

CORPORATE GOVERNANCE CODE AND RULE AMENDMENTS

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Corporate Governance Code & Rule Amendments



Structure of our Corporate Governance Framework

- Rules - Mandatory
- Code – Code Provisions – Comply or explain
 - New Section in Code “What is comply or explain”
- Recommended Best Practices

SUBSTANTIVE CHANGES



PART I: DIRECTORS



PART II: SHAREHOLDERS



PART III: COMPANY SECRETARY

SUBSTANTIVE CHANGES



PART I: DIRECTORS

1. Directors' duties and time commitments
2. INEDs
3. Training
4. Board committees
5. Remuneration of directors, CE and senior management
6. Board meetings
7. Directors and CE's information
8. Monthly management updates
9. Next Day Disclosure for a director exercising an option in the issuer or the issuer's subsidiaries
10. Board evaluation

SUBSTANTIVE CHANGES

PART I: DIRECTORS



1. Directors' duties and time commitments

Rule changes

MB R 3.08

- Expanded Rule 3.08
 - ❖ Requires directors to take an active interest in the issuer's affairs – attending formal meetings alone insufficient
 - ❖ Failure to discharge duties may attract sanction by the Exchange or civil/criminal liability in law
- Provide guidance to directors in a Note to the Rule
 - ❖ Company Registry's "A Guide on Directors' Duties"
 - ❖ HKIoD's "Guidelines for Directors" & "Guide for INEDs"

SUBSTANTIVE CHANGES

PART I: DIRECTORS



1. Directors' duties and time commitments

Code changes

New Principle for the Board (A.1)

- The Board should regularly review the contribution from a director to perform his responsibilities to the issuer, and whether he is spending sufficient time as required

New CP (A.6.6) (upgraded from RBP)

- Director to disclose to the issuer of any change to their significant commitments in a timely manner

SUBSTANTIVE CHANGES

PART I: DIRECTORS



2. INEDs

Rule changes

New Main Board R 3.10A - upgraded from RBP A.3.2

- INEDs to form 1/3 of the board
- Must comply by 31 December 2012

CP A.4.3 - upgraded from RBP A.4.3

- Shareholders to vote on a separate resolution to retain an INED who has served 9 years

SUBSTANTIVE CHANGES

PART I: DIRECTORS



3. Training

CP A.6.5 - upgraded from RBP A.5.5

- Training for directors
- New Note: directors to provide training record to issuer

New Mandatory Disclosure in CG Report (I.(i))

- How each director, by name, complied with CP A.6.5

SUBSTANTIVE CHANGES

PART I: DIRECTORS



4. Board committees

Remuneration committee

- ✚ **New MB R 3.25 to 3.27 (Upgraded from CPs)**
 - Establishment
 - Composition
 - Terms of reference
 - 3 months to rectify breach

SUBSTANTIVE CHANGES

PART I: DIRECTORS



4. Board committees

Remuneration committee

✚ Revised CP B.1.3 (re-numbered CP B.1.2)

➤ Two models:

- ❖ Committee determines remuneration of EDs and senior management
- ❖ Board retains authority, committee acts as advisor

✚ New Paragraph L(d)(i) of Appendix 14

➤ Mandatory disclosure in CG Report of model adopted by issuer

SUBSTANTIVE CHANGES

PART I: DIRECTORS



4. Board committees

Nomination committee

- ✚ **RBPs A.4.4 to A.4.7 upgraded to CPs (re-numbered CPs A.5.1 to A.5.4)**
 - Establishment
 - Composition – majority INEDs, chairman may be board chairman or an INED
 - Terms of reference

SUBSTANTIVE CHANGES

PART I: DIRECTORS



4. Board committees

Corporate governance function

New CPs

- Board responsibility or may delegate (CP D.3.2)
- Terms of reference (CP D.3.1)

SUBSTANTIVE CHANGES

PART I: DIRECTORS



4. Board committees

Audit committee

✚ Revised CP C.3.3(e)(i)

- Audit committee to meet with external auditors at least twice a year rather than the current one

✚ Upgraded RBP C.3.7 to CP

- Arrangements in place for employees to raise concerns about issuer's financial reporting, internal control, etc.

