

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.

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.

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.

While we agree to clarifying the responsibility the Exchange expects of directors, we feel that Rule 3.08 has clearly outlined the duties and responsibilities of directors and it is not necessary to make references to any other sets of principle and guidance which have not been thoroughly examined and adapted by the market and are subject to changes.

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.

We do not think time spent should be a criterion of evaluating how effective a director discharges his/her responsibilities. Focus should be on the quality and outcome of work. Different people manage their work and time differently and their pace of work is also different, and it is therefore hard to come to a view of how much time should be required and is considered sufficient. Time sufficiency also depends on the level of business activities of the company during the year. See our answer to Q.9.

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.

See our answer to Q.4.

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.

See our answer to Q.4.

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.

Different people would have different capacity for work and it is not necessary to try to impose a limit on the amount of work that one desires to take on. The company for sure will exercise discretion in deciding whether a director will have the capacity to fulfil his/her responsibilities.

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.

See our answer to Q.4.

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.

We do not think it is appropriate to put down any specific expected time commitment. It is something very hard to quantify in advance by estimates. The actual time required would depend on the amount of business activities and transactions a company may have during the year, the amount of which is subject to change, and also how much responsibility a director would take on in the board, for example, how many committees would he/she sit on; the workload of those particular committees or whether he/she is the chairperson or a member. It is quite meaningless to come up with a number by estimate only to realize it is not accurate in the end. In our view, there is no need for the Code to be overly-detailed in specifying the working relationship between company and directors.

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.

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.

The number of directorship an individual can take up is a very subjective matter and depends on personal circumstances. Say for example, the time available to a full time senior executive to be a director of another company is very different from that of a retired professor. The latter has a lot more capacity to devote their experience and wisdom to other companies. To impose a cap artificially would be to deprive more companies to benefit from such experience and wisdom. With so many code provisions governing the time commitment of directors and limiting their other professional commitments, the Listing Rules should provide sufficient oversight of a director's capability and capacity to serve a company well. The Exchange should leave it to the company and director him/herself to decide how many is too many. Furthermore, by not having a limit, we would encourage a culture of professional directorship in Hong Kong where more qualified and experienced individuals could build a career in providing independent advice and monitoring to companies, and this could yield positive results to the overall governance standard of our market.

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

N.A.

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.

N.A.

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.

We do not think this training requirement needs to be a CP. Most directors are individuals experienced with business, legal and accounting issues and many are practising professionals. This enables them to be well-versed with company issues, and to mandatorily require them to go through training is unnecessary. This requirement can remain as a RBP.

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.

We do not see the need of a mandatory requirement of training.

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.

We do not see the need of a mandatory requirement of 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.

As stated in the consultation paper, 79% of issuers in Hong Kong are in compliance with this, so we do not object to making this a Rule as we do not envisage a widespread difficulty in complying. We however would add a caveat that experience has shown that it is not easy to find qualified and suitable INEDs. Some members think it is better to upgrade the RBP to a code provision instead of to a rule at one go. The increasingly stringent rules, heightened responsibilities yet potentially serious liabilities all contribute to the short supply of directors in the market. So often times, it is not a matter of companies unwilling to appoint more INEDs but unable to do so. Therefore a transitional period as stated in paragraph 87 of the consultation paper is necessary.

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.

See our answer to Q.17

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.

We concur with the view expressed in paragraph 76 of the consultation paper that independence is more a mind set than a factor of the number of years of service. The important thing is that the information that the director has served over 9 years is clearly spelled out for the minority shareholders at the time of voting for re-appointment, much like the Australian model as described in paragraph 81. As long as the shareholders are informed of the INED's relationship with the company, whether the voting is by special resolution is not that important. We do not think it is necessary for this requirement to be upgraded to a CP.

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.

As said in our answer to Q.19, we agree it is important that information about the directors to be re-elected is disclosed properly to shareholders at the time of re-election, hence, explanation of the reasons for election and independence of an INED is necessary. We agree that this requirement be made a CP.

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.

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.

While we agree that the majority of members of the remuneration committee should be INEDs, we do not think it is essential that the chairman of this committee is also an INED. Who will be the chairman can be left to the committee members to agree amongst themselves through open nomination and election procedures within the committee. Whoever chairs the meeting, it is the majority view that will prevail in the end.

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.

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.

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

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.

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.

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.

