

Part One - Chartered Governance Qualifying Programme

Company Secretarial Practice

Sample Marking Scheme

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

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 or organisation.

Section A

Compulsory questions

1. In respect of listed companies, explain the purpose and impact of a shareholder abstaining (or withholding their vote) from a resolution at a general meeting.

(5 marks)

Question number	Answer
1	<p>Listed companies are obliged to allow shareholders to vote three ways in respect of a resolution: in favour, against or abstain (1).</p> <p>An abstention allows a shareholder to express that they do not support a resolution without having to vote against it (1). Given the increasing role of stewardship expectations of institutional shareholders, the right to abstain from a resolution is intended to provide feedback and / or a potential warning to the board of the company, for example on a company's corporate governance performance (1)</p> <p>In law, an abstention is not a vote and the calculation of votes to determine whether a resolution has reached the required majority only takes into account votes in favour or against the resolution. (1)</p> <p>Listed companies must ensure that the voting results of a general meeting are made public, which must include the number of any abstentions. Hence the level of shareholders who are unwilling to support a resolution will be made available to all interested stakeholders. (1)</p> <p>Reward other valid responses.</p>
	Total: 5 marks

2. Explain the principles of board composition as provided in the Malaysian Code of Corporate Governance 2021.

(5 marks)

Question number	Answer
2	<p>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. (1)</p> <p>The right Board composition will ensure sufficient diversity and independence to avert "groupthink" or "blind spots" in the decision-making process. (1)</p> <p>A Board comprising a majority of independent directors allows for more effective oversight of management. In considering independence, it is necessary to focus not only on whether a director's background and current activities qualify him or her as independent but also whether the director can act independently of management. (1)</p> <p>The board shall prevent long tenures of independent directors and familiarity which may erode Board's objectivity. (1)</p> <p>The board shall also ensure that an independent director does not become a 'dependent' director due to prolonged insular recruitment processes and attractive remuneration packages and material benefits. (1)</p> <p>Reward other valid responses.</p>
	Total: 5 marks

3. Explain the key responsibilities of the company secretary during a Board meeting. **(5 marks)**

Question number	Answer
3	<p>The company secretary should keep a note of those persons present at the commencement of the meeting, any apologies for absence and details of anyone joining or leaving the meeting. (1)</p> <p>The company secretary should ensure that a quorum is present at the commencement of business and whenever any decisions are reached. If any item in which a director has an interest is to be considered, they should ensure that there will still be an independent, disinterested quorum to deal with it. (1)</p> <p>The company secretary should take notes to prepare minutes during the meeting of the key discussion points and on any action decided on by the board and of its decisions reached (including any dissenting views). (1)</p> <p>The company secretary should be prepared to advise the chair on any relevant point of procedure or governance including the conduct of the business of the meeting and to make sure that each item of business has been covered. (1)</p> <p>If a non-board attendee is to be present for a specific agenda item, the company secretary should ensure that they are ready to be called when that item is reached on the agenda. (1)</p> <p>Reward other valid responses.</p>
	Total: 5 marks

4. Explain why a company might outsource maintenance of its register of members to a share registrar. Provide **four** examples of the services provided by a share registrar. (5 marks)

(5 marks)

Question number	Answer
4	<p>A Share Registrar is an institution or organisation whose main responsibility is to keep up-to date records of all shareholders of a company. (1)</p> <p>For the vast majority of companies, maintaining their own register of members does not present any practical difficulties, as there are few changes, and no complex technical processes are required. However, maintenance of the register of members is usually outsourced by companies whose shares are traded on a public market, as these markets require that share trading take place using the electronic settlement system, Central Depository System (CDS) maintained by Bursa Malaysia Depository Sdn Bhd. (1)</p> <p>The necessary system development for CDS makes designing a stand-alone system by an individual company uneconomic and difficult to remain compliant with the associated regulatory and technical requirements. Maintenance of the register of members is therefore usually outsourced to a professional share registrar who has the relevant technical expertise. (1)</p> <p>Additionally, the register size for quoted companies tends to be too large for a company to manage internally and thus the usual practice is to outsource the register to a share registrar. (1)</p> <p>Four examples of the services provided by a share registrar include the following (allow one mark for each pair of examples, up to a maximum of two marks):</p> <ul style="list-style-type: none"> • preparing the list of shareholders eligible to attend the AGM, and the proxy summary reports; • collating and verifying proxy forms; • resolving any issues arising over the validity of proxy instructions; • coordinating with appointed polling agents and scrutineers on poll • voting; • verifying and registering attendees at meetings; and • attending to shareholders' enquiries at the information point, if any. <ul style="list-style-type: none"> • Issuance and transfer: issuing new certificates or crediting electronic holdings following the issue of new shares and processing share transfers, cancelling old share certificates and issuing new certificates. • Record keeping: keeping and recording ownership of shares. • Registration: registering changes of ownership and other documentation received in connection with the shareholding / membership. • Paying agent: distributing interest, cash, dividends, or other payments to members. In addition, a share registrar may act as a tender agent (tendering shares in a tender offer) or exchange agent (exchanging a company's shares, options and warrants in a merger).

	<ul style="list-style-type: none">• Shareholder liaison: facilitating communications between companies and their members. Acting as a proxy agent (sending out proxy materials) and a mailing agent (mailing the company's annual, interim and other reports etc).• Meeting management: support for the administration of general meetings, registering and verification of attendees, vote scrutineers, managing poll votes and the technology for virtual and hybrid general meetings. <p>Reward other valid responses.</p>
	Total: 5 marks

Marking Scheme

5. Explain the procedure for a public limited company to convert into a private limited company. What action may members of a public company take if they object to a proposed re-registration?

