

## 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.

Plain writing would make the rules more user-friendly.

In relation to Rule 13.51(2)(o): “where he has, in connection with the formation or management of any enterprise, company, partnership or unincorporated business enterprise or institution, been adjudged by a Court or arbitral body civilly liable for any fraud, breach of duty or other misconduct by him involving dishonesty, full particulars of the judgment”, suggest to change “unincorporated business enterprise or institution” to “unincorporated institution or business enterprise”, as the investing public would want to know, say, if a director is involved in a dishonesty case concerning any institution, whether it is a business institution, charitable institution or one of any other nature.

### 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.

The proposed MB Rule 3.08 is one of the basic practical requirements that may help ensure that the corporate governance requirements in the Listing Rules will be implemented by listed companies.

Regarding directors' duties, it is a fundamental principle that interested directors should abstain from the voting on a resolution and should not be counted towards the quorum for that resolution. A key provision remains to be fixed in the Listing Rules. We note the proposal to amend MB Rule 13.44 to exclude paragraph (3) of Note 1 to Appendix 3 which exempts a director from this requirement in certain situations. For example Note 1 allows issuers' articles to state that a director may vote on a board resolution for a proposed transaction with a company in which he is beneficially interested in no more than 5% of that company's issued shares or voting rights. The proposed MB Rule 13.44 provides as follows: "Subject to the exceptions set out in paragraphs (1), (2), (4) and (5) of Note 1 to Appendix 3, a director of the issuer shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting."

Paragraph (3) of Note 1 to Appendix 3 has been problematic because of its uncertainty in scope. In the past it could have resulted in connected transactions purportedly approved by directors including those appointed or nominated by a connected substantial shareholder in question. Such directors, if allowed to vote and be counted in quorum, would likely vote in favour of the connected transactions.

It is submitted that the issue might not have been entirely clarified by the proposed Rule 13.44. For instance, it is not entirely clear whether, in relation to a connected transaction between the listed issuer and its substantial shareholder, a director of the issuer who is also a director of (but without any beneficial shareholding in) the substantial shareholder group (excluding the issuer group) can vote. Without clear guidance from the exchange, some issuers may take the view that such a director, if he has nil beneficial shareholding in the substantial shareholder group (excluding the issuer group), can still vote and be counted in the quorum. It is therefore desirable that the exchange give clear guidance in this regard, to the effect that such a director, irrespective of whether he has any shareholding in the connected entity, should not vote at the relevant board meeting of the issuer or be counted in quorum. Moreover, it is submitted that MB Rules 14A.56(9) and 14A.59(18) should be amended to require that the names of abstaining directors be disclosed, as the investing public should be entitled to this important information in so far as corporate governance is concerned.

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.

See reasoning in Q2.

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.

The focus on directors' time commitments is in line with the practice in other jurisdictions. A review of the time that directors are required to spend (and have spent) to perform their responsibilities will help set the benchmarks that directors must meet in order to fulfil their duties. This should act as a reminder and encourage directors to devote sufficient time to manage and participate in the issuer's business, which in turn should hopefully reduce the issuer's instances of non-compliance with the Rules. Directors are already required under the existing rules to devote sufficient time and attention to the company's affairs, so the new proposals should not place any additional undue burden on them.

However, the proposal that the nomination committee should "regularly review the time required by a director to perform his responsibilities to the issuer and whether he is spending sufficient time as required" is difficult to implement in practice. Directors do not fill up "time sheets" as some professionals do and there is no objective yardstick in the proposal to determine whether the time spent by a director is adequate.

To support the nomination committee's supervisory function, as a general principle, it is submitted that "a director should disclose to the board his significant professional or other commitments upon appointment and should inform the board of any subsequent changes in a timely manner".

Question 5. Do you agree to include a new duty (CP A.5.2(f)) in the nomination committee's written terms of reference that it should review NEDs' annual confirmation that they have spent sufficient time on the issuer's business ?

Yes

No

Please give reasons for your views.

See reasoning in Q4.

Question 6. Do you agree to include a disclosure requirement in the Corporate Governance Report (paragraph L(d)(ii) of Appendix 14) that NEDs have made annual confirmation to the nomination committee that they have spent sufficient time on the issuer's business?

Yes

No

Please give reasons for your views.

See reasoning in Q4. Disclosure to shareholders should help keep increase directors' accountability.

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.

