The Chartered
Governance
Institute

ICSA Qualifying Programme

Corporate Governance

Sample mark scheme 2019

Section A

Question number	Answer	Mark
1	False.	
	Total	**(1)**

Question number	Answer	Mark
2	The purpose of the Equator Principles (the 'Principles') is to assist financial institutions in assessing and managing the environmental and social risks associated with projects that they are proposing to finance or are financing. (1) The Principles provide a framework for minimum due diligence and monitoring standards. (1) The Principles also assist in focusing the attention of financial institutions on environmental, social and community standards and responsibilities. (1) **Reward other valid responses.**	
	Total	**(3)**

Question number	Answer	Mark
3	**Award up to 2 marks from the following:** Examples of evidence that a Board is focused on the company conducting its business ethically include: • The adoption by the Board of a set of ethical values, or of a code of ethics, for the company which are published internally for employees and externally on the company's website. (1) • The inclusion of references to, and monitoring of, ethical values in Board papers and Board minutes. (1) • Ethical conduct being rewarded in the remuneration policies and practices of the company for directors and employees. (1) **Reward other valid examples.**	
	Total	**(2)**

Question number	Answer	Mark
4	B: Arranging to meet with the other non-executive directors without the Chair being present.	
	Total	**(1)**

Question number	Answer	Mark
5	The purpose and benefits of an integrated report are that it: • presents a company's social and environmental performance in a way which is integrated with its financial performance; (1) • shows how the company's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value in the short, medium and long-term; (1) • enhances transparency and accountability in relation to sustainability issues and CSR: integrated reporting takes into account the risks and opportunities created by sustainability issues and the most important non-financial metrics for the company; (1) • promotes 'integrated thinking', that is it helps a company to understand the relationships and interdependence between its business and capital (including both financial capital and non-financial capital, such as human and social capital) and how that affects the company's ability to create and preserve value; (1) • shows how the company responds to stakeholder issues in its decisions and actions as well as explaining its relationships and engagement with stakeholders. (1) **Reward other valid responses.**	
	Total	**(5)**

Question number	Answer	Mark
6	An agent-principal relationship exists when an agent represents the principal and is expected to promote the best interests of the principal above their own interests. (1) In the context of a company, the agency theory of governance is that shareholders are the principal and the directors and managers (the 'managers') are the agent(1). This is under the shareholder value theory of governance, with the managers' task as agent being to promote value for the shareholders as principal. (1) The agent-principal relationship can be said to exist in companies where there is a separation of ownership (by the shareholders) and control (by the managers). (1) **Reward other valid responses.**	
	Total	**(4)**

Question number	Answer	Mark
7	**Award up to 4 marks from the following:** Key features of an effective induction programme include: • An induction programme should be a formal, organised programme for each new director. (1) • An induction programme should always be tailored to the needs of the individual director – the Company Secretary should consult with the director about their needs before devising the programme for that director. (1) • The programme should provide the director with an understanding of the nature of the company, its business and its markets. (1) • The programme should cover the company's employees and other key stakeholders. (1) • The programme should include meetings with key management and advisors, site visits to the company's businesses and meetings with non-management employees, as well as formal training sessions. (1) • The programme should cover directors' duties and the company's corporate governance framework. (1) **Reward other valid responses.**	
	Total	**(4)**

Question number	Answer	Mark
8	Section 174 of the Companies Act sets out the directors' duty to act with reasonable skill, care and diligence in the performance of their duties.(1) Section 174 says that this means the care, skill and diligence that would be exercised by a reasonably diligent person with: • the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and (1) • the general knowledge, skill and experience that the director has. (1) This means that there are two thresholds that a director must meet. The first is based on an objective test, which is the minimum knowledge and skills that all directors are expected to have.(1) The second is based on a subjective test, which takes into account the specific knowledge and skills that the particular director has and which can create a more demanding standard (but not a lower standard than the objective test) for that director.(1) **Reward other valid responses.**	
	Total	**(5)**

Section B

Question number	Indicative content
9(a) 13 marks	Answers should demonstrate an understanding of the UK Corporate Governance Code provisions on shareholder engagement, the focus of engagement in the context of remuneration policies and the different methods of understanding institutional investor views. Answers should make reasonable suggestions about how Beta could go about understanding their views in the period leading up to the AGM. **Answers could include the following content:** There are three main levels of information and engagement for the Board to consider in order to understand the views of shareholders: • The main institutional shareholder representative bodies (including the Investment Association and the Pensions and Lifetime Savings Association) publish formal, detailed guidance for companies which sets out their position on a range of issues, including remuneration. • Individual institutional shareholders also publish information about the positions that they take on particular issues, for example via letters to companies and publications on their websites. The Stewardship Code also requires investors who are signatories to the Code to include a statement on their website about how they apply the Code. • Beta should proactively conduct an ongoing dialogue and individual engagement with its key shareholders via one-on-one meetings and calls with them. The UK Corporate Governance Code places the prime responsibility for engagement with shareholders on the Chair of the board and requires the Chair to seek regular engagement with major shareholders in order to understand their views on governance and performance (Provision 3). In practice, other members of the company, including its investor relations team, are likely to be involved and the board committee Chairs should also be involved where the engagement relates to a matter within the committee's remit. In relation to remuneration issues, the remuneration committee should take the lead in engagement with shareholders. The UK Corporate Governance Code (Provision 41) requires the report of the remuneration committee to include a description of what engagement has taken place with shareholders and the impact this had on remuneration policy and outcomes. Engagement is not possible with all shareholders, and so Beta should be focused its key shareholders (ie most significant in terms of size and importance to the company). Beta should have details, via liaison with its registrars and investor relations team, of who those most important shareholders are (whether institutional shareholders or large private shareholders) and who the key contacts are at those shareholders for engagement issues. Beta's remuneration committee should engage directly with these key shareholders on remuneration issues: • The committee Chair should schedule meetings (or calls) with key shareholders to discuss and explain the committee's current thinking in relation to the new remuneration policy and in particular the proposed changes to the policy and how these will meet the concerns previously expressed by shareholders. • The remuneration committee should also consider seeking shareholder views before