The Chamber cannot come to a consensus view on this question. Some members think it is good governance practice to disclose difference in opinions between the remuneration committee and the full board. On the other hand, some members expressed concerns that this would set a precedent for disclosure of other disagreements within the board or between the board and other committees, and this may be disruptive to the running of the company. As some commentators noted, disagreement will arise and is part of the negotiation and discussion, the important thing is an agreement can eventually be reached.

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.

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.

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.

Similar to our view about the remuneration committee, we agree that the majority of members of the nomination committee can be INEDs, but we do not think it is essential that this committee is to be chaired by an INED. The committee members can agree amongst themselves through open nomination and election procedures within the committee. Whoever chairs the meeting, it is the majority view that will prevail in the end.

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.

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.

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.

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.

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.

We disagree with this for the following two reasons:

There is no similar requirement for the other two committees, and so for consistency, we do not think the terms of reference of the nomination committee need to be posted on the HKEx website.

We would support that the terms of reference be posted on the company's website rather. This would attract more investors to log on to the issuer's website as a main source of corporate information where other business information can be viewed and this should encourage the investors to develop a better understanding of the company that they invest in.

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.

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.

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.

See our answer to Q.42

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.

The objective of the committee performing these duties is to ensure the corporate governance level of the company and monitor compliance of the Code on CG Practices. These would be the contents of the corporate governance report section of the financial statements anyway and the corporate governance report is to be reviewed and approved by the Board. So we feel that there is no need to duplicate this report with an additional report.

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.

See our answer to Q.40

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.

We do not see the need of establishing a separate corporate governance committee to carry out the proposed duties which we think can be carried out by an existing committee. See below.

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.

The proposed duties of the corporate governance committee can be handled by existing committees such as the audit committee in order to avoid incurring additional compliance costs and increasing the burden of existing directors by having them sit on one additional committee.

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.

Corporate governance is the responsibility of the all board members, executive and non-executive alike, and it involves many internal compliance issues and procedures, so the participation of executive directors is key. We do not see the need of having an INED-dominant committee to oversee the work.

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.

See our answer to Q.44.

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.

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.

We agree to this although some members pointed out since the interim results need not be audited, it is not a usual practice for them to convene an Audit Committee to meet with the auditors more than once a year. Nevertheless, the majority view is that meeting twice a year is doable and is in many cases the existing practices.

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.

We disagree that disclosure of this level of details is necessary and would bring any real benefits to shareholders. The Rules already stipulates the disclosure of director emoluments by name and the aggregate amount paid to the five highest paid individuals. The latter in many cases are the senior management, hence there is no need to impose further requirements.

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.

N.A.

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.

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.

No one can disagree that remuneration has to be linked with performance but the issue is how the whole remuneration package is structured. In Hong Kong, like anywhere else, the salary package is made up of two parts: basic salary and bonus; but here basic salary is still a major part. Basic salary which reflects employees' capability, complexity of responsibilities, scope of leadership, years of experience, and the job market situation, among other factors, is what many employees have come to rely on. The Exchange proposal that says "a significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance" with emphasis on "significant proportion" deviates from the norm of the Hong Kong corporate culture and employees' expectation. Secondly, the nature of every job is different and some jobs are more suitable for a performance based package, such as sales and investments, than others. The company needs to have the flexibility of designing the remuneration packages based on actual circumstances and job requirements. The Chamber therefore disagrees to making this a CP. Furthermore, too much emphasis on the performance element might promote short-termism and may not yield long term positive effects to the company and shareholders.

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.

We believe that the majority of Hong Kong issuers are not ready for such an evaluation. To engage an external consulting firm to do this would mean extra financial burden; to do this internally may run the risk of this being reduced to a formality, so this issue would better be deferred to the future. The performance of the board is best reflected in the business of the company and all directors are accountable to shareholders already.

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.

We agree that a full board meeting should be held in this given circumstances but want to add that a board committee can be formed at this board meeting to which the board can delegate power for it to further discuss the matter and to monitor its progress and development and report back to the board frequent and as necessary. A full board meeting is not required every step of the 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.

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.

In law, attendance by an alternate is counted as attendance by the director him/herself and carries the same legal power, and hence it should be reflected as such. Having said that, we have no objection that the attendance by an alternate should be clearly marked and identified in the attendance report, so that readers can tell which attendance was by the director personally and which was by an alternate.

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.

- 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.

It is common for company directors to hold shares in other listed companies as personal investment. The number of shares held may be immaterial. If the exemption is removed, such directors will not be able to form quorum and vote on transactions between a listed issuer and another listed company even if he/she only holds 1 share in the latter company. We suggest the threshold be lowered to 1% which is the same as the 1% shareholding threshold for determining the independence of an INED

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.

