

15 April 2011

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12/F One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Dear Sir,

Re: Consultation Paper on review of the Code on Corporate Governance Practices and associated Listing Rules

We welcome the Exchange's proposals as stated in its 'Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules' (December 2010) in enhancing the corporate governance system of Hong Kong listed companies. We understand that the Exchange's proposals aim at improving the transparency and focusing on the determinants of the effectiveness of the Board including the Chairman, INEDs and NEDs and so forth. It is noted that the consultation proposals have raised the compliance requirements by either converting a number of the current recommended best practices (RBPs) to code provisions (CPs) in the Code on Corporate Governance Practices or introducing a number of new rules. Currently, listed companies can choose non-compliance of RBP requirements and they do not need to explain reasons of non-compliance to shareholders. If RBPs become CPs, listed companies are expected to comply with the code provisions. In case of non-compliance of CPs the management of listed companies must provide explanations to shareholders. This can increase the accountability and transparency to shareholders and, hence, promote/attract global investors to come to invest in Hong Kong.

We, however, are of the view that we should not create undue burden on the relatively smaller size companies listed on the Main Board given their resources constraint. The cost of compliance for these companies should be taken into consideration, and they should be given transitional periods to gradually adopt good practices. This would mean that while a good practice is a CP or Rule for the larger size companies, for instance, it may be a RBP for the smaller size companies, which in the future will have to gradually adopt it as a CP or Rule.

Our methodology, where appropriate, includes research studies, corporate governance codes/policies/articles/practices of other jurisdictions.

Enclosed please find our responses to the Questionnaire in respect of the Consultation Proposals. In addition, we also have comments and suggestions in the following issues:

1. Independent non-executive directors

We are of the view that the number INED positions an individual may hold could be limited to 5. The proposed number is in fact in line with CSRC's requirement in Mainland China. If an individual takes up too many INED positions, shareholders will have the following concerns:

- (a) sufficient time and effort put in when discharging his/her duties
- (b) whether the INED understands thoroughly the company's operations
- (c) conflict of interests if sitting on various boards of competing companies

However, this proposed number can be increased to 8-10 for a retired senior executive working full time as an INED.

For information, the term of office of an INED in Mainland China is 3 years. Renewal of the term of office is permitted, but it is limited to a maximum of 6 years.

In UK, Sir David Walker in his 'A review of corporate governance in UK banks and other financial industry entities – Final Recommendations' (26 November 2009) recommended that the minimum expected time commitment of 30-36 days for NEDs in major bank board should be included in the letters of appointment. He also suggested that a banking company can limit the capacity of an individual NED to take up directorships in other companies.

2. Board diversity

Board diversity refers to age, experience, expertise, gender, race and so forth. Hong Kong is seriously lack of gender diversity as women only holds 8.84% INED positions (11.46% directorships) in primary listed companies (as per David Webb's article 'The three wise monkeys of HK boards' dated 15 Feb 2011). In Germany, the Government Commission of the German Corporate Governance Code in May 2010 recommended more women for the supervisory boards and boards of directors. Mr. Klaus-Peter Müller, Chairman of the Government Commission of the German Corporate Governance Code said: "In the upcoming battle for the best talent, the improper consideration of women would not only be poor corporate governance, but would also be a grave disadvantage in global competition". (Press Release dated 27 May 2010 by Commission of the German Corporate Governance Code). In USA, the Council of Institutional Investors also supports a diverse board of directors. We propose to include a RBP in the CG Code recommending listed companies to increase the diversity of the boards of directors by such measures as appointing more women, incorporating global experiences, and inclusion of recruiting younger INEDs in succession plans.

3. Board committees

(a) Audit committee

Since AC has very important functions to perform (e.g. review of financial and other reporting, review of internal control and risk management, monitoring of internal and external audits etc.), minority shareholders especially rely on them to protect their interests in the listed companies. Currently, Chapter 3 of Main Board Listing Rules requires that a majority of the AC members must be INEDs.

