

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.

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.

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 are fine with the proposal to refer to the Companies Registry. However, we note that HKIOD is not a statutory body and non-representative of the general public. We believe that it is improper to allow HKIOD powers to dictate duties of directors. To the extent that the existing guidelines from HKIOD are considered best practices, these should be embodied in the Listing Rules.

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.

We are not sure that "hours spent" is a good determinant of whether a person is discharging his/her duties. There is no way for the nomination committee to know for sure if adequate time has been spent. We prefer an obligation which is more objective such as attending no less than x% of the meetings of directors.

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.

This is necessarily subjective and cannot be effectively policed (see above).

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.

Would we expect any NED to give a declaration that they have not spent sufficient time on the issuer's business? Since there is no yardstick to determine what is sufficient time, this seems rather arbitrary and chances are that even NEDs that have spent minimal time will claim that he/she has spent sufficient time on the issuer's business. A preferred solution would be to ask each director to disclose his approximately time spent on the issuer's business and let the public determine whether this is adequate.

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.

We agree with the proposal to require the director to confirm that he will have sufficient time to meet his obligations. However, we see no co-relation between professional commitments and time spent on an issuer's business. For example, someone with few professional commitments but who is regularly out of the country may not have more time to spend on an issuer's business than someone who is a professional director and takes his role seriously. On the contrary, we would argue that a professional director has a reputation to protect and he is more likely to be diligent in discharging his/her duties than a "part-time" director with only one or two directorships.

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 answer to Question 6 above.

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.

We are not sure how a company is supposed to determine this. Also, what if the company is wrong in its estimate? Does it mean that a NED does not have to give additional time commitment? A NED should to give as much time as a company needs. If an expected time commitment is given, it should only be a guideline and not be seen as a regulatory requirement.

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.

A company should always be given the necessary information to determine whether a director is likely to be able to discharge his obligation to the company (in the belief of the nomination committee or the board of directors).

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.

See response to Question 7 above.

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

N/A

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.

N/A

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.

Many professional bodies now require their members to be subject to regular training. Given that the obligations of directors of listed companies are increasingly more onerous, it is not unfair to ask them to attend regular training sessions to update themselves. However, given that some directors may be regularly outside Hong Kong, one may have to look carefully how this is to be implemented.

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.

A full day of training in a year is not unduly onerous.

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.

Please see response to Question 14. It may be necessary for online training to be accepted for directors outside Hong Kong. Alternatively, it may be possible to designate part of this to non-structured training whereby credit is earned from self-reading.

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.

We can understand that a board whereby the majority are INEDs will be very different from a board majority controlled by executive directors. However, unless there is evidence to support the contention that more INEDs (as opposed to more diligent INEDs) will lead to better governance even if they do not form the majority of the board, we do not believe listed companies should be required to do so as a matter of regulatory requirements. We are particularly concerned that Hong Kong will increasingly become too expensive for SMEs to raise funds.

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.

See response to Question 17 above.

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.

There are very large numbers of listed companies which are majority controlled by a single group of shareholders. This requirement is more likely to give minority shareholders a say without unduly burdening the company.

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.

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.

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

There seems to be little point in pushing the company to set up the remuneration committee just to comply with the time limit. Shareholders should be informed that the company does not have a remuneration committee and make appropriate decision whether the company has appropriate corporate governance but there does not appear to be any point in doing it just for the sake of fulfilling the rule. Perhaps a better option might be to require the company to make periodic announcements until this is fulfilled.

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.

One would have considered that most professionals owe their fiduciary duties to the company, not any particular director. The risk of adding “independent” is that it could be a calling card for several professionals to be appointed in relation to the same matter (one purportedly to be acting only for the INEDs) and these professionals are not able to speak with a common voice. Which professional should the directors listen to?

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 do not believe that either Model “A” or Model “B” is right for all companies. Therefore, it is better for companies to make their own choices and for their investors to determine whether to invest in such companies.

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.

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.

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.

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.

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.

No. This is meaningless.

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.

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.

Please see response to Question 26 above.

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 believe that the whole Board should take responsibility for this task and not left to a body of mostly independent directors. However, we have no objection to the formation of a committee to do this as RPP simply because it is probably more effective to do this in small groups.

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.

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.

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.

See response to Question 39 above.

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.

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.

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.

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.

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.

This is personal information which does not appear to be relevant to the performance of a company.

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 too difficult to implement as there is substantial grey area as to how remuneration is linked. Should it be linked to short term performance, long term performance, etc? This is best left to remuneration committee to decide.

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.

However, we wonder whether this should be wrapped up as part of the duties of the nomination committee.

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 note that open informal discussions could have been held among directors before formal resolutions are circulated. Hence, there might be situation where there would not be a need for physical meetings to be held. For tax reasons, we have come across directors being advised not to participate in a formal board meeting from where they were then based. If the requirement is that these directors must attend the meeting physically or by tele-conference, it might actually reduce the attendance level of the directors.

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.

Helps to encourage more directors to attend.

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.

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.

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.

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.

While 5% threshold may not be appropriate, one of the problems about the term “materiality” is that it is difficult to implement and does not have a common meaning. At least the 5% threshold provides a bright line test within which where the company can easily calculate.

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.

The words seem to confuse more than help. We think a general principle that there should be a clear division of responsibilities is sufficient.

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.

These words are easy to mention but very difficult to apply in practice. Who determine what is “accurate” or “clear”?

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.

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.

This should be left to the individual discretion of the chairman.

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 fear that the Chairmen might feel particularly burdened and do not wish to take on the role as he will have to confirm that this is complied with but there is no yardstick to determine if it has or not.

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.

This should be left to the discretion of the Chairman on how he want to run the board.

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.

Greater transparency but not necessarily more burdensome.

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.

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.

So long as investors can assess the information on the issuer's website, no point in duplicating this 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.

Shouldn't this be left to the directors to determine what information they get?

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.

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.

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.

Long term business models are notoriously inaccurate. Such a disclosure, if it is too generic has no value and if it is too specific might result in greater misunderstanding.

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.

Such insurance protects both the directors and shareholders (against errant 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.

We are concerned about potential liabilities with the use of those words.

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.

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.

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.

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.

Too onerous for "comply and explain". We already have a separate disclosure about number of meetings to be attended.

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.

Too onerous for "comply and explain".

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.

Transparency.

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.

Is this not the responsibility of an issuer rather than the Chairman?

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.

See response to Question 91 above.

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.

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.

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.

No need to publish on HKEx website.

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.

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.

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.

However, the list should be non-exhaustive. We believe there should be flexibility in determining who should be acceptable on a "case-by-case" basis as well.

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.

Inconsistent with HKEx becoming a listing venue for overseas companies.

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.

We think this should only apply if the company secretary is not already a member of the professional bodies set out in Para.345 as these individuals would have already been subject to training requirements of their professional bodies.

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.

See response to Question 103 above.

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.

It helps to focus the issuer's mind as to the responsibilities of the company secretary.

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 is a lack of good company secretaries in Hong Kong. This will limit the use of professional advisers. Small listed companies may not have a need for a full-time company secretary.

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.

External service provider should have the reporting lines sorted out anyway. The new section already says that the company secretary reports to the Board.

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.

See response to Question 54 above.

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.

They should report to all directors.

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 -