	exercising discretion on remuneration issues. • If the company is proactive in engaging with shareholders, and explaining its strategy and its approach to remuneration issues, this may assist in helping to persuade shareholders not to vote against the remuneration report or new remuneration policy, and not to vote against the re-election of the remuneration committee Chair. The Chair of Beta should lead on engagement with shareholders more generally. In light of the issues raised by Druid and the media reports about potential concerns from other shareholders, the focus of the engagement in the lead up to the company's AGM should in particular be on strategy: • This could be done by scheduling meetings (or calls) with key shareholders ahead of the AGM at which the Chair is present • The meetings or calls are an opportunity to explain the company's strategy and seek shareholder views on it (taking care not to breach the rules regarding equality of information to shareholders and on disclosure of inside information). • The Chair should also seek to engage in this way with Druid, given its public criticism – it should not exclude Druid from engagement, or wait for Druid to make an approach first, just because it is perceived as hostile to the company. As regards the AGM itself, this should be seen by Beta as another way to engage with its shareholders: • The AGM gives shareholders an opportunity to ask questions about any matters covered in the annual report as well as the other items of business at the meeting. • The Chair and other board members should be fully briefed in advance of the meeting on the questions that may arise and on any of the matters raised in any engagement meetings or calls that have been held with shareholders prior to the AGM. • In addition to the Chair, the Chair of the audit, nomination and remuneration committees should be available to answer questions at the AGM about matters within their committee remits.

Level	Mark	Descriptor
	0	No rewardable material.
Level 1 (Fail)	1-6	• The answer may attempt to explain shareholder engagement but it is likely to be unclear and not explained in full. • The answer demonstrates limited understanding of shareholder engagement in the context of remuneration policies and different methods of understanding institutional investor views. This is communicated in a basic way with simple or generalised statements. • There is little or no reference to the question scenario on Beta, and how Beta can go about understanding shareholders' views ahead of the AGM. • The answer includes limited discussion of the factors that underpin engagement with shareholders.

Level 2 (Pass)	7-8	• The answer provides a clear explanation of shareholder engagement. • The answer demonstrates a good understanding of shareholder engagement in the context of remuneration policies and different methods of understanding institutional investor views. • The answer makes links between theory and practice. • The points made are relevant and linked to the question scenario on Beta, and how Beta can go about understanding its shareholders' views ahead of the AGM. • The answer includes discussion of the factors that underpin engagement with shareholders.
Level 3 (Merit/Distinction)	9-13	• The answer provides a clear and detailed explanation of shareholder engagement. • The answer demonstrates an in-depthunderstanding of shareholder engagement in the context of remuneration policies and different methods of understanding institutional investor views and is communicated in a logical writing structure. • A wide range of points are made which are relevant and linked to the question scenario on Beta, and how Beta can go about understanding its shareholders' views ahead of the AGM. • The answer includes a detailed discussion of the factors that underpin engagement with shareholders illustrating that the candidate has a thorough understanding of the subject.

Question number	Indicative content
9(b) 12 marks	Answers should be set out as a briefing paper to the Board of Beta. Answers should demonstrate a clear understanding of the concept of shareholder activism and knowledge of the shareholder rights that Druid could exercise as a 6% shareholder. **Answers could include the following content:** Shareholder activism is a term used to describe the way in which shareholders can assert their power as owners of the company to influence its behaviour. More specifically, the term 'shareholder activism' is used to refer to the activities by institutional investors (and sometimes other investors) to influence governance and strategy decisions in companies in which they invest. It is a broad term encompassing a range of different types of shareholder action. An activist investor is a person or a group of people who buy up a significant percentage of a company's shares in the hope of forcing changes to governance or strategy. Druid's purchase of a stake of 6% of Beta, coupled with its public statements critical of Beta's strategy and its CEO, suggest that it has acquired the stake in order to be an activist investor. In most cases shareholder activism is constructive and involves dialogue and discussion. It can also play a positive role in addressing management issues, taking a fresh look at difficulties that a company is facing and providing a benefit to other more passive shareholders. Often it is only when private dialogue and discussion with a board does not result in any satisfactory response that an activist shareholder will consider taking more aggressive action. However, in this case Druid has gone public with its concerns, and made a personal attack on the CEO, without engaging in any prior private dialogue with the Beta Board. Druid is seeking to bring pressure to bear on Beta from the negative publicity that shareholder opposition to the Board can create. This suggests that Druid is the type of activist investor that prefers to take an aggressive and hostile approach in public from the outset, rather than using constructive dialogue. The shareholder rights and tactics that Druid could exercise in the lead up to and at the AGM, and the tactics that it could employ, as part of its activist strategy are: • Voting against one or more resolutions at the AGM – in particular against the approval of the annual report (to show its disapproval in relation to strategy) and against the re-election of the CEO (to reflect its criticism of the CEO). • Submitting a shareholder resolution to Beta to be proposed at the AGM – as Druid holds more than 5% of the shares it is entitled to requisition a resolution at the AGM – this could for example be a resolution to seek to appoint one or more nominee directors to the Board of Beta and/or a resolution to remove the CEO as a director of Beta. If the requisition is received before Beta's year-end, then Beta is required to bear all of the costs of the requisition. • Sending one or more corporate representatives or proxies to attend the AGM and to ask questions at the AGM critical of the Board and its strategy. • Approaching the Board to ask for a private discussion with the Chair or other members of the Board to discuss its concerns. • Continuing with its public media campaign criticising the Board and its strategy. • Making a formal public statement about its concerns in advance of the AGM.

