

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.

Generally, we support the plainer writing amendments. However, it must be emphasised that such initiative should minimize ambiguities and uncertainties. In this connection, the wordings to be used must be specific and precise enough to achieve such purposes.

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.

We consider that as directors bear responsibility for not fulfilling their duties, it would be helpful for the Exchange to clarify its expectation in this regard. Having said that, we recognise that non-executive directors (including independent non-executive directors) might have difficulties in satisfying such requirements and accordingly, executive directors should use their best efforts to assist them.

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.

We consider that it would be helpful to provide more guidance to assist directors in meeting their duties in practice.

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.

Generally, we agree with the proposal that the nomination committee should regularly review whether sufficient time is spent by a director to perform his responsibilities. However, we do not agree to fix the number of hours which a director should spend in order to assess whether he has duly fulfilled his duties. We consider that the quality of time used and how much contribution he has made to the issuer are more important than how many hours he has nominally spent. Also, we consider that it would be very difficult to determine on a fair and just basis the exact time commitment expected from a director to carry out his duties as different directors have different level of experience and qualifications and roles in the issuer. We would suggest that assessment be based on various factors including (not an exhaustive list) his level of participation, number of meetings attended and the effort and contribution he has made in designing and implementing the business plans of the issuer etc.

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.

We consider that it would encourage NEDs to spend sufficient time on the issuer's business if such matter is monitored by the nomination committee.

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.

We consider that the shareholders should have a right to know whether the NEDs have spent sufficient time to manage the issuer's business.

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.

Generally, we agree with the proposal that a director should limit his other professional commitments for the purpose of giving sufficient time to meet his obligations. However, this should not be done by imposing a fixed number of other professional commitments which a director can take. The number of other professional commitments taken up by a director should only be one of the criteria in assessing whether he has spent sufficient time to meet his obligations. Also, we would suggest that such requirements be included in a note to the relevant rule instead of in the body of the rule.

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.

We consider that it would encourage an NED to spend sufficient time on the issuer's business if such matter is monitored by the nomination committee.

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.

As explained in our reply to Question 4, we do not agree to fix the number of hours which a director (including NED) should spend in order to assess whether he has duly fulfilled his duties. We consider that the quality of time used and how much contribution he has made to the issuer are more important than how many hours he has nominally spent. Also, we consider that it would be very difficult to determine on a fair and just basis the exact time commitment expected from a director to carry out his duties as different directors have different level of experience and qualifications and roles in the issuer. The number of hours spent should only be one of the assessment criteria.

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.

We consider that such timely disclosure would be useful to the issuer in assessing whether a director would still have sufficient time or would be able to increase his time commitment to manage the issuer's business so that the issuer could make the necessary rearrangement of work duties accordingly.

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.

Please refer to our reply to Question 7.

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

Not applicable.

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.

Not applicable.

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.

We agree that it is important for a director to keep himself updated about the latest developments in the relevant law and regulations so as to enhance his compliance with them.

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.

We agree with the proposal to set out the minimum number of hours required for the directors to attend training so that the directors can have a clear guidance as to the minimum expectation from them. Also, we agree that such proposed minimum CP requirement be less than the HKIOD requirement and that a director who meets the HKIOD requirement would also comply with the proposed CP requirement so as not to add extra compliance burden on the directors.

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.

We consider that when deciding which training methods are acceptable, the Exchange should adopt a very flexible approach and allow a wide range of methods including e-training. Having said that, we do not agree that such matter should be dealt with or prescribed in the Listing Rules. It requires careful consideration and we would suggest the Exchange to discuss the same with professional bodies such as the HKIOD before prescribing the relevant guidelines.

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.

Generally, we agree with the proposal that at least one-third of the board should be INEDs. However, we have concerns that some issuers might have difficulties in complying with such requirement in practice given that the pool of appropriate INEDs in Hong Kong might not be large enough to support such additional requirement. We would suggest that apart from the transitional period as described in paragraph 87, the Exchange should have a discretion to grant conditional waivers after the expiry of the transitional period to issuers who have justifiable difficulties or reasons for not being able to comply with such requirement temporarily.

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.

We consider that a grace period should be allowed to give sufficient time to issuers to comply with such new requirement. Please also refer to our reply to Question 17.

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.

We consider that it would be appropriate to give shareholders a chance to reconsider the independence of an INED who has served for more than nine years. Generally, we agree that independence may be more of a mental status that does not depend on the duration of service. In this connection, we would suggest that the INED seeking for re-election and the issuer should confirm to the shareholders respectively that he/it still considers himself/the INED independent. Also, we would suggest that the voting be done in annual general meetings instead of separate general meetings if possible to minimize the compliance burden and costs.