See reasoning in Q4. Directors are already required under the existing rules to devote sufficient time and attention to the company's affairs, so the new proposals should not place any additional undue burden on them.

Question 8. Do you agree to expanding CP A.5.3 (re-numbered CP A.6.3) to state that an NED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business?

Yes

No

Please give reasons for your views.

See reasoning in Q4. Directors are already required under the existing rules to devote sufficient time and attention to the company's affairs, so the new proposals should not place any additional undue burden on them.

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.

See reasoning in Q4.

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.

See reasoning in Q4.

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.

Generally agree with the need to impose a limit, although each issuer is different and HKEx should ensure that there is sufficient flexibility in the Rules to cater for the different circumstances of issuers and directors.

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

The suggested number is five, which is in line with the CSRC guidelines in the PRC. Since there are an increasing number of issuers which are listed both in HK and the PRC, the HKEx should consider harmonising the regulatory requirements with those in the PRC where appropriate to help reduce the burden on issuers to comply with different rules in different jurisdictions.

It would be desirable to have significant harmonisation of regulations between Hong Kong and Mainland China, to the extent practicable. Large PRC companies which are dual-listed in Hong Kong and the Mainland face a heavy compliance burden. For such companies, you have to consider the implications of any amendments to the rules from a regional perspective. Moreover, if you have a transaction in the region, any regulatory inconsistency is a headache to the managers of the deal.

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.

Every issuer is different, and the amount of time it takes for a director to adequately manage the affairs of a particular issuer will vary. Therefore, there may be circumstances where an INED can hold more than 5 directorships at the same time but is nevertheless able to devote sufficient time to each issuer's affairs (eg if the issuers' affairs are not particularly complex). Therefore, the HKEx should consider adopting an approach that is more flexible (ie a CP rather than a Rule) so that any deviation from the proposed limit (on the number of INED positions) can be explained (as per the "comply or explain" approach), rather than result in an immediate breach of the Rules. It is submitted that this flexibility is particularly important in HK, where the pool of good INEDs is relatively small.

## 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.

Generally agree with the requirement for continuous professional development to enhance corporate governance and reduce instances of non-compliance with the Rules. However, the approach and the training methods used should be flexible enough to cater for the needs of directors who do not necessarily reside in HK or who frequently require business travel.

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.

Eight hours appear to be a reasonable minimum amount of time for directors to refresh understanding and keep up with developments of regulatory requirements.

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.

\* attending/preparing for/facilitating/presenting at accredited conferences and seminars (including those provided by external legal counsel or professional bodies such as the Hong Kong Institute of Directors) on relevant topics  
\* accredited distance/on-line learning courses  
\* writing/reading relevant books, articles and other publications which may be accredited with appropriated points

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 proposal is in line with the practice in other jurisdictions. In particular, this would enhance regional consistency of the requirement (in particular with Mainland China's requirement). In general, regulatory consistency would make life easier for corporate conglomerates which have securities listed on both HKEx and another stock exchange in Mainland China (including A+H share companies and listed companies which may have a parent company or fellow subsidiary listed on a Mainland stock exchange). The number of such companies is on the rise. Parties involved in the maintenance of Hong Kong's financial infrastructure should note this trend and cater to this development.

The effectual function of INEDs is one of the fundamentals of good corporate governance for listed companies. As part of the reform of the corporate governance regime the HKEx may consider proposals to tackle the root of the issue - which is to enhance the true value of INEDs in HK. It has been observed by some commentators that many INEDs in HK only serve as rubber stamps to proposals put forward by the management and might not be truly independent in the first place. The HKEx may consider introducing new Rules which further promote the safeguard functions of INEDs.

However, a controlling shareholder and its board representatives should be allowed to effectively run the business of the company. Any changes in the regime should be logical and follow the principle of reciprocity.

