policy on LTIPs or any other remuneration-related matter, it must consider this requirement to ensure that the updated policies and procedures are appropriately reviewed and made accessible to all relevant stakeholders. Doing so will promote transparency and accountability and help maintain the company's compliance with the MCCG practices.

#### **Consulting with shareholders**

The Remuneration Committee should consider consulting with its shareholders about the proposed new remuneration package for the new CEO. If the remuneration policy is to be revised to accommodate a new package for Lim, then the Committee will need to consult with its key shareholders about the proposed changes before finalising them.

Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1 (Fail)</b>	1-6	<ul style="list-style-type: none"> <li>The answer may attempt to explain the statutory requirements for the approval of the directors' remuneration policy and the Malaysian Code on Corporate Governance (MCCG) practises relating to remuneration, but it is likely to be unclear and not explained in full.</li> <li>A few aspects of the long-term incentive plans and how the statutory and MCCG practises impact agreeing to the remuneration proposed by the new CEO are identified, but they are not directly linked to the scenario and are accompanied by little detail.</li> <li>The answer demonstrates a limited understanding of the link between statutory requirements and MCCG practises in the context of deciding on LTIP share awards. This is communicated in a basic way with simple or generalised statements.</li> <li>There is little application of relevant knowledge and understanding, which may not be supported by an evaluative statement.</li> <li>The answer includes a limited analysis of the link between the statutory requirements for the approval of the directors' remuneration policy and the Malaysian Code on Corporate Governance (MCCG) practises relating to long-term incentive plans.</li> </ul>
<b>Level 2 (Pass)</b>	7-8	<ul style="list-style-type: none"> <li>The answer explains the statutory requirements for the approval of the directors' remuneration policy and the Malaysian Code on Corporate Governance (MCCG) practises relating to remuneration.</li> <li>A few aspects of the long-term incentive plans and how the statutory and MCCG practises impact agreeing to the remuneration proposed by the new CEO are identified that are relevant to the scenario.</li> <li>The answer demonstrates understanding of the link between statutory requirements and MCCG practises in the context of deciding on LTIP share awards and expresses ideas with clarity.</li> <li>There is application of relevant knowledge and understanding, with an evaluative statement.</li> <li>The answer includes an analysis of the link between the statutory requirements for the approval of the directors' remuneration policy and the Malaysian Code on Corporate Governance (MCCG) practises relating to long-term incentive plans.</li> </ul>
<b>Level 3 (Merit / Distinction)</b>	9-13	<ul style="list-style-type: none"> <li>The answer includes a clear explanation of the statutory requirements for the approval of the directors' remuneration policy and the Malaysian Code on Corporate Governance (MCCG) practises relating to remuneration.</li> <li>A range of the long-term incentive plans and how the statutory and MCCG practises impact agreeing to the remuneration proposed by the new CEO are identified, the majority of which are linked to the scenario and described in some detail.</li> <li>The answer demonstrates a good understanding of the link between the statutory requirements and MCCG practises in the context of deciding on LTIP share awards and is communicated in a logical writing structure.</li> <li>There is a detailed application of relevant knowledge and understanding, supported by a focused evaluative statement.</li> </ul>

	<ul style="list-style-type: none"> <li>The answer includes a good analysis of the link between the statutory requirements for the approval of the directors' remuneration policy and the Malaysian Code on Corporate Governance (MCCG) practises relating to long-term incentive plans.</li> </ul>
--	--

Question number	Indicative content
6(b) 12 marks	<p>Answers should demonstrate a good knowledge of the assessment of risk (including the types of risk, stress testing, risk appetite, risk tolerance, and risk mitigation) and the Board's role in relation to risk, applying these concepts to Sinarjaya's proposed new strategy.</p> <p><b>Answers could include the following content:</b></p> <p><b>Assessment of principal risks associated with new strategy</b></p> <p>The Finance Director's report should consider all of the risks that could be associated with the proposed new strategy.</p> <p>Identification of principal risks could be by mind mapping, that is thinking of all the risks to the company from the proposed new strategy, in order to then categorise and assess them.</p> <p>The Finance Director should use any internal and external research and studies that have been used to create the new strategy to help him with the assessment.</p> <p>In particular, we are told that the new strategy involves the sale and purchase of a substantial number of properties and that it could result in a need for new financing depending on the timing of the property sales. The key risks to be considered are therefore:</p> <p><b>Financial:</b> The report needs to consider the impact on Sinarjaya's finances of the sale and purchase of properties and of the sequencing of the sales and purchases. It also needs to consider the risks relating to impact on the company's finances of seeking new loan financing for the purchases, including the risks relating to different sizes of loan and higher interest rates.</p> <p><b>Operational and strategic:</b> The proposal is a substantial shift in strategy in relation to the type of properties being held in the portfolio. There are strategic risks relating to whether the company can select and purchase the right properties and create a more profitable portfolio. There are also marketplace risks, in particular the impact of any future changes in the commercial property market on the valuations of the properties being sold and those being bought.</p> <p>In relation to each potential risk that is identified, there then needs to be an assessment of the likelihood of that risk occurring, and the seriousness of the impact in the event that it does. So, for example, the likelihood of delays in the sales of properties should be considered and so should the risk of being unable to obtain loan finance at a low interest rate. The likelihood can be assessed as high, medium or low, and the impact can be assessed as significant, moderate or minor.</p> <p><b>Stress Testing</b></p> <p>It is important that the risk assessment includes stress testing. Stress testing means modelling a series of hypothetical circumstances to assess a company's ability to withstand unexpected events or shocks. Carrying out a stress testing exercise therefore allows a company to assess the potential worst case impact of particular events and to identify the company's principal risks in relation to those events. Stress testing can also help to assess the effectiveness of the proposed measures to reduce or manage risk.</p>

In the case of Sinarjaya, the stress testing should model alternative scenarios, including modelling the impact on Sinarjaya's finances of taking out a new bank loan at the highest possible amount that might be needed and at the highest potential interest rate for those loans (taking into account economic forecasts for interest rates). It should also include modelling the impact of the worst case scenario for the proceeds from the sale of properties both in terms of the timing of the sales and the sale price achieved for the properties.

### **Mitigation of risk**

The assessment of the risks associated with the new strategy should also include assessing how those risks can be managed or mitigated. The ability to manage or mitigate a risk will be a factor in how great an impact that risk could have.

Therefore the report should cover the extent to which the risks that have been identified could be managed or mitigated. For example, there could be an adjustment of the purchase schedule to delay it in the event that the sale of some of the properties takes longer than expected. In relation to the loan financing, it may be possible to reduce the risks relating to the ability to obtain a new bank loan by securing a loan facility at the outset with a flexible draw down arrangement.

### **Consideration of the risk assessment by the Board**

The MCCG states in Principle B II that the board of directors is responsible for the company's risk management and internal control systems. It should set appropriate policies on internal control and seek assurance that the systems are functioning effectively. The board must also ensure that the system of internal control manages risks and forms part of its corporate culture.

Practice 10.1 says that the board should also establish an effective risk management and internal control framework. In addition, Guidance 1.1 says that the board need to set the risk appetite within which the board expects management to operate and ensure that there is an appropriate risk management framework to identify, analyse, evaluate, manage and monitor significant financial and non-financial risks.

Bursa Malaysia Guidance on Effective Audit and Risk Management Pull out II also includes guidance on the Board's role in relation to risk and risk management.

The Board needs to be satisfied that the risks have been adequately analysed and considered in the Finance Director's report. The Board will then need to consider the analysis of the principal risks, the stress testing that was carried out and whether the risks can be adequately mitigated, before deciding whether to approve the new strategy or to modify the strategy in order to reduce the risks.