✚ New RBP C.3.8

- “Whistleblowing” policy

SUBSTANTIVE CHANGES

PART I: DIRECTORS



5. Remuneration of directors, CE and senior management

Revised Paragraph 24 of Appendix 16

- Disclosure of CE's remuneration (if he is not a director)

New CP

- Disclosure of senior management's remuneration by band (CP B.1.5)

SUBSTANTIVE CHANGES

PART I: DIRECTORS



6. Board meetings

- ✚ **New Notes to Paragraph I(c) in Appendix 14 (Mandatory disclosure of directors' attendance at board and general meetings)**
 - Attendance of board meetings by a director in person, or by electronic means such as telephonic or video-conferencing all count towards the director's attendance
 - If a director is appointed part way during a financial year, his attendance should be stated by reference to the number of board meetings held during his tenure

SUBSTANTIVE CHANGES

PART I: DIRECTORS



6. Board meetings

- ✚ New Paragraph I(d) of Appendix 14 (Mandatory disclosure of directors' attendance at board or committee meetings)**
 - An alternate director's attendance at board or committee meetings should not be considered attendance by the director himself
 - An issuer must 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

SUBSTANTIVE CHANGES

PART I: DIRECTORS



6. Board meetings

- ✚ MB R 13.44 revised to exclude an exception under Note 1(3) of Appendix 3
 - Removed 5% threshold for voting on a resolution in which a director has an interest

SUBSTANTIVE CHANGES

PART I: DIRECTORS



7. Directors' and CEs' information

MB R 13.51

- A director/supervisor's removal or retirement
- CE to disclose same information as a director if he is not a director

MB R 13.51(2)(o)

- Broadened to cover all civil judgments of fraud, breach of duty or other misconduct involving dishonesty

SUBSTANTIVE CHANGES

PART I: DIRECTORS



7. Directors' and CEs' information

- ✚ **Upgraded RBP A.3.3 to a CP A.3.2 and revised wording**
 - Updated directors' information to be maintained on the issuer and the HKExnews websites

SUBSTANTIVE CHANGES

PART I: DIRECTORS



7. Directors' and CEs' information

✚ MB R 13.51B(3)(c)

- Revised Rule to clarify that the Rule is to exempt an issuer from making a further announcement following its receipt of public sanction. If a person is a director of both Issuer A and Issuer B, the public sanction he receives relating to Issuer A should be published in an announcement by Issuer B, and vice versa (current Rule 13.51(2))

SUBSTANTIVE CHANGES

PART I: DIRECTORS



8. Monthly management updates

New CP (C.1.2)

- Providing monthly management accounts or management updates to all board members

SUBSTANTIVE CHANGES

PART I: DIRECTORS



9. Next Day Disclosure

Revised MB R 13.25A(2)(a)(viii) and (ix)

- To remove the need for issuers to publish a Next Day Disclosure return following the exercise of an option for shares in the issuer by a director of its subsidiaries

Revised MB R 13.25A(2)(b)(i) and (ii)

- Options for shares in the issuer exercised by a director of its subsidiaries only trigger an announcement if the change in its share capital, individually or when aggregated with other events, is 5% or more since its last Monthly Return

SUBSTANTIVE CHANGES

PART I: DIRECTORS



10. Board evaluation

New RBP B.1.9

- Recommending the board to conduct regular evaluation of its performance

SUBSTANTIVE CHANGES



PART II: SHAREHOLDERS

1. **General meetings – notice and bundling**
2. **Voting by poll**
3. **Shareholders' approval to appoint and remove auditors**
4. **Auditors attendance at AGM**
5. **Communication with shareholders**

SUBSTANTIVE CHANGES

PART II: SHAREHOLDERS



1. General meetings

Revise CP E.1.1

- Issuers should avoid “bundling” resolutions unless the resolutions are interdependent and linked so as to form one significant proposal