	• Calling a separate shareholder meeting to put forward resolutions relating to the Board or to strategy (again, with a holding of over 5% of the shares it is able to exercise this requisition right). • Seeking to persuade other Beta shareholders to join it in expressing concerns publicly and in voting against certain resolutions at the AGM.

Level	Mark	Descriptor
	0	No rewardable material.
Level 1 (Fail)	1-5	• The answer may attempt to explain shareholder activism but it is likely to be unclear and not explained in full. • The answer demonstrates limited understanding of the factors that underpin shareholder rights. This is communicated in a basic way with simple or generalised statements. • The answer makes few links between theory and practice. • Points made are superficial and not directly linked to the scenario in the question. • The answer includes limited discussion of the rights that Druid may have and the tactics it might employ as part of its activist strategy.
Level 2 (Pass)	6-7	• The answer includes a good explanation of shareholder activism. • The answer demonstrates a goodunderstanding of the factors that underpin shareholder rights and expresses ideas with clarity. • The answer makes links between theory and practice. • The points made are relevant and linked to the scenario in the question. • The answer includes sufficient discussion of the rights that Druid may have and the tactics it might employ as part of its activist strategy.
Level 3 (Merit/Distinction)	8-12	• The answer includes a clear and detailed explanation of shareholder activism. • The answer demonstrates an in-depthunderstanding of the factors that underpin shareholder rights. • The answer makes strong links between theory and practice and expands this with further examples. • A wide range of points are made which are relevant and linked to the scenario in the question. • The answer includes strong discussion of the rights that Druid may have and the tactics it might employ as part of its activist strategy.

Question number	Indicative content
10(a) 15 marks	Answers should demonstrate a clear understanding of good corporate governance practice in relation to Board composition, by reference in particular to the UK Corporate Governance Code and should be able to apply that to the facts of the Roadplanscenario. **Answers could include the following content:** The current situation at Roadplan raises a number of issues which could be viewed as weaknesses in relation to Board composition: • overall composition of the current Board • independence of directors • the Chair • diversity on the board • succession planning. **Overall composition of the board** The effectiveness of a Board of directors depends on its composition. Under the UK Corporate Governance Code (theCode) Principle K, the Board and its committees should have the appropriate balance of skills and experience. The fact that the majority of the Board have been in place for many years suggests that the company has not properly considered the appropriate balance of skills and experience as the company has grown and the business has developed. The business has expanded substantially and developed new product lines with a greater focus on technology in the last few years and yet there have been no new Board appointments. The recent skills audit has highlighted the lack of IT experience and skills on the Board. **Independence** A key principle of good governance is that there should be a sufficient number of independent non-executive directors (NEDs) on the Board to create a suitable balance of power and prevent the dominance of the Board by one individual or a small number of individuals. The Code states in Provision 11 that at least one half of the Board, excluding the Chair, should be independent NEDs. In Roadplan's case this means that, as there are 6 directors, in order to comply with the Code, at least 3 of the 4 NEDs would need to be independent. Code Provision 10 provides that Roadplan should identify in the annual report each NED it considers to be independent. The independence criteria for NEDs are set out in Provision 10 and need to be assessed annually. The RoadplanBoard should determine whether each NED is independent in character and judgement and whether circumstances exist which could affect or appear to affect the director's judgement so that they should not be treated as independent. Simon Dale is now a director of another company where the Chair, Robert Hill, is also a director. Under Provision 10, the existence of cross-directorships with other directors is one of the factors that indicates that a director is not independent, and so it is difficult to see how Roadplan could continue to determine him to be independent in these circumstances, although it is still up to the Board to determine whether he can be or not.

Two of the NEDs, David Young and John Harris, have already served on the Board for more than 9 years since the date of their first appointment. That is also one of the stated factors in the Code which is relevant in determining independence. The company could nevertheless determine that they remain independent (and so meet the Code requirement to have at least 3 independent NEDs) but institutional shareholders are still likely to become increasingly vocal about their length of service and some may vote against their re-election.

The limited number of independent NEDs on the board also makes it more difficult for Roadplan to meet the requirements in the Code as regards the composition of Board committees, as these are focused on independent NED membership.

The Chair

The Chair of the board, Robert Hill, has also been on the board for more than 9 years. Although the Code only requires a Chair to be independent on appointment, it also states in Provision 19 that the Chair should not remain in post beyond 9 years from their first appointment as a director. This period can be extended if a clear explanation is provided, but only if the purpose of the extension is to facilitate effective succession planning and the development of a diverse Board, which are not factors that apply in this case.

