



The Stock Exchange of Hong Kong Limited
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Our Ref: MD20101217023

17 December 2010

To: Main Board Listed Issuers (Attn: Authorised Representatives)
GEM Listed Issuers (Attn: Authorised Representatives)
Market practitioners

Dear Sirs,

Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules

We have today published a Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules (the “**Consultation Paper**”).

The principal objective of our review is to promote a higher level of corporate governance among issuers. The Consultation Paper seeks views on proposals to:

- promote some of the Code Provisions (“CPs”) in the Code to Rules;
- upgrade majority of the Recommended Best Practices (“RBPs”) to CPs;
- introduce some new Listing Rules, CPs and RBPs; and
- amend certain corporate governance related Listing Rules.

We also propose to merge Appendix 23 into Appendix 14 and make minor stylistic or plain writing amendments to the Code and the Rules.

We strongly recommend that you consider the Consultation Paper carefully because there are detailed issues that may be of direct relevance to you. The attached Executive Summary is only an outline of certain issues discussed in the full Consultation Paper and may not include issues that potentially affect your company or about which you may have views.

The Consultation Paper is available on the HKE website at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp2010124.pdf>. We invite written comments on the proposed changes. These can be made using one of the methods set out in the Consultation Paper. We have also published a consultation questionnaire available at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp2010124q.doc>.

The consultation period will close on 18 March 2011.

Yours faithfully
For and on behalf of
The Stock Exchange of Hong Kong Limited

[Signed]

Mark Dickens JP
Head of Listing

香港交易及結算所有限公司
Hong Kong Exchanges and Clearing Limited

EXECUTIVE SUMMARY

1. This paper proposes changes to the Code on Corporate Governance Practices (the “**Code**”), as well as amendments to the Rules Governing the Listing of Securities (the “**Rules**”). Our principal objective is to promote the development of a higher level of corporate governance among issuers, the importance of which was highlighted in the recent financial crisis. Other major markets and international financial centres have already implemented, or are currently implementing, reforms on corporate governance. The changes that we propose are generally in line with international best practice.
2. Under the proposals, a small number of Code Provisions (“**CP**”) have been promoted to Rules because of their importance. Most issuers have been complying with these CPs since their introduction and the requirements do not impose a greater burden on them. A majority of the proposals upgrade Recommended Best Practices (“**RBP**”) to CPs. Issuers continue to have the flexibility to comply with the CPs. If issuers decide not to adopt a CP, they must explain the reasons for the decision in their corporate governance report. For RBPs, issuers are encouraged, but not required, to state whether they have adopted them.
3. The principal aim of the amendments is to encourage better accountability of issuers and directors. In summary, the review includes the following measures:
 - (a) improve transparency by bolstering requirements for disclosure and communication with shareholders;
 - (b) enhance the quality of directors and company secretaries by requiring training;
 - (c) require greater involvement in issuers’ board committees by INEDs;
 - (d) recognise company secretaries’ contribution to corporate governance and define their role and function; and
 - (e) place emphasis on the leadership role of the chairman of the board in corporate governance matters.

Directors’ duties and time commitments

4. To strengthen the accountability of directors, we propose to expand the Rules on directors’ duties, provide guidance to directors, and revise the Code to recommend greater disclosure of time commitments by directors, particularly independent non-executive directors (“**INEDs**”). We recommend that a director should keep the issuer informed of his other professional commitments, limit those commitments and acknowledge to the issuer on appointment that he will have sufficient time to meet his obligations to it. The letter of appointment should state the time commitment expected of the director. A non-executive director (“**NED**”)¹ should confirm annually to the nomination committee that he has spent adequate time on the issuer’s business.

¹ Unless otherwise stated, the term non-executive director includes independent non-executive director.

The nomination committee should review the NEDs' confirmations and provide details of the review in the corporate governance report.

5. We seek market views on whether we should introduce a Rule or a CP to limit the number of INED positions an individual may hold and if so, what is the maximum number. If there is strong support for such an approach, we would conduct a further consultation on this specific topic before making any Rule change.

Directors' training and independent non-executive directors

6. To better equip directors, we propose to upgrade the RBP on directors' training to a CP, and further propose that directors should spend eight hours training on developments in law, regulations and topics relevant to their duties.
7. We consider that increasing the number of INEDs, will promote better corporate governance. We propose to introduce a rule that INEDs should constitute one third of an issuer's board. Since 21% of issuers do not currently meet this proposed requirement, we propose a transitional period for issuers to comply.