(5 marks)

Question number	Answer
5	<p>Pursuant to s.41 CA 2016 7 CA2006, a public limited company may convert to a private limited company by passing a special resolution. (1)</p> <p>The company shall lodge with the Registrar a notice of conversion and specifying an appropriate alteration to its name. (1)</p> <p>Upon lodgement of the notice for conversion, the Registrar shall make such endorsements in or alterations to the register to record the conversion and issue to the company a notice of conversion and cancel the previous notice of registration or certificate of incorporation of the company. (1) The constitution should also be reviewed as part of the process and amendments made as needed for shareholder approval. (1)</p> <p>If members of the public company object to a proposed re-registration, they should vote against the special resolution (1).</p> <p>Reward other valid responses.</p>
	Total: 5 marks

TOTAL FOR SECTION A = 25 MARKS

Section B

Three out of four questions

Question 6

You are the Secretary of Goodison Footwear Bhd (Goodison) which has a total of 25 shareholders. Highbury Fashions Bhd (Highbury), owns 10% of Goodison, for which Highbury paid RM60 a share. Neither Goodison nor Highbury are listed on any stock exchange. Jane Hough, the Chief Executive Officer of Goodison, tells you that she recently met with the Chair of Highbury who told her that they want to increase their holding in Goodison:

- firstly to 20%.
- then to 40%.
- and finally, to 80%. Once Highbury owns 80% of Goodison, Jane is concerned as Highbury want to force the remaining shareholders of Goodison to sell their shares to Highbury for RM42 for each remaining share, as Highbury think that would be a fair price.

Jane also informs you that Highbury has requested a copy of Goodison's statutory registers, including:

- the register of directors (with each director's full date of birth and residential addresses).
- minute books for board and general meetings.
- a fully updated register of charges; and
- the register of members in printed copy and electronically in a spreadsheet, sorted by size of holder. Highbury have not explained why they want the register.

Jane tells you she thinks Goodison should refuse Highbury's requests for the registers.

Provide advice to Jane on:

- (a) The statutory considerations in respect of Highbury's proposals for the acquisition of Goodison's shares, including:
- any duties of disclosure and statutory registers which must be updated; and
 - whether Highbury's intention for the compulsory acquisition of Goodison's shares are viable and if not, how Highbury could complete a compulsory acquisition.

(15 marks)

- (b) Highbury's requests for a copy of Goodison's statutory registers.

(10 marks)

(Total: 25 marks)

Question number	Indicative content
<p>6(a) 15 marks</p>	<p><i>Answers should evaluate and demonstrate an understanding of the statutory provisions in respect of increasing a holding in a public company, compulsory takeovers and the rights of minority interests. Answers should also demonstrate comprehension of a viable alternative to a compulsory takeover.</i></p> <p>Answers could include the following content:</p> <p>Highbury's current 10% holding in Goodison will be shown in Goodison's register of members. When Highbury increase their holding to 20%, the register of members shall be updated to reflect this change. This shall apply every time Highbury increases its shares. Goodison is required to notify the Registrar of these changes within 14 days. (s.51 CA 2016)</p> <p>In addition, Highbury is also a substantial shareholder of Goodison as the shares held is 5% or higher (s.136 CA 2016). Every public company shall maintain a register of substantial shareholders (s.144 CA 2016). Thus, Highbury's details would already been recorded in Goodison's register of substantial shareholders. Every time Highbury increases its shareholding, it shall notify Goodison in writing of the change in its interest in the shares of Goodison (s.138 CA 2016). Highbury shall then submit this notice to the Registrar on the day the notice is given to Goodison (s.141 CA 2016).</p> <p>As Goodison is a public company, it is not required by the CA 2016 to impose any restriction on transfer of shares. The facts of the questions also do not provide that the constitution of Goodison imposes any restriction of transfer of shares. Hence there is nothing to prevent the shareholders of Goodison voluntarily transferring their shares to Highbury provided the appropriate documents have been submitted. However, Highbury's plans to compulsorily acquire Goodison's shares must be evaluated against s.371 CA 2016, which sets out certain requirements regarding the compulsory acquisition of another company's shares. A compulsory acquisition cannot be considered until the offeror company has acquired or contracted to acquire not less than 90% in value of the shares. Highbury cannot therefore compulsorily acquire Goodison's shares at the 80% level they have proposed.</p> <p>Provided the 90% level can be achieved, the CA 2016 provides protections of the rights of the remaining shareholders (i.e. the minority holders). The CA 2006 allows dissenting shareholders to apply to court in relation to the provisions of the compulsory acquisition. The court would most likely ensure that the dissenting shareholders are treated no less fairly than the other shareholders who have accepted an offer from Highbury. Therefore, it is not likely that a reduced offer to compulsorily acquire the remaining shares at RM42 a share will succeed and the original price of 60 per share is far more likely to be successful.</p>

	<p>An alternative to the compulsory acquisition route is a scheme of arrangement, which will effectively reconstruct Goodison and acquire it for cash or shares. Schemes of arrangement may be useful where it would not be possible to obtain the required 90% level of acceptances for a compulsory acquisition. However, minority interests still have to be protected so this would not be a route to reduce the value of the offer by an unfair amount. A scheme of arrangement will require a special resolution of the members (hence the intended 80% holding will be sufficient) plus the approval of the Court. (s.366 CA 2016)</p> <p>Reward other valid responses.</p>
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Level	Mark	Descriptor
Question 6(a)	0	No rewardable material.
Level 1 (Fail)	1 – 6	<ul style="list-style-type: none"> • Answers are unlikely to demonstrate knowledge in respect of the statutory provisions in respect of increasing a holding in a public company. • Answers are unlikely to demonstrate knowledge in respect of the maintenance of statutory registers. • Answers are unlikely to show sufficient comprehension of the facts in the question and link these to the answer • Answers are unlikely to critically evaluate any statutory deficiencies (for example that a shareholding of 80% is insufficient to commence a compulsory acquisition of the remaining shares). • Answers are unlikely to critically evaluate alternative routes which may be available to achieve the complete the acquisition. • Answers are unlikely to demonstrate adequate knowledge to give additional advice (for example that offering a lower share price is likely to contravene the rights of the minority interests).
Level 2 (Pass)	7 – 9	<ul style="list-style-type: none"> • Answers are likely to demonstrate sufficient knowledge in respect of the statutory provisions in respect of increasing a holding in a public company. • Answers are likely to demonstrate sufficient knowledge in respect of the maintenance of statutory registers. • Answers are likely to show sufficient comprehension of the facts in the question and link these to the answer • Answers are likely to critically evaluate some statutory deficiencies (for example that a shareholding of 80% is insufficient to commence a compulsory acquisition of the remaining shares). • Answers are likely to critically evaluate alternative routes which may be available to achieve the complete the acquisition. • Answers are likely to demonstrate adequate knowledge to give additional advice (for example that offering a lower share price is likely to contravene the rights of the minority interests).
Level 3 (Merit / Distinction)	10 – 15	<ul style="list-style-type: none"> • Answers are likely to demonstrate excellent knowledge in respect of the statutory provisions in respect of increasing a holding in a public company.