There could be many ways to improve the financial infrastructure as regards the INED system. The requirement for INEDs is largely a creature of the listing rules as opposed to that of a listed issuer's constitutional documents. According, HKEx has the responsibility to ensure that the INED system established under the listing rules is generally regarded as fair and reasonable in respect of safeguarding the basic interests of the investing public and preventing power abuses by the management of a listed issuer. As to the criticism that INEDs in HK are not truly independent as they are appointed by the majority shareholders, especially where the listed issuer is family-run, there are many ways that the INED system may be modified. It is noted that the proposed new MB Rule 13.51D requires that the issuer must publish the procedures for shareholders to propose a person for election as a director on its website. This is a good proposal. Thinking along the line, the INED system may be modified by procedural improvements. By way of illustration only, we may consider an independent veto: an INED proposed for election or re-election by the board can be vetoed by a vote of shareholders, requisitioned by a group of shareholders having, say, at least 20% voting power in aggregate, with the requisitioning shareholders and any controlling shareholder and their respective associates abstaining; any INED proposed for election or re-election by a shareholders' requisition (say, with at least 20% voting power) can be vetoed by a vote of shareholders with the requisitioning shareholders and any controlling shareholders and their respective associates abstaining. Basically, this gives shareholders together having, say, 20% voting power the right to request that the appointment of an INED proposed by the majority shareholder be subjected to a special confirmatory vote (by the silent minority). In reality, the chance of a successful veto could be rare, if at all possible. An INED will only be ousted in the event there is a strong outcry for terminating his tenure. However, such a system would remind INEDs that they are not solely accountable to the person proposing their appointment.

There should be many ways to improve the INED system. It is hoped that, with further thoughts, the procedures underlying the INED system can be improved to better serve its purposes.

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.

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.

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.

### 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.

The vast majority of existing issuers comply with this requirement already, so the proposal should not result in any additional burden on them.

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.

The chairman takes on an important leadership role in the remuneration committee. If the overall aim of these proposals is to enhance the element of independence in determining directors' remuneration, then it is submitted that the committee (as represented by its chairman) should be seen to be independent as well.

Question 23. Do you agree with our proposal to move the requirement for issuers to have written terms of reference for the remuneration committee from the Code (CP B.1.1) to the Rules (Rule 3.26)?

Yes

No

Please give reasons for your views.

Question 24. Do you agree with our proposal to add a new Rule (Rule 3.27) requiring an issuer to make an announcement if it fails to meet the requirements of proposed Rules 3.25, 3.26 and 3.27?

Yes

No

Please give reasons for your views.

Question 25. Do you agree with our proposal that issuers that fail to meet Rules 3.25, 3.26 and 3.27 should have three months to rectify this?

Yes

No

Question 26. Do you agree that we should add “independent” to the professional advice made available to a remuneration committee (CP B.1.2, re-numbered CP B.1.1)?

Yes

No

Please give reasons for your views.

Question 27. Do you agree that, in order to accommodate Model B, we should revise CP B.1.3 (re-numbered CP B.1.2) as described in paragraph 117 of the Consultation Paper?

Yes

No

Please give reasons for your views.

Question 28. (i) Do you agree that where the board resolves to approve any remuneration with which the remuneration committee disagrees, the board should disclose the reasons for its resolution in its corporate governance report)? (ii) If your

answer is “yes”, do you agree that RBP B.1.8 should be revised and upgraded to a CP (re-numbered CP B.1.6).

(i)  Yes  No

(ii)  Yes  No

Please give reasons for your views.

It is submitted that the function and importance of the remuneration committee will be undermined if the board can simply disregard the committee's recommendations without the need to justify it to shareholders.

Question 29. Do you agree that the term “performance-based” should be deleted from CP B.1.2(c) (re-numbered CP B.1.2(b)) and revised as described in paragraph 118 of the Consultation Paper?

Yes

No

Please give reasons for your views.

## B. Nomination Committee

Question 30. Do you agree that RBP A.4.4 (establishment and composition of a nomination committee, re-numbered CP A.5.1) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

The nomination committee has an important task of choosing the right candidates to be appointed to the board and assessing their independence. This task is particularly important in the HK market, where good INEDs (who are truly independent) are difficult to find. The committee therefore plays an important role of making sure that the board is sufficiently independent and not only influenced by the views of connected controlling shareholders.

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.

It is submitted that the element of independence may be weakened if the chairman is not an INED.

Question 32. Do you agree that RBP A.4.5 (nomination committee's terms of reference, re-numbered CP A.5.2) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

Question 33. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should be performed at least once a year?

Yes

No

Please give reasons for your views.

A review of the structure, size and composition of the board should be encouraged as a good corporate governance practice; however, the stipulation that it should be performed at least once a year may be unduly burdensome for some issuers (especially since this does not appear to be required in other jurisdictions such as the UK or the PRC). It is submitted that this requirement should be a RBP rather than a CP.

