

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.

We agree with the reasonings as set forth under paragraphs 32 to 34 of the Consultation Paper. We have member's views that the UK principal based approach is to be preferred, and implementation of the proposals should not go towards the US Sarbanes-Oxley based approach.

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.

We agree with the reasonings as set forth under paragraphs 32 to 34 of the Consultation Paper.

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.

We agree with the reasonings as set forth under paragraphs 36 to 50 of the Consultation Paper.

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 with the reasonings as set forth under paragraphs 57, 66 and 67 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.

We agree with the reasonings as set forth under paragraphs 56 and 58 to 65 of the Consultation Paper.

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.

We agree with the reasonings as set forth under paragraph 69 of the Consultation Paper.

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.

We agree with the reasonings as set forth under paragraph 70 of the Consultation Paper.

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.

We agree with the proposal to upgrade the existing recommendation that issuers should disclose within their CG Report their procedures and internal controls for handling and disseminating inside information (existing Section S, paragraph (a)(ii)). We share member’s concern with the new disclosure requirement under CP C.2.4(e) relating to “other regulatory compliance risks” on the basis that this is too general, ambiguous and unclear as to its meaning and scope of disclosure required. Please consider this aspect further for tighter language.

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.

We agree with the proposed upgrade as set forth under Q9 (a) to (c). We share member’s concern with Q9(d) on the basis that any significant views or proposals put forward by the audit committee would normally have been acted upon during the course of the year prior to the issue of the annual report, and disclosure of any such views or proposals within the annual report would not be meaningful to the shareholders and other stakeholders. Please consider this aspect further.

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.

The proposed amendment clarifies the disclosure requirements.

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 in all likelihood redundant and should be removed.

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.

The proposals clarify the disclosure requirements.

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.

We agree with the reasonings as set forth under paragraphs 79 to 86 of the Consultation Paper.

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.

We agree with the reasonings as set forth under paragraphs 80 and 88 of the Consultation Paper. We have member's view that (b) is especially important as there is need to share resources within such H-shares or PRC domestically owned enterprises with a group structure of listed 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.

We agree with the reasonings as set forth under paragraphs 80 and 88 of the Consultation Paper.

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.

We agree with the reasonings as set forth under paragraphs 94 to 101 of the Consultation Paper.

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.

We agree. As such, consequential amendments are required to CP C3.3. There is need to acknowledge that the duties of an audit committee in respect of internal control and risk management could be effectively discharged by a separate board risk committee. Otherwise, listed issuers will technically be in non-compliance with the Corporate Governance Code where they need to "explain" which is unsatisfactory. In fact, financial services regulators frequently require establishment of separate non-executive risk committee as part of best practice, and the Listing Rules should be aligned to, and take into consideration such convergence of global standards. A point in reference is the UK Corporate Governance Code, where it is stated that the audit committee shall “review the company’s internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company’s internal control and risk management systems.

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.

We will serve to promote the compliance culture to our members in line with market consensus, including as to timing of implementation of the proposals. However, please kindly consider providing sufficient time and education to SMEs in view of their resources, along with any practical compliance tools like checklists to promote the regulatory objectives.

- End -