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.

Our view is that it would be too redundant to have two separate meetings with INEDs and NEDs, respectively, since the spirit is to provide a discussion forum where executive directors are not present. So if the Exchange is proposing a CP for having two separate meetings, we would disagree. This could be an RBP. But if the Exchange is to propose a CP for having a meeting for INEDs and NEDs together, without the presence of EDs, we would agree to it.

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.

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.

Instead of publishing it on the HKEx website, we see more advantages of publishing it on the company's website. As stated before, we believe this would attract more investors to log on to the issuer's website as a main source of corporate information where other business information can be viewed and this should encourage the investors to develop a better understanding of the company that they invest in.

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.

A company board meets four times a year and at these meetings, management information would be provided to board members to update them of the latest company situation and the financials. We feel that this kind of quarterly updates is sufficient to keep directors informed of the state of the business and trend of development and would allow them to make proper response and follow up. If anything is worth the immediate attention of the board members or is price sensitive, the company would of course bring it to the attention of the board members and make proper disclosure as necessary under its general obligation. In normal circumstances, a company's state of affairs and financials would not change much on a month-to-month basis. To provide a monthly update would be to inundate directors with information that may not be of great value. We therefore do not think a CP of monthly management updates for board members is necessary and that quarterly updates would suffice.

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.

We agree to the proposal to remove the need for an issuer to publish a next day disclosure return immediately following the exercise of options by a director of a subsidiary for administrative efficiency. At the same time we would recommend that the issuer publish a next day return upon issuance of the new shares so that any change in the issued share capital of an issuer will be reported by a next day return.

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.

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.

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.

We feel that the word “appropriate” is good enough for the purpose. What is “adequate” coverage is hard to determine in advance. One never knows for sure if an insurance coverage is adequate or not before a claim arises.

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.

We do not have a straight yes or no to this question. We feel that whether shareholder approval is needed to appoint auditor depends on the circumstances as follows:

(a) if the auditor is removed by the shareholders, any replacement auditor will have to be approved by the shareholders; but

(b) if the auditor resigns on his own volition, the directors may appoint a replacement auditor who will hold office until the next annual general meeting.

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.

Paragraph 295 of the consultation paper states that NEDs and INEDs may be encouraged to attend if disclosure of attendance at general meetings was mandatory. Our thinking is that if the purpose of having a mandatory disclosure provision is to encourage attendance, then it is not necessary. There is already an existing CP for chairmen of the three key committees, i.e. audit, remuneration and nomination to attend general meetings, it is therefore not a must that other NEDs and INEDs to attend. For this reasoning, a mandatory disclosure of their attendance is not necessary either.

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.

We have issue with the word “arrange” which has a connotation that the chairmen of “any other committees” are at the disposal of the board chairman. We could agree to wordings like “invite” or “encourage”, and these committee chairmen can decide to attend or not based on their own circumstances. If they are not available, these committee chairmen can choose to appoint a replacement to attend on his/her behalf.

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.

The Chamber is in fact open to this proposal for auditors to be present at AGM and answer questions about the conduct of the audit and other related matters. But we consider that the auditors may have their own professional conduct requirements and compliance consideration, and may take a different view and choose not to attend. We’d rather not introduce a CP that might encounter difficulty in implementation.

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.

We agree to publishing an issuer's updated and consolidated version of their M&A or constitutional documents on its own website but not on the HKEx website at the same time. As said, we see more advantages of publishing the information on the issuer's website as this would attract more investors to log on to the issuer's website as a main source of corporate information where other business information can be viewed and this should encourage the investors to develop a better understanding of the company that they invest in.

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.

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.

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.

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.

In view of the increasing number of non-Hong Kong and international companies listed in our market, this requirement may pose certain practical challenge, and so we agree to its removal, but want to suggest that these companies appoint a Hong Kong contact that is familiar with the Stock Exchange rules and regulations so as to provide a contact point for the Exchange.

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.

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.

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.

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.

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.

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.

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.

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.

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.

We feel that this matter can be dealt with by written board resolution. If the appointment of directors can be by written board resolution, so should that of company secretaries.

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.

We do not see the absolute necessity of this proposal. The company secretary is responsible to the whole board and so the reporting should be to the whole board but not only to the Chairman or CEO. The board should also have the flexibility to designate a board member, or a senior executive such as the CFO or Head of Legal, for the company secretary to report to and this designated board member is accountable to the board for company secretarial matters.

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.

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.

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.

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.

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.

- End -