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.

We consider that the shareholders should be given sufficient information to make an informed decision.

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.

We consider that in order to determine the level of remuneration of executive directors and senior management on a more fair and reasonable basis, independent advice is important and such independence could be better achieved if the remuneration committee consists of a majority of INED members.

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.

We consider that independence of the remuneration committee could be better attained if it is chaired by an INED.

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.

We agree that the remuneration committee should have a guideline which explains clearly its authority and responsibilities to facilitate the carrying out of its duties.

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.

We agree that the shareholders should be informed accordingly if such requirements could not be satisfied.

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

Please give reasons for your views.

We agree that there should be a grace period allowed for issuers to satisfy the requirements. Also, the Exchange should have a discretion to extend such grace period (whether subject to conditions or not) after the expiry of the 3-month period if the issuer has justifiable difficulties or reasons for not being able to comply with such requirements temporarily.

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.

We consider that independent advice is important to assist a remuneration committee to perform its duties.

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.

We agree that issuers should have a choice to select between Model A and Model B.

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.

We consider that the shareholders should have a right to know about the disagreement between the board and remuneration committee in relation to remuneration and the underlying reasons causing such disagreement.

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.

We agree that the term should be removed from the CP to avoid any inconsistency with other parts of the Code.

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.

We consider that choosing the right members and having the appropriate composition for the board is very important to the success of an issuer and establishing a nomination committee would be very useful for such purposes.

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.

We consider that if the chairman is an INED, this would enhance the independence of the 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.

We agree that the nomination committee should have a guideline which explains clearly its authority and responsibilities to facilitate the carrying out of its duties.

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.

We agree that reviews to be conducted by the nomination committee should be done on a regular basis and at least once a year would seem to be appropriate.

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 complement the issuer's corporate strategy?

Yes

No

Please give reasons for your views.

We consider that that one of the major functions of the board is to determine and implement the issuer's corporate strategy and so it is appropriate for the nomination committee's review of the structure, size and composition of the board to complement such corporate strategy.

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.

We agree that the terms of reference should be made easily accessible by the shareholders/investors so that they could have a better understanding of the function and responsibilities of the nomination committee.

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.

As explained in Question 35, we agree that the terms of reference should be made easily accessible by shareholders/investors and it would be useful to establish a central repository to contain all issuers' nomination committee terms of reference for convenience purposes so that shareholders/investors do not have to visit the website of each issuer to access the information.

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.

We consider that providing sufficient resources and support are essential for the nomination committee to carry out its duties effectively and efficiently.

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.

As explained in our reply to Question 37, we consider that providing sufficient resources and support are essential for the nomination committee to carry out its duties effectively and efficiently. Accordingly, as one of the supportive measures, the committee should be allowed to seek independent professional advice at the issuer's expense when appropriate.

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 with the proposed terms of reference listed in paragraph 141. Also, in order to assist the committee in performing its duties more effectively and efficiently, we would suggest that it should be provided with sufficient resources and support such as allowing it to seek independent professional advice at the issuer's expense when appropriate.

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.

We consider that it would be useful for recording and following-up purposes if the committee(s) could produce an annual report to the board summarising matters such as the activities conducted and findings made, recommendations made to and communications with the board and what professional assistance has been obtained during the past financial year. In this connection, we would suggest that there should be a guideline specifying the matters to be included in the report.

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.

We consider that the shareholders should have a right to know about the activities conducted by and findings of the committee.

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.

We agree that more effort should be spent on promoting good corporate governance. Although we agree that good corporate governance is a duty for the whole board, we consider that it would be more efficient if certain board members are dedicated specifically to handle such matter. Having said that, we understand that some issuers might not have enough resources to establish such a committee and so we agree that an issuer should have the flexibility to expand the duties of an existing board committee or committee(s) to be in charge of corporate governance matters provided that the existing committee(s) would dedicate sufficient attention, time and resources to deal with such matters. Accordingly, we agree that the proposed establishment of a corporate governance committee should only be made as a recommendation.

Also, in order to facilitate issuers in promoting better corporate governance, we would suggest the Exchange to issue more guidelines and provide more recommendations from time to time so that directors could better understand what are expected from them.

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.

Please refer to our reply to Question 42.

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.

We consider that independence could be better achieved if the committee performing the proposed duties comprises a majority of INEDs.