The Board will need to consider whether the risks associated with the proposed new strategy, as set out in the risk assessment, fall within the current risk appetite and risk tolerance levels for Sinarjaya or exceeds them. Risk appetite means the level of risk that an organisation is willing to take in the pursuit of its objectives. Risk tolerance means the amount of risk that an organisation is prepared to accept in order to achieve its financial objectives, expressed as a quantitative measure.

Risk appetite and risk tolerance levels should have been set by the Board of Sinarjaya. The Board can review the levels as the business environment changes and so one of the questions for the Sinarjaya Board is whether it should adjust its risk appetite and risk tolerance levels in order to accommodate the new strategy, or whether they should stay the same and the strategy should be changed so that the risks remain within the current levels.

Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1 (Fail)</b>	1-5	<ul style="list-style-type: none"> <li>• The answer may attempt to explain the assessment of risk (including the types of risk, stress testing, risk appetite, risk tolerance, and risk mitigation) and the board's role in relation to risk, but it is likely to be unclear and not explained in full.</li> <li>• A few key elements of a risk assessment to propose and approve a new strategy are included, but are accompanied by little detail.</li> <li>• The answer demonstrates a limited understanding of the Finance Director and Board roles in relation to the risk assessment necessary to propose and approve a new strategy. This is communicated in a basic way with simple or generalised statements.</li> <li>• The answer makes few links between theory and practice.</li> <li>• The answer includes a limited analysis of the roles of the Finance Director to assess the risk of a new strategy and the Board members to approve the risk assessment of a new strategy.</li> <li>• Any analysis is not used to make a judgement and is not supported by examples.</li> </ul>
<b>Level 2 (Pass)</b>	6-7	<ul style="list-style-type: none"> <li>• The answer includes an explanation of the assessment of risk (including the types of risk, stress testing, risk appetite, risk tolerance, and risk mitigation) and the board's role in relation to risk.</li> <li>• The key elements of a risk assessment to propose and approve a new strategy are included, some of which are described in detail.</li> <li>• The answer demonstrates understanding of the Finance Director and Board roles in relation to the risk assessment necessary to propose and approve a new strategy and expresses ideas with clarity.</li> <li>• The answer makes links between theory and practice.</li> <li>• The answer includes an analysis of the roles of the Finance Director to assess the risk of a new strategy and the Board members to approve the risk assessment of a new strategy.</li> <li>• The analysis is used to make a judgement, supported by examples.</li> </ul>
<b>Level 3 (Merit / Distinction)</b>	8-12	<ul style="list-style-type: none"> <li>• The answer includes a clear explanation of the assessment of risk (including the types of risk, stress testing, risk appetite, risk tolerance, and risk mitigation) and the board's role in relation to risk.</li> <li>• A range of the key elements of a risk assessment to propose and approve a new strategy are included and described in some detail.</li> <li>• The answer demonstrates a good understanding of the Finance Director and Board roles in relation to the risk assessment necessary to propose and approve a new strategy and is communicated in a logical writing structure.</li> <li>• The answer makes strong links between theory and practice.</li> <li>• The answer includes an in-depth analysis of the roles of the Finance Director in the risk assessment of a new strategy and the approval of the risk assessment by the Board members.</li> <li>• The analysis is used to make a clear judgment, which is supported with appropriate examples.</li> </ul>

7. Brightstar Solar Sendirian Berhad (Brightstar) is a private company which installs solar panels on farmland in Malaysia. The company has been successful and is planning to significantly expand its workforce over the next year. It has just diversified its business by entering into a contract with a building company to install solar panels on the roofs of new houses.

Brightstar has a Board of 5 directors: a non-executive Chair, Liyana Kamil, and 4 executive directors. Following a review of governance, the Board of Brightstar has recently agreed that it should adopt the Malaysia Code on Corporate Governance (MCCG). The Board has also agreed that it should search for, and appoint, two new non-executive directors to the Board. There is currently no ethnic diversity on the Board and all of the executive directors are male. Liyana has asked the Company Secretary of Brightstar, Amira Azhar, to provide a note for the Board about the factors the Board should consider when selecting the new non-executive directors. Liyana says that she does not think that they need to use a recruitment firm as part of the recruitment process because Brightstar can advertise the new roles on social media and can use the networks of the existing Board members to publicise the new roles.

The Company Secretary of Brightstar, Amira Azhar, has been asked by the Finance Director, Tariq Asnan, who has recently joined the Board, to carry out a review of the latest draft of the company's next annual report and accounts (annual report) which is due to be published in a few months' time. In particular, Tariq wants Amira to check if the non-financial information in the draft annual report is sufficient to comply with the mandatory content requirements. He also wants Amira to consider whether Brightstar should expand the information in the annual report on corporate social responsibility issues to include voluntary disclosures that go beyond the mandatory requirements. Tariq thinks that the annual report needs to include more positive news and that it should showcase the company's successes.

- (a) Prepare a note from the Company Secretary, Amira Azhar, to the Chair, Liyana Kamil, about the selection process for the two new non-executive directors, explaining how Board diversity and skills should be taken into account.

**(12 marks)**

- (b) Analyse the role of Amira, as Company Secretary, in relation to the draft annual report and why it would be advantageous for Brightstar to include additional voluntary CSR reporting in its next annual report.

**(13 marks)**

**(Total: 25 marks)**

Question number	Indicative content
7(a) 12 marks	<p>Answers should demonstrate a good understanding of the concepts of Board skills and diversity, how they should form part of the selection process for the new non-executive directors, the relevant Practices in the MCCG, and what steps, including skills mapping and the method of selection, would be best practice, applying this to the Brightstar scenario.</p> <p><b>Answers could include the following content:</b></p> <p>Answers should be in the form of a note from Amira Azhar, the Company Secretary, to Liyana Kamil, the Chair.</p> <p>The appointment of two new non-executive directors should be seen as an opportunity to improve Board skills and Board diversity.</p>

### **MCCG in relation to skills and diversity.**

Brightstar has recently adopted the Malaysia Code on Corporate Governance (MCCG). Principle A (II) of the MCCG states that an effective board should include the right group of people, with an appropriate mix of skills, knowledge, experience and independent elements that fit the company's objectives and strategic goals. The right board composition will ensure sufficient diversity and independence to avert 'groupthink' or 'blind spots' in the decision-making process. It also enables the board to be better equipped to respond to challenges that may arise and deliver value.

In relation to Board diversity, the Practice 5.5 says that appointment of board and senior management are based on objective criteria, merit and with due regard for diversity in skills, experience, age, cultural background and gender.

### **Governance Code in relation to diversity**

Although it is a private company and so the practices in the MCCG do not apply, Brightstar could also consider the practices in the MCCG about Board consideration of skills and diversity and the best practice suggestions about skills and diversity in the Bursa Malaysia Guidance on Board Leadership and Effectiveness Pull Out I.

### **Types of diversity and Brightstar's current Board**

The MCCG makes it clear that diversity takes many forms. As mentioned above, Practice 5.5 of the MCCG refers to the promotion skills, experience, age, cultural background and gender.

Brightstar only has one female director among its current 5 directors (20% of the total Board members), that is the Chair. It also needs to focus on ethnic diversity given there is currently no ethnic diversity on the Board.

### **Diversity Policy and diversity targets**

Practice 5.9 says that the board should comprise at least 30% women directors.

These targets do not apply to Brightstar because it is a private company, but they are indicative of the types of benchmarks for diversity that companies should take into account. Brightstar currently only has one woman Board member (20% of the total) and no ethnic minority Board member and so does not currently meet the targets set out in the MCCG practices.

### **Improving diversity – application process for the NED roles**

The process for seeking new non-executive directors for the Board of Brightstar should seek to encourage successful applications from more diverse candidates.