Diversity on the board

The Board of Roadplan lacks diversity, with only one woman on the board, and that position will become acute when Jane Court leaves the Board. There is also no evidence from the scenario of any wider social or ethnic diversity on the Board.

Principle J of the Code states that board appointments and succession planning should promote diversity of gender and social and ethnic backgrounds, as well as cognitive and personal strengths. In addition, Provision 23 of the Code says that the nomination committee should describe the Board diversity policy and how its planning and appointment processes support a diverse pipeline.

The lack of gender diversity on the Board in particular is likely to be a matter of focus for institutional shareholders, who would expect to see improvements in relation to the diversity of the Board composition. Proxy advisory firms and institutional investor groups may recommend voting against the re-election of directors, including the Chair and the nominations committee chair, if Roadplan does not take steps to improve diversity on its Board.

Succession planning

Principle J of the Code states that an effective succession plan should be in place for the Board and senior management. Principle K states that consideration should be given to the length of service of the board as a whole and membership should be regularly refreshed.

These principles are designed to assist in maintaining an appropriate balance of skills and experience on the Board and to ensure progressive refreshing of the Board. A smooth succession is desirable to avoid disruptions to the company's decision-making processes. The succession should also be planned well in advance so that the newly appointed individuals have an opportunity to learn about their new role before the actual succession occurs.

In Roadplan’s place, there has been insufficient refreshing of the Board and there is no evidence

	of any succession planning. The two executive directors have both been with the company since it was founded, and the Chair and two of the NEDs have been there for over 9 years. Furthermore, the departure of Jane Court will leave the company with significant problems as regards the number of independent NEDs and diversity, and there is no evidence that the board has been planning ahead to cater for succession.

Level	Mark	Descriptor
	0	No rewardable material.
Level 1 (Fail)	1-7	• The answer may attempt to explain corporate governance practice for Board composition but it is likely to be unclear and not explained in full. • The answer demonstrates limited understanding of corporate governance weaknesses in relation to Board composition. This is communicated in a basic way with simple or generalised statements. • The answer makes few links between theory and practice and lacks reference to the UK Corporate Governance Code. • Points made are superficial and not directly linked to the corporate governance weaknesses set out in the question scenario. • The answer includes limited analysis of the factors that underpin good governance practice in Board composition.
Level 2 (Pass)	8-9	• The answer clearly explains corporate governance practice for Board composition. • The answer demonstrates a goodunderstanding of corporate governance weaknesses in relation to Board composition. • The answer makes links between theory and practice, including references to the UK Corporate Governance Code. • The points made are relevant and linked to the corporate governance weaknesses set out in the question scenario. • The answer includes analysis of the factors that underpin good governance practice in Board composition.
Level 3 (Merit/Distinction)	10-15	• The answer includes a clear and detailed explanation of corporate governance practice for Board composition. • The answer demonstrates deeperunderstanding of corporate governance weaknesses in relation to Board composition. • The answer makes strong links between theory and practice, with application to the UK Corporate Governance Code. • A wide range of points are made which are relevant and linkedto the corporate governance weaknesses set out in the question scenario. • The answer includes robust analysis of the factors that underpin good governance practice in Board compositionillustrating that the candidate has a thorough understanding of the subject.

Question number	Indicative content
10(b) 10 marks	Answers should demonstrate a knowledge of good practice in relation to the appointment of a new non-executive director, with particular reference to the UK Corporate Governance Code (the Code) **Answers could include the following content:** The process that should be followed and issues to consider as a matter of good governance in relation to the recruitment of a new non-executive director • Under the Code (Provision 17) the nomination committee should lead the process for the recruitment of new directors. • The nomination committee should already have a general succession plan in place which maps the length of tenure, skills and diversity of the rest of the Board and any skills gaps, and this should help to inform the recruitment process and the type of skills and experience required for a new appointment. If there is no such plan in place, then the committee should prepare one before embarking on the recruitment process. • The FRC Guidance on Board Effectiveness recommends (paragraph 92) that the nomination committee should prepare a description of the role and capabilities required for any new appointment to the Board. • If the company has a Board diversity policy, the recruitment process should take into account that policyCode Principle (Principle J) states that succession plans and appointments should promote diversity, including diversity of gender and social and ethnic backgrounds. • The Code (Provision 20) provides that the Board should usually use either advertising or an external search consultancy for the appointment of a new NED • In order for the Board and committee compositions to be Code compliant in future, the company should be seeking to recruit directors who are independent under the tests set out in Provision 10 of the Code. • When considering candidates, details should be obtained, and account taken, of their other time commitments and whether they would have sufficient time to devote to the role (Provision 15 of the Code). • A company should carry out due diligence in relation to any director that it is considering appointing, including seeking information about any potential conflicts of interest as a result of their other positions or interests. • . Under Provision 32 of the Code, the chair of the remuneration committee must have served on a remuneration committee for at least 12 months before the appointment as chair. • Once the nomination committee has been through the selection process, it should make a recommendation to the board about the new appointment. It will also need to agree an appointment letter, including the level of directors' fees, with the recommended candidate.

Level	Mark	Descriptor
	0	No rewardable material.
Level 1 (Fail)	1-4	• The answer may attempt to explain the appointment process for a new NED but it is likely to be unclear and not explained in full. • The answer demonstrates limited understanding of the issues that should be considered in recruiting a new NED. This is communicated in a basic way with simple or generalised statements.