Board committees

8. Remuneration committee: we propose requiring issuers to set up a remuneration committee with specific terms of reference. The committee's chairman and a majority of the members must be INEDs. There are two models for how the remuneration committee discharges its responsibilities. In the first, the board delegates to the committee authority to determine the remuneration of executive directors and senior management. In the second model, the board retains that authority, with the committee taking an advisory role. For the second model, there may be a risk (or perceived risk) that the board has a conflict of interest in approving its own remuneration. We therefore seek views on whether any material disagreements between the board and the committee on executive directors' remuneration should be disclosed in the corporate governance report.
9. Nomination committee: we propose to upgrade to CPs the current RBPs relating to the committee's establishment, composition and terms of reference.
10. Corporate governance committee: we propose to introduce a CP that sets out the duties of a corporate governance committee. We propose that establishing a corporate governance committee should be an RBP because some issuers may have resource constraints and would prefer an existing board committee to carry out the functions of a corporate governance committee. The composition of the committee will be a new CP.
11. Audit committee: should meet with the issuer's external auditor at least twice a year and should (as an RBP) set up a "whistleblowing" policy enabling employees and those who deal with the issuer to raise concerns.

Chairman and Chief Executive Officer

12. We propose to revise the Code to emphasise the chairman’s role and responsibility in leading the issuer’s corporate governance efforts. We also propose that a chief executive officer (“CEO”) who is not a director must disclose his appointment, resignation, re-designation, retirement or removal and any change in this information in the same way as a director. The remuneration of a CEO (if he is not a director) should also be disclosed.

Communication with shareholders

13. We propose to require issuers to publish their memoranda and articles of association or other constitutional documents on their websites and on the HKEx website on a continuous basis. We propose to introduce CPs recommending disclosure by name of individual directors’ attendance at general meetings, and attendance of external auditors at general meetings to answer questions from shareholders relating to the audit of the issuer. We also propose introducing a CP that the board should establish, and regularly review, a shareholder communication policy.

Company secretary

14. We propose to revise the Rules on company secretary’s qualifications and experience to make them less Hong Kong focused. We also propose a minimum of 15-hours of professional training for company secretaries. We propose to introduce a new section in the Code on the company secretary’s role and responsibilities.

Other Rule amendments

15. We propose to amend the Rules:
 - (a) on voting by poll: to allow an exception for procedural and administrative matters and to clarify disclosure requirements of poll results;
 - (b) on notification of changes to directors’ and supervisors’ information;
 - (c) to require shareholders to approve appointment and removal of auditors. The auditors must be allowed to make a representation at the general meeting to remove them before the end of their term of office;
 - (d) to remove the 5% de minimis exemption on a director’s right to vote on an interested transaction;
 - (e) to include in a circular information on the competing interest of a proposed director of the issuer;
 - (f) on next day disclosure on exercise of an option:
 - (i) to exclude exercise, by a director of a subsidiary, of options granted by an issuer; and

- (ii) aggregating events for the 5% threshold to include options exercised by persons who are not directors of the issuer;
- (g) on disclosing senior management's remuneration by band; and
- (h) on disclosing directors' attendance at board meetings.

Other Code amendments

16. We propose to introduce the following CPs:
 - (a) management to provide monthly updates, which may take the form of management accounts or trading updates, to each of the directors; and
 - (b) directors to disclose long term business model in which the issuer generates or preserves business value.
17. We propose to upgrade the following RBPs to CPs and revise the wording:
 - (a) nine years' service as an INED should be relevant in determining independence;
 - (b) INEDs and NEDs should attend board, board committee and general meetings and contribute to an issuer's strategy;
 - (c) a circular nominating a person for election as an INED should explain his suitability for election and why he is considered independent; and
 - (d) issuers should take out adequate and appropriate insurance for directors.
18. We propose to introduce an RBP that issuers should conduct a regular evaluation of the board's performance.
19. We propose to make minor stylistic or plain writing amendments to the Code and Rules. There is intended to be no change in existing policy, and we invite comments on these amendments to ensure that they simplify the provisions.
20. We conducted a soft consultation to solicit views from interested groups of practitioners and issuers on the issues and our proposals. We thank them for sharing with us their views and suggestions.