

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/cp201406.pdf>

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

1. Do you agree with our proposal to amend the title of Section C.2 of the Code to “Risk management and internal control”?

Yes

No

Please give reasons for your views.

The amended title will better reflect the content of the relevant section.

Aside from the reason, we noted that in the Consultation Paper Executive Summary, Page 1 Para 4(a) states “...emphasise that internal controls are an integrated part of risk management...”, whereas the heading of Para. 5 states “risk management as an integral part of internal control” some consistency would be recommended, although, we agree that it works either way, i.e. risk management is part of internal control and internal control is also part of risk management.

2. Do you agree with the proposed amendments to Principle C.2 to define the roles of the board and the management, and state that the management should provide assurance to the board on the effectiveness of the risk management systems? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

The proposed amendment provides a clearly defined responsibility, and set out below are additional suggestions for consideration:

The Principle C.2 about evaluating the “nature” and “extent” of risks the Board is willing to take is not clear. Suggest simplify as “... evaluating risks it is willing to take in achieving the issuer’s strategic objectives”.

Responsibility of management should go beyond providing “assurance to the Board on the effectiveness of the risk management system”. Management is actually responsible for (i) implementing the risk management system effectively; (ii) integrating the risk management process into day-to-day business activities; and (iii) timely reporting top risks to the Board.

3. Do you agree with our proposal to introduce an amended RBP (C.2.6) to provide that the board may disclose in the Corporate Governance Report that it has received assurance from management on the effectiveness of the issuer’s risk management and internal control systems? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

This is in line with principle of transparency for better corporate governance.

Further, to ensure meaningful disclosure, we would suggest the Exchange to consider issuing specific parameters for disclosure under the amended RBP (C.2.6).

4. Do you agree with the proposed amendments to CP C.2.1 to state that the board should oversee the issuer’s risk management and internal control systems on an ongoing basis? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

We agree to align with the requirements in other jurisdictions (pages 12-13 of the Consultation Paper).

5. Do you agree with our proposal to upgrade to a CP the existing RBP C.2.3, which sets out the matters that the board's annual review should consider?

Yes

No

Please give reasons for your views.

It improves the transparency of disclosure.

6. Do you agree with our proposal to upgrade to a CP the existing RBP C.2.4, which sets out the particular disclosures that issuers should make in their Corporate Governance Reports in relation to how they have complied with the internal control CPs during the reporting period?

Yes

No

Please give reasons for your views.

It improves the transparency of disclosure.

7. Do you agree with our proposal to amend the wording of proposed CP C.2.4 to simplify the requirements and remove ambiguous language, and to make clear that the risk management and internal control systems are designed to manage rather than eliminate risks? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

It improves clarity and supplements the board's acknowledgement.

8. In relation to proposed CP C.2.4, do you agree with our proposal to upgrade the existing recommendation that issuers disclose their procedures and internal controls for handling and disseminating inside information (Section S., paragraph (a)(ii)), and amend it to include the handling of “other regulatory compliance risks”?

Yes

No

Please give reasons for your views.

While we fully support the proposed upgrading of the relevant provision requiring issuers to disclose how they comply with the "inside information" regime, we do not believe that it should be extended to "other regulatory compliance risks" without more specific parameters to give more guidance, as it could be onerous and difficult to comply with.

9. Do you agree with our proposal to upgrade to Mandatory Disclosures the following existing Recommended Disclosures in relation to internal controls (Section S.):

- (a) whether the issuer has an internal audit function;
- (b) how often the risk management and internal control systems are reviewed, the period covered, and where an issuer has not conducted a review during the year, an explanation why not;
- (c) a statement that a review of the effectiveness of the risk management and internal control systems has been conducted and whether the issuer considers them effective and adequate; and
- (d) significant views or proposals put forward by the audit committee?

Yes

No

Please give reasons for your views.

It enhances corporate governance and improves disclosure.

10. Do you agree with our proposal to move the existing recommendation that issuers disclose details of any significant areas of concern (Section S., paragraph (a)(ix)) to a new RBP C.2.7, and to amend the provision to widen its application by removing the reference to areas of concern “which may affect shareholders”?

Yes

No

Please give reasons for your views.

While we agree and support the principle of enhanced transparency and disclosure, without a more definitive set of criteria for disclosure, it will be difficult to achieve meaningful disclosure across issuers.

11. Do you agree with our proposal to remove RBP C.2.5, which states that issuers should ensure their disclosures provide meaningful information and do not give a misleading impression?

Yes

No

Please give reasons for your views.

We agree that RBP C.2.5 is redundant.

12. Do you agree with our proposals to remove the recommendations that issuers include in their Corporate Governance Reports:

(a) an explanation of how the internal control system has been defined for them (Section S., paragraph (a)(i)); and

(b) the directors’ criteria for assessing the effectiveness of the internal control system (Section S., paragraph (a)(vii))?

Yes

No

Please give reasons for your views.

We agree that the disclosure requirements under paragraphs (a)(i) and (a)(vii) in Section S of Appendix 14 are ambiguous.

13. Do you agree with our proposal to upgrade RBP C.2.6 to a CP (re-numbered C.2.5) and amend it to state that an issuer should have an internal audit function, and issuers without an internal audit function should review the need for one on an annual basis and disclose the reasons for the absence of such function in the Corporate Governance Report? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

It enhances corporate governance.

14. Do you agree with our proposal to introduce new Notes to the proposed CP C.2.5 to clarify that:

(a) the role of the internal audit function is to carry out the analysis and independent appraisal of the adequacy and effectiveness of an issuer's risk management and internal control systems; and

(b) a group with multiple listed issuers may share group resources of the holding company to carry out the internal audit function for members of the group?

Yes

No

Is the intention of the proposed wording sufficiently clear? Please give reasons for your views.

The clarification note will provide clarity on role of internal audit across all issuers.

15. Do you agree with our proposal to amend the existing CP C.2.2 to state that the board's annual review should ensure the adequacy of resources, staff qualifications and experience, training programmes and budget of the issuer's internal audit function (in addition to its accounting and financial reporting functions)?

Yes

No

Please give reasons for your views.

Listed issuers' internal audit function is part of the governance framework and it is necessary for the board to ensure that the function has the right level of resources and is delivered by the right level and mix of staff.

16. Do you agree with our proposal to amend Principle C.3 in respect of audit committees and CP C.3.3 in respect of their terms of reference to incorporate “risk management” where appropriate?

Yes

No

Please give reasons for your views.

Agreed in principle for better corporate governance sake.

However, if the Board of the listed issuers has established a separate risk committee (or alike), the proposed amendment may not be appropriate and provision should be included along the line that if listed issuers have established a separate risk committee (or alike), oversight of risk management can be carved out from the terms of reference of the audit committee for so long it falls under the mandate of the risk committee (or alike).

17. Do you agree that the matter of establishing a separate board risk committee should be left to issuers to decide in accordance with their own circumstances?

Yes

No

Please give reasons for your views.

This gives flexibility to listed issuers.

18. What would be an appropriate period of time between the publication of the consultation conclusions and the implementation of the amendments set out in the Consultation Paper?

Six months

Nine months

12 months

Others (please specify:)

Please give reasons for your views.

It allows sufficient time for issuers to develop the implementation plan and line up necessary resources for supporting the new requirements.

- End -