	<ul style="list-style-type: none"> • Answers are likely to demonstrate excellent knowledge in respect of the maintenance of statutory registers. • Answers are likely to show good comprehension of the facts in the question and link these to the answer (. • Answers are likely to critically evaluate most statutory deficiencies (for example that a shareholding of 80% is insufficient to commence a compulsory acquisition of the remaining shares). • Answers are likely to thoroughly critically evaluate alternative routes which may be available to achieve the complete the acquisition. • Answers are likely to demonstrate detailed knowledge to give additional advice (for example that offering a lower share price is likely to contravene the rights of the minority interests).
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Question number	Indicative content
6(b) 10 marks	<p><i>Answers should demonstrate knowledge in respect of the Company Secretary's role to safeguard a company's statutory registers. Answers should show comprehension and advice on circumstances where it is inappropriate to comply with a request for information.</i></p> <p>Answers could include the following content:</p> <p>As a general rule, any member of the company or other person may, as an alternative to requesting to inspect a register, request that a copy of the register be sent to them (s.48 CA 2016). A fee may be payable for providing copies for certain registers.</p> <p>The register of directors, managers and secretaries will contain details such as directors' name, residential address service address, date of birth, business occupation and identification. This register is open to members for inspection without charge. Highbury may request for a copy of the register of directors from Goodison which shall provide this information within 21 days upon Highbury's request.</p> <p>There is no statutory provision or right for members to have access to minutes of the meetings of the directors. Minutes of directors may contain commercially sensitive information and access should be kept restricted. Members have the right to inspect the minutes of general meetings and if they require copies there is a fee payable pursuant to s.342 CA 2016.</p> <p>s.362 CA 2016 requires a company to keep instruments of charges and register of charges at the registered office. These documents shall be open for inspection by any member of the company for a fee of RM5 and they can ask to be furnished a copy of the information within three days from making the application for a fee not exceeding RM10.</p> <p>Every member of a company has the right to inspect its register of members without charge (s.55 CA 2016). He can also request the company to furnish him with a copy of the register or any part of the register, but only so far as it relates</p>

	<p>to names, addresses, payment of shares held, and amounts paid on shares. Additional payment is required to be made for every hundred words or fractional part of it. This informant shall be sent to that person within 21 days of the request. Since Goodison is not a listed company, it is not necessary for Highbury to provide reason behind its demand to inspect the register of members. Highbury may request that the register of members be sent to them in hard copy or electronically, but the law does not provide any right of a member of a company to specify the particular format to be used. Hence Goodison is not obliged to prepare the register in a spreadsheet, sorted by the size of holder.</p> <p>Reward other valid responses.</p>
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Level	Mark	Descriptor
Question 6(b)	0	No rewardable material.
Level 1 (Fail)	1 – 5	<ul style="list-style-type: none"> • Answers are unlikely to demonstrate sufficient knowledge in respect of third-party access to the statutory registers. • Answers are unlikely to sufficiently critically evaluate and differentiate on providing access to certain registers. • Answers are unlikely to show adequate comprehension of the facts in the question and to link it to the answer (for example in respect of the request for directors' residential addresses). • Answers are unlikely to show adequate comprehension of relevant missing information in the question and to link it to the answer (for example that the request for the register of members does not contain the information required by statute). • Answers are unlikely to demonstrate sufficient knowledge to provide correct advice to the board. • Answers are unlikely to comprehend and apply relevant statutes (for example in respect of the provision of the register of charges). • Answers are unlikely to evaluate additional advice which should be provided (for example to promptly notify the other party if a request for the register of members is deficient).
Level 2 (Pass)	6 – 7	<ul style="list-style-type: none"> • Answers are likely to demonstrate sufficient knowledge in respect of third-party access to the statutory registers. • Answers are likely to sufficiently critically evaluate and differentiate on providing access to certain registers. • Answers are likely to show adequate comprehension of the facts in the question and to link it to the answer (for example in respect of the request for directors' residential addresses). • Answers are likely to show adequate comprehension of relevant missing information in the question and to link it to the answer (for example that the request for the register of members does not contain the information required by statute). • Answers are likely to demonstrate sufficient knowledge to provide correct advice to the board. • Answers are likely to comprehend and apply relevant statutes (for example in respect of the provision of the register of charges).

		<ul style="list-style-type: none"> Answers are likely to evaluate additional advice which should be provided (for example to promptly notify the other party if a request for the register of members is deficient).
Level 3 (Merit / Distinction)	8 – 10	<ul style="list-style-type: none"> Answers are likely to demonstrate good knowledge in respect of third-party access to the statutory registers. Answers are likely to comprehensively critically evaluate and differentiate on providing access to certain registers. Answers are likely to show thorough comprehension of the facts in the question and to link it to the answer (for example in respect of the request for directors' residential addresses). Answers are likely to show good comprehension of relevant missing information in the question and to link it to the answer (for example that the request for the register of members does not contain the information required by statute). Answers are likely to demonstrate detailed knowledge to provide correct advice to the board. Answers are likely to comprehend and fully apply relevant statutes (for example in respect of the provision of the register of charges). Answers are likely to fully evaluate additional advice which should be provided (for example to promptly notify the other party if a request for the register of members is deficient).

Question 7

You are the Company Secretary of Brent Deliveries Bhd (Brent), which is not listed on any stock exchange. Brent is a successful business with a net asset value of RM120m. Brent has four directors, and you are attending a board meeting. Abigail Smithers is one of the directors. She is unwell and it is not clear whether she will be able to participate in the board meeting. Proposals are on the board agenda to sell a plot of land owned by Brent and to dispose of the company's car fleet. Sean Moyles, the Sales Director, proposes that he purchases one of the cars for RM21,000 for his personal use. Melody West, the Finance Director, proposes that she acquires the plot of land for RM1.5m as she wishes to build her new home on it. Both Sean and Melody are directors of Brent. The car and land have already been assessed by independent valuers, who have confirmed the proposed value of each as the fair market price.