		• The answer makes few links between theory and practiceand lacks reference to the UK Corporate Governance Code. • Points made are superficial and not directly linked to the question. • There is little application of relevant knowledge and understanding which may not be supported by an evaluative statement.
Level 2 (Pass)	5-6	• The answer includes a clear explanation of the appointment process for a new NED. • The answer demonstrates a good understandingof the issues that should be considered in recruiting a new NEDand expresses ideas with clarity. • The answer makes some links between theory and practice, including references to the UK Corporate Governance Code. • The points made are relevant and linked to the question. • There is application of relevant knowledge and understanding, which is supported by anevaluative statement.
Level 3 (Merit/Distinction)	7-10	• The answer includes a clear and detailed explanation of the appointment process for a new NED. • The answer demonstrates a thoroughunderstandingof the issues that should be considered in recruiting a new NED and is communicated in a logical writing structure. • The answer makes strong links between theory and practice, with application to the UK Corporate Governance Code. • A wide range of points are made which are relevant and linked to the question. • There is a good application of relevant knowledge and understanding supported by a focused evaluative statement.

Question number	Indicative content
11(a) 15 marks	Answers should be set out as a briefing note for the CEO of Prime. Answers should demonstrate a clear understanding of the directors' duty under section 172 of the Companies Act 2006 and the duty to have regard to the stakeholder factors listed in that section. Answers should demonstrate a knowledge of the new Companies Act and Accounts Regulations requirements for disclosures in the annual report, about consideration of the stakeholder factors and engagement with stakeholders, including the guidance available in relation to those new provisions. **Answers could include the following content:** There has recently been a renewed focus on the duty of directors under section 172 of the Companies Act 2006 (CA2006), that is the duty to promote the success of the company. In particular there has been a focus on the requirement in section 172 for directors, when performing that duty, to have regard to the factors listed in section 172(1) (a) to (f). These include the following factors which are often referred to as the 'stakeholder factors': • the interests of the company's employees; • the need to foster the company's business relationships with suppliers, customers and others; • the impact of the company's operations on the community and the environment; and • the desirability of the company maintaining a reputation for high standards of business conduct. Prime is a large company for accounting purposes and must therefore include a strategic report in its annual report. The CA2006 states that the purpose of the strategic report is to help members of the company to assess how the directors have performed their duty under section 172 to promote the success of the company. In addition, the Companies (Miscellaneous Reporting) Regulations 2018 have amended the CA2006 and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (Accounts Regulations) to impose new specific disclosure requirements in a company's annual report relating specifically to the directors' performance of their section 172 duty in the context of stakeholders. As a large company for CA2006 accounts purposes, and as a company with over 250 employees in the UK, Prime is obliged to prepare a strategic report and to comply with the full range of the new requirements in the 2018 Regulations. This means that Prime's strategic report will need to include a 'Section 172(1) statement' on how the directors have had regard to the matters set out in section 172(1) (a) to (f) when performing their duty under section 172, which will include how the Prime directors have had regard to the interests of employees and how they have fostered relationships with customers, suppliers and others. Prime must also explain in its annual report (either in its strategic report or directors' report): • how the board has engaged with its employees, and how directors have regard to employee interests, and the effect of that regard,including on the principal decisions taken by Prime during the year; and • how directors have had regard to the need to foster the company's business relationships with suppliers, customers and others, and the effect of that regard, including on the principal decisions taken by the Prime during the year.

	By engaging effectively with the company's key stakeholders and ensuring that the Board has reports on the outcome of that engagement, and the views of those stakeholders, the Prime Board will be better able to include these required disclosures, relating to their performance of their section 172 duty in the next annual report. Prime is currently facing challenges with a range of its stakeholders and must ensure that it will be able to explain in its next annual report how it has engaged with those stakeholders. Although the impact of Prime on the environment is one of the factors set out in section 172, and so the company should continue to explain its environmental approach and policies, the other stakeholder factors set out in section 172 are also important to Prime's business and so must be taken into consideration by its Board and be reported on. In particular: • Employees – Prime is a significant employer and its employees are essential to the success of its business. Given in particular the recent dispute with employees about their contracts, the Prime Board needs to consider how to more effectively engage with its employees and consider how it takes into account their interests. This will also enable it to respond more effectively in the annual report to the negative publicity surrounding the employee dispute. • Customers and Suppliers – The need to foster good relations with customers and suppliers is set out as a factor in section 172. Supplier relations are currently being damaged by complaints about late payment. Although this is currently being dealt with privately, the company should nevertheless be considering how to improve its engagement methods with its suppliers, including by widening engagement at board level beyond the Finance Director, and it will need to disclose in its annual report how its decisions have been impacted by a consideration of its relations with its customers and suppliers. Consideration of stakeholder issues, and engagement with stakeholders is a responsibility for the whole board although it could be delegated to a committee. For example, the board could consider whether the CSR committee remit should be widened to cover other stakeholder interests as well. The guidance that is available to Prime about section 172, the stakeholder factors, stakeholder engagement and disclosures in relation to stakeholders in the annual report is: • The FRC's Guidance on Board Effectiveness, which accompanies the Governance Code and includes guidance on relations with stakeholders and how to develop and engagement strategy – although this guidance is designed mainly for listed companies, it can also assist large private companies. • The Guidance prepared by the ICSA in collaboration with the Investment Association, called "The Stakeholder Voice in Board Decision Making" which sets out principles a board can follow to ensure that it is taking into account the interests of stakeholders when taking decisions. • The FRC Guidance on the Strategic Report, which includes a section on section 172 reporting and stakeholders. • The GC 100 Guidance on Directors' Duties, Section 172 and Stakeholder Considerations which explains why consideration of stakeholder issues are important for directors when fulfilling their section 172 CA2006 duty. • The BEIS Q&A Guidance on the Companies (Miscellaneous Reporting) Regulations 2018.