The MCCG Guidance 5.5 states that there should be a formal, rigorous and transparent process for the appointment of directors (including reappointments) and senior management. In addition, Practice 5.6 says that in identifying candidates for appointment of directors, the board does not solely rely on recommendations from existing directors, management or major shareholders. The board utilises independent sources to identify suitably qualified candidates.

The Bursa Malaysia Guidance on Board Leadership and Effectiveness Pull Out I makes a range of suggestions for improving diversity in the appointment process including:

- Publicly advertising Board appointments.
- Working with recruitment agents that have made a commitment to promote diversity
- Ensuring that the interview process does not disadvantage candidates with more diverse backgrounds.

The Board should also ensure that the search for candidates accesses a wide pool, including from the public sector and charities, rather than just the corporate sector. Although social media, and use of the Brightstar Board members' networks may result in a sufficient number of applications, it does not address the issue of diversity and may mean that only a narrow type of candidates apply. So, the Board should consider whether to appoint recruitment agents and the form of advertising that it uses for the roles in order to seek more diverse candidates.

### Board skills

The Board should also consider what mixture of skills the company needs now, and may need in future, to meet its strategy. It therefore needs to consider what skills it already has on the Board and whether it needs directors with new skills and experience, in order to fill any skills gaps. This will then enable the Board to consider the type of skills and experience required for the new Board appointments before it advertises the roles.

Brightstar is diversifying its business into installing solar panels on new houses. The Board therefore needs to consider whether the future skills it needs should include experience of the building industry. Another area that could be lacking is HR skills, which will become increasingly important as Brightstar expands its workforce. There may also be a gap in the accounting skills on the Board. We are told that the Finance Director is concerned about the quality of the annual report and we do not know if there is any other Board member with financial or audit skills.

### Skills Matrix

One way of identifying skills gaps is to create a skills matrix. A skills matrix shows the skills and competencies of each member of the Board, their role and how long their tenure has been. A skills matrix can be used to assess which skills and attributes are missing from the current Board and can indicate whether the board is over-reliant on the skills of certain individuals in any particular area. As mentioned above, in terms of the mixture of skills needed on the Brightstar Board, the Board needs to consider whether the Board members have, between them, the right level of skills for the existing business and its future expansion. A skills matrix will help to identify any current or future gaps in these skills.

Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1 (Fail)</b>	1-5	<ul style="list-style-type: none"> <li>The answer may attempt to explain the concepts of board skills and diversity as part of the selection process for new non-executive directors, but it is likely to be unclear and not explained in full.</li> <li>A few requirements in the Malaysian Code on Corporate Governance (MCCG) relating to board skills and diversity are identified, but they are not directly linked to the scenario and are accompanied by little detail.</li> <li>The answer demonstrates a limited understanding of steps, skill mapping, and the selection method for new non-executive directors. This is communicated in a basic way with simple or generalised statements.</li> <li>The answer makes few links between theory and practice.</li> </ul>

		<ul style="list-style-type: none"> <li>• The answer includes a limited analysis of the board's skills and diversity concepts in the selection process for the new non-executive directors.</li> <li>• Any analysis is not used to make a judgement and is not supported by examples.</li> </ul>
<b>Level 2 (Pass)</b>	6-7	<ul style="list-style-type: none"> <li>• The answer explains the concepts of board skills and diversity as part of the selection process for new non-executive directors.</li> <li>• The Malaysian Code on Corporate Governance (MCCG) requirements relating to board skills and diversity are identified, with points made which are relevant to the scenario.</li> <li>• The answer demonstrates understanding of steps, skill mapping, and the selection method for new non-executive directors and expresses ideas with clarity.</li> <li>• The answer makes links between theory and practice.</li> <li>• The answer includes good analysis of the board's skills and diversity concepts in the selection process for the new non-executive directors.</li> <li>• The analysis is used to make a judgement, supported by examples.</li> </ul>
<b>Level 3 (Merit / Distinction)</b>	8-1	<ul style="list-style-type: none"> <li>• The answer includes a clear explanation of the concepts of board skills and diversity as part of the selection process for new non-executive directors.</li> <li>• A range of the Malaysian Code on Corporate Governance (MCCG) requirements relating to board skills and diversity are identified, the majority of which are linked to the scenario and described in some detail.</li> <li>• The answer demonstrates a good understanding of steps, skill mapping, and the selection method for new non-executive directors and is communicated in a logical writing structure.</li> <li>• The answer makes strong links between theory and practice.</li> <li>• The answer includes in-depth analysis of the the board's skills and diversity concepts in the selection process for the new non-executive directors .</li> <li>• The analysis is used to make a clear judgement which is supported with appropriate examples.</li> </ul>

<b>Question number</b>	<b>Indicative content</b>
7(b) 13 marks	<p>Answers should show a good understanding of the role of the Company Secretary in relation to the preparation of the annual report, and in particular the non-financial and CSR reporting aspects, and should set out some of the key drivers and benefits of voluntary reporting by companies on CSR matters, in the context of the Brightstar scenario.</p> <p><b>Answers could include the following content:</b></p> <p>As the Company Secretary, Amira Azhar has an important role to play in the preparation of Brightstar's annual report. The two key categories of role that are relevant to this are the Company Secretary's role in statutory and regulatory compliance and the role in advising the Board.</p>

The ICSA Guidance Note on the governance role of the company secretary makes it clear that the Company Secretary has an important role in relation to finance and business reporting and provides examples of how the Company Secretary can, and should, assist the company with this.

### **Statutory and regulatory compliance**

In relation to statutory and regulatory compliance, Amira should have a good knowledge of the content requirements for the non-financial reporting parts of the annual report which are set out in the Companies Act 2016 and the Accounts Regulations. She should therefore be able to advise the Finance Director on whether those content requirements have been met in the draft report.

Meera should be aware of the need for the annual report to show a true and fair view. She should advise that both financial and non-financial information needs to be properly balanced between the positive and the negative. We are told that the Finance Director wants to make the annual report more positive and for it to be a showcase for the company's successes but Amira should warn him that this cannot be at the expense of the overriding duty for the report and accounts to show a true and fair view.

### **General advice on the content of the annual report**

In addition to her advice in relation to the detailed content requirements, Amira should assist the Finance Director, and the Board more generally, on the drafting of the narrative content of the annual report. For example, she could assist the Board in the presentation of the disclosures relating to performance against the company's KPIs. Other examples are checking that the principal risks have been properly disclosed and checking that the narrative reporting section of the annual report is consistent with the financial statements and the notes to the accounts.

Amira should also seek to ensure that the narrative in the annual report is presented in a way that non-financial readers can understand. She should consider whether the report will meet the needs of the different audiences that may refer to it, including stakeholders such as employees and customers. This will include considering the reputational implications of the disclosures and potential reaction of stakeholder groups.

In terms of best practice for disclosures in the annual report, for example on CSR matters, Amira should look at what other peer companies have been disclosing in their annual reports, and how they are presenting the information, including how they are responding to stakeholder issues.

In providing this advice and assistance, Amira will be part of a wider internal team at Brightstar who are assisting with the preparation of the annual report, including members of the company's finance team.

### **Advice to the Board about their responsibilities**

Amira's role as an adviser to the Board means that she should have a role to play in advising the Board when the accounts are presented to the Board for approval.

She should explain to the directors their individual responsibility for the accounts and the requirement for the report and accounts to show a true and fair view. She should also explain to the directors the link between the annual report and their duty under section 213 of the Companies Act to promote the success of the company, because the strategic report is required to disclose how the directors have performed that duty.

### **Adding additional voluntary information on CSR matters**

Companies can benefit from their CSR activities in a range of ways, and by disclosing these activities in their annual report, they can create greater publicity for those activities with stakeholders such as employees, customers and the community and thereby enhance those benefits.

The benefits of CSR activities to Brightstar include attracting and retaining employees, creating a competitive advantage with customers, reducing reputational risk and long-term sustainability. Disclosure of the CSR activities in Brightstar's annual report will help to enhance these advantages by disclosing them to key stakeholders.