The Klein (2002) empirical study on US listed companies suggested that 'audit committee structured to be more independent (of the CEO) is more effective in monitoring the corporate financial accounting process. Another study by Carcello and Neal (2003) suggested that 'audit committees whose members are more independent, have more governance expertise, more financial expertise, and own less of the company's stock, will be more likely to resist managerial attempts to dismiss an auditor following the issuance of a going-concern report'.

In order to better protect investors, we propose that all members in the committee should be comprised of INEDs. This is the practice adopted by companies listed on the NYSE in USA.

With regards to your consultation question Q48, we support your proposal by requiring audit committees to establish a whistle-blowing policy. However, we suggest that your proposal should be a Rule instead of a RBP to improve investor protection. Such a mechanism can alert senior management at an earlier stage to deal with malpractices/misconduct occurred within the company and hence can safeguard company's assets. Since rules are mandatory, all listed companies must comply with the requirements.

(b) Remuneration committee

We welcome the proposal to enhance the protection of investor interests by raising the CP requirement to a Rule requirement for the larger size companies. This means that every listed company must mandatorily set up a remuneration committee with majority INEDs as members and chaired by an INED. This will make sure that the remuneration packages of directors and senior management, which are being reviewed objectively, are fair and reasonable. Thus, investor interests are protected.

As per Paragraph 180 of the Consultation Paper, it is proposed that listed companies should conduct regular evaluations of the performance of their directors, as a recommended best practice. However, we propose that this should be a code provision instead of a recommended best practice (see our response in Q53) for the larger size companies in order to enhance accountability to shareholders. In this connection, we believe that it will be logical for the remuneration committee to review the board performance.

For the smaller size companies, they should be given the option of combining Remuneration Committee, Nomination Committee and Corporate Governance Committee as mentioned below into a more inclusive committee as a CP, taking into consideration the cost of compliance.

(c) Nomination committee

We support your proposal to raise the requirement of the establishment of a nomination committee from a RBP to a CP in the Code. However, this should apply to the larger size companies only. All such listed companies are expected to establish nomination committees. Once it is a code provision, shareholders will be informed of reasons if a company fails to have a nomination committee. With reference to the corporate governance policies of the Council of Institutional Investors, we propose that the terms of reference of the nomination committees should include age, experience, expertise, background, gender, race, ethnicity and culture. For better investor protection, it will be better to make nomination committee a Rule requirement for the larger size companies. Failure to comply with the Rule will constitute a breach of Listing Rules.

For the smaller size companies, they should be given the option of combining Remuneration Committee, Nomination Committee and Corporate Governance Committee as mentioned below into a more inclusive committee as a CP, taking into consideration the cost of compliance.

(d) Corporate governance committee

We support your proposal requiring every listed company to establish a corporate governance committee. However, we propose to make this requirement as a CP instead of a RBP for the larger size companies. If it is a CP, listed companies are expected to comply with such requirement. Non-compliance requires explanation to shareholders. This will enhance accountability of the management towards their shareholders.

For the smaller size companies, they should be given the option of combining Remuneration Committee, Nomination Committee and Corporate Governance Committee into a more inclusive committee as a CP, taking into consideration the cost of compliance.

(e) Risk Governance

As a result of the global financial tsunami since late 2008, more attention has been paid to the issue of risk management. In UK, Sir David Walker's report titled 'A review of corporate governance in UK banks and other financial industry entities – Final recommendations' (26 November 2009) has stressed that 'the obligation of the board in respect of risk should be to ensure that risks are promptly identified and assessed; that risks are effectively controlled; that

strategy is informed by and aligned with the board's risk appetite; and that a supportive risk culture is appropriately embedded so that all employees are alert to the wider impact on the whole organization of their actions and decisions'. Moreover, The UK CG Code (June 2010) has also emphasized that the board of directors should be responsible for ensuring their company to adopt a sound risk management system.

Also note that Singapore's CG Code has stated that 'the Board's role is to..... establish a framework of prudent and effective controls which enables risk to be assessed and managed.....'.