Subject to the proposal to dispose of the car fleet, the board is also considering a proposal in future to lease cars from Dana Leasing Sdn Bhd (Dana). Sean and Melody tell you that they own 0.5% and 21% respectively of Dana, information of which the board was not previously aware.

Mandy Linton, Brent's chair, supports all of the above proposals and asks you if each proposal can proceed immediately and whether any disclosures need to be made. Mandy Linton is also concerned as to whether the quorum for the board meeting can be met if Abigail Smithers could not attend this meeting.

Advise Mandy on whether each of the above proposals can proceed and if so, the required authority. Include in your advice any procedures, relevant considerations and disclosures to ensure statutory compliance and good governance.

(25 marks)

(Total: 25 marks)

Question number	Indicative content
7 25 marks	<p><i>Candidates should demonstrate knowledge of applicable provisions in respect of substantial property transactions. Candidates should also evaluate and apply principles of good governance, in particular regarding conflicts of interest. Answers should consider the relevant facts of the question and provide differentiated analysis taking those facts into account. Answers should also demonstrate a good understanding of the critical way in which a Company Secretary can add value by providing good and practical governance support to the board.</i></p> <p>Answers could include the following content:</p> <p>The proposed purchases by both Sean and Melody are classified as an arrangement in respect of a 'non-cash asset' by directors and need to be considered as substantial property transactions. The starting position under s.228 CA 2016 is that such transactions cannot proceed without prior approval of the members by ordinary resolution.</p>

The value of the properties in question needs to be considered in order to determine the correct procedure under CA 2016 A 'substantial non-cash asset' is defined in s.228 as any asset of the company if its value is greater than RM250,000 or if its value does not exceed RM 250,000 but exceeds 10% of the company's net asset value provided it is not lower than RM50,0000. Transactions exceeding this limit require approval by the members. Applying s.228:

- As the car is valued at RM21,000 this is below RM50,000 and therefore maybe exempted from the requirement to seek shareholder approval. The board may approve the transaction; however, the necessary steps must be taken to avoid a conflict of interest (see below).
- As the land is valued at RM1.5m this is in excess of RM250,000 and must therefore be subject to shareholder approval. As the value is in excess of RM250,000, it is not necessary to assess whether the value is in excess of 10% of the company's net asset value.

In respect of disclosures, sufficient information must be provided to the members of the company regarding the sale of the land in order for them to consider the matter in general meeting. This should be set out in a memorandum accompanying the notice of general meeting. The transactions to be approved pursuant to s.228 CA 2016 will also require disclosure in the company's annual report and accounts.

Directors have a duty under s.218 CA 2016 to avoid situations in which they have or might have an interest that conflicts or might conflict with the interests of the company. The management of conflicts of interest is a core part of the Secretary's role and there should be robust procedures in place to ensure this is managed effectively. This is necessary as directors occupy a position of trust within companies and procedures are required to deter the potential abuse of a director running a company for their own benefit. The Secretary should ensure that there are processes in place which require directors to declare any interests which might conflict with the interests of the company. Declarations should ideally be in writing from the director concerned. Any such conflicts must be shared with the whole board and the Secretary should ensure that this is done as part of their responsibility to ensure there is a good flow of communications with the board. Directors should declare their interests on appointment, and this should be subsequently updated on a periodic basis. It is good practice to have an agenda item at the start of any board meeting which provides an opportunity for directors to declare interests relating to any of the items of business.

In respect of the proposed acquisition of the car and of the land, both Sean and Melody have a conflict of interest as directors participating in a substantial property transaction.

In respect of the leasing proposals, as the interests in Dana of both Sean and Melody are not previously known to the board, these must be declared either before or at the start of the board meeting and recorded in the minutes of the meeting applying s.221. The duty to disclose is not applicable if the director's interest is not regarded as material. When in doubt, it is always advisable for the director to disclose his interest.

At the board meeting, the directors should then make a determination whether each director's interest can reasonably be regarded as likely to give rise to a conflict of interest. If the director's interest is minor, it is reasonable to determine that this would not constitute a conflict of interest. Applying this to Sean and Melody, it may be reasonable to determine that a shareholding of 0.5% is minor and that Sean is not conflicted in respect of the leasing proposal. However, this would not appear to be the case for Melody's holding of 21% and she appears to be conflicted.

Where a director has to disclose his interest under s.221, he shall be prohibited from participating in the discussion and voting on the proposed contract, but his presence may be counted as quorum; s.222 CA 2016

The quorum for a board meeting shall be fixed by the Board and if not so fixed shall be a majority of the directors (Third Schedule of CA 2016). This is subject to any contrary provision in the company's constitution. There are four directors in but Abigail is unwell and might not make it to the meeting. However, since Sean and Melody's presence may be counted as quorum, even if the requirement of quorum is majority of the directors, this requirement would be satisfied.

Taking the above into consideration, Mandy should be advised that the proposed transaction to sell the company's fleet of cars and to enter into the leasing arrangement with Dana may be approved by the board and can be done immediately. However, the proposed sale of land cannot be approved by the board and must first be put to the company's members for approval. Melody (if she owns shares in the company) and persons connected with her shall not be allowed to vote in relation to this proposal since Brent is a public company.

Reward other valid responses.

Level	Mark	Descriptor
Question 7	0	No rewardable material.
Level 1 (Fail)	1 - 12	<ul style="list-style-type: none"> Answers are unlikely to demonstrate knowledge in respect of the substantial property transactions. Answers are unlikely to demonstrate knowledge in respect of the identification and management of conflicts of interest. Answers are unlikely to sufficiently evaluate differences where there may or may not be a substantial property transaction. Answers are unlikely to sufficiently evaluate differences where there may or may not be a conflict of interest. Answers are unlikely to show good knowledge on the role of the Company Secretary to manage conflicts of interest. Answers are unlikely to show sufficient comprehension of the facts in the question and link these where relevant to the answer (for example on the threshold for shareholder approval for a substantial property transaction).