CSR reporting has become increasingly mainstream and standard practice. If Brightstar continues to limit itself to the bare minimum of mandatory reporting on these issues, it will be out of line with best practice. By increasing its voluntary reporting, it can bring itself more into line with best practice and improve its reputation with stakeholders.

The business that Bright star is in, solar panels, means that the stakeholder expectations about its CSR activities will be high. In particular, as it is in the renewable energy business, its approach to climate change issues, including the climate change impact of its own activities, will be expected to be in accordance with best practice. There may be concerns from local communities and other stakeholders about the biodiversity impact of installing solar panels on farmland, and so disclosures about the mitigation measures that the company takes will be important for its reputation and its success as a business.

The increase in reporting on sustainability issues reflects also the growing understanding of the importance that environmental, social and governance (ESG) issues have on financial performance, risk and on a company's long-term success. Therefore, although the additional disclosures are 'voluntary' in the sense that they go beyond the minimum mandatory information required on these topics, the additional information may in fact be necessary to be included in the accounts in order to provide a full understanding of the company's business, its long-term prospects and its risks. In particular, the failure of a business to address climate change is not just a reputational risk, but is also a financial risk.

Another benefit is that it is highly likely that mandatory reporting on CSR issues, including in particular climate change, will continue to expand and develop. By developing voluntary disclosures now, Brightstar will be better prepared to meet these enhanced mandatory disclosures when they come into force.

The company could adopt best practice for voluntary disclosures by referring to one or more of the reporting standards that have been developed in relation to CSR and climate change, such as the Global Reporting Initiative (GRI) Sustainability Reporting Standards and the Task Force on Climate-related Financial Disclosures.

<b>Level</b>	<b>Mark</b>	<b>Descriptor</b>
	0	No rewardable material.
<b>Level 1 (Fail)</b>	1-6	<ul style="list-style-type: none"><li>The answer may attempt to explain the role of the company secretary in relation to the preparation of the annual report, in particular the non-financial and CSR reporting aspects, but it is likely to be unclear and not explained in full.</li></ul>

		<ul style="list-style-type: none"> <li>• A few factors should be considered when setting out some of the key drivers and benefits of voluntary reporting by companies on CSR matters are identified, but they are not directly linked to the scenario and are accompanied by little detail.</li> <li>• The answer demonstrates a limited understanding of the Malaysian Code on Corporate Governance (MCCG) requirements relating to the role of the company secretary in relation to non-financial and CSR reporting aspects. This is communicated in a basic way with simple or generalised statements.</li> <li>• There is little application of relevant knowledge and understanding, which may not be supported by an evaluative statement.</li> <li>• The answer includes a limited analysis of the link between the role of the company secretary and the preparation of the annual report, focusing on the non-financial and CSR reporting aspects.</li> </ul>
<b>Level 2 (Pass)</b>	7-8	<ul style="list-style-type: none"> <li>• The answer explains the role of the company secretary in relation to the preparation of the annual report, in particular the non-financial and CSR reporting aspects.</li> <li>• A few factors should be considered when setting out some of the key drivers and benefits of voluntary reporting by companies on CSR matters are identified, which are relevant to the scenario.</li> <li>• The answer demonstrates understanding of the Malaysian Code on Corporate Governance (MCCG) requirements relating to the role of the company secretary in relation to non-financial and CSR reporting aspects and expresses ideas with clarity.</li> <li>• There is application of relevant knowledge and understanding, with an evaluative statement.</li> <li>• The answer includes analysis of the link between the link between the role of the company secretary and the preparation of the annual report, focusing on the non-financial and CSR reporting aspects.</li> </ul>
<b>Level 3 (Merit / Distinction)</b>	9-13	<ul style="list-style-type: none"> <li>• The answer includes a clear explanation of the role of the company secretary in relation to the preparation of the annual report, in particular the non-financial and CSR reporting aspects.</li> <li>• A range of the factors should be considered when setting out some of the key drivers and benefits of voluntary reporting by companies on CSR matters are identified the majority of which are linked to the scenario and described in some detail.</li> <li>• The answer demonstrates a good understanding of the Malaysian Code on Corporate Governance (MCCG) requirements relating to the role of the company secretary in relation to non-financial and CSR reporting aspects and is communicated in a logical writing structure.</li> <li>• There is a detailed application of relevant knowledge and understanding supported by a focused evaluative statement.</li> <li>• The answer includes good analysis of the link between the role of the company secretary and the preparation of the annual report, focusing on the non-financial and CSR reporting aspects.</li> </ul>

8. Aspen Animations (Aspen) is a private company which supplies special effects to the film industry.

Aspen was set up 25 years ago by two brothers, Izzuddin Shamsul and Faiz Shamsul. The Board of Aspen consists of 3 directors: Izzuddin is the Chair and CEO, Faiz is the Finance Director and Faiz's daughter, Bella, is the Commercial and Human Resources Director. Izzuddin and Faiz each hold 30% of the shares in Aspen and the other shareholders who hold the remaining 40% are their two sisters and their parents.

The Shamsul brothers have recently asked the Company Secretary of Aspen, Lutfi Amin, to help them to plan for the future ownership and governance of the company. They say that they want to retire in a few years' time and that when they retire they want the ownership and control of the company to be transferred to Bella and to Izzuddin's two children who do not currently work in the business. Izzuddin says that he would like to step down as CEO later this year and become the non-executive Chair of the Company. He would like Bella to become the CEO of Aspen in his place. Faiz is concerned about how the Board should go about splitting the Chair and the CEO roles. Faiz is also concerned about the handover of control to their children. He thinks that the children may have disagreements if they are on the Board together and that they may not want to take the same approach to the business as he and Izzuddin have done.

Aspen has an office in Malaysia and has 40 staff. The Board has been considering whether the company should invest in a new facility outside Malaysia, which would improve its technology capabilities but which would be expensive to set up. The company has been having problems retaining and recruiting staff. A recent staff survey suggested that staff are unhappy about their working hours and their salaries, with a substantial number of employees saying that they thought that they could get better working hours and higher salaries at other special effects companies. The HR manager has prepared a paper for the Board setting out the results of the survey and suggesting that all staff should be given a large salary increase this year.

Bella has asked Lutfi to provide her with refresher training on her duty as a director to promote the success of the company. Bella wants to understand how the duty applies to Aspen as a family-owned company and whether it means that the directors should try to make the company as profitable as possible each year. Bella also wants to know how she should take the interests of employees into account when performing her duty as a director to promote the success of the company.

(a) Discuss the issues that Izzuddin and Faiz should consider when planning for the future ownership and control of the company by their children and how the role of Chair and CEO should be split.

**(14 marks)**

(b) Explain Bella's duty to promote the success of the company including how she should take the interests of Aspen's employees into account when performing that duty.

**(11 marks)**

**(Total: 25 marks)**

Question number	Indicative content
8(a) 14 marks	Answers should show an understanding of the governance issues relating to the control and ownership of a family company and should clearly describe, with examples, how Aspen can create a split of responsibilities between a non-executive Chair and the CEO.  <b>Answers could include the following content:</b>

### **Development of governance of Aspen as a family company**

Aspen was founded by the Shamsul family over 25 years ago, and the Shamsul brothers are considering how its governance and management should be developed and changed now that they are considering retiring and handing over control to their children.

The brothers need to take steps to reduce the potential for conflict between family members, to maintain the value of the business, and to create a smooth hand over of power to their children.

The two brothers could agree with the other family shareholders and their children, a vision, mission and values statement for the company, which sets out their agreed approach to the business and the ethical framework that they think it should operate under. This could assist in reducing the potential for conflict between their children, which Faiz is worried about.

