

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp2010124.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

CHAPTER 1: INTRODUCTION

Plain Writing Amendments

Question 1. Do you have any comments on the plainer writing amendments? Do you consider any part(s) of the plainer writing amendments will have unintended consequences?

Yes

No

Please give reasons for your views.

The Exchange should grasp every chance in simplifying the languages of the rules and codes when applicable.

CHAPTER 2: PROPOSED SUBSTANTIVE AMENDMENTS

PART I: DIRECTORS

1. Directors' Duties and Time Commitments

Question 2. Do you agree with our proposed change to Rule 3.08 to clarify the responsibilities the Exchange expects of directors?

Yes

No

Please give reasons for your views.

Setting out the responsibilities clearly for everyone is always a good move.

Question 3. Do you agree with our proposed addition of the Note to Rule 3.08 referring to the guidance issued by the Companies Registry and HKIOD?

Yes

No

Please give reasons for your views.

To synchronize the application of the guidelines will uphold the recognition of those guidelines by the market.

Question 4. Do you agree to include a new duty (CP A.5.2(e)) in the nomination committee's written terms of reference that it should regularly review the time required from a director to perform his responsibilities to the issuer, and whether he is meeting that requirement?

Yes

No

Please give reasons for your views.

Reviewing the continuing suitability of a director is within the scope of responsibility of the Nomination Committee ("NC"). If one is no longer suitable, the NC may consider whether there is a need to find a replacement.

Question 5. Do you agree to include a new duty (CP A.5.2(f)) in the nomination committee's written terms of reference that it should review NEDs' annual confirmation that they have spent sufficient time on the issuer's business ?

Yes

No

Please give reasons for your views.

Reviewing the continuing suitability of a NED is within the scope of responsibility of the NC. If one is no longer suitable, the NC may consider whether there is a need to find a replacement.

Question 6. Do you agree to include a disclosure requirement in the Corporate Governance Report (paragraph L(d)(ii) of Appendix 14) that NEDs have made annual confirmation to the nomination committee that they have spent sufficient time on the issuer's business?

Yes

No

Please give reasons for your views.

It would keep the market informed of the CG standard of the issuer.

Question 7. Do you agree to expanding CP A.5.3(re-numbered CP A.6.3) to state that a director should limit his other professional commitments and acknowledge to the issuer that he will have sufficient time to meet his obligations?

Yes

No

Please give reasons for your views.

Yes, the CSRC Guideline is a good reference on this.

Question 8. Do you agree to expanding CP A.5.3 (re-numbered CP A.6.3) to state that an NED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business?

Yes

No

Please give reasons for your views.

It is rather subjective and maybe a bit insulting to do so.

Question 9. Do you agree to upgrading RBP D.1.4 to a CP (re-numbered CP D.1.4) and amending it to state that an NED's letter of appointment should set out the expected time commitment?

Yes

No

Please give reasons for your views.

It is good to have some common languages with the NEDs.

Question 10. Do you agree to upgrading RBP A.5.6 to a CP (re-numbered CP A.6.6) and to amending it to encourage timeliness of disclosure by a director to the issuer on any change to his significant commitments?

Yes

No

Please give reasons for your views.

It is not an exhaustive request and a director is expected to have close and continuous dialogue with the issuer.

Question 11. Do you consider that there should be a limit on the number of INED positions an individual may hold?

Yes

No

Please give reasons for your views.

Yes, the CSRC Guideline is a good reference on this.

Question 12. If your answer to Question 11 is "yes", what should be the number? Please give reasons for your views.

5, the CSRC Guideline is a good reference on this.

Question 13. If your answer to Question 11 is “yes”, do you think that it should be a Rule or a CP?

Rule

CP

Please give reasons for your views.

It is always a hard question to quantify the issue of director's involvement in the issuer's matters.

2. Directors' Training and Independent Non-executive Directors

Question 14. Do you agree that we should upgrade RBP A.5.5 (requirement for continuous professional development) to a CP (re-numbered CP A.6.5)?

Yes

No

Please give reasons for your views.

Even it becomes a CP, an issuer may deviate from it and explain to the public their reason. To upgrade to a CP is a recognition of its importance.

Question 15. Do you agree that the minimum number of hours of directors training should be eight?