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.

As corporate governance compliance is very much interrelated with the issuer's day-to-day operations, we consider that it would be very helpful if the committee could include one member who is an executive director or non-executive director with sufficient knowledge of the day-to-day operations of the issuer for the purposes of developing tailor-made and practical policies and procedures to cater for the issuer's own situation.

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.

We consider that constructive comments from employees would be beneficial to the issuer. Accordingly, we agree that there should be effective channels for them to raise concerns about any irregularities.

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.

We consider that if the audit committee could meet with the external auditor more frequently, this could assist the performance and progress of the audit to be discussed and the related issues to be dealt with in a more timely manner.

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.

Generally, we agree with the establishment of a whistleblowing policy as the management should be alarmed with any irregularities. Although whistleblowing policies might vary depending on the issuers' own circumstances, we would suggest the Exchange to issue guidelines and make suggestions in relation to the contents.

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 agree with the proposal to include as a Listing Rule provision that issuers should disclose senior management remuneration by band and that disclosure by name is only a recommendation so as to balance out between transparency to shareholders and privacy of senior management.

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.

We do not agree that sale commission should be subject to the remuneration disclosure requirements as such payment is usually directly relating to the sales generated by an individual and not the management role or performance of such individual. Proper policies and procedures should be implemented to ensure that sale commissions are paid out properly and fairly and to avoid any conflicts of interest issue.

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.

We consider that the remuneration disclosure requirements for the CEO should be the same as the directors as the CEO (who is not a director) usually plays a management role which is as important as the directors in the operation of an issuer and so the transparency level in this regard should be the same.

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.

Generally, we agree that a significant proportion of the executive directors' remuneration should be linked to the corporate and individual performance. Having said that, the performance-linked remuneration model should be designed to promote and encourage long-term growth and success of the issuer instead of short-term gains at the expense of long-term benefits. Also, there should be appropriate and practical policies and procedures to assess the performance of executive directors for the purpose of linking performance to remuneration.

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.

We agree that an issuer should conduct a regular evaluation of its own and individual directors' performance for the purposes of enhancing good corporate governance and linking performance to remuneration as explained in our reply to Question 52. Also, since this concept is new to Hong Kong listed issuers, it will be more appropriate to first introduce it as a 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.

We agree that an issuer should hold a board meeting to discuss resolutions on a material matter where a substantial shareholder or director has a conflict of interest as physical meeting would provide a more effective channel for the directors to express their views and understand other directors' views. We would also suggest that a physical board meeting be held when there is a dissenting view expressed by any director in relation to the subject matter.

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 consider that these are common means for communication.

- 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 have discussed in our reply to Question 55 the benefits of having physical board meetings and we consider that including note (a) would encourage directors to attend board meetings in person. Also, note (b) would be fairer to directors who are appointed part way during a financial year.

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.

We consider that the major purposes for encouraging the directors to attend board meetings by themselves are to enhance their understanding and participation in the issuer's affairs. If they attend the meetings by themselves, they can have more in-depth discussions of the affairs by expressing their views more publicly and better understanding other directors' views. This would be beneficial to their management of the issuer's business. By contrast, attendance by alternates might not be able to achieve such purposes.

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.

We consider that the proposal would encourage the directors to attend board meetings in person by themselves. Also, such information might serve as one of the criteria in assessing the performance of a director as discussed in our replies to Questions 52 and 53.

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 consider that the 5% threshold is a clear guideline as to what is meant by "material interest". Removing such provision may create ambiguity. If 5% is regarded as too high, the Exchange may consider reducing the percentage.

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.

We consider that the words "at the board level" confusing and unnecessary.

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.

We consider that ensuring the directors receive accurate and clear information is important for them to carry out their job duties properly and effectively.

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.

We consider that the role of the chairman is very important as he is the leader of the board responsible for giving directions. It is reasonable to upgrade such duty from a RBP to a CP to emphasize the significance of such a role.

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.

Generally, we agree to upgrade RBP A2.5 to a CP. However, if the proposals in relation to the establishment of corporate governance committee have been adopted, we would suggest that there should be a clear description of the respective roles of the chairman and the committee in relation to the establishment of good corporate governance practices and procedures.

Accordingly, we would suggest the following amendment:

*“The chairman should take primary responsibility **and give directions to and co-ordinate with the corporate governance committee (or if a corporate governance committee is not established, the committee(s) performing the relevant duties)** for ensuring that good corporate governance practices and procedures are established.”*

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.

