From: KC
Sent: Saturday, March 05, 2011 1:36 PM
To: response
Subject: Re: CP on CG Review

Dear Sirs,

Attached are my response to the Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules.

I am a retired merchant banker and have acted as INEDs for a good number of listed issuers since 1993. I have witnessed the progress made by the Stock Exchange and the issuers on corporate governance practices over these years and wish that my experience will help.

Yours faithfully,
KC Wong

Response to the Consultation Paper on review of the Code on Corporate Governance Practices and associated listing rules (the "Consultation Paper")

The following are my responses and views to the Consultation Questions, as they are numbered in the Consultation Paper. Not all of the Consultation Questions are answered. Those that are not answered indicate that I do not have an opinion on the relevant question. If abbreviations are used, they are the same as those defined in the Consultation Paper.

2	Agreed. Most directors became directors as a recognition of their seniority in their management role. Few notice the change in legal and regulatory requirements.
3	Agreed. Reason same as 2 above.
4	The amount of time required is probably the easy part. The requirement to review whether a director has spent the time required is difficult, if not impractical.
5	Agreed. Although an audit by the nomination committee is impractical. It should at least apply some pressure to the NEDs.
6	Agreed. Reason same as 5 above.
7	No. Prefer confirmation to nomination committee.
8	Agreed.
9	Agreed. Most NEDs come to Board and committee meetings totally unprepared. Meeting time perhaps only accounts for less than 25% of the time required. Expected total time commitment should be clearly set out which include meeting and preparation time.
10	Agreed. Other significant commitment would certainly affect the NED's time commitment to the issuer.
11	This is a difficult question to answer. I retired in 1993 and have since then taken up NED roles with a number of issuers. The maximum number was 6 at the same time (now has only one because of the increased burden of being a NED!). My estimate is that if I were to do nothing else and work almost full time as NEDs, 12 is the limit. It is public knowledge that some "popular" NEDs who are also working full time are taking up over 10 NED roles! So the key question is how much time one can afford to spend rather than how many board he is sitting on.
14	Agreed. Most NEDs do not possess sufficient knowledge to be a director of a public listed company.
15	Agreed.
16	Should be loosely defined. I find most of the courses offered by many professional institutions (the legal & accounting bodies, HKIOD, universities, etc.) too academic, too basic, or conducted by junior practitioners (most of those taught in the course can be learnt via the internet!). If possible, tailored made in-house training by the issuers' legal advisers will be more useful because different NEDs have different backgrounds and require different training.
17.	No. A certain percentage has no meaning. Some boards are large, some are small, and bear no relationship to the size of the issuer. Another important distinction of our market is that most issuers are still "controlled" companies. Practically the controlling shareholders will not tolerate a board "controlled" by "outsiders.
19	No. I am totally against the argument that the length of service impairs one's

	independence. What about the length of time that the controlling shareholder befriend the INED before he is appointed?
20	No. You will find standardized content in these circulars which will be of no practical use to shareholders.
21	Agreed. Give it stronger backing.
22	No strong opinion. A majority of INEDs is suffice.
23	Agreed. See 21 above.
24	Agreed. See 21 above.
25	Agreed. See 21 above.
26	Agreed, but the professional advice here is mostly about remuneration matters. It is rare for expert pay consultants to be “not independent” anyway.
27	Agreed. A necessity to make this change effective.
28	Agreed. See 27 above.
29	This is confusing. My understanding is that the original B.1.3(c) refers to the part of the pay which is “performance-based”, ie. the variable portion, rather than the whole package.
30	No. Most locally listed issuers are “controlled” companies. The concept of using a nomination committee to weaken the management’s influence on board composition may work well overseas but not here.
32	No. See 31 above.
39	Agreed.
40	Agreed. As a matter of principle, all board committees should submit their reports, at least annually.
41	No. Requirement to publish will just discourage inclusion of sensitive matters in the report, and weakens its usefulness to the board.
42	Agreed. But it should remain a RBP.
43	Probably not. Corporate governance is a very wide topic. None of the other committees should bear this extra burden.
44	No. Corporate governance is as much an executive matters as it is for the INEDs.
45	See 44 above.
46	Agreed. Good assistance to the audit committee’s ability to uncover improper actions.
47	No. Meaningless to count the number of meetings. Effective audit committees will meet with the auditors as and when required.
48	Agreed. Find it useful.
49	The point is that avoidance of disclosure can easily be achieved by not including an employee as “senior management”. A more effective approach to avoid excessive pay is the compulsory disclosure, by name, of the 5 (or any other number) highest paid employees (including directors) and a breakdown of the different components of their pay.
50	See 49 above.
51	No. Not every issuer has a CEO. Comment on 49 should cover the issue.
52	No. Directors’ remuneration structure is a matter for the Board, subject to the review of the Remuneration Committee. Different director may have different roles to play (some may focus on short term financial performance, some may focus on