Question 34. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should implement the issuer's corporate strategy?

Yes

No

Please give reasons for your views.

Question 35. Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

Question 36. Do you agree that the proposed CP (currently RBP A.4.6, re-numbered CP A.5.3) should state that issuers should include their nomination committee's terms of reference on the HKEx website?

Yes

No

Please give reasons for your views.

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.

It is submitted that the HKEx should provide guidance as to what constitutes "sufficient resources" if the provision is to be upgraded to be a CP. This will help issuers assess whether they have complied with the provision and explain any deviation if necessary.

Question 38. Do you agree that the proposed CP (currently RBP A.4.7, re-numbered CP A.5.4) should clarify that a nomination committee should be able to seek independent professional advice at the issuer's expense?

Yes

No

Please give reasons for your views.

C. Corporate Governance Committee

Question 39. Do you agree with the proposed terms of reference listed in paragraph 141 of the Consultation Paper?

Yes

No

Please give reasons and alternative suggestions.

We agree in principle with the proposed terms of reference, however, we submit that the relevant provision detailing these terms of reference should be a RBP rather than a CP. There are currently no requirements for a corporate governance committee in other jurisdictions like the UK and PRC (where many HK listed companies are also listed), and it is submitted that this new requirement, whilst a good corporate governance practice, might place an additional undue burden on them.

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.

See reasoning in Question 39. Again, we agree with this in principle, but consider that this should be a RBP only.

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.

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.

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.

See reasoning in Question 39. Again, we agree with this in principle, but consider that these additional duties on the existing committees should be RBPs only.

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 is consistent with the membership requirements for other board committees.

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.

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.

This requirement is in line with the practice in jurisdictions like the UK and Singapore. It is submitted that this is an important corporate governance measure, given the general lack of whistle-blowing legislation in this regard in HK.

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.

It is submitted that that the current requirement for the audit committee to meet with the external auditor at least once a year should be sufficient. In light of the likely additional burden on the audit committee, we respectfully ask the HKEx to elaborate on the added benefits at would be brought by these additional meetings.

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.

See reasoning in Question 46.

#### 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.

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 is consistent with the disclosure requirements regarding directors' remuneration.

Question 51. Do you agree with our proposal to amend Appendix 16 to require an issuer to disclose the CEO's remuneration in its annual report and by name?

Yes

No

Please give reasons for your views.

Question 52. Do you agree with our proposal to upgrade RBP B.1.6 to a CP (a significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance, re-numbered CP B.1.5)?

Yes

No

Please give reasons for your views.

This is in line with the practice in other jurisdictions. Furthermore, by aligning remuneration with corporate and individual performance, it would hopefully provide an incentive for directors to devote more time to the issuer's business to improve its performance for the benefit of the issuer and its shareholders.

## 5. Board Evaluation

Question 53. Do you agree with our proposal to add new RBP B.1.8 that issuers should conduct a regular evaluation of its own and individual directors' performance?

Yes

No

Please give reasons for your views.

This is in line with the practice in other jurisdictions. A regular evaluation would hopefully provide an incentive for directors to devote more time to the issuer's business to improve its performance for the benefit of the issuer and its shareholders.

## 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.

It is submitted that this requirement should be retained, due to the fact that in the HK market many directors are, or have ties to, the substantial shareholders of the issuer. A physical meeting (rather than a written resolution) would ensure that the matter is properly discussed and the relevant issues debated.

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.

We agree that these meetings can be achieved via electronic means, especially given that the directors of many overseas issuers (eg H-share issuers) do not necessarily reside in HK.

## 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.

We agree that only attendance in person or by electronic means at board meetings should be counted, because attendance at a "paper board meeting" does not allow a director to properly discuss the matter and debate the relevant issues with others on the board.

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.

This requirement does not impose any new/undue burden on directors (as they can still appoint an alternate to attend meetings on their behalf), but at the same time this information disclosed regarding attendance can help the board and shareholders assess each director's time commitments.

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.

See reasoning in Question 57.

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.

We agree with the proposal to revise Rule 13.44 to remove the exemption in question. However, we submit that this Rule will still remain problematic even if this proposal is accepted. In this regard, please see the reasoning in Q2.

**7. Chairman and Chief Executive Officer**

Question 60. Do you agree with our proposal to remove the words “at the board level” from Code Principle A.2 to clarify the division between management of the board and day-to-day management of an issuer’s business?