We, therefore, propose that the CG Code should include a new code provision for the larger size companies requiring their boards of directors to closely oversee and monitor the risk management of their companies by the establishment of a board risk committee (as recommended by Sir David Walker in his report) or a risk governance committee or a risk management committee at the board level. For the smaller size companies, this could be combined into the terms of reference of the Audit Committee.

4. Senior management remuneration

We agree with the proposal to disclose details of the remuneration of senior management, but this should apply to the larger size companies only. Clarification of the definition of senior management is required i.e. to provide details of senior management positions.

5. Auditors' independence

We agree with your proposal to revise E.1.2 such 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'.

Given the fact that auditors of listed companies are being appointed by controlling shareholders and their term of office is usually long, the minority shareholders are concerned with the independence of auditors. As per European Commission's Green Paper – Audit Policy: Lessons from the Crisis issued in October 2010, European Commission stated that "the mandatory rotation of audit firms – not just of audit partners – should be considered.....". We believe that now is the time for the Exchange to ponder the issue of auditors' independence by requiring listed companies to consider tender from different audit firms including the serving one (say every 5 years) in order to enhance auditors' independence and investor protection.

6. Internal audit function

It is noted that the consultation paper has not addressed the issue of internal audit function of listed companies. This is an important governance issue which helps to ensure effectiveness of the system of internal controls of listed companies. The Singapore's Code of Corporate Governance has stipulated that every listed company should establish an internal audit function. In Malaysia, it is mandatory for every listed company to establish an internal audit function and disclose the same in its annual reports. We propose that our CG Code should include a new code provision requiring the larger size listed companies to put in place an internal audit function. For the smaller size companies, this should be a RBP.

7. Corporate governance for sustainability

Corporate governance for sustainability is widely accepted and promoted internationally. The consultation paper has not addressed this important issue. The recent tsunami and nuclear crisis in Japan further raise concerns on both the social and environmental issues. A company takes responsibility in respect of the impact of its activities on the stakeholders (e.g. customers, employees, shareholders, community), and environment and matters of concern in the society in which it operates (e.g. environmental protection, health and safety and social welfare). We propose that HKEx should encourage listed companies, as a recommended best practice, to produce an integrated report incorporating their views on company's performance as well as social and environmental performance.

Should you require clarifications to our responses, please feel free to let us know. Please also find attached our response to the Questionnaire.
Yours faithfully,

cc: Mr. Charles Li, Chief Executive
Mr. Mark Dickens, Head of the Listing Division
Hong Kong Exchange and Clearing Limited

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.

N/A

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.

It is important to provide details to all directors the necessary duties expected from them when they manage the corporations as agents, irrespective of the fact that they are full-time or part-time.

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.

Directors, especially the new appointed ones should be given guidelines for discharging their duties properly, irrespective of whether they are from local or overseas.

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.

This is to ensure a director has to put in sufficient time and effort in discharging his duties as director of the company.

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.

Same as Q4. Besides, this is one measure of effectiveness of the individual NED.

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.

***This serves as an enhancement of accountability to shareholders.
Please also refer to Point (1) Independent non-executive directors of our covering letter.***

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.

***So that he/she can devote sufficient time and effort in the listed company's affairs.
Please also refer to Point (1) Independent non-executive directors of our covering letter.***

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.

This allows the nomination committee to make assessment on the NED annually and the NED can re-consider his position as to whether he can afford the time for the company. It is not only nomination committee, should include the board and all committees in which NEDs serve.

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.

By so doing, a NED knows his extent of commitment, in both time and effort, to the listed company before he finally accepts the appointment.

NOTE: Listed companies may choose not to comply with the RBPs. It is required to explain to the shareholders for non-compliance of CPs, but not for RBPs. This will enhance accountability and transparency to shareholders.

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.

This can alert the nomination committee of the listed company earlier to take actions e.g. to start looking for a new candidate.

Please also refer to the NOTE in Q9.

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.

By limiting number of INED positions, an individual will be able to devote more time and concentration on the affairs of the listed companies he serve.

In Mainland China, the number of INED positions is limited to 5 (please refer to point (1) Independent non-executive directors with regards to the reasons stated in our covering letter).