Yes

No

Please give reasons for your views.

It is just 2 to 3 seminars only.

Question 16. What training methods do you consider to be acceptable for the requirements stated in the proposed CP (re-numbered RBP A.6.5)? Please give reasons for your views.

I agree that some of the directors need to travel frequently, in-house training by lawyers, professional or the company secretary would be an alternate way in directors' training.

Question 17. Do you agree that we should upgrade RBP A.3.2 (at least one-third of an issuer's board should be INEDs) to a Rule (re-numbered Rule 3.10A)?

Yes

No

Please give reasons for your views.

One-third composition is the minimum international standard on this. As above, even it becomes a CP, an issuer may deviate from it and explain to the public their reason. To upgrade to a CP is a recognition of its importance.

Question 18. Do you agree that this Rule (at least one-third of an issuer's board should be INEDs) be effective after a transitional period as described in paragraph 87 of the Consultation Paper?

Yes

No

Please give reasons for your views.

1-year transitional period allowance is reasonable for issuers who are deviating from this Rule to make remedial action.

Question 19. Do you agree that we should upgrade RBP A.4.3 (shareholder to vote on a separate resolution for the further employment of an INED who has served more than nine years) to a CP (re-numbered CP A.4.3)?

Yes

No

Please give reasons for your views.

Actually issuers always put separate proposal for election of each director.

Question 20. Do you agree with our proposal to upgrade RBP A.4.8 (issuer should include explanation of its reasons for election and independence of an INED in a circular) to a CP (re-numbered CP A.5.5)?

Yes

No

Please give reasons for your views.

I think this should be a responsibility of recommendation/ explanation by the Remuneration Committee. Setting out their views in the circular would make the shareholders more informed.

3. Board Committees

A. Remuneration Committee

Question 21. Do you agree with our proposal to move the requirement for issuers to establish a remuneration committee with a majority of INED members from the Code (CP B.1.1) to the Rules (Rule 3.25)?

Yes

No

Please give reasons for your views.

This will meet the international standards.

Question 22. Do you agree with our proposal that the remuneration committee must be chaired by an INED?

Yes

No

Please give reasons for your views.

It is no point to restrict who should be the chairman, given the governed terms of reference of their scope of responsibilities of the RC.

Question 23. Do you agree with our proposal to move the requirement for issuers to have written terms of reference for the remuneration committee from the Code (CP B.1.1) to the Rules (Rule 3.26)?

Yes

No

Please give reasons for your views.

To become Rules, it would make the RC more sound in recognition by the market.

Question 24. Do you agree with our proposal to add a new Rule (Rule 3.27) requiring an issuer to make an announcement if it fails to meet the requirements of proposed Rules 3.25, 3.26 and 3.27?

Yes

No

Please give reasons for your views.

It is along the principle of keeping the market informed.

Question 25. Do you agree with our proposal that issuers that fail to meet Rules 3.25, 3.26 and 3.27 should have three months to rectify this?

Yes

No

Three months is reasonable and enough to rectify this in their quarterly board meeting.

Question 26. Do you agree that we should add “independent” to the professional advice made available to a remuneration committee (CP B.1.2, re-numbered CP B.1.1)?

Yes

No

Please give reasons for your views.

Otherwise, there will be conflict of interests exist.

Question 27. Do you agree that, in order to accommodate Model B, we should revise CP B.1.3 (re-numbered CP B.1.2) as described in paragraph 117 of the Consultation Paper?

Yes

No

Please give reasons for your views.

No comment.

Question 28. (i) Do you agree that where the board resolves to approve any remuneration with which the remuneration committee disagrees, the board should disclose the reasons for its resolution in its corporate governance report)? (ii) If your answer is “yes”, do you agree that RBP B.1.8 should be revised and upgraded to a CP (re-numbered CP B.1.6).

(i) Yes No

(ii) Yes No

Please give reasons for your views.

These information is concerned by the market. CP will give tighter requirements and give a level playing ground for investors.

Question 29. Do you agree that the term “performance-based” should be deleted from CP B.1.2(c) (re-numbered CP B.1.2(b)) and revised as described in paragraph 118 of the Consultation Paper?

Yes

No

Please give reasons for your views.

The new wordings form a objective and broader grounds of evaluation.