Yes

No

Please give reasons for your views.

Question 61. Do you agree with our proposal to amend CP A.2.3 to add “accurate” and “clear” to describe the information that the chairman should ensure directors receive?

Yes

No

Please give reasons for your views.

Question 62. Do you agree with our proposal to upgrade RBP A.2.4 to a CP to give greater emphasis to the chairman’s duty to provide leadership for the board, to ensure that the board works effectively and discharges its responsibilities, etc.?

Yes

No

Please give reasons for your views.

This is particularly important in the HK market where the duality of roles is common and the CEO/chairman of a listed company are often the same person. This proposal will help to highlight the responsibilities that a person needs to fulfil in his/her capacity as chairman.

Question 63. Do you agree with our proposal to upgrade RBP A.2.5 to a CP and amend it to state: “The chairman should take primary responsibility for ensuring that good corporate governance practices and procedures are established”?

Yes

No

Please give reasons for your views.

Question 64. Do you agree with our proposal to upgrade RBP A.2.6 to a CP to emphasise the chairman’s responsibility to encourage directors with different views to voice their concerns, allow sufficient time for discussion of issues and build consensus?

Yes

No

Please give reasons for your views.

Question 65. Do you agree with our proposal to upgrade RBP A.2.7 to a CP and amend it to state that the chairman should hold separate meetings with only INEDs and only NEDs at least once a year?

Yes

No

Please give reasons for your views.

We submit that this should be a RBP only, in particular, since this requirement is not stated in the relevant corporate governance codes of other comparable jurisdictions.

Question 66. Do you agree with our proposal to upgrade RBP A.2.8 to a CP to highlight the chairman's role to ensure effective communication between the board and shareholders?

Yes

No

Please give reasons for your views.

Question 67. Do you agree with our proposal to upgrade RBP A.2.9 to a CP to emphasise the chairman's role to enable NED contributions and constructive relations between EDs and NEDs?

Yes

No

Please give reasons for your views.

## 8. Notifying directorship change and disclosure of directors' information

Question 68. Do you agree that we should amend Rule 13.51(2) to require issuers to disclose the retirement or removal of a director or supervisor?

Yes

No

Please give reasons for your views.

Question 69. Do you agree that we should amend Rule 13.51(2) to apply to the appointment, resignation, re-designation, retirement or removal of a CEO (and not only to a director or supervisor)?

Yes

No

Please give reasons for your views.

Question 70. Do you agree that we should amend Rule 13.51(2)(o) to cover all civil judgments of fraud, breach of duty or other misconduct involving dishonesty?

Yes

No

Please give reasons for your views.

We submit that it is important for shareholders to have such information to assess the integrity and character of the directors in question so that they could make an informed decision on whether to re-elect such directors in the future.

Question 71. Do you agree that we should amend Rule 13.51B(3)(c) to clarify that the sanctions referred to in that Rule are those made against the issuer (and not those of other issuers)?

Yes

No

Please give reasons for your views.

Question 72. Do you agree with our proposal to upgrade RBP A.3.3 to a CP to ensure that directors' information is published on an issuer's website?

Yes

No

Please give reasons for your views.

Question 73. Do you agree with our proposed amendment to the CP (RBP A.3.3 upgraded) that directors' information should also be published on the HKEx website?

Yes

No

Please give reasons for your views.

We generally support this proposal. However, to make the information more useful and accessible to shareholders and other users alike, we suggest that all the relevant information relating to a particular director (eg info regarding his various directorships) should be incorporated into one single profile on the HKEx website.

## 9. Providing Management Accounts or Management Updates to the Board

Question 74. Do you agree that we should add CP C.1.2 stating issuers should provide board members with monthly updates as described in paragraph 240 of the Consultation Paper?

Yes

No

Please give reasons for your views.

This will hopefully help to ensure that any issues regarding the financial performance and position of the issuer will be dealt with timely. This will be particularly important since the participation of INEDs (who do not necessarily have day-to-day management of the issuer's business) will likely be increased as a result of the other proposals being put forward in the consultation.

**10. Next Day Disclosure for a Director Exercising an Option in the Issuer or the Issuer's Subsidiaries**

Question 75. Do you agree with the proposed amendment to Rule 13.25A(2)(a)(viii) and (ix) removing the need for issuers to publish a Next Day Disclosure Return following the exercise of options for shares in the issuer by a director of a subsidiary?