We consider that such an approach would be beneficial as a whole as it would encourage the directors to contribute their expertise and talents more openly and issues could be more thoroughly discussed and considered before coming to conclusions.

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 agree that NEDs and INEDs may represent different shareholders' interests and so the chairman should hold separate meetings with them at least once a year to understand more about such interests.

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.

We consider that enhancing effective communication between the board and shareholders is a virtual part of good corporate governance and shareholders' protection.

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.

We consider that such an approach would be beneficial as a whole as it would encourage the NEDs to contribute their expertise and talents more openly and issues could be more thoroughly discussed and considered before coming to conclusions. However, we would suggest using the wording "*promote a culture of openness and constructive discussion*" instead of "*promote a culture of openness and debate*". The basic principle is that the board should try to maintain a rational and sensible atmosphere during meetings in order to work effectively and efficiently.

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.

We consider that the shareholders/investors should be notified with such information on a timely basis as it may have a significant impact on the issuer.

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.

We consider that the shareholders/investors should be notified with such information on a timely basis as it may have a significant impact on the issuer.

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 agree that the current drafting is too narrow and there should more transparent and wider disclosure.

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.

We agree that the Exchange should clarify the rule to avoid any misunderstanding.

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.

We agree that such information (which should be updated from time to time) should be made easily accessible by the shareholders.

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.

As explained in our reply to Question 72, we agree that such information should be made easily accessible by shareholders and it would also be useful to establish a central repository to contain all directors' information for convenience purposes so that shareholders do not have to visit the website of each issuer to access the information.

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.

Generally, we agree that issuers should provide board members with regular updates as it might help them to better perform their duties. However, we are not sure whether this should be done on a monthly basis as it might substantially increase the workload of NEDs and INEDs and the compliance burden of issuers. We would suggest a separate consultation be conducted in relation to this matter.

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.

As information in relation to the exercise of options by directors of the issuer's subsidiaries is already required to be disclosed in the next monthly return, we agree with the proposed amendment so as to remove any undue compliance burden on issuers.

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.

We agree with the proposed amendment to remove any undue compliance burden on issuers.

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 agree that it is good corporate governance for issuers to disclose such information. We would suggest issuers be required to highlight any changes to such information in their annual reports.

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.

We agree that it is in the interests of the issuer and its shareholders if the directors are appropriately and adequately covered by insurance for potential claims against them in the performance of their duties. Such protection might also attract more talents to become directors.

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.

Please refer to our reply to Question 78.

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.

We agree that if resolutions are "bundled", there is a possibility that the significance of a resolution would be undermined and it might result in such resolution not being carefully or adequately considered before arriving at a conclusion.

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.

We consider that the proposed amendment could facilitate general meetings to be conducted in a more efficient manner.

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.

We agree with the examples as we consider that such resolutions would be more practically and appropriately dealt with by a show of hands.

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.

We agree that the proposed amendments would clarify disclosure in poll results as information is required to be classified and presented in a clearer manner. However, we would suggest retaining the wording "*the total number of shares.*"

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 agree to provide more flexibility to the chairman in this connection.

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.

We consider that the shareholders should have a right to determine the appointment of the issuer's auditor as it is vital for their protection. Also, Hong Kong companies and overseas companies should be subject to the same shareholders' protection in this regard.

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.

Similarly, we consider that the shareholders should have a right to determine the removal of the issuer's auditor before the end of his term of office which is also vital for their protection.

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.

We consider that it is important for the shareholders to be provided with all the relevant information, such as the reasons for the proposed removal and representation from the auditor, so that they could make an informed decision after considering such information.

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 consider that such a provision could enhance the NEDs' participation in and understanding of the issuer's affairs. Also, we consider that it would be helpful for the NEDs to attend general meetings to understand shareholders' views and concerns so that they could better perform their duties.

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.

We consider that such a provision could facilitate more active and positive contribution of the expertise and skills by the NEDs. This would be beneficial to the issuer.

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.

We consider that such a provision would have a positive effect in encouraging attendance at general meetings by the directors.

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.

Generally, we agree that the issuer's chairman should arrange for the chairmen of "any other committees" to attend the annual general meeting as he considers appropriate. However, since the issuer may have established different committees from time to time (including the ad hoc ones) for various purposes, the issuer's chairman should ensure that the discussions to be conducted at the annual general meeting are relevant to the "any other committees" before arranging for the respective chairmen's attendance.

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.