B. Nomination Committee

Question 30. Do you agree that RBP A.4.4 (establishment and composition of a nomination committee, re-numbered CP A.5.1) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

If they are appointed by directors, no need to pass to the NC to consider once more before further re-election or retirement in the AGMs. Besides, I think many of the Hong Kong Listcos are family-controlled. The existence of NC would be more on decorative side.

Question 31. Do you agree that the proposed CP (currently RBP A.4.4) should state that the nomination committee's chairman should be an INED?

Yes

No

Please give reasons for your views.

As discussed in Q30, the NC would be influenced by the controlling directors/ shareholders. Whether or not the Chairman is an INED will not improve the independency of the NC.

Question 32. Do you agree that RBP A.4.5 (nomination committee's terms of reference, re-numbered CP A.5.2) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

If NC is required to be established, a clear written terms of reference should be set out.

Question 33. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should be performed at least once a year?

Yes

No

Please give reasons for your views.

I still think that the structure, size and composition of the board may always be influenced by the controlling shareholders. Whether it is to be reviewed by the NC would not have any indicative reference to the market.

Question 34. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should implement the issuer's corporate strategy?

Yes

No

Please give reasons for your views.

Many listcos have no clear corporate strategy, or else it is rather a subjective issue. Besides, review of corporate strategy by the NC seems not relevant to "nomination" side.

Question 35. Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

Again, if a NC must be formed, the TORs should be available for inspection or in website.

Question 36. Do you agree that the proposed CP (currently RBP A.4.6, re-numbered CP A.5.3) should state that issuers should include their nomination committee's terms of reference on the HKEx website?

Yes

No

Please give reasons for your views.

This would allow the market to monitor the performance of the Board and its committees.

Question 37. Do you agree that RBP A.4.7 (sufficient resources for the nomination committee, re-numbered CP A.5.4) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

This ensures the NC can perform its duties with sufficient resources. Besides, from the business point of view, the controlling shareholders may view the NC not revenue-generating and may waste resources. Hence, code provisions would safeguard this.

Question 38. Do you agree that the proposed CP (currently RBP A.4.7, re-numbered CP A.5.4) should clarify that a nomination committee should be able to seek independent professional advice at the issuer's expense?

Yes

No

Please give reasons for your views.

No comment

C. Corporate Governance Committee

Question 39. Do you agree with the proposed terms of reference listed in paragraph 141 of the Consultation Paper?

Yes

No

Please give reasons and alternative suggestions.

Question 40. Do you consider that the committee(s) performing the proposed duties listed in paragraph 141 of the Consultation Paper should submit to the board a written report on its work annually?

Yes

No

Please give reasons for your views.

Since it is a committee under the Board, reporting back to the Board should be necessary.

Question 41. Do you consider that this report (as described in paragraph 140 of the Consultation Paper) should be published as part of the issuer's corporate governance report?

Yes

No

Please give reasons for your views.

Question 42. Do you agree with introducing RBP D.3.3 stating that an issuer should establish a corporate governance committee?

Yes

No

Please give reasons for your views.

I think that many listcos, especially small to medium sized, pay little resource or attention to corporate governance improvement.

Question 43. Do you agree the duties of an existing committee or committees can be expanded to include those of a corporate governance committee?

Yes

No

Please give reasons for your views.

I think existing committee should focus on its core functions, otherwise, their attention will be diverted and hence, less attention will be paid/ spent on its core duties.

Question 44. Do you agree with the addition of CP D.3.2 stating that the committee performing the proposed duties listed in paragraph 141 of the Consultation Paper should comprise a majority of INEDs?

Yes

No

Please give reasons for your views.

INEDs may give independent views when comparing with those executive directors whom focus on business issues.

Question 45. Do you agree with the proposal to add a note to CP D.3.2 stating that the committee should include one member who is an executive director or non-executive director with sufficient knowledge of the issuer's day-to-day operations?

Yes

No

Please give reasons for your views.

This would shorten the time in obtaining forth-and-back information from the company.

D. Audit committee

Question 46. Do you agree with our proposal to upgrade RBP C.3.7 (audit committee's terms of reference should include arrangements for employees to raise concerns about improprieties in financial reporting) to a CP?

Yes

No

Please give reasons for your views.