They could also create a family assembly or council, to be a way of family members interacting with those on the Board.

### **Board membership**

The family should agree the process for appointing new members of the Board when the brothers retire, and whether they should all be family members or whether independent Board members should also be appointed. The basic process for Board appointments should be set out in the company's articles of association and the family may wish to review these provisions, and include further detail, now that the brothers are planning their retirement.

Faiz's two children are not currently working in the business and so the family will need to consider whether and when it would be appropriate for them to become executive directors. This will depend in part on their current roles and also on whether they would want to become executive directors in the business. Normally they would have been working at a senior level in the business, or in a similar role in another business, before being appointed to the Board. One possible step, as part of their career planning and planning for the handover of the business to the children, would be for one or both of Faiz's children to take on management roles in the business in the first instance, if they do not yet have the skills and experience to become Board members. Another alternative would be for one or both of them to become non-executive directors on the Board. This would potentially then mean that non-family members would need to be appointed as new executive directors on the Board when Izzuddin and Faiz step down as executive directors.

The brothers should also consider whether the time is now right to appoint one or more independent directors to the Board to provide outside challenge and expertise, and to help with the transition of management and control to their children. Although Izzuddin and Faiz want to continue on the Board for now, they should also plan for future years when they may wish to step down from the Board completely.

### **Share ownership**

Whether Although Izzuddin and Faiz can transfer their shareholdings to their children will depend on the provisions of the articles and on whether the other family shareholders have a right of pre-emption over the shares being sold that they wish to exercise.

The company's articles should set out the mechanism for family members to sell their shares. Normally in a family company there will be pre-emption rights giving other shareholders a right of first refusal to the shares being sold. Sometimes there is an ability to transfer shares to certain types of permitted transferees without triggering the pre-emption rights.

Therefore, even though they own the majority of the shares between them, the brother would need to check if a transfer of shares to their children is permitted without triggering the pre-emption rights.

This would still also leave the shares held by Although Izzuddin and Faiz's parents and sisters. There should be a family discussion about whether it would be better if all of the shares were transferred to the next generation – but there could also be other family members, such as the sisters' children, who may want to have shares transferred to them.

### **Appointment of separate Chair and CEO – division of responsibilities**

Izzuddin has said that he wants to split the roles of Chair and CEO, with him becoming non-executive Chair, and Bella becoming the CEO.

In order to ensure that the roles of the Chair and the CEO are clear once they are split, there should be a document agreed by the Board which sets out a clear division of responsibilities between the Chair and Chief Executive.

Having a separate chair role will help to prevent there being an overly dominant CEO, with the Chair acting as a balance to the power of the CEO. This will therefore be an improvement on the current position, with Izzuddin acting as both Chair and CEO. However, the fact that Izzuddin is proposing to continue as Chair, rather than appointing an independent Chair, means that particular care will be needed about the division of responsibilities and about the working relationship between Izzuddin and Bella.

There is an ICSA guidance note on the roles of the Chair and Chief Executive, which includes a sample statement of the division of responsibilities between them, and this may be a useful starting point.

The Bursa Malaysia Guidance on Board Leadership and Effectiveness Pull Out I is directed at listed companies, but it includes some useful guidance on the role of the Chair and the CEO and the division of responsibilities between them.

The Bursa Malaysia Corporate Governance Guide notes that the Chair's role includes developing a good working relationship with the Chief Executive, and providing support and advice, while respecting executive responsibility. This will be particularly important given that Izzuddin is currently both Chair and CEO and will be stepping down from his executive role to become non-executive. There is a risk that Bella will feel constrained in her role as CEO by him continuing to be Chair and that he will regard any changes that she makes as being a criticism of his prior work as CEO. Izzuddin will need to ensure that he adjusts his approach and role to a non-executive one, gives Bella freedom to act as CEO, and does not interfere unduly with management and executive decisions which will be the responsibility of Bella and the management team.

The Bursa Malaysia Corporate Governance Guide also states that, when deciding the differing responsibilities of the chair and the CEO, particular attention should be paid to areas of potential overlap. For example, in relation to strategy, the role of the Chief Executive is to propose strategy to the Board, and to implement the approved strategy, but it is the Board as a whole, led by the Chair, that is responsible for approving the Company's strategy. That distinction needs to be made clear in the division of responsibilities between the Chair and the Chief Executive.

	<p>The Chair is responsible for leading the Board, setting the Board's agenda, focusing on Board culture, making sure that all Board members are contributing effectively, running effective board meetings and ensuring that the views of stakeholders are taken into account.</p> <p>In contrast, the CEO role is focused on delivery of the company strategy, leading and managing the company's employees, the management of the company's business, and the operation of its policies and procedures.</p>
--	--

Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1 (Fail)</b>	1-6	<ul style="list-style-type: none"> <li>The answer may attempt to explain the governance issues relating to the control and ownership of a family company and the split of responsibilities between a non-executive chair and the CEO, but it is likely to be unclear and not explained in full.</li> <li>Some aspects of the governance issues relating to the control, ownership, and CEO duality are identified, but they are not directly linked to the scenario and are accompanied by little detail.</li> <li>The answer demonstrates a limited understanding of the governance issues relating to the control and ownership of a family company and how to split the responsibility of CEO duality. This is communicated in a basic way with simple or generalised statements.</li> <li>The answer makes few links between theory and practice.</li> <li>The answer includes a limited critical analysis of the key issues relating to the governance issues of control and ownership of a family company and the split of responsibilities between a non-executive chair and the CEO.</li> <li>Any analysis is not used to make a judgement and is not supported by examples.</li> </ul>
<b>Level 2 (Pass)</b>	7-8	<ul style="list-style-type: none"> <li>The answer includes an explanation of the governance issues relating to the control and ownership of a family company and the split of responsibilities between a non-executive chair and the CEO.</li> <li>The key elements of the governance issues relating to control, ownership, and CEO duality are included, some of which are described in detail.</li> <li>The answer demonstrates understanding of the governance issues relating to the control and ownership of a family company and how to split the responsibility of CEO duality and expresses ideas with clarity.</li> <li>The answer makes links between theory and practice.</li> <li>The answer includes an analysis of the governance issues of control and ownership of a family company and the split of responsibilities between a non-executive chair and the CEO.</li> <li>The analysis is used to make a judgement, supported by examples.</li> </ul>
<b>Level 3 (Merit / Distinction)</b>	9-14	<ul style="list-style-type: none"> <li>The answer includes a clear explanation of the governance issues relating to the control and ownership of a family company and the split of responsibilities between a non-executive chair and the CEO.</li> <li>A range of the key elements of the governance issues relating to control, ownership, and CEO duality are included and are described in some detail.</li> <li>The answer demonstrates a good understanding of the governance issues relating to the control and ownership of a family company and how to split</li> </ul>

		<p>the responsibility of CEO duality, which is communicated in a logical writing structure.</p> <ul style="list-style-type: none"> <li>• The answer makes strong links between theory and practice.</li> <li>• The answer includes an in-depth analysis of the governance issues of control and ownership of a family company and the split of responsibilities between a non-executive chair and the CEO.</li> <li>• The analysis is used to make a clear judgment, which is supported with appropriate examples.</li> </ul>
--	--	---