In USA, the National Association of Corporate Directors (1996) in its report on director professionalism recommended that the senior corporate executives and CEOs should hold no more than three outside directorships. In addition, the Corporate Governance Policies of the Council of Institutional Investors (2010) suggested that individuals with full-time jobs should not sit on more than two other boards.

Empirical evidence from Core et.al. (1999) and Fich and Shivdasani (2006) also suggested that busy directors (who simultaneously serve on three or more boards of public companies) would impair the board effectiveness.

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

Limit the INED positions to 5 – please refer to reasons stated in point 1 of our covering letter.

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.

Since a Rule is a mandatory requirement, this will ensure every listed company complies. It, hence, provides better investor protection. Non-compliance of such Rule constitutes a breach of the Listing Rules. However, if it is a CP, an explanation is necessary.

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.

It is important for directors to be kept updated of the ever changing CG practices, statutory and non-statutory regulations.

Please also refer to the NOTE in Q9.

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.

Same reason as in Q14

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.

Workshops and seminars - for updates and sharing of CG practices.

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.

This is line with the Mainland China requirement. For companies listed on NYSE, the majority of board members should be INEDs. In UK, at least half of the board comprises of INEDs.

NOTE: Rules are mandatory and hence all listed companies must comply with – this provides more objective opinion in the board and, hence, better protection to minority shareholders. It is necessary for the perception of independence as well.

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.

This allows time for listed companies to look for suitable candidates.

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.

Please also refer to the NOTE in Q9..

We propose that such resolution should be voted by independent shareholders only. This ensures the protection of the minority shareholders since most of the listed companies in Hong Kong are family-owned.

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.

***Companies must provide more information to shareholders before they vote to elect an INED at the general meetings.
Please also refer to the NOTE in Q9.***

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 ensures every listed company must have a remuneration committee (not the case currently). The remuneration packages of senior management will be reviewed regularly and objectively by RC to ensure they are fair and reasonable. Please also refer to the NOTE in Q9 and our comments in point 3(b) of our covering letter.

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.

This allows independent and objective review of senior management remuneration packages and strengthens not only the independence of such important issues but also perception of independence.

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.

Once the establishment of a remuneration committee becomes a Rule, it is logical to move the 'terms of reference for the RC' from Code to the Rules.

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.

This ensures transparency and hence accountability to shareholders.

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

This will allow time for the listed company to comply with the requirement.

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.

To ensure independent advice will be received from professionals/consultants in order to make a fair and reasonable decision on remuneration issues.

According to the corporate governance policies of the Council of Institutional Investors in USA, compensation committees should retain compensation consultants or consultant firms, which are independent of the listed companies, to provide independent advice on the compensation packages of directors and senior management.

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.

It is sensible to revise the CP B.1.3 and to re-number CP B.1.3 to CP B.1.2 as stated in the Consultation Paper . The revision makes it clearer in the new CP B.1.2 to accommodate both model A and model B which remuneration committees may adopt.

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.

This is a transparency issue. Shareholders have the right to know the reasons for disagreement. If a listed company does not comply with a CP, it needs to explain to their shareholders – hence, enhanced- accountability to shareholders.

Question 29. Do you agree that the term “performance-based” should be deleted from CP B.1.3(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.

In our response to Q53, we propose that the regular board evaluation should be a CP instead of a RBP. Hence, the term ‘performance-based’ should not be deleted from the current B.1.3(c).

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.

By so doing, it will enhance CG practices in Hong Kong. It is important for nomination committee to identify the qualified candidates, especially INEDs, to be appointed in the board and for succession planning purpose. Besides, a nomination committee has other important duties to perform as stated in Q33. Please also refer to the NOTE in Q9 and our comments in point 3(c) of our covering letter.

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.

To ensure independent judgement made by nomination committee.

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.

It is logical to upgrade 'NC's terms of reference' to a CP if nomination committee becomes a CP requirement. Please also refer to the NOTE in Q9.

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.

***Regular review is encouraged to incorporate changes in company policy/strategy, regulation changes and new market developments.
Please also refer to the NOTE in Q9.***

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.