We consider that arranging for the auditor to attend the issuer's annual general meeting to answer questions is a good shareholders' communication policy as it would provide a good opportunity for the shareholders to ask questions and raise concerns with the auditor face-to-face. Such a communication channel should be more effective than written communication.

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.

We consider that shareholders' rights are very important and the specified matters are some basic rights which the shareholders should be notified of explicitly. Accordingly, mandatory disclosure of such rights is reasonable and sensible.

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 consider that an effective shareholder communication policy can enhance shareholders' protection. In this connection, we would suggest the Code provision to specify what are the minimum matters which should be included in such a policy.

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.

We consider that the M&A (or other constitutional documents) is a very important document for the shareholders to understand their rights as it contains the issuer's rules for its own governance and so should be made easily accessible by the 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.

Generally, we agree that an issuer should notify the shareholders clearly of the election procedures for directors. However, such procedures are usually included in the M&A and so there would be a duplication if both documents are posted on the issuer's website. Accordingly, we would suggest the issuer to draw shareholders' attention to the relevant provisions contained in the M&A instead of posting separate procedures.

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.

As explained in our reply to Question 95, we consider the M&A as a very important document for the shareholders to understand their rights. Accordingly, the shareholders should be notified timely about the significant changes made in this document.

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.

We agree with the proposal as it would enhance flexibility and allow more overseas talents to take up the role. It is in line with the Exchange's goal to become a global listing venue.

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.

We understand that these are the qualifications commonly acceptable to Hong Kong issuers.

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.

Generally, we agree with the list of items but would suggest the wordings as follows:

*" (a) length of employment with the issuer and the other issuers **and the roles he/she plays / has played in such employment**"*

*"(b) familiarity with the Exchange Listing Rules **and other relevant law and regulations including (but not limited to) the Securities and Futures Ordinance, Companies Ordinance and The Codes on Takeovers and Mergers and Share Repurchases.**"*

The Exchange should consider all the factors in totality, in particular item (b), as we consider that it is important for a company secretary to have reasonable knowledge about the relevant law, rules and regulations in order to perform his job properly.

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 proposal as it would enhance flexibility and allow more overseas talents to take up the role. However, the company secretary must be able to discharge his job duties properly and be always contactable.

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.

Since it is proposed that the requirement for company secretaries to be ordinarily resident in Hong Kong be removed, Rule 19A.16 would then seem to be redundant.

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.

Generally, we agree that company secretaries should receive continuous training to keep themselves abreast with the latest developments in the relevant law and regulations. In this connection, the Exchange should issue guideline(s) to explain clearly what is regarded as "relevant professional training".

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.

Broadly, we agree with the proposed transitional arrangement but would like the Exchange to clarify the following:

(a) "*A person who was a company secretary*" - must the person be a company secretary of a listed company?

(b) For the various periods specified which the person was a company secretary - must the person be a company secretary for the whole period of time or is there a requirement for a minimum period of service?

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.

We consider that it would be helpful to promote awareness of the importance of the role of company secretary by including provisions which explain clearly the position and responsibilities of such a role.

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.

We consider that it would be helpful to promote awareness of the importance of the role of company secretary by including the proposed principle which provides an overview of the duties of such a role.

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.

Generally, we agree that the company secretary should have knowledge of the issuer's day-to-day affairs in order to perform his role effectively. However, we do not agree that he must be an employee of the issuer as it is irrelevant to the performance of his duties. For some issuers, the company secretary may be an employee of one of the group companies who looks after the company secretarial matters of the entire group.

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.

We consider that the proposal would facilitate the external service provider to perform his role as a company secretary more effectively and efficiently.

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.

As it is proposed that the company secretary would work closely with the board, in particular the chairman and/or chief executive officer and that there is a code provision which states that all directors should have access to the advice and services of the company secretary, it would be sensible for the board to decide the selection, appointment or dismissal of such a role.

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.

We do not consider that it is appropriate to mandate a physical board meeting to consider such matters as it would unduly increase the workload of directors.

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.

We consider that it would be more appropriate for the company secretary to report to the Chairman instead of the CEO.

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.

We consider that keeping proper records is a good corporate governance measure and the company secretary should be an appropriate person to handle this.

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.

Generally, we agree with the addition of the definition but would suggest the following wording:

"announcement" means announcement published under rule 2.07C and "announce" should be construed accordingly.

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.

We consider that the proposal would assist the Exchange to contact the issuer's authorised representatives more easily.

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.

For convenience and ease of reference purposes.

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.

Plainer and more easily understood wordings are always preferred.

- End -