Yes

No

Please give reasons for your views.

This will help reduce the administrative burden on issuers in relation to disclosures.

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.

See reasoning in Question 75.

**11. Disclosing Long Term Basis on which an Issuer Generates or Preserves Business Value**

Question 77. Do you agree that we should introduce the proposed CP (CP C.1.4) as described in paragraph 250 of the Consultation Paper?

Yes

No

Please give reasons for your views.

We submit that this proposal should be introduced as a RBP only. This is because some smaller issuers may not necessarily have a well defined corporate strategy or long term business model.

## 12. Directors' Insurance

Question 78. Do you agree with our proposal to upgrade RBP A.1.9 (issuers should arrange appropriate insurance for directors) to a CP (re-numbered CP A.1.8)?

Yes

No

Please give reasons for your views.

Question 79. Do you agree with our proposal to add the words “adequate and general” to RBP A.1.9 (upgraded and re-numbered CP A.1.8)?

Yes

No

Please give reasons for your views.

## PART II: SHAREHOLDERS

### 1. Shareholders' General Meetings

#### A. Notice of Meeting and Bundling of Resolutions

Question 80. Do you agree with our proposal to amend CP E.1.1 to state that issuers should avoid “bundling” of resolutions and where they are “bundled” explain the reasons and material implications in the notice of meeting?

Yes

No

Please give reasons for your views.

B. Voting by Poll

Question 81. Do you agree with our proposal to amend Rule 13.39(4) to allow a chairman at a general meeting to exempt procedural and administrative matters described in paragraph 274 of the Consultation Paper from voting by poll?

Yes

No

Please give reasons for your views.

Question 82. Do you agree with the examples of procedural and administrative resolutions in paragraph 275 of the Consultation paper? Do you have any other examples to add?

Yes

No

Please give reasons for your views.

Question 83. Do you agree that our proposed amendments to Rule 13.39(5) clarify disclosure in poll results?

Yes

No

Please give reasons for your views.

Question 84. Do you agree with our proposal to amend CP E.2.1 to remove the words "at the commencement of the meeting" so that an issuer's chairman can explain the procedures for conducting a poll later during a general meeting?

Yes

No

Please give reasons for your views.

We generally agree with this proposal. However, for the purposes of clarity we suggest that the wording of CP E.2.1 be amended to the effect that the chairman can explain the procedures for conducting a poll at any point during a general meeting, but he/she must do so before voting takes place.

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 is in line with the practice in other comparable jurisdictions, and also the requirements for Hong Kong incorporated issuers as set out in the Companies Ordinance.

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.

See reasoning in Question 85.

Question 87. Do you agree that the new Rule 13.88 should require a circular for the removal of the auditor to shareholders containing any written representation from the auditor and allow the auditor to make written and/or verbal representation at the general meeting to remove him?

Yes

No

Please give reasons for your views.

D. Directors' Attendance at Meetings

Question 88. Do you agree with our proposal to upgrade RBP A.5.7 (NEDs' attendance at meetings) to a CP (re-numbered CP A.6.7)?

Yes

No

Please give reasons for your views.

We agree with the HKEx's proposal and consider this to be an important way to ensure that NEDs spend enough time on the issuer's business.

Question 89. Do you agree with our proposal to upgrade RBP A.5.8 (NEDs should make a positive contribution to the development of the issuer's strategy and policies) to a CP (re-numbered CP A.6.8)?

Yes

No

Please give reasons for your views.

Question 90. Do you agree with our proposal to introduce a new mandatory disclosure provision in Appendix 23 (re-numbered paragraph I(c) of Appendix 14) stating that issuer must disclose details of attendance at general meetings of each director by name?

Yes

No

Please give reasons for your views.

Question 91. Do you agree with our proposal that CP E.1.2 state the issuer's chairman should arrange for the chairman of "any other committees" to attend the annual general meeting?

Yes

No

Please give reasons for your views.

We submit that this amendment is necessary, especially in light of the proposed new RBP regarding the establishment of a corporate governance committee.

#### 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.

## 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.

There does not appear to be a similar requirement in other comparable jurisdictions. The HKEx should elaborate on the likely benefits as a result of these added disclosures.