		<ul style="list-style-type: none"> Answers are unlikely to demonstrate sufficient knowledge of practical steps (for example having a declaration of interests as the first item of business on a board agenda).
Level 2 (Pass)	13 - 16	<ul style="list-style-type: none"> Answers are likely to demonstrate sufficient knowledge in respect of the substantial property transactions. Answers are likely to demonstrate sufficient knowledge in respect of the identification and management of conflicts of interest. Answers are likely to sufficiently evaluate differences where there may or may not be a substantial property transaction. Answers are likely to sufficiently evaluate differences where there may or may not be a conflict of interest. Answers are likely to show adequate knowledge on the role of the Company Secretary to manage conflicts of interest. Answers are likely to show sufficient comprehension of the facts in the question and link these where relevant to the answer (for example on the threshold for shareholder approval for a substantial property transaction). Answers are likely to demonstrate adequate knowledge of practical steps (for example having a declaration of interests as the first item of business on a board agenda).
Level 3 (Merit / Distinction)	17 - 25	<ul style="list-style-type: none"> Answers are likely to demonstrate good knowledge in respect of the substantial property transactions. Answers are likely to demonstrate good knowledge in respect of the identification and management of conflicts of interest. Answers are likely to comprehensively evaluate differences where there may or may not be a substantial property transaction. Answers are likely to comprehensively evaluate differences where there may or may not be a conflict of interest. Answers are likely to show detailed knowledge on the role of the Company Secretary to manage conflicts of interest. Answers are likely to show good comprehension of the facts in the question and link these where relevant to the answer (for example on the threshold for shareholder approval for a substantial property transaction). Answers are likely to demonstrate detailed knowledge of practical steps (for example having a declaration of interests as the first item of business on a board agenda).

Question 8

You are the Company Secretary of Ashfield Media Bhd (Ashfield) and there is a board meeting tomorrow. Ashfield is not listed on any stock exchange.

Lee Gates, one of the directors, proposes that Megan Green (who is not a director) or one of the existing directors attends as his alternate director, as Lee cannot attend. Bill Maddison, the Chair, argues that alternates are not permitted as they are not recognised directors and it is not fair to have both Lee and his alternate attending together at all future board meetings, particularly as this would give them an unfair advantage when voting. Bill also argues that any proposal for an alternate is invalid as the board has not given approval.

There is a proposal tomorrow to appoint Henry Jensen to the board. However, Bill has just discovered that Henry was a director of a company which was liquidated three years ago. Bill thinks this factor will prevent Henry from being appointed as a director again.

Ashfield has made substantial losses recently, so the board has been reviewing its strategy. It has been receiving advice from Aston Technology Bhd (Aston) which owns 30% of Ashfield and regularly attend board meetings via its representatives. Aston claim that the size of their holding entitles them to attend. Janet Dawson, a well-known social media expert, has also been attending board meetings to provide advice. Neither Aston nor Jane are directors of Ashfield and Bill thinks their attendance is not a problem. Lee has suggested that Aston be appointed as a corporate director but Bill comments that he believes corporate directors are illegal.

Advise Bill on:

- (a) the proposals and his comments regarding the alternate director and the appointment of Henry. Provide advice on any required procedures. **(14 marks)**
- (b) any issues which may be relevant in respect of the attendance at board meetings of non-directors and the proposed appointment of a corporate director. **(11 marks)**

(Total: 25 marks)

Question number	Indicative content
8 (a) 14 marks	<p><i>Answers should demonstrate knowledge on the approval, appointment and operation of alternate directors. Answers should also analyse the criteria for eligible appointment (i.e. whether a disqualification may be in place).</i></p> <p>Answers could include the following content:</p> <p>Bill is incorrect in his assumption that alternates are not permitted. The definition of directors in s.2 CA 2016 includes alternate directors, Although the CA 2016 does not provide for the appointment of an alternate director, the constitution of a company usually would provide for such appointment. For instance, Article 82 of</p>

Table A of the Companies Act 1965 allows a director to appoint his alternate director with the approval of the other directors. If there is no such authority in the constitution, then no alternate directors may be appointed. If the proposed alternate director is already an existing director of Ashfield, there is no need for the board to approve the alternate's appointment. However, Bill is correct that where the proposed alternate is not an existing director, the alternate appointment is subject to approval by the board.

Bill is also incorrect in asserting that alternate directors are not recognised directors. As mentioned earlier, alternate directors are included in the definition of 'director' under s.2 CA 2016. If the alternate is an existing director, they will already be included in the register of directors and appear on the company's records at Companies Commission of Malaysia. If Megan is appointed as Lee's alternate (subject to the above approval), her particulars would be entered in the register of directors, managers and secretaries and details of her appointment notified to the Registrar of Companies.

Bill appears to also misunderstand the nature of an alternate director appointment. An alternate director is a person appointed by an existing director to act on their behalf in their absence. This means either that Megan as the alternate will not attend a board meeting if Lee is attending. If an existing director is appointed as the alternate, if Lee is also in attendance this means that the existing director does not also act as Lee's alternate. Either way, Lee (or his alternate) can only cast one vote on any proposal. Once the alternate appointment is no longer needed, unless the alternate is already an existing director, then their appointment will be terminated and the usual actions will be taken, including updating the register of directors and sending a notification of particular changes to directors, managers and secretaries in pursuant to s.58 CA 2016the .

In respect of Henry, further information is needed to consider whether he may not be eligible to be appointed to the board of Ashfield. Just because a business has been liquidated, it does not necessarily mean that it was insolvent. Even if the closure was due to insolvency, it does not necessarily follow that the directors involved would have been disqualified. A disqualification on this basis must be for unfitness – the court would disqualify a person who was a director of an insolvent company where their conduct made them unfit to be involved in the management of a company. Besides, this would only apply if Henry is a director of at least two companies which had gone into insolvency within a period of five years and the court grant a disqualification order on application by the Registrar. Hence, it would be sensible to ascertain first if the liquidation was solvent or not and this can be found from the records at Companies Commission of Malaysia

The court has power to disqualify a director for a period not exceeding five years from the date the disqualification order and it is noted that the company went into liquidation three years ago. Whether a disqualification should be recommended is therefore dependent on an assessment of the director's conduct prior to and during the liquidation. Any disqualification proceedings will be heard in court. If the director is disqualified, the Registrar have the power to remove the name of such a director from the register kept by the Registrar. w