	internal control, some may focus on long term strategy), and they should be rewarded accordingly. No general pay structure should apply to all.
53	Yes. But I think that most local issuers are not mature enough to do that. Evaluation of individual director is routinely performed but it is mostly done on the basis of their managerial performance (as opposed to their Board performance). Evaluation of the entire Board's performance is a rarity here.
54	No. My experience is that for responsible directors, circulating a written resolution makes no difference to a physical meeting. Strong objection can always be raised or a physical meeting can strongly be requested if the need arises to discuss the matter face to face. On the other hand, many "conflict of interests" situation can be quite trivial and the compulsory requirement to hold a physical meeting is a waste of Board resources.
55	Yes. Rather obvious.
56	Attendance by telephone is as good as attendance in person.
57	No. What is the point of having an alternate?
58	Yes. A fair requirement.
59	Yes. Agree with the logic stated.
60	Yes. Better wording.
61	I prefer "accurate, reliable and adequate".
62	Yes.
63	No. I do not agree that the chairman should necessary be the one assigned this duty personally. Theoretically the whole Board is responsible. And for the issuer of which I serve as an INED, we have another director specifically assigned that duty. Therefore I think it should be taken out altogether.
64	Yes.
65	No. I think it should be left with the chairman. He will naturally do so if it is necessary.
66	Yes.
67	Yes.
68	Yes. Logical to include these circumstances.
69	Yes. CEO being a crucial member.
70	Yes. For the sake of completeness.
71	Yes. Agree with the logic provided.
72	Yes. Useful information.
73	Yes. Handy.
74	No. Different Boards have different forms of segregation of duties between Board and management. For those that adopt the more American style, the Board is rather remote from the normal operating activities, and there are pros and cons of having such an arrangement. It is up to each individual issuer to choose its won Board/management relationship and, accordingly, the appropriate amount of information the Board wishes to receive periodically.
77	No. Information on an issuer's business model and strategies should already have been included in the chairman's statement and/or the management's analysis. I do not see any benefit to put this as a CP. Those issuers who fail or unwilling to disclose such information will only give generic descriptions which will provide no practical assistance to readers.

78	No. It is a matter between the issuer and its directors. I do not see why an issuer's corporate governance practices are impaired if its directors collectively resolve that insurance is not necessary.
80	Yes. Agreed with the logic.
85	No. Typically the argument on the continual engagement of the auditor happens at the beginning or during the audit process. If an issuer is then required to convene a general meeting to remove and appoint auditor, it will almost certainly result in a delay in the announcement of the results. As an alternative measure to improve governance, I would suggest that the continual appointment of the new auditor be approved in the next available general meeting and that the outgoing auditor be given appropriate opportunity to make representation to the shareholders.
86	No. See 85 above
87	See 85 above.
88	Yes. Active participation in Board and general meetings is naturally their job.
89	No. I think it is rather meaningless to single out NEDs. Under our unitary board system, all the directors are responsible for those matters reserved for the board, which also without exception include development of the issuer's strategies nd policies.
90	No. Unlike board meetings, general meetings can be attended by all shareholders. Attendance is no secret. Furthermore, for issuers with a large board, it is normally for certain directors to be absent (or we should say that there is no point in asking ALL of them to attend).
91	No. For certain issuers, board committees may be formed entirely for internal operating purposes (such as ethics, purchasing, investments, etc.) and there is no special reason to ask each of the chairmen to attend compulsorily.
92	Yes. It is common practice anyway.
93	Yes. Improve shareholders' right.
94	No. I think the basic rights of shareholders to communicate with the issuer are already provided in other CPs and legislations. Some issuers are more active in this area than others, for good or bad reasons. I see no point in forcing an issuer to have a "policy". It will result in those uninterested issuers adopting boilerplate policy.
95	Yes. Although there are other ways to search for an issuer's constitutional documents. This provision will provide handy help.
96	No. Should have already included in its constitutional documents which are covered in 95 above. No need to single this particular section.
97	Yes. Provide useful information.
98	Agreed.
99	Agreed. Most appropriate qualifications included.
100	Agreed. Capture most other exceptions.
101	Agreed. Local residency is no longer an appropriate requirement for our market. Even for "local" issuers, many have already moved their base of operations to China and the company secretary may not need to reside in Hong Kong to effectively conduct his work.
102	In fact all types of issuers should have the same requirements.
103	I think only those who are not qualified under paragraph 345 should have a CPD requirement. Members of professional bodies are already subject to relevant CPD

	requirements.
104	There should be no transitional arrangement for those who do not qualified under paragraph 345.
105	Yes. The importance of company secretary justifies that.
106	I think 352(c) should be revised to take out “Board policy”. The compliance of board policies is a much wider issue and not the company secretary’s job.
107	Yes. Same reason as 105.
108	In principle I do not agree with the idea of using an “external service provider” as an issuer’s company secretary.
109	No. Although I agree that the company secretary is an important employee. But it is over the top to make his appointment or dismissal a Board matter compulsorily.
110	See 109 above.
111	No. Should leave it to the issuer. For example, some issuer may have an in-house counsel also occupying a board seat and the company secretary may be more effective reporting to him.
112	Although I agree with the idea, I do not think this type of procedural duties should be included in CP.
115	Agreed. Strange to have 2 such related subject split under different appendices.