SUBSTANTIVE CHANGES

PART II: SHAREHOLDERS



2. Voting by poll

MB R 13.39(4)

- Exception for procedural and administrative matters

MB R 13.39(5)

- Rule revised to clarify disclosure in poll results - current Rule does not require announcement to separately disclose due to the restrictions of the Rules how many shares need to be abstained from voting

SUBSTANTIVE CHANGES

PART II: SHAREHOLDERS



2. Voting by poll

CP E.2.1

- Currently states that the Chairman should ensure that an explanation is provided of the detailed procedure for conducting a poll at the commencement of a general meeting
- Revised to remove “commencement of the meeting”

SUBSTANTIVE CHANGES

PART II: SHAREHOLDERS



3. Shareholders' approval to appoint and remove auditors

New MB R 13.88

- Require shareholders' approval to appoint an auditor
- For removal of an auditor before the end of his term of office, the proposed new Rule will require the issuer to send a circular to shareholders, containing any written representation from the auditor and the auditor must be allowed to make a written and/or verbal representation at the general meeting to remove him

SUBSTANTIVE CHANGES

PART II: SHAREHOLDERS



4. Auditors' attendance at AGM

Revised CP E.1.2

- Management should ensure the external auditor attends the AGM to answer questions about the conduct of the audit, the preparation and content of the auditors' report, the accounting policies and auditor independence

SUBSTANTIVE CHANGES

PART II: SHAREHOLDERS



5. Communication with shareholders

Constitutional documents -

New MB R 13.90

- Require an issuer to publish its constitutional documents (memorandum and articles of association) on its own website and on HKExnews website on a continuous basis

Paragraph P of Appendix 14

- Mandatory disclosure on any significant changes to the issuer's articles of association in the issuer's Corporate Governance Report (Previously only Recommended Disclosure)

SUBSTANTIVE CHANGES

PART II: SHAREHOLDERS



5. Communication with shareholders

New MB R 13.51D

- Publishing procedures for shareholders to propose a person for election as a director on the issuer's website continuously

New CP E.1.4

- Issuers should establish a shareholder communication policy which is regularly reviewed by the board to ensure its effectiveness

SUBSTANTIVE CHANGES



PART III: COMPANY SECRETARY

1. Qualifications, experience and training
2. New section in Corporate Governance Code

SUBSTANTIVE CHANGES

PART III: COMPANY SECRETARY



1. Qualifications, experience and training

Move MB R 8.17 to MB R 3.28

- Current requirements on company secretaries are in Chapter 8 which primarily governs qualification for listing of equity securities. It does not specify a continuous obligation to comply with the requirements
- Remove the requirement for a company secretary to be ordinarily resident in Hong Kong

SUBSTANTIVE CHANGES

PART III: COMPANY SECRETARY



1. Qualifications, experience and training

Repeal MB R 19A.16

- Company secretaries of Mainland issuers would need to meet the same requirements as for all other issuers

New MB R 3.29

- Company secretary to undertake 15 hours of training
- Implementation timetable

SUBSTANTIVE CHANGES

PART III: COMPANY SECRETARY



2. New section in Corporate Governance Code

- ✚ Should be an employee with knowledge of issuer's affairs
- ✚ Disclosure of issuer contact person, if company secretary is an external service provider
- ✚ Selection, appointment and dismissal should be the subject of board decision, at a physical board meeting (i.e. no written resolution)
- ✚ Should report to chairman and/or chief executive

AREAS NOT REVIEWED



 **C.2 Internal Controls**

 **C.3 Audit Committee**

IMPLEMENTATION DATE



1 January 2012

- Rules (those that do not impose an administrative burden on issuers)

1 April 2012

- Revised Code
- Rules (those related to the revised Code and those that require issuers to act)

31 December 2012

- Issuers must comply with the requirement that INEDs represent at least one-third of the board

THANK YOU