

Part (f)	Write a memorandum, addressed to the Board of Directors, in which you – (i) discuss your concerns with regard to Chris Edwards’s put option agreement from a governance perspective	Marks
1	<p>To: The Board of Directors of E-buy Ltd Date: 28 January 2018 From: ITC Candidate/First Year Trainee Accountant</p> <p>Subject: Concerns regarding the put option and factors that should be considered by the Board prior to implementing the proposed employee incentive plan.</p> <p>To whom it may concern As requested, I include the factors that should be considered before implementing the proposed employee incentive plan.</p> <p>Ending with Please contact me should you have any further queries.</p> <p>Regards ITC Candidate</p> <p><i>Note to makers: 1 mark for Memo style and 1 mark for logical argument</i></p>	2
KING RECOMMENDATIONS		
2	King IV recommends the Board to act in good faith and in the best interest of the company (E-buy).	1
2.1	It seems as if the repurchase of the former CEO’s shares will not be in the best interest of the company due to the following:	1
2.2	The company does not have sufficient funds to make the pay-out without having to raise debt funding (which will add an unexpected liability to the company’s balance sheet); and	1
2.3	The company’s future investment plan and shareholder dividends are likely to be impacted by this decision.	1
3	King IV also recommends the Board to ensure that E-buy <u>remunerates fairly, responsibly and transparently</u> .	1
3.1	King IV recommends that a Remuneration Committee suggest a director’s remuneration;	1
3.2	The remuneration should be approved by shareholders at the AGM;	1
3.3	This does not appear to have been the case (no indication with whom negotiations were held and the shareholders are unaware of the deal).	1
4	King IV recommends that the governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation’s performance, and its short, medium and long-term prospects.	1
5	King IV recommends that organisations follow an inclusive stakeholder approach.	1
5.1	Furthermore, the put option arrangement results in a misalignment of interests given that it provides a former executive with an incentive to exit when the share price is as high as possible, whereas the company would want to buy back the shares when the price is as low as possible.	1
5.2	This arrangement consequently prejudices the other shareholders	1
6	The percentage of the total shareholding that 375 000 shares comprise would have to be confirmed, to determine whether or not there is any validity at all to Stephan’s statement.	1

COMPANIES ACT REQUIREMENTS		
7	It also seems as if the Board does not adequately monitor and ensure compliance with applicable laws and regulations. This statement is based on the following:	1
7.1	The Companies Act requires that directors' remuneration (which would include the share option agreement with Chris Edwards) be disclosed in the annual financial statements.	1
7.2	The Board cannot approve the repurchase of Chris Edwards's shares by means of a director's resolution.	1
7.3	The shares are to be repurchased from a former director or from a person related to a director (Chris Edwards is the father of Stephan Edwards – the current CEO).	1
7.4	Therefore a special resolution is required to approve the repurchase of Chris Edwards's shares, in which 75% of the shareholders would have to vote in favour of the repurchase.	1
7.5	This repayment is a distribution in terms of S46 of the Companies Act.	1
7.6	Stephan Edwards has an interest in the put option contract in terms of S75.	1
7.7	Stephan should have abstained from voting but still formed part of the quorum.	1
7.8	E-buy would need to meet the solvency and liquidity test in section 4 of the Companies Act before and after the repurchase of the shares.	1
7.9	It appears that the solvency and liquidity requirements of S4 are not met as the company raised external debt to honour the obligation.	1
7.10	Therefore the purchase could therefore amount to reckless trading in terms of S22.	1
7.11	The directors have therefore not acted in the best interest of the company in terms of S76, Conduct of Directors.	1
7.12	The directors could be held liable in terms of S77 for losses incurred by E-Buy.	1
	Available	27
	Maximum Total part (f)(i)	16

Part (f)	Write a memorandum, addressed to the Board of Directors, in which you – (ii) critically analyse the proposed B-BBEEE scheme	Marks
1	Increasing E-Buy's B-BBEEE rating would be beneficial to the company , and would indeed enable to company to explore more government work.	1
2	It would be beneficial because the scheme would enable the company to explore more government work (<i>valid example of why benefit</i>)	1
3	However, the proposed scheme by Stephan seems to amount to a fronting/window dressing arrangement	1
4	Although Mpho Dodgee will own 100% of the voting rights in E-Buy, he will have no economic rights (not entitled to any distributions)	1
5	Effectively, Chris Edwards would obtain an increased economic exposure in E-Buy while making it seem as if Mpho Dodgee is the beneficiary of the scheme	1
6	If this scheme were reported or investigated by the Department of Trade and Industry (DTI) and/or another regulator, E-Buys B-BBEE score may be completely disregarded.	1
7	This may further lead to finances/penalties for fraud and/or reputational damage.	1
8	Directors have to act with integrity and any doubt cast upon their integrity (e.g. the R1 million payment may be excessive) could impact negatively on the company.	1
9	Furthermore, the proposed scheme seems to be inconsistent with the stated objectives. (Scheme is not fair)	1
10	The scheme is not broad-based (does not improve economic status), because:	1
11	<ul style="list-style-type: none"> - there is only one proposed B BBEE participant; - Mpho Dodgee is a leading attorney, his participation is unlikely to result in any reduction in income inequalities - does not include employees <i>(max 2 for examples/reasons)</i>	1 1
12	Mpho Dodgee has been requested to facilitate the BBEE scheme, but it is not clear that Mr Dodgee has prior experience in such transactions. This further entrenches doubts as to the motivation of the transaction	1
13	Consequently, the proposed scheme is not likely to boost E-Buys B-BBEE rating.	1
14	The transaction could, even if it were appropriate, give investors the idea that it was not above-board , due to the relationship between Stephan and Mpho.	1
15	Mpho Dodgee has a conflict of interest: as he is advising the company on the structure of the scheme and is one of two beneficiaries of the scheme.	1
16	Furthermore, by buying shares in the open market , it does not appear as if any consideration was given to a potential B-BBEE discount	2
17	The provision of a loan by Chris Edwards to E-Dodge is likely to trigger related party disclosure in terms of the Companies Act/IFRS.	1
18	The transaction will also have tax and accounting consequences that need to be considered.	1
19	Mpho Dodgee's experience as a legal advisor to state-owned enterprises, his experience is likely to be valuable to E-Buy in the long term.	1
20	It may be appropriate to retain him as a B-BBEE partner but restructure the scheme to address the issues identified above	2
21	The reasonability (excessive) of the fee of R1 million as well as who would be liable to pay the amount needs to be considered.	1
22	The terms of the loan must be considered for reasonability.	1
	Available	25
	Maximum Total for part (f)(ii)	11