Level	Mark	Descriptor
	0	No rewardable material.
Level 1 (Fail)	1-7	• The answer may attempt to explain the statutory reporting requirements in relation to engaging with stakeholders but it is likely to be unclear and not explained in full. • The answer demonstrates limited understanding of the statutory reporting requirements which Prime must comply with and the guidance available. • The answer makes few links between theory and practice. • The answer includes limited discussion of the stakeholder factors listed in section 172 of the Companies Act 2006 and the stakeholder factors that apply to Prime.
Level 2 (Pass)	8-9	• The answer includes a clear explanation of the statutory reporting requirements in relation to engaging with stakeholders. • The answer demonstrates a good understanding of the statutory reporting requirements which Prime must comply with and the guidance available. • The answer includeslinks between theory and practice. • The answer includes a good discussion of the stakeholder factors listed in section 172 of the Companies Act 2006 and the stakeholder factors that apply to Prime.
Level 3 (Merit/Distinction)	10-15	• The answer includes a clear and detailed explanation of the statutory reporting requirements in relation to engaging with stakeholders. • The answer demonstrates a detailedunderstandingof the statutory reporting requirements which Prime must comply with and the guidance available. • The answer makes strong links between theory and practice. • The answer includes an in-depth discussion of the stakeholder factors listed in section 172 of the Companies Act 2006 and the stakeholder factors that apply to Prime.

Question number	Indicative content
11(b) 10 marks	Answers should demonstrate a clear understanding of the concept of enlightened shareholder value and of section 172 of the Companies Act 2006. **Answers could include the following content:** Enlightened shareholder value is the term used to describe a middle ground between a pure shareholder value approach to corporate governance and a pure stakeholder approach to corporate governance. The shareholder value approach to corporate governance is based on the view that the Board of directors should govern their company in the best interests of its shareholders, with the main objective of the company being to maximise the wealth of a company's shareholders through share price growth and dividend payments. Under this approach, the directors are only accountable to the shareholders and not to other stakeholders and should make decisions purely to maximise the interests of shareholders, rather than being required to take into account the interest of any other stakeholder group. In contrast, the stakeholder value approach to corporate governance requires directors to have a wider vision beyond profit maximisation for shareholders and instead obliges them to act in the interests of a wider group of constituents with a stake or interest in the company and its business. The enlightened shareholder value approach creates a middle ground by taking the view that directors, when considering actions to maximise shareholder value, consider the views of and impact on other stakeholders and not just shareholders. The views and interests of other stakeholders are, however, only considered in so far as it would be in the interests of shareholders to do so. Therefore, the enlightened shareholder value approach is still in essence a shareholder value approach and not a stakeholder value approach. The wording of section 172 of the Companies Act 2006 embodies the enlightened shareholder value approach, as a compromise between the two different philosophical approaches to corporate governance. Section 172 states that directors must act in the way 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, but in doing so they must have regard (amongst other matters) to a range of factors listed in section 172, which include the company's stakeholders, that is: • the likely consequences of any decision in the long-term; • the interests of the company's employees; • the need to foster the company's business relationships with suppliers, customers and others; • the impact of the company's operations on the community and the environment; • the desirability of the company maintaining a reputation for high standards of business conduct; and • the need to act fairly as between the members of the company. Under section 172, the directors' duties are still owed solely to the company but, in order to promote the success of the company, directors should also have regard to the interests of stakeholder groups and other factors that relate to the company's external impact.

	Therefore, the CEO of Prime does not need to be concerned about how the focus on stakeholders fits with the duty to shareholders. The duty of the directors is to promote the success of Prime for the benefit of its shareholders as a whole but, in order to do so, the interests of the company's stakeholders need to be taken into account. It is not a question of preferring one stakeholder interest over another, or of preferring stakeholders over shareholders, but of considering stakeholder views and interests and, having done so, deciding what would best promote the success of the company.

Level	Mark	Descriptor
	0	No rewardable material.
Level 1 (Fail)	1-4	• The answer may attempt to explain the definition of enlightened shareholder value but it is likely to be unclear and not explained in full. • The answer demonstrates limited understanding of section 172 of the Companies Act 2006 and how this encapsulates enlightened shareholder value. This is communicated in a basic way with simple or generalised statements. • Points made are superficial and not directly linked to the scenario in the question. • There is little application of relevant knowledge and understanding which may not be supported by an evaluative statement on the CEO's concerns about stakeholders versus shareholders. • The answer includes limited analysis of the factors that underpinenlightened shareholder value.
Level 2 (Pass)	5-6	• The answer includes a cleardefinition of enlightened shareholder value. • The answer demonstrates a good understandingof section 172 of the Companies Act 2006 and how this encapsulates enlightened shareholder value and expresses ideas with clarity. • The points made are relevant and linked to the scenario in the question. • There is application of relevant knowledge and understanding, which is supported by anevaluative statement on the CEO's concerns about stakeholders versus shareholders. • The answer includes analysis of the factors that underpin enlightened shareholder value.
Level 3 (Merit/Distinction)	7-10	• The answer includes a clear and detailed definition of enlightened shareholder value. • The answer demonstrates a deeperunderstandingof section 172 of the Companies Act 2006 and how this encapsulates enlightened shareholder value and is communicated in a logical writing structure. • A wide range of points are made which are relevant and linked to the scenario in the question. • There is a good application of relevant knowledge and understanding supported by a focused evaluative statementon the CEO's concerns about stakeholders versus shareholders. • The answer includes good analysis of the factors that underpin enlightened shareholder value.