This may be the only way to report to an independent bodies before going to ICAC or the police.

Question 47. Do you agree with our proposal to amend CP C.3.3(e)(i) to state that the audit committee should meet the external auditor at least twice a year?

Yes

No

Please give reasons for your views.

This may be too burdensome for the INEDs or the Auditors. Besides, there may not be interim audit and hence the Auditors may not have up-to-date idea about the company.

Question 48. Do you agree that a new RBP should be introduced to encourage audit committees to establish a whistleblowing policy?

Yes

No

Please give reasons for your views.

4. Remuneration of Directors, CEO and Senior Management

Question 49. Do you agree with our proposal that issuers should disclose senior management remuneration by band (Appendix 16, new paragraph 25A)?

Yes

No

Please give reasons for your views.

To make the company more accountable.

Question 50. If your answer to Question 49 is yes, do you agree with our proposal that senior management remuneration disclosure should include sales commission?

Yes

No

Please give reasons for your views.

This may be commercial sensitive.

Question 51. Do you agree with our proposal to amend Appendix 16 to require an issuer to disclose the CEO's remuneration in its annual report and by name?

Yes

No

Please give reasons for your views.

CEO should be subject to directors' disclosure requirement just like those under DI disclosure.

Question 52. Do you agree with our proposal to upgrade RBP B.1.6 to a CP (a significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance, re-numbered CP B.1.5)?

Yes

No

Please give reasons for your views.

This may influence one's willingness in acting as directors as there are not sufficient portion of fixed income.

5. Board Evaluation

Question 53. Do you agree with our proposal to add new RBP B.1.8 that issuers should conduct a regular evaluation of its own and individual directors' performance?

Yes

No

Please give reasons for your views.

The evaluation is quite complicated and comprehensive that may influence the routine business.

6. Board Meetings

- A. Considering a matter where there is a conflict of interest by a physical board meeting rather than a written board resolution

Question 54. Do you agree that, except for plain language amendments, the wording of CP A.1.8 (re-numbered CP A.1.7) should be retained (issuers to hold a board meeting to discuss resolutions on a material matter where a substantial directors or a director has a conflict of interest)?

Yes

No

Please give reasons for your views.

Direct dialogue makes the issue to be resolved in a more accountable way.

Question 55. Do you agree with our proposals to add a note to CP A.1.8 (re-numbered CP A.1.7) stating that attendance at board meetings can be achieved by telephonic or video conferencing?

Yes

No

Please give reasons for your views.

More practical

B. Directors' Attendance at Board Meetings

Question 56. Do you agree with our proposal to add the notes to paragraph I(c) of Appendix 14 (on attendance at board meetings) as described in paragraph 195 of the Consultation Paper?

Yes

No

Please give reasons for your views.

Question 57. Do you agree with our proposal to introduce a new requirement (paragraph I(d) to Appendix 14) that attendance by an alternate should not be counted as attendance by the director himself?

Yes

No

Please give reasons for your views.

This is not in line with the underlying principle in appointing alternate directorship whom can act just like he was the director.

Question 58. Do you agree with our proposal that an issuer disclose, for each named director, the number of board or committee meetings he attended and separately the number of board or committee meetings attended by his alternate?

Yes

No

Please give reasons for your views.

To make it more transparent.

C. Removing Five Percent Threshold for Voting on a Resolution in which a Director has an Interest

Question 59. Do you agree with our proposal to revise Rule 13.44 to remove the exemption described in paragraph 199 (transactions where a director has an interest)?

Yes

No

Please give reasons for your views.

Once he is interested in a transaction, no matter how large his involvement is or in what respect he is interested in, he is required to abstain from voting.

7. Chairman and Chief Executive Officer

Question 60. Do you agree with our proposal to remove the words “at the board level” from Code Principle A.2 to clarify the division between management of the board and day-to-day management of an issuer’s business?

Yes

No

Please give reasons for your views.

No comment.

Question 61. Do you agree with our proposal to amend CP A.2.3 to add “accurate” and “clear” to describe the information that the chairman should ensure directors receive?

Yes

No

Please give reasons for your views.

Question 62. Do you agree with our proposal to upgrade RBP A.2.4 to a CP to give greater emphasis to the chairman’s duty to provide leadership for the board, to ensure that the board works effectively and discharges its responsibilities, etc.?