	<p>If such a disqualification order is made on Henry, he is not qualified to be a director unless he has obtained leave to hold such office from the Official Receiver or the court.</p> <p>Reward other valid responses.</p>
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Level	Mark	Descriptor
Question 8(a)	0	No rewardable material.
Level 1 (Fail)	1 - 6	<ul style="list-style-type: none"> • Answers are unlikely to demonstrate sufficient knowledge in respect of the appointment and operation of alternate directors. • Answers are unlikely to demonstrate sufficient knowledge in respect of the disqualification of directors. • Answers are unlikely to critically evaluate different circumstances in respect of the appointment of alternate directors (e.g. board approval is not required to appoint an existing director as an alternate). • Answers are unlikely to show sufficient comprehension of the facts in the question and to link these to the answer (for example the type of liquidation for the company has not been provided and should be ascertained). • Answers are unlikely to critically evaluate the grounds on which a director is disqualified. • Answers are unlikely to evaluate additional advice which should be provided (e.g. forms which need to be filed at Companies Commission of Malaysia).
Level 2 (Pass)	7 - 9	<ul style="list-style-type: none"> • Answers are likely to demonstrate sufficient knowledge in respect of the appointment and operation of alternate directors. • Answers are likely to demonstrate sufficient knowledge in respect of the disqualification of directors. • Answers are likely to give sufficient critical evaluation of the different circumstances in respect of the appointment of alternate directors (e.g. board approval is not required to appoint an existing director as an alternate). • Answers are likely to show sufficient comprehension of the facts in the question and to link these to the answer (for example the type of liquidation for the company has not been provided and should be ascertained). • Answers are likely to critically evaluate the grounds on which a director is disqualified. • Answers are likely to adequately evaluate additional advice which should be provided (e.g. forms which need to be filed at Companies Commission of Malaysia).
Level 3 (Merit / Distinction)	10 – 14	<ul style="list-style-type: none"> • Answers are likely to demonstrate good knowledge in respect of the appointment and operation of alternate directors. • Answers are likely to demonstrate good knowledge in respect of the disqualification of directors.

	<ul style="list-style-type: none"> • Answers are likely to give thorough critical evaluation of the different circumstances in respect of the appointment of alternate directors (e.g. board approval is not required to appoint an existing director as an alternate). • Answers are likely to show detailed comprehension of the facts in the question and to link these to the answer (for example the type of liquidation for the company has not been provided and should be ascertained). • Answers are likely to fully critically evaluate the grounds on which a director is disqualified. • Answers are likely to comprehensively evaluate additional advice which should be provided (e.g. forms which need to be filed at Companies Commission of Malaysia).
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Question number	Indicative content
8 (b) 11 marks	<p><i>Answers should demonstrate knowledge in respect of the statutes regarding shadow directors and explain general potential risks or poor governance, and should highlight specific risks linking the facts of the question to their response. Answers should evaluate steps to mitigate or regularise any risks or poor governance. Answers should also demonstrate awareness of the current debate regarding the appropriateness of corporate directors.</i></p> <p>Answers could include the following content:</p> <p>Directors must exercise care when considering attendees at board meetings. This is because any non-directors who frequently attend are at risk of being considered a shadow director. A shadow director is a person, not appointed as a director, managing or directing the affairs of a company or who directs the actions of the directors. This situation can occur where a significant shareholder such as Aston or advisor such as Janet frequently attend board meetings. The point of concern is that pursuant to s.2 CA 2016, a shadow director is deemed to be a director of the company for all purposes. This is of relevance to Ashfield, given it has made substantial losses recently. Should Ashfield become insolvent, the liquidator / receiver may look to the actions of Aston and Janet and if they are considered to be shadow directors, they will be reviewed alongside the appointed directors to assess if any wrongdoing was committed.</p> <p>The Board should keep in mind their statutory duties in respect of running a company. This requires them, and not any advisors or the shareholders, to take decisions to promote the long term success of the business. The board should ensure that advisors restrict their advice to their area of expertise only and that they only attend Board meetings when strictly necessary and for that respective item of business only. If a non-director is to present to the board on a regular basis, formal terms of appointment should be prepared which must clearly set out their capacity as advisors only.</p>

	<p>Shareholders do not have the right to attend board meetings in their capacity of shareholders, regardless of the size of their holding. The board also should make a decision on how to deal with Aston, for example, it should stop their attendance, allow it to nominate a candidate to be appointed as a nominee director representing Aston. or appoint a representative as an advisor as per the above. Corporate directors are not allowed in Malaysia. S.196 CA 2016 requires a director to a natural person.</p> <p>Reward other valid responses.</p>
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Level	Mark	Descriptor
Question 8(b)	0	No rewardable material.
Level 1 (Fail)	1 - 5	<ul style="list-style-type: none"> • Answers are unlikely to demonstrate sufficient knowledge in respect of the existence of shadow directors. • Answers are unlikely to demonstrate sufficient knowledge in respect of the appointment of corporate directors. • Answers are unlikely to demonstrate sufficient knowledge to provide practical advice to prevent shadow directorships occurring. • Answers are unlikely to show sufficient comprehension of the facts in the question and to link these to the answer (for example the impact on a shadow director if a company becomes insolvent). • Answers are unlikely to demonstrate sufficient comprehension of the statutory duties of directors and to relate this to the question. • Answers are unlikely to critically evaluate the grounds on which a corporate director appointment may potentially not be appropriate.
Level 2 (Pass)	6 - 7	<ul style="list-style-type: none"> • Answers are likely to demonstrate sufficient knowledge in respect of the existence of shadow directors. • Answers are likely to demonstrate sufficient knowledge in respect of the appointment of corporate directors. • Answers are likely to demonstrate sufficient knowledge to provide practical advice to prevent shadow directorships occurring. • Answers are likely to show sufficient comprehension of the facts in the question and to link these to the answer (for example the impact on a shadow director if a company becomes insolvent). • Answers are likely to demonstrate sufficient comprehension of the statutory duties of directors and to relate this to the question. • Answers are likely to sufficiently critically evaluate the grounds on which a corporate director appointment may potentially not be appropriate.
Level 3 (Merit / Distinction)	8 – 11	<ul style="list-style-type: none"> • Answers are likely to demonstrate comprehensive knowledge in respect of the existence of shadow directors. • Answers are likely to demonstrate comprehensive knowledge in respect of the appointment of corporate directors.