Question number	Indicative content
12(a) 9 marks	Answers should demonstrate a clear understanding of the concept of reputational risk and why it is important and should be able to apply the concept to the Exmoor scenario. **Answers could include the following content:** Reputational risk is an increasingly important category of risk for companies and an important corporate governance issue. The new accessibility and speed of mainstream media and social media means that reputational damage to a company can occur very easily and very rapidly. Reputational damage on its own can have a significant detrimental impact on a company's business, even if it does not relate to an event which has caused direct damage to the business. At the extreme it could mean that the company is unable to continue its business. This is because of the likely impact on, and reaction of, the company's key stakeholders if a company is regarded as having behaved unethically or to have failed to meet the standards of business conduct that are expected of it. • Employees – Existing staff may leave or be more dissatisfied and it may be more difficult to recruit the best new staff. • Customers – Customers may be less willing to buy the company's products or in high profile cases some could boycott the products. • Regulators – Regulators across the jurisdictions in which the company operates could decide to launch investigations into the company's conduct in response to media reports. • Shareholders – The company's shareholders may lose trust in the board and senior management and become critical of the company's strategy. If reputational issues arise, the share price could fall. In some cases, certain investors may decide that they are unwilling to continue to be shareholders in the company because of its behaviours. Reputational damage can also make raising new capital more difficult. • Business partners – Business partners, such as suppliers, may be less willing to work with the company. The Exmoor Board therefore needs to have structures, policies and processes in place to identify and manage reputational risk. Exmoor faces a range of reputational risks, both current and potential, and needs to make sure that these can be managed and mitigated and that it has a crisis plan in place should a serious risk materialise. The company will already have suffered reputational damage as a result of the investigation in connection with alleged bribes by the company's sales force, which was publicly announced by the regulator. It is also currently in the media spotlight, and having its reputation damaged, as a result of the campaign group activities criticising the environmental impact of its products. In relation to both of these matters, Exmoor urgently needs to develop a response and a strategy which reduces the harm that is being done to its reputation, both in the short term and the long term. It may be able to robustly refute the claims and defend itself against them. But it needs to be clear about the veracity of the claims, whether particular incidents are contained and one-off or are symptomatic of wider failings.If the allegations and reports are true (or true on part), specific action needs to be taken involving a change in procedures or strategy. For example, this could be in relation to how the sales force operates or in relation to how its products are manufactured. In any event, its external messaging and actions will be key to mitigating the reputational damage that it is suffering.

	The other reputational risk that Exmoor potentially faces is in relation to customer data, which is key to its business. An inadvertent data breach by it, or a cyber-attack on the company involving the publication or theft of customer data could lead to significant reputational damage as well as regulatory action. The Board of Exmoor needs to ensure that it has policies and procedures in place to reduce the risk of such an event occurring or of an attack being successful, and that procedures are in place as part of its crisis management planning to mitigate the impact of such an event, including mitigating any reputational damage.

Level	**Mark**	**Descriptor**
	0	No rewardable material.
Level 1 (Fail)	1-4	• The answer may attempt to explain reputational risks but it is likely to be unclear and not explained in full. • Points made are superficial and not directly linked to the scenario in the question and the reputational risks that Exmoor faces. • There is little application of relevant knowledge and understanding which may not be supported by an evaluative statement. • The answer includes limited discussion of why it is important for the Exmoor Board to assess and manage reputational risks.
Level 2 (Pass)	5	• The answer includes a clear explanation of reputational risks. • The points made are relevant and linked to the scenario in the question and the reputational risks that Exmoor faces. • There is application of relevant knowledge and understanding but supported by a limited evaluative statement. • The answer includes a good discussion of why it is important for the Exmoor Board to assess and manage reputational risks.
Level 3 (Merit/Distinction)	6-9	• The answer includes a clear and detailed explanation of reputational risks. • A wide range of points are made which are relevant and linked to the scenario in the question and the reputational risks that Exmoor faces. • There is a good application of relevant knowledge and understanding supported by a focused evaluative statement. • The answer includes a thorough discussion of why it is important for the Exmoor Board to assess and manage reputational risks.