Yes

No

Please give reasons for your views.

Question 63. Do you agree with our proposal to upgrade RBP A.2.5 to a CP and amend it to state: “The chairman should take primary responsibility for ensuring that good corporate governance practices and procedures are established”?

Yes

No

Please give reasons for your views.

Question 64. Do you agree with our proposal to upgrade RBP A.2.6 to a CP to emphasise the chairman’s responsibility to encourage directors with different views to voice their concerns, allow sufficient time for discussion of issues and build consensus?

Yes

No

Please give reasons for your views.

Question 65. Do you agree with our proposal to upgrade RBP A.2.7 to a CP and amend it to state that the chairman should hold separate meetings with only INEDs and only NEDs at least once a year?

Yes

No

Please give reasons for your views.

Question 66. Do you agree with our proposal to upgrade RBP A.2.8 to a CP to highlight the chairman's role to ensure effective communication between the board and shareholders?

Yes

No

Please give reasons for your views.

Question 67. Do you agree with our proposal to upgrade RBP A.2.9 to a CP to emphasise the chairman's role to enable NED contributions and constructive relations between EDs and NEDs?

Yes

No

Please give reasons for your views.

NED should be responsible for his own contribution to the Board independently but it is not the responsibility of the Chairman.

8. Notifying directorship change and disclosure of directors' information

Question 68. Do you agree that we should amend Rule 13.51(2) to require issuers to disclose the retirement or removal of a director or supervisor?

Yes

No

Please give reasons for your views.

Question 69. Do you agree that we should amend Rule 13.51(2) to apply to the appointment, resignation, re-designation, retirement or removal of a CEO (and not only to a director or supervisor)?

Yes

No

Please give reasons for your views.

Question 70. Do you agree that we should amend Rule 13.51(2)(o) to cover all civil judgments of fraud, breach of duty or other misconduct involving dishonesty?

Yes

No

Please give reasons for your views.

Question 71. Do you agree that we should amend Rule 13.51B(3)(c) to clarify that the sanctions referred to in that Rule are those made against the issuer (and not those of other issuers)?

Yes

No

Please give reasons for your views.

Question 72. Do you agree with our proposal to upgrade RBP A.3.3 to a CP to ensure that directors' information is published on an issuer's website?

Yes

No

Please give reasons for your views.

Question 73. Do you agree with our proposed amendment to the CP (RBP A.3.3 upgraded) that directors' information should also be published on the HKEx website?

Yes

No

Please give reasons for your views.

9. Providing Management Accounts or Management Updates to the Board

Question 74. Do you agree that we should add CP C.1.2 stating issuers should provide board members with monthly updates as described in paragraph 240 of the Consultation Paper?

Yes

No

Please give reasons for your views.

10. Next Day Disclosure for a Director Exercising an Option in the Issuer or the Issuer’s Subsidiaries

Question 75. Do you agree with the proposed amendment to Rule 13.25A(2)(a)(viii) and (ix) removing the need for issuers to publish a Next Day Disclosure Return following the exercise of options for shares in the issuer by a director of a subsidiary?

Yes

No

Please give reasons for your views.

This would not be burdensome, just like filing the “Next Day Disclosure Form”, this will keep the market up-to-date.

Question 76. Do you agree with the proposed amendment to Rule 13.25A(2)(b)(i) and (ii) to require issuers to publish a Next Day Disclosure only if options for shares in the issuer exercised by a director of its subsidiary or subsidiaries results in a change of 5% or more (individually or when aggregated with other events) of the issuer’s share capital since its last Monthly Return?

Yes

No

Please give reasons for your views.

See above.

11. Disclosing Long Term Basis on which an Issuer Generates or Preserves Business Value

Question 77. Do you agree that we should introduce the proposed CP (CP C.1.4) as described in paragraph 250 of the Consultation Paper?

Yes

No

Please give reasons for your views.

To disclose in a more structural way.

12. Directors' Insurance

Question 78. Do you agree with our proposal to upgrade RBP A.1.9 (issuers should arrange appropriate insurance for directors) to a CP (re-numbered CP A.1.8)?

Yes

No

Please give reasons for your views.