This sounds logical and reasonable.

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.

Same as Q32.

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 ensures easy reference by the investing public.
Please also refer to the NOTE in Q9.***

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.

Same as Q32

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.

***To ensure they can receive independent advice from professionals/consultants in order to make a fair and reasonable decision.
Please also refer to the NOTE in Q9.***

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.

So that shareholders know about the details of the duties that are discharged by this committee.

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.

So that the board is kept informed of the issues addressed by the committee and can decide on the follow up actions for CG improvement.

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.

This is a good practice and it will enhance accountability and transparency to shareholders.

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.

This will enhance the CG system of listed companies. It is recommended to introduce it as a CP, so that if a company fails to perform the duties expected from this committee, explanation to shareholders are required – thus ensuring the accountability and transparency to shareholders. Please also refer to our comments in point 3(d) of our covering letter.

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.

Audit committee may take up duties as stated in the Consultation Proposal under paragraph 141(a),(c)&(e), while nomination committee may take up those duties as mentioned in paragraph 141(b) and (d).

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.

This will ensure independent judgement.

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 will ensure that the INEDs in the committee have sufficient knowledge of the operations of the listed 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.

Please refer to the NOTE in Q9.

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.

More frequent meetings and dialogues between auditors and audit committee are instrumental to improve auditors' independence.

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.

This is a good governance practice. This proposal can be introduced as a CP instead of a RBP.

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 wish to propose that larger size companies should further disclose the details of the remuneration of senior management. Please also refer to our comments in point 4 of our covering letter.

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 will enhance the transparency and accountability to shareholders.

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 is a senior person at the management level and he is in charge of the day-to-day operations of a listed company. Shareholders should be informed of his/her remuneration to ensure the compensation serves to improve his/her performance.

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.

Directors' remuneration is of great concern to shareholders. Non-compliance of the proposal (CP) requires management's explanations to shareholders. Shareholders will then be kept informed of the reasons of non-compliance.

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.

This will enhance the governance practices of Hong Kong listed companies. It helps to assess board effectiveness and hence ensures accountability to shareholders. However, we propose a CP instead of RBP.

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.

A physical meeting allows clarifications and explanations on the complex operational matters before they are put to vote. A written resolution cannot serve that purpose.

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.

It is now a common practice. It may be sometimes impracticable for directors to meet with each other at the same place. It is acceptable for them to hold meetings via electronic means, which must be stated in the company's articles of association.

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.

It seems reasonable.

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.

It is reasonable.

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.

This ensures transparency and accountability to shareholders.

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.

So long a director has any interest in a transaction, he should not vote. This ensures protection to shareholders.

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.

It is clearer. One can see the distinction between those who manage the company at board level and those who manage the daily operations of the company.

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.

It is important that the information directors received are accurate and clear. This imposes more responsibility on the chairman.

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.

Chairman is expected to provide a leadership role in the Board to achieve the board effectiveness. This will enhance good governance of a company.

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.

Chairman of every listed company is expected to assume responsibility to ensure the company has good governance. It is appropriate for the chairman to take the lead to set up policies/procedures for good CG practices. If the chairman fails to do this, explanations to shareholders are required. This will also enhance accountability.

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.

Refer to Q63

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.

***By so doing, the chairman can solicit diverse views and opinions separately from the INEDs and the NEDs on the company's affairs. This improves CG system of Hong Kong listed companies.
Please also refer to the NOTE in Q9.***

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.

Please also refer to the NOTE in Q9.

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.

Please also refer to the NOTE in Q9.

7. 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.

This ensures the accountability and transparency to shareholders. Shareholders will be informed of the reasons for removal of a director or supervisor.

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.

This ensures the accountability and transparency to shareholders.

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.

This ensures the accountability and transparency to shareholders. Shareholders will be kept informed of the details of any misconduct of the individuals in the announcements.

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.

No comments.

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.

Please refer to the NOTE in Q9.

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.

This provides better transparency to the investing public. The investing public can have access to the directors' information of all listed companies conveniently. Please also refer to the NOTE in Q9.