Question number	Indicative content
<p>8(b) 11 marks</p>	<p>Answers should show a good understanding of the duty to promote the success of the company under section 213 of the Companies Act 2016, including the consideration of the stakeholder factors and the need to consider the impact of decisions in the long-term. Answers should correctly describe how the duty imposes an obligation to take into account the interests of the company's employees, correctly applying this to the Aspen scenario.</p> <p><b>Answers could include the following content:</b></p> <p><b>Statutory Duty to promote the success of the company</b></p> <p>Under section 213 of the Companies Act 2016 directors have a statutory duty to act in the way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.</p> <p>Section 213 goes on to say that, when doing so, directors must have regard (among other matters) to:</p> <ul style="list-style-type: none"> <li>• The likely consequences of any decision in the long term.</li> <li>• The interests of the company's employees.</li> <li>• The need to foster the company's business relationships with suppliers, customers and others.</li> <li>• The impact of the company's operations on the community and the environment.</li> <li>• The desirability of the company maintaining a reputation for high standards of business conduct.</li> <li>• The need to act fairly as between the members of the company.</li> </ul> <p>Section 213 does not however require the directors to act for the benefit of the stakeholders listed in that section. It requires them to determine, having taken into account those stakeholder interests, what action would best promote the success of the company for the benefit of its members, that is its shareholders, as a whole.</p> <p>This is known as the enlightened shareholder value approach. When considering what action to take to maximise shareholder value, directors need to consider the views of and impact on the company's other stakeholders, but these are only considered in order to determine what would be most in the interests of shareholders. This is because, by taking into account those interests, a company is more likely to be sustainable and successful. It is not a question of putting the interests of other stakeholders ahead of shareholders or of balancing conflicting interests of stakeholders, but of determining, having taken into account all relevant factors, what would best promote the success of the company for the benefit of the shareholders.</p>

### **Application to Aspen as a family company**

Therefore, in order to comply with their duty under section Section 213, what Bella and the other directors must do when making a decision is to consider what will best promote the success of Aspen for the benefit the members, that is the shareholders, of the company. When doing so, the directors will need to consider all of the factors set out in section 213 that are relevant to the decision that is being made.

The shareholders in this case are the Shamsul family. However, this does not mean that the directors can ignore the company's other stakeholders, such as the community and employees. They must consider the interests and views of those stakeholders if they are relevant to the decision being made, because that will help to determine what is in the best interests of the company, and therefore what will promote its success for the benefit of the family shareholders.

It is not the case that the directors should just look at what will maximise the company's profits each year. They should take a longer-term view, taking into account what will make the business more sustainable and successful over the long term. This is why section 213 refers to the need to consider the likely consequences of any decision in the long-term. So the investment in the new facility could benefit the company in the long-term because it will provide better technology capabilities, and ultimately make the company more successful and profitable, even if in the short term it reduces the profits available to shareholders this year because of the expense of the investment.

### **Taking into account the interests of employees**

Section 213 specifically refers to the interests of employees as one of the factors that directors should consider when performing their duty to promote the success of the company.

The HR manager has recommended a substantial increase in the salaries of the employees. If Bella and the other directors of Aspen believe that, unless the salaries of employees are substantially increased, the recruitment and retention difficulties will continue and that this would be damaging to the business, then they have a duty to take that into account when deciding whether to approve the increase.

The Aspen Board will need to decide whether the increase in salaries will promote the success of the company in the long term for the benefit of its shareholders as a whole. In doing so, they will need to consider whether the decrease in the company's profits as a result of the salary increase is outweighed by the benefits to the business in the long-term of better staff recruitment and retention.

The Board should also consider the complaints that have been made by employees about working conditions and how these could be dealt with. Engagement with stakeholders can ensure that their interests are taken into account by the directors. For example, it may be helpful to set up a committee of employees to consider well-being initiatives which could also improve retention of employees. Bella could join this group as its Board representative, given her role as the HR Director, and this would enable her to better consider the employees' views and report on them to the other directors.

The section 213 duty can only be enforced by the company itself, and not by any of the stakeholders to whom the directors are meant to have regard. Therefore, the employees could not sue the directors for breach of the duty.

Level	Mark	Descriptor
	0	
<b>Level 1 (Fail)</b>	1-5	<ul style="list-style-type: none"> <li>• The answer may attempt to explain the director's duty to promote the success of the company under Section 213 of the Companies Act 2016, including the consideration of stakeholder factors and the need to consider the long-term impact of decisions, but it is likely to be unclear and not explained in full.</li> <li>• A few aspects of the stakeholder factors—the need to consider the long-term impact of decisions and the duty to take into account the interests of the company's employees—are identified, but they are not directly linked to the scenario and are accompanied by little detail.</li> <li>• The answer demonstrates a limited understanding of the link between the duty to promote the success of the company under Section 213 of the Companies Act 2016 and stakeholder factors, long-term decision-making implications, and the interests of the company's employees. This is communicated in a basic way with simple or generalised statements.</li> <li>• There is little application of relevant knowledge and understanding, which may not be supported by an evaluative statement.</li> <li>• The answer includes a limited analysis of the link between Section 213 of the Companies Act 2016 and stakeholder factors, long-term decision-making implications, and the interests of the company's employees.</li> </ul>
<b>Level 2 (Pass)</b>	6-7	<ul style="list-style-type: none"> <li>• The answer explains the director's duty to promote the success of the company under Section 213 of the Companies Act 2016, including the consideration of stakeholder factors and the need to consider the long-term impact of decisions.</li> <li>• A few aspects of the stakeholder factors—the need to consider the long-term impact of decisions and the duty to take into account the interests of the company's employees—are identified, which are relevant to the scenario.</li> <li>• The answer demonstrates understanding of the link between the duty to promote the success of the company under Section 213 of the Companies Act 2016 and stakeholder factors, long-term decision-making implications, and the interests of the company's employees and expresses ideas with clarity.</li> <li>• There is application of relevant knowledge and understanding, with an evaluative statement.</li> <li>• The answer includes analysis of the link between Section 213 of the Companies Act 2016 and stakeholder factors, long-term decision-making implications, and the interests of the company's employees.</li> </ul>
<b>Level 3 (Merit / Distinction)</b>	8-11	<ul style="list-style-type: none"> <li>• The answer includes a clear explanation of the director's duty to promote the success of the company under Section 213 of the Companies Act 2016, including the consideration of stakeholder factors and the need to consider the long-term impact of decisions.</li> <li>• A range of the stakeholder factors—the need to consider the long-term impact of decisions and the duty to take into account the interests of the company's employees—are identified the majority of which are linked to the scenario and described in some detail.</li> <li>• The answer demonstrates a good understanding of the link between the duty to promote the success of the company under Section 213 of the Companies Act 2016 and stakeholder factors, long-term decision-</li> </ul>

		<p>making implications, and the interests of the company's employees and is communicated in a logical writing structure.</p> <ul style="list-style-type: none"><li>• There is a detailed application of relevant knowledge and understanding supported by a focused evaluative statement.</li><li>• The answer includes good analysis of the link between Section 213 of the Companies Act 2016 and stakeholder factors, long-term decision-making implications, and the interests of the company's employees.</li></ul>
--	--	--

Marking Scheme

9. Hunter Logistics Berhad (Hunter) is a company which is in the road haulage business and has its shares listed on the Main Market of the Bursa Malaysia. Hunter complies in full with Malaysian Code on Corporate Governance (MCCG).

Last year Hunter sold its business in Ireland and announced that its new strategy was to expand its business in Malaysia rather than internationally. The company has just announced its half year results which showed that the profits of its Malaysia business have fallen. The Hunter share price dropped significantly after the results announcement. As a result, three of Hunter's institutional shareholders, including one with a 2.5% holding, have privately expressed concerns to the Board about the Board's strategy. The shareholders have suggested that the Board should not be just focusing on expansion of the business in Malaysia, but the Board has rejected their criticisms. The three institutional shareholders are all signatories to the Malaysian Code for Institutional Investors (MCII). A new shareholder has recently acquired a 1.5% shareholding in Hunter. Hunter's registrar thinks that the new beneficial owner of the shares is an activist hedge fund but the name in which the shares are registered in the company's register of members is a nominee company. The Hunter Board is concerned that the new shareholder could join with the other activist shareholders to try to challenge and change Hunter's strategy.