Question 79. Do you agree with our proposal to add the words “adequate and general” to RBP A.1.9 (upgraded and re-numbered CP A.1.8)?

Yes

No

Please give reasons for your views.

PART II: SHAREHOLDERS

1. Shareholders' General Meetings

A. Notice of Meeting and Bundling of Resolutions

Question 80. Do you agree with our proposal to amend CP E.1.1 to state that issuers should avoid “bundling” of resolutions and where they are “bundled” explain the reasons and material implications in the notice of meeting?

Yes

No

Please give reasons for your views.

B. Voting by Poll

Question 81. Do you agree with our proposal to amend Rule 13.39(4) to allow a chairman at a general meeting to exempt procedural and administrative matters described in paragraph 274 of the Consultation Paper from voting by poll?

Yes

No

Please give reasons for your views.

Question 82. Do you agree with the examples of procedural and administrative resolutions in paragraph 275 of the Consultation paper? Do you have any other examples to add?

Yes

No

Please give reasons for your views.

Question 83. Do you agree that our proposed amendments to Rule 13.39(5) clarify disclosure in poll results?

Yes

No

Please give reasons for your views.

Question 84. Do you agree with our proposal to amend CP E.2.1 to remove the words "at the commencement of the meeting" so that an issuer's chairman can explain the procedures for conducting a poll later during a general meeting?

Yes

No

Please give reasons for your views.

C. Shareholders' Approval to Appoint and Remove an Auditor

Question 85. Do you agree with our proposal to add new Rule 13.88 to require shareholder approval to appoint the issuer's auditor?

Yes

No

Please give reasons for your views.

Question 86. Do you agree with our proposal to add, in new Rule 13.88, a requirement for shareholder approval to remove the issuer's auditor before the end of his term of office?

Yes

No

Please give reasons for your views.

Question 87. Do you agree that the new Rule 13.88 should require a circular for the removal of the auditor to shareholders containing any written representation from the auditor and allow the auditor to make written and/or verbal representation at the general meeting to remove him?

Yes

No

Please give reasons for your views.

D. Directors' Attendance at Meetings

Question 88. Do you agree with our proposal to upgrade RBP A.5.7 (NEDs' attendance at meetings) to a CP (re-numbered CP A.6.7)?

Yes

No

Please give reasons for your views.

Question 89. Do you agree with our proposal to upgrade RBP A.5.8 (NEDs should make a positive contribution to the development of the issuer's strategy and policies) to a CP (re-numbered CP A.6.8)?

Yes

No

Please give reasons for your views.

Question 90. Do you agree with our proposal to introduce a new mandatory disclosure provision in Appendix 23 (re-numbered paragraph I(c) of Appendix 14) stating that issuer must disclose details of attendance at general meetings of each director by name?

Yes

No

Please give reasons for your views.

Question 91. Do you agree with our proposal that CP E.1.2 state the issuer's chairman should arrange for the chairman of "any other committees" to attend the annual general meeting?

Yes

No

Please give reasons for your views.

E. Auditor's Attendance at Annual General Meetings

Question 92. Do you agree with our proposal that CP E.1.2 state that the chairman should arrange for the auditor to attend the issuer's annual general meeting to answer questions about the conduct of the audit, the preparation and content of the auditors' report, the accounting policies and auditor independence?

Yes

No

Please give reasons for your views.

2. Shareholders' Rights

Question 93. Do you agree with our proposal to upgrade the recommended disclosure of "shareholders' rights" under paragraph 3 (b) of Appendix 23 to mandatory disclosure (re-numbered paragraph O of Appendix 14)?

Yes

No

Please give reasons for your views.

3. Communication with Shareholders

A. Establishing a Communication Policy

Question 94. Do you agree with our proposed new CP E.1.4 stating that issuers should establish a shareholder communication policy?

Yes

No

Please give reasons for your views.

B. Publishing Constitutional Documents on Website

Question 95. Do you agree with our proposal to add a new Rule 13.90 requiring issuers to publish an updated and consolidated version of their M & A or constitutional documents on their own website and the HKEx website?

Yes

No

Please give reasons for your views.

This would make the shareholders and the public easily access to the governing articles of associations of the listco.

C. Publishing Procedures for Election of Directors

Question 96. Do you agree with our proposal to add a new Rule 13.51D requiring an issuer to publish the procedures for shareholders to propose a person for election as a director on its website?