## 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.

We submit that this should be introduced as a RBP only. Whilst increased communication between issuers and shareholders should be encouraged, there are at present sufficient rules which require issuers to communicate regularly with shareholders (in particular, requirements on interim/annual reports, publication of announcements/circulars and holding of annual general meetings etc). It is submitted that the requirement to establish a shareholder communication policy (introduced as a CP) in addition to these existing rules would be an undue burden on issuers without much added benefit 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.

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.

See reasoning in Question 93.

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.

This will hopefully assist shareholders in finding out more easily the changes that have been made to the issuer's articles during the year.

**PART III: COMPANY SECRETARY**

**1. Company Secretary's Qualifications, Experience and Training**

Question 98. Do you agree with our proposal to introduce a new Rule 3.28 on requirements for company secretaries' qualifications and experience?

Yes

No

Please give reasons for your views.

Question 99. Do you agree that the Exchange should consider as acceptable the list of qualifications for company secretaries set out in paragraph 345 of the Consultation Paper?

Yes

No

Please give reasons for your views.

Question 100. Do you agree that the Exchange should consider the list of items set out in paragraph 346 of the Consultation Paper when deciding whether a person has the relevant experience to perform company secretary functions?

Yes

No

Please give reasons for your views.

Question 101. Do you agree with our proposal to remove the requirement for company secretaries to be ordinarily resident in Hong Kong?

Yes

No

Please give reasons for your views.

We agree with the removal of this requirement, especially given the large of number of issuers which are not incorporated in HK, and the increasing number of PRC issuers listed in HK.

Question 102. Do you agree with our proposal to repeal Rule 19A.16 so that Mainland issuers' company secretaries would need to meet the same requirements as for other countries?

Yes

No

Please give reasons for your views.

Question 103. Do you agree with our proposal to add a Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year?

Yes

No

Please give reasons for your views.

Question 104. Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350 of the Consultation Paper?

Yes

No

Please give reasons for your views.

## 2. New Section in Code on Company Secretary

Question 105. Do you agree with our proposal to include a new section of the Code on company secretary?

Yes

No

Please give reasons for your views.

Question 106. Do you agree with the proposed principle as described in paragraph 362 of the Consultation Paper and set out in full in page 27 of Appendix II?

Yes

No

Please give reasons for your views.

Question 107. Do you agree with our proposed CP F.1.1 stating the company secretary should be an employee of the issuer and have knowledge of the issuer's day-to-day affairs?

Yes

No

Please give reasons for your views.

There are competent external providers of company secretarial services who can ensure that the necessary board procedures, rules and regulations are followed. Therefore, it is submitted that the company secretary does not necessarily need to be an employee of the issuer. Even if this proposal is adopted, it is submitted that it should be adopted as a RBP only.

Question 108. Do you agree with our proposal described in paragraph 364 of the Consultation Paper, that if an issuer employs an external service provider, it should disclose the identity of its issuer contact person?

Yes

No

Please give reasons for your views.

Question 109. Do you agree with our proposed CP F.1.2 stating that the selection, appointment or dismissal of the company secretary should be the subject of a board decision?

Yes

No

Please give reasons for your views.

Question 110. Do you agree with our proposed note to CP F.1.2 stating that the board decision to select, appoint or dismiss the company secretary should be made at a physical board meeting and not dealt with by written board resolution?

Yes

No

Please give reasons for your views.

It is submitted that this should be introduced as a RBP only.

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.

Question 112. Do you agree with our proposal to add CP F.1.5 stating that the company secretary should maintain a record of directors training?

Yes

No

Please give reasons for your views.

### **CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS**

#### **1. Definition of “Announcement” and “Announce”**

Question 113. Do you agree with our proposal to include a definition in the Rules for the terms “announcement” and “announce” as described in paragraph 371 of the Consultation Paper?

Yes

No

Please give reasons for your views.

## 2. Authorised Representatives' Contact Details

Question 114. Do you agree with our proposal to amend Rule 3.06(1) to add a reference to authorised representatives "mobile and other telephone numbers, email and correspondence addresses" and "any other contract details prescribed by the Exchange may prescribe from time to time"?

Yes

No

Please give reasons for your views.

## 3. Merging Corporate Governance Report Requirements into Appendix 14

Question 115. Do you agree with our proposal to merge Appendix 23 into Appendix 14 for ease of reference?

Yes

No

Please give reasons for your views.

Question 116. Do you agree with our proposal to streamline Appendix 23 and to make plain language amendments to it?

Yes

No

Please give reasons for your views.

- End -