

## 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.

This would highlight the need for a holistic system/approach to effectively assess, and put in place measures to effectively mitigate/prevent, the various risks; in particular, from our point of view, the risks of bribery, corruption, or other malpractice or abuse, that might involve directors as well as management and staff.

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.

It is essential to clearly set out the respective roles and responsibilities of the board and the management to ensure that each party will effectively exercise their duties. The proposed roles and duties of the board to oversee the design, implementation and monitoring of the risk management and internal control systems is particularly important. While the management should provide assurance to the board, the board should proactively exercise supervision, with independent review if necessary.

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.

That said, receiving assurance from the management should not be taken as relieving the board from its duty and accountability to ensure effectiveness of the systems.

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.

This is necessary to ensure timely response to and control measures for the changing environment and risks that may arise or come to the management/board's notice from time to time.

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.

This ensures that the board will at least look into essential matters of risk management and internal control systems, which would in turn help to ensure adequate risk management and internal control. A standard framework also facilitates the public/investors' assessment of the effectiveness of the issuers' risk management and internal control.

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.

The enhanced transparency allows the public/investors to assess the effectiveness of the issuers' risk management and internal control. In particular, good governance and internal control begins with a Code of Conduct/Ethics which governs, and provides the public/investors assurance of, the proper conduct and integrity of all personnel of the issuer from board directors to the frontline. It also forms the foundation to drive the integrity culture of the company. Moreover, relevant provisions of the Code also help to ensure compliance with anti-bribery laws. Hence, the essential provisions of an issuer's Code of Conduct/Ethics covering directors and staff (e.g. anti-bribery policy, rules on acceptance/offering of advantages and conflict of interest) should be one of the "main features" that should be disclosed.

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.

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.

Other than inside information, companies may face various compliance risks, such as risk of bribery. An effective internal control system should mitigate/prevent such regulatory compliance risks, and hence issuers should be recommended to disclose the relevant measures as well to provide the public/investors a comprehensive picture of the effectiveness of the issuers' internal control system.

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.

This ensures adequate transparency relating to the effectiveness of an issuer's risk management and internal control systems, which will not only facilitate public/investors' assessment, but will also encourage the issuers to put in place effective systems and/or improve the effectiveness of their systems.

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 widening of the RBP’s application should enhance transparency for shareholders and potential investors.

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.

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.

No strong view, as issuers adopting and disclosing different definitions and assessment criteria of their own may not provide adequate assurance to the public/investors of an objective assessment. In the long run, assessment of the effectiveness of internal control systems with reference to standards or criteria laid down by authoritative/professional institutes or bodies would be more desirable.

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.

An internal audit function is a very effective mechanism to help a company identify risks and control weaknesses, including those that give rise to corruption, before/after breaches occur, and put in place measures to reduce the risk of occurrence/re-occurrence. In the long run, the work of the internal audit function will help the issuer to build up robust systems against corruption, malpractice and other risks.

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 of role helps to clarify that the internal audit function's main duty is not only to conduct internal accounting audit, but review of the effectiveness of the issuer's risk management and internal control systems, and accordingly to appoint staff with suitable experience and focus to perform the function. For a group with multiple listed issuers, an internal audit function at the group level is even better placed to exercise an independent internal audit function over listed issuers under the group.

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.

Adequate resources, staff qualifications and experience, training programmes and budget are essential for the effective functioning and retention of the competent staff concerned.

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.

It follows from Question 1.

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.

No particular view

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.

Suggest to implement the amendments set out in the Consultation Paper not later than 2015.

- End -