Yes

No

Please give reasons for your views.

D. Disclosing Significant Changes to Constitutional Documents

Question 97. Do you agree with our proposal to upgrade the recommended disclosure of any significant change in the issuer's articles of association under paragraph 3(c)(i) of Appendix 23 to mandatory disclosure (re-numbered paragraph P(a) of Appendix 14) ?

Yes

No

Please give reasons for your views.

PART III: COMPANY SECRETARY

1. Company Secretary's Qualifications, Experience and Training

Question 98. Do you agree with our proposal to introduce a new Rule 3.28 on requirements for company secretaries' qualifications and experience?

Yes

No

Please give reasons for your views.

Company Secretary (“CS”) is, in practice, responsible for assisting the Board of an issuer in compliance to the Listing Rules. Without requisite experience and qualification, the company secretarial functions cannot be fully discharged in a satisfactory manner. Hence, setting minimum quantitative criteria would help justify one’s suitability to the position. However, I consider having “both” qualification and experience is important instead of just obtaining either one of them.

Question 99. Do you agree that the Exchange should consider as acceptable the list of qualifications for company secretaries set out in paragraph 345 of the Consultation Paper?

Yes

No

Please give reasons for your views.

I object to the acceptability of a professional accountant to occupy the position of the CS. It is encountered in many experiences that if an issuer appointed the Financial Controller/ Chief Financial Officer to be the CS, that issuer usually employed a middle-level company secretarial staff to fulfill the CS functions. The standard of works would be much lower when comparing to those issuers with a professional company secretarial team. Also, the FC/ CFO usually need to participate in many corporate duties and can only discharge its CS role at a minimum level, e.g. compliance works; not to say corporate governance promotion works and board practice matters.

Question 100. Do you agree that the Exchange should consider the list of items set out in paragraph 346 of the Consultation Paper when deciding whether a person has the relevant experience to perform company secretary functions?

Yes

No

Please give reasons for your views.

However, I consider that item (a) is irrelevant in considering one's suitability in fulfilling the function as a CS, because a CS is more on the role of compliance, boardroom practice and corporate governance works. Without these but having a lengthy employment period with a issuer won't help in discharging the CS functions. Besides, I consider that it is rather subject in considering whether one is familiar with the Listing Rules for item (b). One way to assess this is to gain the professional qualification through passing the paper of "Company Secretarial Practices" examined by The Hong Kong Institute of Chartered Secretaries ("HKICS").

Question 101. Do you agree with our proposal to remove the requirement for company secretaries to be ordinarily resident in Hong Kong?

Yes

No

Please give reasons for your views.

With the ease of accessing information online and transparency of the financial market in Hong Kong, I consider whether one is a resident in the territory is not material in assessing its eligibility in assuming a CS function.

Question 102. Do you agree with our proposal to repeal Rule 19A.16 so that Mainland issuers' company secretaries would need to meet the same requirements as for other countries?

Yes

No

Please give reasons for your views.

Please refer to the answer to Question 101 above.

Question 103. Do you agree with our proposal to add a Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year?

Yes

No

Please give reasons for your views.

Many professional bodies (e.g. HKICPA, HK Law Society) require its members to attend requisite training courses with minimum-hour requirement. It is a way to maintain the quality of its professional.

Question 104. Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350 of the Consultation Paper?

Yes

No

Please give reasons for your views.

I consider the transitional arrangement is too generous to those old market players. If a director is also required to attend continuous training yearly, I see no point to allow CS to have buffer period.

2. New Section in Code on Company Secretary

Question 105. Do you agree with our proposal to include a new section of the Code on company secretary?

Yes

No

Please give reasons for your views.

As self-explained in the Consultation Paper, the role of CS is important and should be set out clearly in order to have common understanding by the market.

Question 106. Do you agree with the proposed principle as described in paragraph 362 of the Consultation Paper and set out in full in page 27 of Appendix II?

Yes

No

Please give reasons for your views.

In addition, the actual function borne by the CS in issuers in practice is largely on compliance to the rules and regulations governed by the Stock Exchange, the SFC and the Companies Registry. It is easily found in various job descriptions in newspapers. Hence, wordings like "... and compliance matters" can be added after "... on governance matters".