		<ul style="list-style-type: none">• Answers are likely to demonstrate detailed knowledge to provide practical advice to prevent shadow directorships occurring.• Answers are likely to show thorough comprehension of the facts in the question and to link these to the answer (for example the impact on a shadow director if a company becomes insolvent).• Answers are likely to demonstrate excellent comprehension of the statutory duties of directors and to relate this to the question.• Answers are likely to fully critically evaluate the grounds on which a corporate director appointment may potentially not be appropriate.
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Marking Scheme

Question 9

You are the Company Secretary of Stamford Fuels Bhd (Stamford), which is listed on the Bursa Malaysia. The share capital of Stamford consists of:

- Ordinary shares;
- Preference shares; and
- Cumulative preference shares.

Stamford also has debentures which carry a fixed rate of interest.

Stamford has a profitable history and has previously paid a high level of dividends. However, as the use of fossil fuels has decreased, Stamford's profits have declined. Some of the directors say all of Stamford's shareholders are entitled to dividends every year regardless of the company's performance and are keen to maintain the level of previous dividend payments. Other directors say the company must reduce or stop paying dividends and stop paying the interest on the debentures for the next few years. Liz Mitchell is the Chair and she said that after reviewing the latest annual accounts it would not be possible for shareholders to approve payment of an interim dividend when the half year results are announced in two weeks' time. However, Jamil Singh, the Chief Financial Officer, said that the annual accounts are out of date and the board should declare an interim dividend on each class of share immediately.

In order to modernise the business, Stamford is currently negotiating two projects to enter the renewable energy market. One project is minor but the other is major and is likely to transform the business substantially. Jamil thinks that Stamford's share price will increase significantly when the projects are announced and asks if he could buy shares (or if he could ask his wife to buy shares) in Stamford today or in one month.

(a) Advise the board on their discussions to pay an interim dividend on each class of share and whether they should stop paying interest on the debentures. Your advice should include any actions prior to approving any dividend payment and the rights of each type of shareholders in receiving dividends.

(14 marks)

(b) Evaluate Jamil's request for him or his wife to purchase shares in Stamford, providing commentary on relevant regulatory matters and good governance.

(11 marks)

(Total: 25 marks)

Question number	Indicative content
9(a) 14 marks	<p><i>Answers should demonstrate a good understanding and analysis of the obligations of directors in respect of distributions (dividends) and the rights of members. Answers should reflect the differences in the share capital of a company. Answers should also evaluate and differentiate debentures as loans and not as part of the share capital.</i></p> <p>Answers could include the following content:</p>

Prior to a decision being approved, directors must analyse whether the company's financial situation permits the payment of a dividend. S.131 CA 2016 requires that a company may only make a distribution if it is solvent. These are defined as the company's accumulated realised profits less its accumulated realised losses. Payment of a dividend or other distribution in contravention of the CA2006 would constitute a breach of duty under s.131 CA 2016 and failure to observe the statutory requirements may mean that the dividend payment is not lawful and can make the directors liable to repay the amount of the dividend.

If the last annual accounts do not show that there is sufficient distributable profits, the directors must prepare interim financial reports to justify the distribution. As Stamford is a public listed company, the interim financial reports must be properly prepared in accordance with the requirements of Bursa Malaysia Listing Requirements and a copy shall be submitted to Bursa Malaysia. Failure to file interim financial reports justifying any interim dividend declaration means that the dividend payment is not lawful and can make the directors liable to repay the dividend. Once the ability to pay an interim dividend has been confirmed, the directors may approve the payment – no shareholder approval is needed.

Shareholders do not have a right to receive dividends, only an expectation subject to the company's financial performance and its other commitments. It is necessary to consider the typical rights of each class of share and any order of ranking between such classes. Ordinary shares carry rights to participate in dividends, however, this does not guarantee that a dividend will be paid. This is because ordinary shares are typically the company's 'risk capital' – if the company does well, the dividends may increase, but if the company is struggling, dividends may be reduced or not paid. Ordinary shares typically rank behind preference shares for the purposes of determining dividends.

Preference shares typically carry a preferential right ahead of ordinary shares to a fixed rate of dividend. Payment of a dividend to preference shareholders is subject to the same CA 2016 rules on distributable profits, so if in any year profits are insufficient a payment will not be made. However, to the extent that a dividend can be paid, they will take priority over dividends to ordinary shareholders. Cumulative preference shares are similar to preference shares but carry an additional right that if in any year profits are insufficient to pay the preference dividend in full, any part of the dividend not paid will be carried forward to be paid when the company's finances allow such a payment. The payment of such arrears ranks ahead of payment of dividends on the ordinary shares.

Debentures do not form part of the share capital of a company but are loans. Payment of the interest on debentures must be treated differently to dividends to shareholders. Interest payments rank ahead of dividend payments and must be paid even if the company does not have sufficient distributable reserves, as failure to pay may lead to an event of default. Stamford should prioritise payment of the interest on the debentures and if it is unable to pay the interest, should discuss the matter urgently with the debenture holders or source an alternative means to pay the interest.

Reward other valid responses.

Level	Mark	Descriptor
Question 9(a)	0	No rewardable material.
Level 1 (Fail)	1 - 6	<ul style="list-style-type: none"> Answers are unlikely to demonstrate sufficient knowledge in respect of distributions. Answers are unlikely to demonstrate sufficient knowledge in respect of the rights and expectations of members and are unlikely to adequately differentiate between their rights and expectations. Answers are unlikely to critically evaluate different classes of shares. Answers are unlikely to demonstrate sufficient knowledge in respect of debentures / loans. Answers are unlikely to show sufficient comprehension of the facts in the question and to link these to the answer (for example the correct approval in respect of the payment of an interim dividend). Answers are unlikely to critically evaluate and correctly advise on the prioritisation of interest payments compared to dividend payments. Answers are unlikely to evaluate additional advice which should be provided (e.g. on the implications of making an unlawful dividend payment). Answers are unlikely to sufficiently evaluate relevant information which is missing from the question and to link it to the answer (for example, whether the annual accounts show if there is sufficient distributable profits).
Level 2 (Pass)	7 - 9	<ul style="list-style-type: none"> Answers are likely to demonstrate sufficient knowledge in respect of distributions. Answers are likely to demonstrate sufficient knowledge in respect of the rights and expectations of members and are likely to adequately differentiate between their rights and expectations. Answers are likely to critically evaluate different classes of shares. Answers are likely to demonstrate sufficient knowledge in respect of debentures / loans. Answers are likely to show sufficient comprehension of the facts in the question and to link these to the answer (for example the correct approval in respect of the payment of an interim dividend). Answers are likely to critically evaluate and correctly advise on the prioritisation of interest payments compared to dividend payments. Answers are likely to evaluate additional advice which should be provided (e.g. on the implications of making an unlawful dividend payment). Answers are likely to sufficiently evaluate relevant information which is missing from the question and to link it to their answer (for example, whether the annual accounts show if there is sufficient distributable profits).
Level 3 (Merit / Distinction)	10 – 14	<ul style="list-style-type: none"> Answers are likely to demonstrate good knowledge in respect of distributions.