Hunter has recently been the subject of a critical report by a climate change group which said that Hunter had not yet provided any strategy for changing to electric vehicles and that its longer-term sustainability is therefore uncertain. The Board has asked the Audit Committee whether, given the likely impact of the phasing out of petrol and diesel vehicles in future, the company's climate change related risks need to be reassessed and whether the risk disclosures in the annual report and accounts need to be amended to reflect that new assessment.

- (a) Explain how the Hunter Board could get information about the new beneficial owner of the 1.5% shareholding in the company and what shareholder rights the hedge fund and other activist shareholders might use to try to challenge and change Hunter's strategy. **(11 marks)**
- (b) Analyse the [statutory, Listing Requirements and MCCG] responsibilities of the Board and the Audit Committee for the assessment of Hunter's climate change risks and the disclosures about those risks in its annual report and accounts. **(14 marks)**

**(Total: 25 marks)**

Question number	Indicative content
9(a) 11 marks	<p>Answers should demonstrate a clear understanding of the right of a company to seek information about its shareholders, the nature of shareholder activism, including reference to the Malaysian Code for Institutional Investors (MCII), and the shareholder rights that could be exercised by shareholders who wish to influence a listed company's strategy, with application to the relevant facts in the Hunter scenario.</p> <p><b>Answers could include the following content:</b></p> <p><b>Information about beneficial owners</b></p> <p>Under the Listing and Disclosure Rules, only shareholdings above 5% must be disclosed to the company and announced to the market. The new shareholding in Hunter is below that level because the new investor only has a 1.5% holding.</p> <p>However, Hunter has the right under section 56 of the Companies Act, to seek information about any interest in its shares, whatever the size. Under section 56, a company can give notice to any person or entity that the company believes to have an interest in the shares within such reasonable time as is specified in the notice.</p>

The notice can require the person to disclose whether they have an interest and the nature of that interest. The notice can be enforced by a court order and failure to respond is a criminal offence. Therefore, Hunter could serve a notice on the nominee holder asking for information about its holding and, through its response, learn who the beneficial owner of the shares is.

### **Shareholder activism and MCII**

Shareholder activism means activities by shareholders to influence governance and strategy decisions in companies in which they invest. Usually, it is only when private dialogue and discussion with a Board does not result in a satisfactory response that an activist shareholder will consider taking more aggressive action. In this case the Board has rejected the suggestions made in private dialogue with the three institutional shareholders and so those shareholders may now decide to take more proactive and public steps to seek to influence the Board.

We are told that the three institutional shareholders who have complained to the Board are signatories to the MCII. They will therefore be using the principles in that Code to determine whether, and how, to engage with the company and to exercise their rights. Under the MCII institutional shareholders are required to consider when it is necessary to enter into an active engagement with the company (Principle 3). The MCII says that, when necessary, they should participate in collaborative engagement with other shareholders and escalate activities to influence the company. The MCII also makes it clear that signatories should actively exercise their rights and responsibilities, and in particular their voting rights (Principle 6).

The MCII suggests that collective action can be particularly appropriate at times when a company is under severe stress or when there are risks that are significantly affecting a company's value. In this case, the strategy that the Hunter Board announced last year appears to be failing because the Malaysia business is not performing well and this has significantly affected the share price. This is therefore the type of situation in which the three institutional shareholders may consider that active collaboration with other shareholders, including potentially the new shareholder, and the escalation of activities to influence the company, is appropriate.

### **Exercise of shareholder rights**

The shareholder rights that Hunter's activist shareholders might exercise in order to try to change Hunter's strategy are:

- **Exercising their voting rights** – The shareholders could vote against, or abstain from voting for, one or more resolutions at the next AGM. This would be a protest vote or abstention, to show their disapproval of the current strategy. In particular the shareholders could vote against the approval of the annual report or against the re-election of the CEO or Chair
- **Submitting a shareholder resolution to be proposed at the next AGM.** Shareholders holding more than 5% of the shares are entitled to requisition a resolution at the AGM. The activist shareholders could act together to reach this 5% threshold. We are told that one of the shareholders owns 2.5% of the shares and the new shareholder owns 1.5%. So they would need shareholders owning at least in aggregate a further 1% of the shares to support a joint requisition. The resolution to be proposed at the AGM could be a resolution to seek to appoint one or more of the shareholders' nominees as directors to the Board of Hunter and/or a resolution to remove the CEO or Chair of Hunter. If the requisition is received before Hunter's year-end, then Hunter is required to bear the costs of the requisition.

	<ul style="list-style-type: none"> <li>• <b>Asking questions at the AGM</b> – The shareholders could send corporate representatives to attend the AGM and to ask questions at the AGM critical of the Board and its strategy.</li> <li>• <b>Calling a shareholder meeting</b> – The shareholders could submit a requisition to call a general meeting of Hunter to vote on resolutions put forward by the shareholders. This could be to either appoint their nominees as directors or remove some of the current directors. This right also requires support from shareholders holding of over 5% of the shares, and so again the institutional shareholders would need to have sufficient support to reach this minimum.</li> </ul> <p>The hedge fund is not on the register of members itself and so cannot exercise these rights directly, but if the registered holder is the hedge fund’s nominee then the hedge fund can direct its nominee how to vote and can direct it to submit a requisition. It can also direct the nominee as to who should attend the AGM as proxy or corporate representative.</p>
--	--

Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1 (Fail)</b>	1-5	<ul style="list-style-type: none"> <li>• The answer may attempt to explain the right of a company to seek information about its shareholders, the nature of shareholder activism, and the shareholder rights that could be exercised by shareholders who wish to influence a listed company’s strategy, but it is likely to be unclear and not explained in full.</li> <li>• A few requirements of the Malaysian Code for Institutional Investors (MCII) relating to shareholder activism and engagement with stakeholders are identified but are not directly linked to the scenario and are accompanied by little detail.</li> <li>• The answer demonstrates limited understanding of the issues relating to seek information about company’s shareholders, the nature of shareholder activism, and the shareholder rights. This is communicated in a basic way with simple or generalised statements.</li> <li>• There is little application of relevant knowledge and understanding which may not be supported by an evaluative statement.</li> </ul>
<b>Level 2 (Pass)</b>	6-7	<ul style="list-style-type: none"> <li>• The answer includes an explanation of the right of a company to seek information about its shareholders, the nature of shareholder activism, and the shareholder rights that could be exercised by shareholders who wish to influence a listed company’s strategy.</li> <li>• Aspects of the Malaysian Code for Institutional Investors (MCII) relating to shareholder activism and engagement with stakeholders are identified some of which are relevant to the scenario and described in detail.</li> <li>• The answer demonstrates understanding of the issues relating to seek information about company’s shareholders, the nature of shareholder activism, and the shareholder rights and expresses ideas with clarity.</li> <li>• There is application of relevant knowledge and understanding but supported by a limited evaluative statement.</li> </ul>
<b>Level 3 (Merit / Distinction)</b>	8-11	<ul style="list-style-type: none"> <li>• The answer includes a clear explanation of the right of a company to seek information about its shareholders, the nature of shareholder activism, and the shareholder rights that could be exercised by shareholders who wish to influence a listed company’s strategy.</li> </ul>

	<ul style="list-style-type: none"> <li>• A range of aspects of the Malaysian Code for Institutional Investors (MCII) relating to shareholder activism and engagement with stakeholders are identified, the majority of which are linked to the scenario and described in some detail.</li> <li>• The answer demonstrates a good understanding of the issues relating to seek information about company's shareholders, the nature of shareholder activism, and the shareholder rights and is communicated in a logical writing structure.</li> <li>• There is a good application of relevant knowledge and understanding supported by a focused evaluative statement.</li> </ul>
--	--