Question number	Indicative content
12(b) 8 marks	Answers should demonstrate a clear understanding of the viability statement requirement in the UK Corporate Governance Code and be able to consider the issues it raises in the Exmoor scenario. **Answers could include the following content:** Under the UK Corporate Governance Code (the Code) listed companies are required to make a statement on the long-term viability of the company. Provision 31 states that, taking account of the company's current position and principal risks, the Board should explain in the company's annual report how it has assessed the prospects of the company, over what period it has done so and why it considers that period appropriate. The Board should also state whether it 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 of their assessment. The assessment period for the viability statement is expected to be significantly longer than 12 months and in practice the expectation is that it will be at least three years (which is now the most common period chosen by listed companies, although institutional shareholders are pressing for periods that are even longer than that). This means that the assessment covers a longer period than that used in considering the going concern basis of accounting. Considering the prospects of the company over a long period is particularly challenging for a business like Exmoor's because there is a frequent emergence of new technologies which could threaten the business model. Long term planning is therefore difficult and its strategic and operational risks are high. It is also operating in challenging circumstances with other risks, including reputational risks, that have recently risen in significance. In addition, Exmoor will shortly be embarking on a debt refinancing and this will impact on the board's assessment of the company's financial position and future solvency. It is particularly important for the Exmoor Board that, in order to be able to make the statement, it conducts a robust assessment of the principal risks, future performance, solvency and liquidity of the company. In particular it will need to take into account whether it is reasonable to expect that the refinancing will be successfully completed on time and whether it is reasonable to expect that it can manage and mitigate the risks to the business that it has identified. However, the 'reasonable expectation' test does not mean that certainty is expected and the board does not have to produce a detailed justification for its assessment in the statement. The statement can, and should, be accompanied by the qualifications and assumptions that the Board has used in order to make the statement. Exmoor will need to be clear about what these are and will need to tailor them specifically to its situation.

Level	Mark	Descriptor
	0	No rewardable material.
Level 1 (Fail)	1-3	• The answer may attempt to explain the viability statement requirement but it is likely to be unclear and not explained in full. • The answer demonstrates limited understanding of therequirement in the UK Corporate Governance Code. • Points made are superficial and not directly linked to the scenario in the question and the challenges that the Exmoor Board faces in making the viability statement. For example, there is no reference to the impact of the emergence of new technologies in the sector and the debt refinancing. • There is little application of relevant knowledge and understanding which may not be supported by an evaluative statement.
Level 2 (Pass)	4-5	• The answer includes a clear explanation of the viability statement requirement. • The answer demonstrates understanding of the requirement in the UK Corporate Governance Code and expresses ideas with clarity. • The points made are relevant and linked to the scenario in the question and the challenges that the Exmoor Board faces in making the viability statement. For example, the answers refers to the impact of the emergence of new technologies in the sector and the debt refinancing. • There is application of relevant knowledge and understanding which is supported by anevaluative statement.
Level 3 (Merit/Distinction)	6-8	• The answer provides a clear and detailed explanation of the viability statement requirement. • The answer demonstrates a good understanding of the requirement in the UK Corporate Governance Code and is communicated in a logical writing structure. • A wide range of points are made which are relevant and linked to the scenario in the questionand the challenges that the Exmoor Board faces in making the viability statement. For example, the answers discusses the impact of the emergence of new technologies in the sector and the debt refinancing. • There is a good application of relevant knowledge and understanding supported by a focused evaluative statement.

Question number	Indicative content
12(c) 8 marks	Answers should demonstrate a clear understanding of the Company Secretary's governance role and provide a good range of examples of how the Company Secretary can assist the Board on risk and risk management issues when performing that role. **Answers could include the following content:** As the key internal adviser to the Board on governance issues, the Company Secretary has an important role to play in supporting the Board in relation to its responsibilities regarding risk and risk management. The range of matters that the Company Secretary can assist with include: • Assisting the Board in ensuring that the appropriate structures are put in place at the proper levels in the company to manage risk, including advising on what matters should be delegated to a Board committee and the split of responsibilities between the Board and management. • Ensuring that when a proposal is put to the Board, the Board has the information available to enable it to consider both the upside and the downside risks associated with that proposal. • Ensuring that the Board receives information about the type of risks that may affect the company and its business and advising the Board on the governance risks of the company. • Working with the internal audit function to help the Board to identify whether the appropriate internal controls are in place. • Ensuring that a risk manual (or similar set of policies and procedures) is put in place and is reviewed regularly. • Assisting with the reviews of whether the company's internal controls and risk management processes are being properly implemented and are effective, including by ensuring that the feedback on implementation is provided to the Board or to the relevant Board committee. • Including as on-going items on the Board and Board committee agendas, consideration of the company's internal control policies and procedures and reports about their operation. • Ensuring that discussions about risk appetite are on the Board's agenda (and sufficient time is allowed for it) and that the Board considers any impact on risk appetite of any proposals that are submitted to them for approval. • Including on the Board agenda, at least annually, a robust review of the risks facing the company and its business and how they are being managed and mitigated. • Linking the people and processes that make up the internal control and risk management structure and ensuring that the processes are integrated effectively into the overall work flow and decision-making processes of the Board.

Level	Mark	Descriptor
	0	No rewardable material.
Level 1 (Fail)	1-3	• The answer may attempt to explain the Company Secretary's governance role in assisting with risk management but it is likely to be unclear and not explained in full. • little application of relevant knowledge and understanding which may not be supported by an evaluative statement.
Level 2 (Pass)	4-5	• The answer includes a clear explanation of the Company Secretary's governance role. • The answer demonstrates understanding of how a Company Secretary can assis a Board with risk and risk management issues. • There is a goodapplication of relevant knowledge and understanding, supported by anevaluative statement.
Level 3 (Merit/Distinction)	6-8	• The answer includes a clear and detailed explanation of the Company Secretary's governance role. • The answer demonstrates a goodunderstanding of how a Company Secretary can assis a Board with risk and risk management issues. • There is a detailed application of relevant knowledge and understanding supported by a focused evaluative statement.