	<ul style="list-style-type: none"> • Answers are likely to demonstrate good knowledge in respect of the rights and expectations of members and are likely to adequately differentiate between their rights and expectations. • Answers are likely to fully critically evaluate different classes of shares. • Answers are likely to demonstrate detailed relevant knowledge in respect of debentures / loans. • Answers are likely to show good comprehension of the facts in the question and to link these to the answer (for example the correct approval in respect of the payment of an interim dividend). • Answers are likely to critically evaluate and authoritatively advise on the prioritisation of interest payments compared to dividend payments. • Answers are likely to comprehensively evaluate additional advice which should be provided (e.g. on the implications of making an unlawful dividend payment). • Answers are likely to comprehensively evaluate relevant information which is missing from the question and to link it to their answer (for example, whether the annual accounts show if there is sufficient distributable profits).
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Question number	Indicative content
9(b) 11 marks	<p><i>Answers should demonstrate an understanding of the relevant provisions in the Bursa Malaysia Listing Requirements and Capital Markets and Services Act 2007 and the criminal sanctions for insider dealing. Answers should also evaluate the role of the secretary of a listed company to support the directors in the discharge of their regulatory duties.</i></p> <p>Answers could include the following content:</p> <p>Jamil's suggestions to purchase shares in Stamford requires further consideration due to the provisions in the Bursa Malaysia Listing Requirements. As Jamil is a director, he is considered as an 'affected' person who is prohibited from dealing with Stamford shares if he is in possession of price sensitive information. This refers to information that "on becoming generally available would or would tend to have a material effect on the price or value of securities. If the affected person is not in possession of any price sensitive information, he may deal with the shares provided he followed the procedures. A closed period includes the period of 30 days prior to an announcement of the company's half-year results and it is noted that Stamford will release its half year results in two weeks. Jamil has to give notice to Stamford of his intention to deal in Stamford's shares. Once Stamford receives this notice, it has to make an announcement to Bursa Malaysia. Once such dealing takes place, Stamford shall be notified and it would have to make another announcement to Bursa. Notices of dealing shall be kept properly by Stamford and a summary of dealings of the directors shall be tabled at each board meeting.</p>

	<p>The two projects on renewable energy need to be evaluated to determine whether either constitutes inside information.</p> <p>It would appear that the minor project does not qualify as price sensitive information as a small-scale project is unlikely to have a significant effect on the share price. However, the major project is likely to have a significant impact on the share price and has not yet been made public. The major project would appear to be iprice sensitive information.</p> <p>Bursa Malaysia Listing Requirements prohibit insiders from trading on the shares based on material information which is not made public. Listed companies and the parties who can be considered as insiders shall be fully aware of the prohibition on insider trading. Stamford shall prepare an insider list which include employees with access to inside information for a specific or event-based.</p> <p>Dealing in shares while in possession of price-sensitive information (insider dealing) is also a criminal offence under the Capital Markets and Services Act 2007 (CMSA 2007). The definition of insider under CMSA is very wide. It includes any person who comes into possession of material non-public information relating to securities hat person knows that the said information is not generally available, which upon becoming generally available would have a material effect on the price or the value of securities. The offences under the CMSA 2007 would not only relate to any dealings by Jamil but also extends to encouraging another person (such as Jamil’s wife) to deal while in possession of inside information.</p> <p>Reward other valid responses.</p>
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Level	Mark	Descriptor
Question 9(b)	0	No rewardable material.
Level 1 (Fail)	1 - 5	<ul style="list-style-type: none"> • Answers are unlikely to demonstrate sufficient knowledge in respect of the Bursa Malaysia Listing Requirements and Capital Markets and Services Act 2007. • Answers are unlikely to demonstrate sufficient knowledge in respect of the criminal offences of insider dealing. • Answers are unlikely to show sufficient comprehension of the facts in the question and to link these to the answer. • Answers are unlikely to critically evaluate relevant provisions in respect of closed periods (for example that the company is currently within a closed period). • Answers are unlikely to critically evaluate the grounds which may give rise to the existence of inside information. • Answers are unlikely to demonstrate sufficient knowledge to provide additional relevant advice (for example on the use of insider lists).
Level 2 (Pass)	6 - 7	<ul style="list-style-type: none"> • Answers are likely to demonstrate sufficient knowledge in respect of the Bursa Malaysia Listing Requirements and Capital Markets and Services Act 2007.

		<ul style="list-style-type: none"> • Answers are likely to demonstrate sufficient knowledge in respect of the criminal offences of insider dealing. • Answers are likely to show sufficient comprehension of the facts in the question and to link these to the answer. • Answers are likely to critically evaluate relevant provisions in respect of closed periods (for example that the company is currently within a closed period). • Answers are likely to critically evaluate the grounds which may give rise to the existence of inside information. • Answers are likely to demonstrate sufficient knowledge to provide additional relevant advice (for example on the use of insider lists).
Level 3 (Merit / Distinction)	8 – 11	<ul style="list-style-type: none"> • Answers are likely to demonstrate good knowledge in respect of the Bursa Malaysia Listing Requirements and Capital Markets and Services Act 2007. • Answers are likely to demonstrate good knowledge in respect of the criminal offences of insider dealing. • Answers are likely to show thorough comprehension of the facts in the question and to link these to the answer. • Answers are likely to comprehensively critically evaluate relevant provisions in respect of closed periods (for example that the company is currently within a closed period). • Answers are likely to comprehensively critically evaluate the grounds which may give rise to the existence of inside information. • Answers are likely to demonstrate detailed knowledge to provide additional relevant advice (for example on the use of insider lists).

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