Question 107. Do you agree with our proposed CP F.1.1 stating the company secretary should be an employee of the issuer and have knowledge of the issuer's day-to-day affairs?

Yes

No

Please give reasons for your views.

If the CS is not an employee of the issuer, one cannot monitor the day-to-day operation of the issuer in order to "proactively" advise the proper procedures in daily corporate administrative matters. I also consider that adding requirement likes "a CS should be a managerial role of an issuer" so that he/ she can participate in management meetings to be kept updates and give advice on potential company development matters.

Question 108. Do you agree with our proposal described in paragraph 364 of the Consultation Paper, that if an issuer employs an external service provider, it should disclose the identity of its issuer contact person?

Yes

No

Please give reasons for your views.

I strongly disagree with the present market practice in engaging external advisor as the CS. As responded in Question 107 above, the CS should be a "full-time" employee of a listco so that its function can be fully discharged properly, Instead of being sought advice from the board of an issuer, a CS should be responsible for giving advice to the board "proactively". Even there are situations that a board member may not have professional knowledge to alert for potential breaches of the rules and regulations or improper procedural arrangements, so that the director may not be able to ask for assistance from the "external CS". Sometimes the subject corporate project is of highly confidential nature, seeking external advice and assistance in procedural matters would not be preferred. In practice, the "external CS" may not be able to attend every physical meeting. He/ She may prefer to transact the subject business(es) by way of written circulations instead of physical meetings. Some may even arrange "paper meetings" which was generally adopted in the past.

Question 109. Do you agree with our proposed CP F.1.2 stating that the selection, appointment or dismissal of the company secretary should be the subject of a board decision?

Yes

No

Please give reasons for your views.

In reality, the articles of association of the issuers usually set out that a CS should be appointed by the board of directors. Notwithstanding this, it is general a practice to seek board approval on change of company secretary in my understanding.

Question 110. Do you agree with our proposed note to CP F.1.2 stating that the board decision to select, appoint or dismiss the company secretary should be made at a physical board meeting and not dealt with by written board resolution?

Yes

No

Please give reasons for your views.

Unless there is disagreement with the Company (e.g. dismissal), it is not required to hold physical meetings in allowing dialogue among the board members.

Question 111. Do you agree with our proposal to add CP F.1.3 stating that the company secretary should report to the Chairman or CEO?

Yes

No

Please give reasons for your views.

In many small and medium issuers, the CS is usually reporting to a CFO or legal counsel. However, those CFOs and legal counsels are in practice have little understanding, knowledge and practical experiences in company secretarial works. It would hinder the performance of a CS in discharging its function.

Question 112. Do you agree with our proposal to add CP F.1.5 stating that the company secretary should maintain a record of directors training?

Yes

No

Please give reasons for your views.

A CS is responsible for keeping corporate records like minutes, registers of directors, members and transfers, etc.. Keeping record of directors' training is part of its role in maintaining corporate records.

CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS

1. Definition of “Announcement” and “Announce”

Question 113. Do you agree with our proposal to include a definition in the Rules for the terms “announcement” and “announce” as described in paragraph 371 of the Consultation Paper?

Yes

No

Please give reasons for your views.

The proposed change would make it more clear and easy in reading.

2. Authorised Representatives' Contact Details

Question 114. Do you agree with our proposal to amend Rule 3.06(1) to add a reference to authorised representatives “mobile and other telephone numbers, email and correspondence addresses” and “any other contract details prescribed by the Exchange may prescribe from time to time”?

Yes

No

Please give reasons for your views.

***Those proposed contents would assist in contacting the authorised representative. Mobile and email are one of the most convenient ways in communication.
Btw, it is very common to contact the CS of an issuer directly instead of just the authorised representative. Would it be ambiguous in such arrangement?***

3. Merging Corporate Governance Report Requirements into Appendix 14

Question 115. Do you agree with our proposal to merge Appendix 23 into Appendix 14 for ease of reference?

Yes

No

Please give reasons for your views.

It would be more user-friendly after such merge.

Question 116. Do you agree with our proposal to streamline Appendix 23 and to make plain language amendments to it?

Yes

No

Please give reasons for your views.

Again, it would be easier for readers to refer to the contents.

- End -