Question number	Indicative content
9(b) 14 marks	<p>Answers should demonstrate a good understanding of the Companies Act and Malaysian Code on Corporate Governance (MCCG) practices about the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk and should apply this to the consideration of climate change risks in the Hunter scenario.</p> <p><b>Answers could include the following content:</b></p> <p><b>Responsibility of the Board for the annual report and accounts</b>            The Board as a whole is responsible for the annual report and accounts. This is a statutory responsibility of directors. Under the Companies Act 2016, it is the responsibility of all of the directors to only sign off on the annual report and accounts if they are satisfied that they show a true and fair view of the assets, liabilities and financial position of the company. Breach of this provision is a criminal offence by the directors.</p> <p>Under Principle A (I) of the MCCG, the board should ensure the integrity of the company's financial and non-financial reporting. Courts have held that it is the duty of every director to read the financial statement of the company and carefully consider whether what they disclose is consistent with the director's own knowledge of the company's affairs.</p> <p><b>Role of the Audit Committee in relation to the report and accounts under the Governance Code</b></p> <p>The MCCG sets out the responsibilities of the audit committee in Principle B (II). These include monitoring the integrity of the financial statements of the company and providing advice to the Board on whether the annual report and accounts, taken as a whole, is fair, balanced and understandable and contains the information necessary to assess the company's position, performance, business model and strategy.</p> <p>The Bursa Malaysia Corporate Governance Guide on the Audit Committee gives further details about the Audit Committee's role in relation to the accounts, including that it should consider the clarity and completeness of the disclosures and the information in the strategic report and corporate governance statements. The guidance also says that the Committee should advise the Board on whether, taken as a whole, the content of the annual report is fair balanced and understandable.</p> <p>Although the Audit Committee has a specific role in a reviewing the report and accounts, and should bring any matters of concern to the Board's attention, all of the directors have equal statutory responsibility for them, as described above.</p>

### **Role of the Board in relation to principal risks**

One of the Principles in the Principle B (II) is that the Board should establish procedures to manage risk and should determine the nature and extent of the principal risk that the company is willing to take. Under the MCCG Practices relating to this principle (Guidance 10.1), the board should, in its disclosure, include a discussion on how key risk areas such as finance, operations, regulatory compliance, reputation, cyber security and sustainability were evaluated and the controls in place to mitigate or manage those risks. In addition, it should state if the risk management framework adopted by the company is based on an internationally recognised risk management framework.

Under the Companies Act the strategic report, which the Board is responsible for, is required to include a description of the company's principal risks and uncertainties.

### **Role of the Audit Committee in relation to principal risks**

The MCCG does not specifically state that Audit Committee is responsible for reviewing the company's principal risks or the disclosure of principal risks, and instead refers more generally to its role in reviewing the company's internal control and risk management systems. However, it is acceptable for the Board of Hunter to delegate the detailed review of the climate change risks to the Audit Committee (given that there is no separate risk committee) and to ask the Audit Committee to report back to it. Also, the MCCG's requirements about the Audit Committee's role in reviewing the content of the annual report mean that this would include a review of the disclosure of principal risks in the annual report.

### **Application to review of climate change risks**

The Audit Committee's review should consider the extent of the climate change risk and how it can be managed and mitigated. The Bursa Malaysia Sustainability Reporting Guide on the disclosure of principal risks for the purposes of the Practices says that principal risks include, but are not limited to, those that might threaten the company's business model, further performance or solvency. It also states that companies should consider the potential impact and probability of the events or circumstances and the timescale over which they may occur.

It is clear that climate change is a significant issue for the Hunter business and is a financial and strategic risk. Climate change activists have already queried how its business model will be sustainable in the long-term unless it has plans to move away from petrol and diesel vehicles. Hunter will need to consider the climate change risk, how it can be mitigated, what its impact could be on Hunter's business model and long-term sustainability and how the risks should be disclosed in the annual report. In order to do this, the Audit Committee will need to get information from the executive management team about the risks and what strategies are being put in place to deal with it. The Committee will then need to report on its assessment and conclusions to the Board.

MCCG Principle A (1) on Board Leadership and Effectiveness says that for companies to be resilient, boards need to take a much more holistic view of the business coupled with proactive and effective measures to anticipate and address material ESG risks and opportunities. Thus, the Board need to include a viability statement in the annual report, which state that the Board has a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period it has set for the assessment (which is expected to be significantly longer than 12 months and is normally 3 years). When making the viability statement the Board should have taken into account the company's current position and principal risks, and this should therefore include the climate change risks.

	<p><b>Consequence of failure to assess the risks correctly</b></p> <p>If the principal risks, including the risks relating to climate change, are not properly identified, and described, and their impact on the company's ongoing viability has not been assessed properly, then the accounts may not show a true and fair view and may not be fair, balanced and understandable. This would be a breach of the Companies Act and of the MCCG.</p> <p>More fundamentally, a failure to properly assess the long-term impact of the climate change risks could mean that the Board fails to put in place proper long-term strategic planning and does not take the necessary steps to manage and mitigate the risks, which could ultimately mean that the company is not sustainable in the long-term.</p> <p><b>Disclosure about the climate change risk issue in the next audit committee report</b></p> <p>The annual report is required by the MCCG Guidance 11.1 to include a report from the Audit Committee. The report must describe any significant issues that the Audit Committee considered relating to the financial statements and how these issues were addressed. Therefore, the Audit Committee report should specifically identify the review of risks relating to climate change, and its outcome, in its report in the next annual report.</p>
--	---

Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1 (Fail)</b>		<ul style="list-style-type: none"> <li>The answer may attempt to explain the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks, but it is likely to be unclear and not explained in full.</li> <li>A few requirements of the Companies Act and Malaysian Code on Corporate Governance (MCCG) practices on the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks are identified but are not directly linked to the scenario and are accompanied by little detail.</li> <li>The answer demonstrates limited understanding of the issues relating to the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks. This is communicated in a basic way with simple or generalised statements.</li> <li>The answer makes few links between theory and practice.</li> <li>The answer includes limited analysis of the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks.</li> <li>Any analysis is not used to make a judgement and is not supported by examples.</li> </ul>
<b>Level 2 (Pass)</b>		<ul style="list-style-type: none"> <li>The answer includes an explanation of the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks.</li> <li>Requirements of the Companies Act and Malaysian Code on Corporate Governance (MCCG) practices on the role and responsibilities of the Board and the Audit Committee in relation to the</li> </ul>

		<p>annual report and accounts and risk by considering climate change risks are identified some of which are relevant to the scenario and described in detail.</p> <ul style="list-style-type: none"> <li>• The answer demonstrates understanding of the issues relating to the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks.</li> <li>• The answer makes links between theory and practice.</li> <li>• The answer includes analysis of the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks.</li> <li>• The analysis is used to make a judgement, supported by examples</li> </ul>
<p><b>Level 3 (Merit / Distinction)</b></p>		<ul style="list-style-type: none"> <li>• The answer includes a clear explanation of the the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks.</li> <li>• A range of the requirements in the Companies Act and Malaysian Code on Corporate Governance (MCCG) practices on the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks are identified, the majority of which are linked to the scenario and described in some detail.</li> <li>• The answer demonstrates a good understanding of the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks and is communicated in a logical writing structure.</li> <li>• The answer makes strong links between theory and practice.</li> <li>• The answer includes in-depth analysis of the role and responsibilities of the Board and the Audit Committee in relation to the annual report and accounts and risk by considering climate change risks.</li> <li>• The analysis is used to make a clear judgement which is supported with appropriate examples.</li> </ul>

**TOTAL FOR SECTION B = 75 MARKS**  
**TOTAL FOR PAPER = 100 MARKS**

*The scenarios included here are entirely fictional. Any resemblance of the information in the scenarios to real persons or organisations, actual or perceived, is purely coincidental.*

**END**