8. 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.

The regular updates on the company's performance received by directors can help them make better business decisions.

9. 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.

No comments.

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.

No comments.

10. 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.

This will enhance the accountability to shareholders.

11. 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.

Please refer to the NOTE in Q9.

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.

Same as Q78. Management knows the details of the insurance cover in case of legal actions are charged against directors.

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.

This enhances the accountability to shareholders. By so doing, shareholders will be informed of the reasons and material implications for their consideration before they vote at the general meetings.

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.

No comments

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.

No comments

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.

This will be better transparency as the proposed amendment also provides information on the number of shares held by those who abstained from voting at the general meetings.

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.

The Chairman should provide explanations to shareholders before the poll is being conducted.

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.

This helps to remind shareholders of their duty in the appointment of an auditor. This is a good practice.

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.

This is a good practice to remind shareholders of their duty in the event of removal of an auditor before the end of his term of office.

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.

This provides an opportunity to auditors in communicating with the company's shareholders about the problems they encountered during the term of the audit on the company.

D. Directors' Attendance at Meeting

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.

NEDs should make full use of the general meetings to better communicate with shareholders and to solicit and understand their views on the company's affairs. Please also refer to the NOTE in Q9.

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.

Please refer to the NOTE in Q9.

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.

This is a good practice which will enhance the transparency and accountability to shareholders.

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.

The proposal should cover all major committees apart from AC, RC and NC. If a shareholder raised any questions on e.g. corporate governance policies and practices, the chairman of the corporate governance committee will be the most appropriate person to answer these questions.

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.

Since auditors are responsible to shareholders who appoint them, they have to attend the AGMs and to answers shareholders' questions relating to the audit related issues.

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.

This will enhance the transparency and accountability to shareholders.

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.

It is important for the boards (as agents) to establish a policy on communication with the shareholders (owners of the companies). Shareholders should be informed of such policy including various means of communication in the corporate governance reports and on the companies' websites. This will enhance the accountability to shareholders.

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.

Shareholders should always be given an updated version of the company's M & A or constitutional documents. They should be able to access these documents via company's own website and HKEx website. This will enhance transparency and accountability to shareholders.

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.

Shareholders must be kept informed of the relevant procedures to nominate a candidate for election as a director. It is their rights. By uploading the said procedures on the company's website, this allows shareholders easy access to the information. This will enhance the transparency to shareholders.

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.

Suggest mandatory disclosure of any changes to the company's articles of association as it forms part of the contract between the company and the shareholders.

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.

It is much better to insert the proposed new rule on company secretary in Chapter 3 (which covers INEDs, audit committee etc.) instead of in current Chapter 8. The new Rule 3.28 clarifies what constitutes relevant experience.

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.

These professionals have the knowledge and expertise of and can ensure the compliance of the relevant statutory and non-statutory regulations.

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.

It provides guidance to an individual for assessing his/her suitability to the position.

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.

It is not necessary for the company secretary to be ordinarily resident in Hong Kong. The individual must be able to discharge the duties of a company secretary.

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.

Same equity treatment.

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.

In order to keep updated of the latest statutory and non-statutory regulations, company secretaries should regularly attend professional seminars.

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.

It seems to be in line with HKICS requirements on their members.

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.

This emphasizes the importance of company secretaries in ensuring good governance. Shareholders should better understand the roles of a company secretary.

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.

Same as Q105

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.

As an employee, the company secretary will be familiar with the company's affairs and understand his/her role in the operations of the company.

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.

This will enhance transparency to shareholders.

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.

Agree, a company secretary works closely with the board.

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.

This provides opportunity to a full discussion and clarification of issues among the board members before making a decision.

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.

A company secretary plays a number of roles in the corporate governance system of a company.

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.

This is a good practice by ensuring all directors of a company receive training regularly.

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.

No comments.

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.

This ensures the individual(s) can be contacted ultimately in case of emergency.

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.

This simplifies the reference to another appendix for compliance requirements.

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.

Yes, this ensures easy reference by the readers.

- End -